



The Louis D. Brandeis Center
for Human Rights Under Law

September 21, 2023

VIA Electronic Mail

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

Re: "Palestine Writes" Festival Requires Further Administrative Action

Dear President Magill:

We are attorneys at the Louis D. Brandeis Center for Human Rights Under Law, a national non-profit legal advocacy organization that works to combat anti-Semitism in higher education and protect the rights of Jewish students and all students. We write to address our concerns about the upcoming Palestine Writes Literature Festival (Festival), scheduled to be held on the University of Pennsylvania's (Penn's) campus beginning this Friday (Sept 22) through Sunday (Sept 24). As you are aware, the Festival features an array of anti-Zionist speakers and activists who have promoted anti-Semitic tropes and called for violence against Israel. Your refusal to take sufficiently firm action, as reflected in the letter you sent yesterday to the Anti-Defamation League, will inevitably worsen the situation at the University of Pennsylvania. In fact, reports of new anti-Semitic vandalism on your campus today indicate that we are already seeing the foreseeable consequence of this failure to take strong leadership. You simply cannot allow this to continue.

The Festival describes itself as "the only North American literature festival dedicated to celebrating and promoting cultural productions of Palestinian writers and artists."¹ If this description were accurate, we would have no problem with it, and would be pleased to see Penn host it. But given the nature of many of the Festival's speakers and events, it is apparent that the Festival has been "hijacked" by controversial figures who espouse anti-Semitic rhetoric and call for the destruction of Israel.

¹ See About Palestine Writes, <https://palestinewrites.org/about-palestine-writes/>.

Although Penn has faced [mounting calls](#) to take action against the anti-Semitism on full display at the Festival, your administration has refused to address the specific anti-Semitism on display at the Festival. In your letter to the ADL, you cited Penn's commitment to open expression and academic freedom. These principles, however, do not prevent Penn from speaking out against the anti-Semitic themes of the Festival, from preventing the use of Penn's logos in connection with the Festival, and from refusing to fund the Festival. These principles have not stopped Penn from taking action against other speakers who traffic in hate against other minorities. Penn must not permit a double standard when it comes to anti-Semitic hate.

By tacitly condoning the inflammatory and false narratives about Israel and the denial of the Jews' ancestral connection to the land of Israel – themes that speakers at this weekend's Festival repeatedly espouse - Penn is allowing the Festival to create a hostile environment for Jewish students on its campus at a time when, even the University has acknowledged, anti-Semitic harassment, vandalism, and assault are rising on college campuses. According to the Anti-Defamation League's most recent report, anti-Semitic incidents on college campuses increased by 41 percent last year, which is even greater than the 36 percent increase in the U.S. overall.² The ADL also observed that recent anti-Israel activity on U.S. college campuses was defined by “the vilification of Zionists and expressions of support for violence and terror organizations.”³

Indeed, publicity about the upcoming Festival, combined with Penn's failure to directly address the Festival's anti-Semitic content and the University's affirmative funding of the Festival – has been followed by a predictable spike in anti-Semitic incidents on campus. As recently as this morning, Penn's Hillel was vandalized by an intruder who burst into the building screaming obscenities such as, “F*ck the Jews.”⁴ And just last week, a student in the architecture department discovered a swastika painted on the wall of a classroom in Meyerson Hall. The anti-Semitism on campus is likely to get worse if the University fails to specifically address the anti-Semitic content of the Festival.

² The report found 219 campus incidents, of which 127 were incidents of harassment, 90 were incidents of vandalism, and 2 were assaults. *See* Audit of Anti-Semitic Incidents 2022, Anti-Defamation League, <https://www.adl.org/resources/report/audit-antisemitic-incidents-2022>.

³ Anti-Israel Activism on U.S. Campuses, 2022-2023, Anti-Defamation League, (Sept. 12, 2023), <https://www.adl.org/resources/press-release/anti-israel-incidents-college-campuses-often-marked-vilification-zionists>.

⁴ 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>.

