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## Recognizing Anti-Zionism as an Attack on Jewish Identity

### Cover Page Footnote

Alyza D. Lewin is President & General Counsel of the Louis D. Brandeis Center for Human Rights Under Law and partner at Lewin & Lewin, LLP. This Article reflects the author's remarks delivered at the Heritage Foundation Symposium, "The Future of Religious Liberty in America," at the Catholic University of America, Columbus School of Law on November 9, 2018. The author would like to thank Aviva Vogelstein, Emma Enig, and Hilary Miller for their assistance in putting together the materials for her remarks and this Article. The author also wishes to thank the editors of this publication for identifying and adding additional source materials in footnotes to this article.

# RECOGNIZING ANTI-ZIONISM AS AN ATTACK ON JEWISH IDENTITY

By Alyza D. Lewin<sup>+</sup>

Increasingly, Jewish students on campus are asked to abandon their support for Israel, lest they face harassment or be barred from certain groups and clubs.<sup>1</sup> Though this may appear to be political jockeying, it is in fact religious discrimination: yearning for Israel is a core tenet of Jewish culture and tradition. Administrators who permit their campuses to become hostile environments to Israel are liable under the same Title VI protections that prohibit other forms of ethnic discrimination.<sup>2</sup>

On university campuses today, the expression of a key element of Jewish identity is mischaracterized as political. That component is a love of Israel and support for the self-determination of the Jewish people in their ancestral homeland. It is a mistake to interpret this identification with Israel as synonymous with support for the policies of the current modern state of Israel.

This yearning for Zion—the emotional tie with Israel—is a deep, spiritual, integral part of Jewish identity.<sup>3</sup> It pre-dates the modern state of Israel and begins when God commands Abraham, the first Jew, to leave his birth-place and go to the land that God will show him.<sup>4</sup> Moses leads the People of Israel, *Am Yisrael*, to the Promised Land, the Land of Israel.<sup>5</sup> Indeed, more than half of the 613 commandments in the Pentateuch relate to the Land of Israel and can only be fulfilled in the Land of Israel.<sup>6</sup> These commandments do not just involve

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<sup>+</sup> Alyza D. Lewin is President & General Counsel of the Louis D. Brandeis Center for Human Rights Under Law and partner at Lewin & Lewin, LLP. This Article reflects the author's remarks delivered at the Heritage Foundation Symposium, "The Future of Religious Liberty in America," at the Catholic University of America, Columbus School of Law on November 9, 2018. The author would like to thank Aviva Vogelstein, Emma Enig, and Hilary Miller for their assistance in putting together the materials for her remarks and this Article. The author also wishes to thank the editors of this publication for identifying and adding additional source materials in footnotes to this article.

1. See generally Yonat Shimron & Michele Chabin, *'This is not OK': American Jewish students harassed for their support of Israel*, RELIGION NEWS SERVICE, (Oct. 17, 2018), <https://religionnews.com/2018/10/17/this-is-not-ok-american-jewish-students-harassed-for-their-support-of-israel/> ("Greenblatt notes that there was an 89 percent increase in anti-Semitic incidents reported on college campuses in 2017 over the year prior.").

2. See Civil Rights Act of 1964, Pub. L. No. 88-352, § 601, 78 Stat. 241, 252 (codified as amended in 42 U.S.C. § 2000d et seq.) ("No person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance.").

3. Daniel Gordis, ISRAEL: A CONCISE HISTORY OF A NATION REBORN 2, 31 (2016).

4. See *Genesis* 12:1–7 ("The Lord had said to Abram, 'Go from your country, your people and your father's household to the land I will show you.'").