I. Penn is hosting an anti-Semitic event sponsored by several of its academic departments.

The Festival consists of panels and events being held over the course of three days at Irvine Auditorium, Penn Commons, The Kelley Writers House, and other university spaces. Penn programs and departments are among the sponsors of this festival. The Middle East Center (MEC),⁵ the Department of Cinema & Media Studies, the Near Eastern Languages and Civilization Department, the Sachs Program for Arts Innovation, the Wolf Humanities Center, and the Kelley Writers House are listed as sponsors on the festival's official website.⁶ Penn has stated that it is not “organizing”⁷ the Festival, but the multi-day program is being promoted as a University of Pennsylvania event. Penn’s logo and sponsoring departments appear on the announcement. The unmistakable inference is that Penn has endorsed the event and its speakers, including those who engage in anti-Semitic rhetoric and behavior. Penn’s broad generic condemnation of anti-Semitism in the abstract is welcome. However, the university’s refusal to distance itself from the event by defunding or condemning the specific anti-Semitic rhetoric peddled by many of the event’s scheduled speakers, renders the university complicit in fostering a hostile environment for Jewish and Israeli students on its campus.

The ADL has identified 25 speakers on the festival list who have expressed anti-Semitic views. It is incumbent on Penn to address anti-Semitic rhetoric on its campus with the same seriousness and vigor that the university addresses hateful rhetoric that targets other communities on campus. The following are just a few examples of the hateful anti-Semitic statements made by some of the speakers participating in this weekend’s event:

Susan Abulhawa is the co-chair of Palestine Writes, the upcoming festival’s executive director, and a speaker presenting at two events. She has equated Israel

⁵ 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>.

⁶ See *Palestinian Writes Literature Festival: Supporters*, <https://palestinewrites.org/supporters-2023/>.

⁷ Penn Office of the President, Statement on Palestine Writes Literature Festival, (Sept. 12, 2023), <https://president.upenn.edu/content/statement-palestine-writes-literature-festival>.

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, Abuelhawa 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.”⁸ Earlier this year, Abulhawa tweeted: “Calling Israel a Nazi state doesn’t quite capture the depths of their malevolence.”⁹ 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.”¹⁰

Just last March, Abulhawa and others created upheaval by promoting anti-Semitism at the Adelaide Writers Week in Australia. Major supporters of the event withdrew due to Abulhawa’s presence.¹¹ 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.¹² In Abulhawa’s session, she accused Jewish settlers of poisoning and destroying Palestinian water sources.¹³ Josh Feldman, 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

⁸ 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/>.

⁹ TWITTER, Susan Abulhawa, (Feb. 25, 2023), <https://twitter.com/sjabulhawa/status/1629588707983360001>.

¹⁰ TWITTER, Susan Abulhawa, (Feb. 19, 2023), <https://twitter.com/sjabulhawa/status/1627286736484155393>.

¹¹ 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>.

¹² 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/>.

¹³ Jews in medieval Europe were periodically accused of poisoning wells in an effort to kill Christians, often resulting in deadly pogroms. See *Id.*

reality.”¹⁴ 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.¹⁵

Randa Abdel-Fattah, an Australian writer of Palestinian heritage, will participate in 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,”¹⁶ 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.”¹⁷ Abdel-Fattah was another controversial writer at the Adelaide Writers Festival earlier this year. She joined Mohammed El-Kurd on the “Authors Take Sides” panel, condemning and vilifying Israel, using words like “pogrom, massacre, and apartheid.”¹⁸

Bill V. Mullen, a professor at Purdue University (Purdue), will present at an event entitled “The Tent Generations, by Mohammed Sawaie.” Mullen has falsely claimed that Israel subjects Palestinians to “ethnic cleansing” and wrote that “The solution is to de-Zionize our campuses.”¹⁹

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, will 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.”²⁰

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ 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/>.

¹⁷ TWITTER, Randa Abdel-Fattah, (April 4, 2023), <https://twitter.com/RandaAFattah/status/1643412890416996352>.

¹⁸ 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>.

¹⁹ 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>.

²⁰ Noa Tishby, “What Part of Antisemitism Does the UPenn Administration Not Get?” *Jewish Journal*, (Sept. 13, 2023),

He has also lauded Palestinian terrorists such as Rasmia Odeh as a “freedom fighter being railroaded for her commitment to justice.”²¹ He has similarly expressed support for terrorist Ali Jiddah on social media and actively assisted in running a 2016 fundraiser for him.²² 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.²³

Roger Waters, a musician and former member of Pink Floyd, is by far the most famous speaker at this Festival. He will present at an event titled “The Cost, Reward, & Urgency of Friendship.” Waters has compared Israel to Nazi Germany and made comments about “Jewish Power.”²⁴ During a recent concert in Berlin, he wore a mock Nazi uniform and projected Anne Franks’s name on stage.²⁵ 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.²⁶ Even his former bandmate, David Gilmour, publicly conceded that Waters is an anti-Semite.²⁷ Water’s participation in this Festival is 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, one must infer he was invited to promote anti-Semitism.

<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/>

²¹ 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/>.

²² *Id.*

²³ 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/>.

²⁴ 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.*

²⁵ *Id.*

²⁶ *Id.*

²⁷ *Id.*

In addition to the Festival’s choice of speakers, we have concerns about some of its programming and panels, which include a screening of the Jordanian film *Farha*. The film depicts fictitious Jewish atrocities against Palestinian Arabs during the 1948 War and promotes an antisemitic blood libel against Israel.²⁸ 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.²⁹ When the university permits a modern-day blood libel to spread unabated on campus, it sends a message that the harassment and discrimination of Jews and Israelis will be tolerated. To avoid fostering a campus climate that is hostile towards Jews, the university should call out and condemn the libelous content of this film as violating the University’s principles of mutual respect and inclusion.

An entire panel at the festival will also be dedicated to the works of terrorist Ghassan Khanafani, who was a member of the Popular Front for the Liberation of Palestine (PLFP) terrorist organization.³⁰ Khanafani has been linked to the May 1972 Lod Airport massacre, in which terrorists recruited by the PFLP gunned down 26 travelers, including American citizens.³¹ Just as it is incumbent on the University to condemn blood libels that defame and disparage Jews and Israelis, so too, should the university condemn the celebration of terrorists who target Jews. By failing to condemn programming and displays that glorify terrorism, the university fosters a campus climate that is inhospitable to Jews.

II. Penn must recognize pernicious forms of contemporary anti-Semitism that target Jews on the basis of their shared ethnic and ancestral identity.

For many Jews, including many Jewish students at Penn, identifying with, and expressing support for the Jewish homeland is a sincere and deeply felt expression

²⁸ 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/>.

²⁹ “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>.

³⁰ 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/>.

³¹ *Id.*

of their Jewish ethnic and ancestral identity.³² Anti-Semitism directed at Jewish ethnicity is often part of a concerted strategy to marginalize Jewish students on campus and make them feel unwelcome.³³

On today's college campuses, anti-Semitic bias and discrimination are often directed at Jews as a people rather than just as a religious or faith community.³⁴ According to Jewish tradition, the Jewish people are descendants from the sons (twelve tribes) of the Hebrew patriarch, Jacob, who was also called "Israel."³⁵ As recounted in the Bible, the "Children of Israel" were liberated from slavery in Egypt and wandered in the desert for forty years before settling in the Land of Canaan (which is contiguous with much of the modern State of Israel.)³⁶ In approximately 1020 BCE, the Jewish people formed a centralized monarchy in Israel.³⁷ In approximately 960 BCE the construction of the First Jewish Temple in Jerusalem was completed.³⁸ The Temple served as the focal point for Jewish life around the world. It was customary for Jews to make a pilgrimage to the Temple during three holidays each year - Passover, Sukkot (the Feast of Tabernacles), and Shavuot (Pentecost).³⁹ Over the centuries, both the First Jewish Temple and the Second Jewish Temple (which was constructed on the same Jerusalem site as the first) were destroyed.⁴⁰

³² 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>.

³³ 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>.

³⁴ Mark Goldfeder, Defining Antisemitism (Feb 1, 2021). Seton Hall Law Review: Vol. 52: Iss. 1, Article 3. Available at: <https://scholarship.shu.edu/shlr/vol52/iss1/3>.

³⁵ Israel" is another name given to the Biblical forefather Jacob, Genesis 32:28

³⁶ MARTIN GILBERT, *The Routledge Atlas of Jewish History*, Eighth Edition, 20-21 (2010), available at <https://ia903401.us.archive.org/11/items/edg-the-routledge-atlas-of-jewish-history/edg%20The%20Routledge%20Atlas%20of%20Jewish%20History.pdf>.

³⁷ Israeli Foreign Ministry, History of Israel: Timeline, <https://embassies.gov.il/UnGeneva/AboutIsrael/history/Pages/History-Israel-Timeline.aspx>.