5. See *Deuteronomy* 34:1–4.

6. YOTAV ELIACH, JUDAISM, ZIONISM AND THE LAND OF ISRAEL 6 (2018).

agriculture in Israel, but also relate to the life of the Nation of Israel in the land. They pertain to topics as varied as the Jewish court system (the *Sanhedrin*), Jewish kings, the laws of war, and activities in the Jewish Temple.<sup>7</sup>

The connection to the Land of Israel, *Eretz Yisrael*, is the glue that sustained Jews and linked them together for millennia despite their dispersion around the globe.<sup>8</sup> From the time they were banished from the land, throughout their exile, Jews, wherever they may be, prayed facing towards Jerusalem and Israel.<sup>9</sup> Jewish prayers have always been filled with references to the ingathering of the exiles and the return to Zion.<sup>10</sup> During the Passover Seder each year, Jews around the globe say, “*L’Shana Ha-ba’ah B’Yerushalayim*,” which translates to “[n]ext year in Jerusalem.”<sup>11</sup> And they say it again at the conclusion of *Yom Kippur*, the Day of Atonement, the holiest day of the year.<sup>12</sup> At Jewish weddings, it is a custom to break a glass in memory of Jerusalem and swear not to “forget thee O Jerusalem . . . .”<sup>13</sup> Even in times of our greatest joy, we recall the destruction of Jerusalem and express our desire to return and rebuild Jerusalem.

The unique miracle of Israel and the Jewish people is that after thousands of years, this perpetual yearning for Zion, this integral component of Jewish identity, was realized in part with the establishment of the modern State of Israel. As Charles Krauthammer once noted, “Israel is the very embodiment of Jewish continuity: It is the only nation on earth that inhabits the same land, bears the same name, speaks the same language, and worships the same God that it did 3,000 years ago.”<sup>14</sup> This source of Jewish strength, this deep-rooted Jewish connection to Israel, however, is under attack.

When students on campus today wish to express this part of their Jewish identity, they encounter very deliberate and targeted efforts to isolate, intimidate, and demonize them.<sup>15</sup> This harassment is part of a concerted effort to prevent students from publicly expressing support for Israel. To shut down pro-Israel speech on campus, those who oppose the modern State of Israel pressure students to shed this component of Jewish identity.<sup>16</sup> Last spring, at New York

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7. *Id.* at 5–6.

8. *Id.* at 6–7.

9. *The Significance of Jerusalem in Judaism*, ISRAEL & JUDAISM STUDIES (Feb. 23, 2019), <https://www.ijs.org.au/the-significance-of-jerusalem-in-judaism/>.

10. *Id.*

11. 2 MY PEOPLE’S PASSOVER HAGGADAH: TRADITIONAL TEXTS, MODERN COMMENTARIES 187–188 (2008).

12. THE COMPLETE ARTSCROLL MACHZOR YOM KIPPUR 764–65 (Nosson Scherman & Meir Zlotowitz eds., trans., 1986).

13. Areyh Kaplan, MADE IN HEAVEN 201–05 (1983).

14. Charles Krauthammer, *At Last, Zion*, THE WEEKLY STANDARD (May 11, 1998, 12:00 AM), <https://www.weeklystandard.com/charles-krauthammer/at-last-zion>.

15. *Background Information on Students for Justice in Palestine (SJP)*, ANTI-DEFAMATION LEAGUE (Nov. 2018), <https://www.adl.org/media/12176/download>.

16. *Id.*

University, 53 student organizations signed an agreement to boycott not only the State of Israel, but also the pro-Israel student groups on campus.<sup>17</sup> The 53 student organizations resolved that they would not co-sponsor events or engage in dialogue with pro-Israel organizations.<sup>18</sup>

What is the message these groups are sending to pro-Israel students? The 53 signatories to the resolution are in effect saying, “*If you want to join our progressive community on campus, if you want to demonstrate with us on issues such as climate change, immigration, or women’s rights, we’ll accept you into our club, but first you have to check your support for Israel at the door.*” The Jewish students who, for ethnic, cultural, and religious reasons support Israel are being told, “*You can join us, and become a fully accepted member of the university community, but only if you first shed a part of your Jewish identity.*” That is no different than if these groups were to say, “*We’ll let you in if you take off your yarmulke or stop eating kosher.*” Or if they were to say to a Catholic student, “*We’ll accept you only if you disavow the Vatican.*”

We are witnessing a new form of anti-Semitism. Irwin Cotler, an internationally renowned human rights activist who served as Minister of Justice and Attorney General in Canada, once said that “[t]raditional anti-Semitism denied Jews the right to live as equal members of society, but the new anti-Jewishness denies the right of the Jewish people to live as an equal member of the family of nations.”<sup>19</sup> Today’s anti-Semitism often manifests itself as anti-Zionism.