³⁸ *Id.*

³⁹ BBC, "Ways of Jewish Living: Pilgrim Festival," <https://www.bbc.co.uk/bitesize/guides/z4kg4qt/revision/9>.

⁴⁰ The First Jewish Temple was destroyed by the Babylonians in 586 BCE. The Second Jewish Temple was built (in the same place in Jerusalem where the First Temple had stood) in approximately 515 BCE. The Second Jewish Temple was destroyed in 70 CE. See Israeli Foreign Ministry, History of Israel: Timeline, <https://embassies.gov.il/UnGeneva/AboutIsrael/history/Pages/History-Israel-Timeline.aspx>.

Throughout years of exile and persecution, the Jewish people continued to recognize Jerusalem (also known as "Zion") and the Land of Israel as the Jews' ancestral homeland. To this day, Jews pray facing toward Jerusalem. The Jewish calendar, Jewish life cycle events, Jewish law, and Jewish prayer reflect the deep historic and ancestral connection of the Jewish people to the Land of Israel. For example, more than half of the 613 commandments included in the Pentateuch relate to and can only be fulfilled in the Land of Israel.⁴¹

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. However, demanding that Jews disavow their ancestral ethnic heritage to be accepted, is discriminatory. With increasing frequency, this form of anti-Semitism manifest on university campuses as vilification, shunning, marginalization, harassment and/or exclusion of Jewish students whose connection to Israel is integral to their Jewish identity. Rhetoric that demonizes and delegitimizes the Jewish state often encourages and facilitates such discriminatory conduct.⁴² On campus, Jewish and Israeli students who celebrate their Jewish ethnic heritage and consider themselves "Zionists" are often branded as "racist," "oppressors," "settler colonialists," and "white" (an ironic inversion of the Nazi claim that Jews polluted the pure white Aryan race). Those who employ these labels frequently ignore, falsify, or deny Jewish history, contemporary facts about Israel, and the existence of Jews of color. They not only shun, marginalize, and ostracize Jewish individuals but also promote negative misperceptions among neutral onlookers.

Universities have an obligation to prevent harassment and discrimination against Jewish and Israeli students. As you are undoubtedly aware, Title VI of the Civil Rights Act of 1964 (Title VI) protects Jews and Israeli nationals against harassment and discrimination on the basis of their national origin and shared ethnic and ancestral identity.⁴³ Indeed, guidance issued by the Department of Education's Office for Civil Rights (OCR) and the Department of Justice in 2004, 2010, 2017 and 2023 clarifies that Title VI covers discrimination against Jews on the basis of their

⁴¹YOTAV EILICH, *Judaism, Zionism and the Land of Israel*, 4-6 (Dialog Press) (2018).

⁴² "Understanding Campus Antisemitism," AMCHA INITIATIVE, (July 2020), available at <https://amchainitiative.org/wp-content/uploads/2020/07/Antisemitism-Report-2019.pdf>.

⁴³ 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").

“actual or perceived shared ancestry or ethnic characteristics.”⁴⁴ 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.”⁴⁵

In January 2023, the Department of Education affirmed its commitment to the Executive Order, which incorporates the International Holocaust Remembrance Act’s Working Definition of Anti-Semitism (the IHRA Definition) when it issued a factsheet on discrimination based on shared ancestry.⁴⁶ In addition, the Department of Education re-affirmed its commitment to the Executive Order as recently as May 2023, when it directed university administrators to the Questions and Answers on Executive Order 13899 as a resource in OCR guidance issued contemporaneously

⁴⁴ See *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>. See also 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>.

⁴⁵ 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. 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>.

⁴⁶ See, 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.”

with the White House National Strategy on Countering Antisemitism⁴⁷. 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, denying the Jewish people the right to self-determination—and/or subjecting Israel to double standards are another thing altogether. These are classic earmarks of anti-Semitism.

Title VI requires all entities receiving federal funding to respond immediately to discrimination and/or harassment that “negatively affect[s] the ability and willingness of Jewish students to participate fully in the school’s education programs and activities.”⁴⁸ A university “*must* take prompt and effective steps reasonably calculated to end the harassment, eliminate any hostile environment, and prevent the harassment from recurring.”⁴⁹ Further, OCR has explained that a university may 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.”⁵⁰

III. This Festival has the potential to foster a hostile environment for Jewish and Israeli students.

Supporters of Festival speakers such as Susan Abulhawa, Randa Abdel-Fattah, and Marc Lamont Hill, among others, may argue they are merely criticizing Israeli policy, even though the hateful anti-Semitic nature of their rhetoric is on full display, as demonstrated in the section above. These speakers are all too likely to stir up anti-Semitic feelings in festival attendees on Penn’s campus. They will also suppress any facts or views on Israel that run counter to their one-sided and generally false narrative, which invariably presents Israel as the sole villain, as exemplified by the Adelaide Writers Festival earlier this year, where Mohammed

⁴⁷ See Dear Colleague Letter, U.S. DEPT OF EDUC.–OFFICE FOR C. R. (May. 23, 2023), available at https://www2.ed.gov/about/offices/list/ocr/docs/antisemitism-dcl.pdf?utm_content=&utm_medium=email&utm_name=&utm_source=govdelivery&utm_term=.

⁴⁸ See Russlyn H. Ali, Dear Colleague Letter, Dept. of Educ. OCR (2010), p. 5-6 [hereinafter 2010 Dear Colleague Letter] <https://www2.ed.gov/about/offices/list/ocr/letters/colleague-201010.html>; see also *Id.* at p. 2 (“[Under Title VI, a] school is responsible for addressing harassment incidents about which it knows or reasonably should have known”)

⁴⁹ See 2010 Dear Colleague Letter, *supra* note 1, at 2-3 (emphasis added).

⁵⁰ See 2010 Dear Colleague Letter, *supra* note 1, 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>.

El-Kurd stated, “There can never be any room or space even to consider any other alternative.”⁵¹ Abdel-Fattah, a speaker at the Penn Festival, has likewise “unequivocally” rejected the notion that any other facts or viewpoints be included or even allowed.

Listening throughout the weekend to this litany of anti-Jewish rhetoric is likely to heighten anti-Semitic feeling on campus by persuading neutral audience members that Jews, especially those whose connection to Israel is an integral part of their Jewish identity, may and must be shunned and excluded from campus life. Often, Jewish students feel compelled to hide their Jewish identity on campus to avoid harassment and discrimination.⁵² Many Jewish students have expressed fear about identifying publicly as Jewish due to a hostile environment toward Jews on campus.⁵³

Unsurprisingly, Penn is already seeing a rise in anti-Semitism in the days leading up to the Festival. The appearance of a swastika at the Weitzman School last week is an example, and while the administration was quick to have it painted over, the harmful impact on the campus climate for Jews lingers. If the perpetrator responsible for this anti-Semitic vandalism is never found, students are left to wonder (particularly in the face of the university’s sponsorship of the upcoming Festival) whether the university takes anti-Jewish hate seriously. If Penn is already experiencing a rise in anti-Semitism before the Festival begins, the campus is likely to see additional evidence of hostility towards Jews during and after a weekend filled with anti-Jewish rhetoric.

IV. Requiring attendance at a festival scheduled to take place over the Jewish Sabbath, particularly during the High Holiday season, violates Penn’s own rules.

The Festival is scheduled to take 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 culminates on the eve of Kol Nidre, which takes

⁵¹ Caroline Overington, “Plenty of Palestinian Passion but No Debate at this Festival,” *The Australian*, (Mar. 5, 2023), <https://www.theaustralian.com.au/nation/plenty-of-palestinian-passion-but-no-debate-at-festival/news-story/e037003ddcf51e3a12a94742c9253473>.

⁵² The Louis D. Brandeis Center for Human Rights Under Law, *ANTISEMITISM @ COLLEGE* Survey of US Members of AEPi and AEPHi, (Spring 2021), <https://brandeiscenter.com/wp-content/uploads/2021/09/Brandeis-Survey-Findings.pdf>.

⁵³ *Id.*

place Sunday evening, and marks the beginning of Yom Kippur, the most solemn, holy day on the Jewish calendar. Information about the Festival suggests that displays from the conference will continue to adorn the main walk on campus throughout the Jewish High Holiday season. The timing of the conference demonstrates either (a) stunning indifference to the Jewish faith or (b) deliberate harassment of Jewish students. As Jonathan Greenblatt, Chief Executive of the ADL, has observed, “That this is happening during the High Holidays, the holiest time of the Jewish calendar, makes this even more insulting. Shame on Penn.”⁵⁴

We appreciate that you noted in your recent letter that students will no longer be required to attend the Festival. It is not clear, however, whether that means Jewish students will be excused from attending, while other students may still be required to attend, or whether *all* students are now being told that attendance is optional. A Festival featuring anti-Semitic speakers should not be mandatory for any student at Penn. In addition, the syllabus for Arabic 0300-401: Intermediate Arabic noted that attendance at the Festival was required because “activities in class will be structured around some of the events.” Will those courses that originally mandated Festival attendance still include class programming “structured around the Festival events”?