The International Holocaust Remembrance Alliance (IHRA), an intergovernmental organization with 31 member countries, issued a definition of anti-Semitism in 2016. The definition, arrived at by scholars of the Holocaust and of anti-Semitism, says, “Anti[-S]emitism is a certain perception of Jews, which may be expressed as hatred toward Jews. Rhetorical and physical manifestations of anti[-S]emitism are directed toward Jewish or non-Jewish individuals and/or their property, toward Jewish community institutions and religious facilities.”<sup>20</sup> This definition has become accepted as the gold-standard definition of anti-Semitism worldwide.<sup>21</sup>

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17. NYU Students for Justice in Palestine, *50+ NYU Student Groups Endorse Boycott, Divestment, and Sanctions Movement for Palestinian Human Rights*, MEDIUM (Apr. 9, 2018), <https://medium.com/@nyusjp/50-nyu-student-groups-endorse-boycott-divestment-and-sanctions-movement-for-palestinian-human-c27786ddc233>.

18. *Id.*

19. KENNETH L. MARCUS, *THE DEFINITION OF ANTI-SEMITISM* 151 (Oxford Univ. Press, 2015) (internal citation omitted).

20. *Working Definition of Antisemitism*, INT’L. HOLOCAUST REMEMBRANCE ALL., <https://www.holocaustremembrance.com/node/196> (last visited Feb. 22, 2019).

21. *Fact Sheet: Working Definition of Antisemitism*, INT’L. HOLOCAUST REMEMBRANCE ALL. (Dec. 19, 2019), <https://www.holocaustremembrance.com/node/196> (listing countries that have adopted the IHRA Definition of Anti-Semitism).

Most important are the examples that are included with IHRA definition of anti-Semitism. The IHRA notes that “criticism of Israel similar to that leveled against any other country cannot be regarded as anti[-S]emitic.”<sup>22</sup> But the IHRA classifies as anti-Semitism taking the old, traditional anti-Semitic tropes and transferring them from the individual Jew to the collective Jew—to the community that has become the State of Israel.

The examples included with the IHRA definition are based on principles set out by Natan Sharansky in 2004.<sup>23</sup> Sharansky distinguished anti-Semitic criticism of Israel from political disagreement with “The 3D Test.”<sup>24</sup> He explained that criticism of Israel which seeks to *Delegitimize*, *Demonize*, or apply a *Double-standard* to the State of Israel is anti-Semitic.<sup>25</sup> Delegitimizing Israel means suggesting that Israel has no right to exist. It includes allegations that *the Jewish people have no right of self-determination*, and that *the State of Israel is a racist endeavor*. Is self-determination acceptable for all groups except the Jews? That’s anti-Semitism.

Demonization means accepting the blood libel or treating the Jew as a demon. According to the IHRA, “[d]rawing comparisons of contemporary Israeli policy to that of the Nazis” or “[m]aking mendacious, dehumanizing, demonizing, or stereotypical allegations about Jews as such or the power of Jews as collective—such as, especially but not exclusively, the myth about a world Jewish conspiracy or of Jews controlling the media, economy, government or other societal institutions” is anti-Semitism.<sup>26</sup> Consequently, holding Jews collectively responsible, not only for the weather as one D.C. councilman once notoriously said,<sup>27</sup> but for the actions of the State of Israel is anti-Semitism. The IHRA acknowledges this by including in its list of examples: “Holding Jews collectively responsible for actions of the state of Israel.”<sup>28</sup> Blaming students on campus for actions of the government of the State of Israel is, therefore, according to this definition, anti-Semitism.

The final “D” of Sharansky’s 3-D’s, applying a double-standard to Israel, is evident when Israel is singled out for criticism and held to a higher standard than any other country.

The IHRA definition has been adopted by the United States Department of State.<sup>29</sup> It is the working definition utilized by State Department officials when

22. *Working Definition of Antisemitism*, *supra* note 20.

23. Natan Sharansky, *3D Test of Anti-Semitism; Demonization, Double Standards, Delegitimization*, *JEWISH POL. STUD. REV.* (Oct. 21, 2004), <http://jcpa.org/article/3d-test-of-anti-semitism-demonization-double-standards-delegitimization/>.

24. *Id.*

25. *Id.*

26. *Working Definition of Antisemitism*, *supra* note 20.

27. Tamar Lapin, *DC lawmaker blames Jews for bad weather*, *N.Y. POST* (Mar. 19, 2018, 11:13 AM), <https://nypost.com/2018/03/19/dc-lawmaker-blames-jews-for-bad-weather/>.

28. *Working Definition of Antisemitism*, *supra* note 20.

29. U.S. DEPARTMENT OF STATE, *DIPLOMACY IN ACTION DEFINING ANTI-SEMITISM* (2016).

they seek to identify, analyze, and address anti-Semitism abroad.<sup>30</sup> The definition, however, has not yet been adopted to apply universally in domestic use.<sup>31</sup> Federal legislation has been introduced which would apply the working definition within the United States.<sup>32</sup> Adopting this definition as federal law would provide guidelines necessary for universities to address the campus harassment of pro-Israel Jewish students. When student groups opposed to the modern state of Israel stifle the expression of Jewish identity by pro-Israel students, they cross the line into anti-Semitism.

Pro-Israel students on campus today are increasingly afraid to disclose their connection to Israel not only vocally but visually. For example, the Jewish Hillel chapters at many American universities traditionally print t-shirts with the name of the university in Hebrew letters.<sup>33</sup> It was reported to me that one Hillel chapter recently requested that such Hebrew t-shirts be discontinued because the students stated wearing the t-shirts with Hebrew on them made them targets. Hebrew is not just the language of the modern state of Israel. It has always been the language of the Jewish people.<sup>34</sup> It is the historic language of the Bible, Jewish texts, and prayer.<sup>35</sup> Yet there are Jewish students today who are feeling unsafe wearing Hebrew t-shirts because they feel it makes them “targets.” This is the result of a very deliberate effort to shut down pro-Israel speech on campus and coercively smother expression of support for Israel by students.

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30. *Id.*

31. As this article was going to print, on December 11, 2019, President Donald J. Trump issued the Executive Order on Combating Anti-Semitism, which requires government agencies that enforce Title VI of the Civil Rights Act of 1964 to consider the IHRA definition. The IHRA Working Definition of Anti-Semitism is, therefore, now applied by the United States domestically as well as internationally. See *Combating Anti-Semitism*, 84 Fed. Reg. 68,779 (Dec. 16, 2019).

32. Anti-Semitism Awareness Act of 2018, S.2940, 115th Cong. § 2D (2018), <https://www.congress.gov/bill/115th-congress/senate-bill/2940/text>.

33. See, e.g., *Classic Harvard Hillel T-Shirt*, ZAZZLE, [https://www.zazzle.com/classic\\_harvard\\_hillel\\_t\\_shirt-235563774515601110](https://www.zazzle.com/classic_harvard_hillel_t_shirt-235563774515601110) (last visited Jan. 15, 2019) (selling Harvard University t-shirt with “Harvard” in Hebrew letters); *Maryland Hillel T-Shirts*, MARYLAND HILLEL, <https://www.marylandhillel.org/product/maryland-hillel-t-shirts/> (last visited Jan. 15, 2019) (selling University of Maryland t-shirt with “Maryland” in Hebrew letters); *Columbia T-Shirt*, COLUMBIA/BARNARD HILLEL, <https://columbiabarnardhillel.org/shop/apparel/columbia-t-shirt/> (last visited Jan. 15, 2019) (selling Columbia University t-shirt with “Columbia” in Hebrew letters); *Hofstra Hillel Hebrew Shirts!*, CUSTOM INK, <https://www.customink.com/fundraising/hofstrahillel> (last visited Jan. 15, 2019) (selling Hofstra University t-shirt with “Hofstra” in Hebrew letters); *Bucky Hebrew Wisconsin T-Shirt*, HILLEL UNIVERSITY OF WISCONSIN, <https://www.uwhillel.org/product-page/short-sleeve-bucky-hebrew-wisconsin-t-shirt> (last visited Jan. 15, 2019) (selling University of Wisconsin t-shirt with “Wisconsin” written in Hebrew letters).

34. 8 ENCYCLOPEDIA JUDAICA 620–83 (2 ed. 2007); Nataniel Kravitz, 3,000 YEARS OF HEBREW LITERATURE (1972).

35. MJL, *7 Things You Should Know About Hebrew: The Jewish people’s traditional language has a storied past*, MY JEWISH LEARNING, <https://www.myjewishlearning.com/article/the-hebrew-language/> (last visited Sept. 7, 2019).

We see with increasing frequency efforts to shut down activities and events that bring pro-Israel speakers to campus. At University of California, Los Angeles (UCLA) last Spring (May 2018), an event celebrating “indigenous people” featured an Armenian, a Kurd, and an Israeli as speakers.<sup>36</sup> The flag of each entity was hung on the wall behind the panelists. Midway through the event, a group opposed to self-determination of the Jewish people in their ancestral homeland interrupted the program.<sup>37</sup> They didn’t just shout-down the speakers and stand aggressively and menacingly over the panelists seated at the table, but they also ripped down the Armenian flag and tossed a speaker’s name placard on the ground.<sup>38</sup> The group of disruptors then proceeded for almost 8 minutes to shut down the event while chanting with bullhorns slogans including “We don’t want no two states, we want ‘48,” demanding a return to 1948, prior to the creation of the Jewish state.<sup>39</sup> The disruptors wanted to go back to a time before there was a state of Israel. Eventually, the police escorted the disruptors outside, but the damage was done. The event concluded soon after.

In November 2018, UCLA was the site of a national conference of Students for Justice in Palestine (SJP).<sup>40</sup> SJP purports to promote and work on behalf of Palestinians, but its real objective is to bring about the end of the Jewish State of Israel. The website for SJP’s national conference listed the themes of the conference. The second goal, titled “Regearing from Mythos to Action” stated:

The aim of this theme is to remind us that Zionism is not an insurmountable force. We know that Zionism is ethnic cleansing, destruction, mass expulsion, apartheid, and death, but it is also something very tangible. The reason we can have hope is that Zionism is a human ideology and a set of laws that have been challenged and can be destroyed. This is a reminder that the successful challenges to Zionism have come from direct action. We need to work on reframing Zionism not as some age-old force that’s too great to confront but as actual laws and institutions that can be broken down and dismantled. At this conference we will continue to make space for theorizing ideologies but will also focus on developing actionable local and regional campaigns with clear targets. We have decades of successful action supporting us in our struggle.<sup>41</sup>

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36. See Amchainitiative, *Disruption to SSI Event at UCLA 5.17.18 (2 Minute Beginning of Disruption)*, YOUTUBE (Jun. 4, 2018), <https://www.youtube.com/watch?v=dXAcv9bCykA> (emphasizing the Israel, the Kurdistan and Armenian flag in the background of the video); see also Amchainitiative, *Anti-Zionist Protesters Aggressively Disrupt an SSI Event at UCLA 5.17.18*, YOUTUBE (Jun. 4, 2018), <https://www.youtube.com/watch?v=1VcelNw78Bg> (last visited Jan. 18, 2019) (noting that the flags in this video are located directly behind the three speakers).

37. See *supra* note 36.

38. See *supra* note 36.

39. See *supra* note 36.

40. National Students for Justice in Palestine, *Our 2018 Conference Theme & Goals*, <https://www.nationalsjip.org/2018-conference.html> (last visited Jan. 18, 2019).

41. *Id.*



If you are a student group whose stated goal is to demonize, dismantle and destroy Zionism, and you wish to develop “actionable local and regional campaigns with clear targets,” who are your “targets?” Clearly, they are the pro-Israel, Zionist students on campus. And what are your “actionable local and regional campaigns?” They are your deliberate efforts to intimidate and stifle the speech of those pro-Israel students—speech that is the expression of their religious, spiritual, and ethnic Jewish identity. Unsurprisingly, social media posts of some former and current SJP student activists and leaders reveal deep anti-Semitic animus including statements such as: “Prepare for the Zionist apocalypse, they are the modern zombies who are after Palestinian flesh Don’t hesitate to slash their throats,”<sup>42</sup> “[l]et’s stuff some Jews in the oven,”<sup>43</sup> and “Hitler should have killed the Jews when he had the chance.”<sup>44</sup> The world would be so much better without Jews.<sup>45</sup> How rapidly and seamlessly the comments segue from opposing Zionism to demonizing Jewish identity. University administrators should not permit this abuse and intimidation. They must take active remedial steps.

Existing law provides possible remedies against university administrators who show deliberate indifference or fail to act against student groups that stifle pro-Israel speech by fellow students.<sup>46</sup> Title VI of the Civil Rights Act of 1964<sup>47</sup> authorizes both judicial and administrative remedies to enforce its ban against discrimination based on race, color, or national origin. The Supreme Court has consistently recognized that Title VI may be enforced by an individual private lawsuit.<sup>48</sup> Anti-Semitic harassment has been held to be covered by the prohibition against racial discrimination in Title VI.<sup>49</sup>

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42. Halima Eid, CANARY MISSION, [https://canarymission.org/individual/Halima\\_Eid](https://canarymission.org/individual/Halima_Eid) (last visited Feb. 26, 2019).

43. Paul Strand, *It’s Not Just Dumb Neo-Nazis, It’s Your Smart College Student: Anti-Semitism Spikes Most in Colleges*, CBN NEWS (Nov. 2, 2018), <https://www1.cbn.com/cbnnews/us/2018/november/its-not-just-dumb-neo-nazis-its-your-smart-college-student-anti-semitism-spikes-most-in-colleges>.

44. Daniel Greenfield, *“I would have Killed all the Jews in the World”*: SJP’s Holocaust Hate, *How tolerating Student for Justice in Palestine ignores the lessons of the Holocaust*, FRONTPAGE MAG (Feb. 5, 2018), <https://www.frontpagemag.com/fpm/269214/i-would-have-killed-all-jews-world-sjps-holocaust-daniel-greenfield>.

45. Adam Milstein (@AdamMilstein), TWITTER (Oct. 31, 2018, 6:59 PM), <https://twitter.com/AdamMilstein/status/1057769149600956417> (“Can a conference calling to kill #Jews take place after #PittsburghSynagogue shooting? YES, and it’s happening Nov. 16 at @UCLA. #SJP leaders and members often call to kill #Jews (see image for yourself) and #UCLA is undeterred in inviting their national conference to its campus.”).

46. See *infra* notes 49–51 and accompanying text.

47. Civil Rights Act of 1964 § 601.

48. *Lau v. Nichols*, 414 U.S. 563, 566–67 (1974); *Alexander v. Sandoval*, 532 U.S. 275, 279–80 (2001).

49. See *Shaare Tefila Congregation v. Cobb*, 481 U.S. 615, 617–18 (1987) (“Jews and Arabs were among the peoples then considered to be distinct races and hence within the protection of the statute.”); see also *T.E., O.C., & D.C. v. Pine Bush Cent. Sch. Dist.*, 58 F. Supp. 3d 332, 357–58

There is already substantial precedent under Title IX of the Civil Rights Act<sup>50</sup> and 42 U.S.C. § 1983<sup>51</sup> for holding campus administrators liable under Section 1983 for their deliberate indifference to student-on-student sexual harassment.<sup>52</sup> The Court of Appeals for the Fourth Circuit recently held that Feminists United on Campus could maintain an action against the administration of the University of Mary Washington for failing to address the hostile environment against female students on campus growing out of student controversy over the student senate's authorization of male-only fraternities.<sup>53</sup> Pro-Israel Jewish students who are subjected to student-on-student intimidation might, in a parallel lawsuit, sue university administrators who, after being notified of such conduct by students, remain deliberately indifferent and fail to take necessary disciplinary and protective measures.

An alternative simpler administrative remedy is to file a Title VI complaint with the Office of Civil Rights of the Department of Education. The Department of Education has made incremental improvements to protect students based on religion. In a 2004 Dear Colleague Letter written by then-Assistant Secretary for Civil Rights Kenneth L. Marcus,<sup>54</sup> the Office for Civil Rights (OCR) clarified that Title VI protected students from certain religious groups that also have ethnic or ancestral components, such as Judaism, Islam, or Sikhism. The Letter read:

Groups that face discrimination on the basis of shared ethnic characteristics may not be denied the protection of our civil rights laws on the ground that they also share a common faith. Similarly, the existence of facts indicative of religious discrimination does not divest OCR of jurisdiction to investigate and remedy allegations of race or ethnic discrimination. OCR will exercise its jurisdiction to enforce the Title VI prohibition against national origin discrimination, regardless of whether the groups targeted for discrimination also exhibit religious characteristics. Thus, for example, OCR aggressively investigates alleged race or ethnic harassment against Arab Muslim, Sikh, and Jewish students.<sup>55</sup>

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(S.D.N.Y. 2014) (“[T]he three Plaintiffs here had anti-Semitic slurs repeatedly directed at them, witnessed swastika graffiti, and were subjected to anti-Semitic ‘jokes.’”).

50. Civil Rights Act of 1964 § 902.

51. 42 U.S.C. § 1983 (2012).

52. See, e.g., *Fitzgerald v. Barnstable Sch. Comm.*, 555 U.S. 246, 258–60 (2009) (holding 42 U.S.C. § 1983 suits based on Equal Protection remain available to plaintiffs alleging unconstitutional gender discrimination in schools).

53. *Feminist Majority Found. v. Hurley*, 911 F.3d 674, 688–89, 704 (4th Cir. 2018).

54. Letter from Kenneth L. Marcus, Deputy Assistant Sec’y for Enf’t, to Colleague (Sept. 13, 2004), available at <https://www2.ed.gov/about/offices/list/ocr/religious-rights2004.html>. This policy guidance was written by Kenneth L. Marcus in 2004 when he was serving as Assistant Secretary for Civil Rights. Mr. Marcus subsequently founded the Louis D. Brandeis Center, Inc. and is now again serving as Assistant Secretary for Civil Rights in the Department of Education.

55. *Id.*

In 2010, the Department of Justice confirmed the legal correctness of the 2004 policy,<sup>56</sup> and the Department of Education re-affirmed the policy in a Dear Colleague Letter.<sup>57</sup>

The Louis D. Brandeis Center recently initiated a new program that we call JIGSAW—our Justice Initiative Guiding Student Activists Worldwide.<sup>58</sup> Since undergraduates don't understand the legal tools available to them to combat student-on-student intimidation, we created a curriculum to train law students on First Amendment issues, on the definition of anti-Semitism, on Title VI of the Civil Rights Act, and on how a discrimination complaint can be filed with the Office of Civil Rights of the Department of Education. We train law students to assist, support, and guide students in the effort to combat anti-Semitism on campus.

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These remarks were prepared for the Symposium on The Future of Religious Liberty in America sponsored by The Heritage Foundation and the Center for Religious Liberty at Catholic University Columbus School of Law.

The symposium was held on November 9, 2018 on the eightieth anniversary of Kristallnacht—the Night of Broken Glass. On November 9–10, 1938, the Nazis terrorized Jews in Germany and Austria. Over 7,500 Jewish businesses were vandalized and, according to Yad Vashem, 1,400 synagogues were burned.

I closed my remarks at the Symposium by noting that Jews represent only two percent of the population in this country, yet over half of the religion-based hate crimes in the United States are directed against Jews.<sup>59</sup> The Anti-Defamation League reports that in 2017 anti-Semitic incidents on university campuses increased 89% over the previous year.<sup>60</sup> If we fail to recognize that recent incidents on campus are anti-Semitism masked as anti-Zionism, we will be forgetting the past and risk its repetition.

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56. See Thomas E. Perez, Assistant Attorney Gen., Letter to Russlynn H. Ali, Assistant Sec'y of Educ. for Civil Rights (Sept. 8, 2010), available at [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](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).

57. See Russlynn Ali, Assistant Sec'y for Civil Rights, to Colleague, (Oct. 26, 2010), available at <https://www2.ed.gov/about/offices/list/ocr/letters/colleague-201010.html>.

58. *About Brandeis Legal JIGSAW Initiative*, THE LOUIS D. BRANDEIS CENTER, INC., <http://brandeiscenter.com/about-brandeis-legal-jigsaw-initiative/> (last visited Jan. 18, 2019).

59. *2017 Audit of Anti-Semitic Incidents*, THE ANTI-DEFAMATION LEAGUE, <https://www.adl.org/resources/reports/2017-audit-of-anti-semitic-incidents#major-findings> (last visited Apr. 24, 2019).

60. *Id.*