Providing only the students who may feel “uncomfortable” attending the Festival with an “excused absence” is insufficient. First, it requires Jewish students to “out” themselves and tell the professor that they are “uncomfortable” attending the event. Second, if the course includes graded activities relating to the Festival it places the Jewish students who do not attend the Festival at a disadvantage because they will not be able to fully engage in “class programming structured around the events.” This “accommodation” (which implicitly acknowledges that the Festival includes anti-Semitic content) marginalizes Jewish students who opt out, subjects them to potential ridicule from their classmates, and potentially harms their class participation grades.

Jewish students who are unable to attend due to the Jewish Sabbath will likewise be penalized if attendance at the program is mandatory for others, and subsequent graded class activities will revolve around the conference programming.

⁵⁴ 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/>.

Making the Festival mandatory or the subject of any coursework violates Penn’s religious accommodation policy, which states: 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.”⁵⁵ Penn’s policy also 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.”⁵⁶

Penn should not turn a blind eye while its departments sponsor an anti-Semitic event on the Jewish Sabbath and then center course activities around it. Attendance at the Festival should be made optional for *all* students, and any class programming related to the Festival should be ungraded.

V. Penn’s response to date has been inadequate.

As stated earlier, this Festival is presented and perceived as a University of Pennsylvania conference. Several of Penn’s academic departments and centers are sponsors. Penn is providing facilities on its campus, and the Penn name and University departments’ logos appear on the conference materials.⁵⁷ Penn cannot effectively condemn anti-Semitism while implicitly condoning it by hosting and sponsoring this Festival.

Penn has made minimal efforts to address the concerns of students, alumni, trustees, Jewish leaders, and local Jewish groups. In conversations with Hillel student leadership, administrators acknowledged that the conference speakers were “problematic,” but instead of addressing the Festival, they promised only to do better “in the future.” This does nothing to address the immediate problem. It fails to protect Jewish students from the hostile campus environment the Festival is already generating.

In response to criticism, Penn put out a statement last week that condemns anti-Semitism generally but says nothing about the Festival promoting and inciting anti-Semitism. More is required. The Penn community must understand that wholesale disparagement of an identity group, especially at an event that makes no

⁵⁵ University of Pennsylvania, Policy on Secular and Religious Holidays, PENNBOOK, (May 23, 2023), <https://catalog.upenn.edu/pennbook/secular-religious-holidays/>.

⁵⁶ *Id.*

⁵⁷ See Palestine Writes Literature Festival Program Announcement, <https://wolfhumanities.upenn.edu/events/palestine-writes-literature-festival/>.

allowance for the presentation of differing views, is unacceptable and violates the University's principles of "inclusivity," "dignity, and respect."⁵⁸

Penn remains a fiscal sponsor of the Festival. The Middle East Center (MEC) is a key sponsor and funder of the Festival. When Duke University and the University of North Carolina (UNC) held a similar conference in 2019, the U.S. Dep't of Education warned the universities that their funding under Title VI of the Higher Education Act of 1965⁵⁹ could be at risk. Had the MEC not already lost its Higher Education funding last year⁶⁰ due to insufficient institutional support from the University,⁶¹ this Festival could have similarly put the University's Title VI funding at risk.⁶² Penn should not be funding anti-Semitic, controversial programming like that included in this Festival. The university should promptly withdraw its financial support and to the extent that it has already provided MEC with funds that have been used to pay for the Festival, the University should withhold from the MEC an amount of funding equivalent to the amount that the Center has spent on the conference. The university should also promptly instruct Festival organizers to remove the university's name and logo from the Festival website and other Festival-related materials.

⁵⁸ University of Pennsylvania, About, <https://www.upenn.edu/about>; See also, Penn's Commitment to Diversity, Equity, and Inclusion," <https://www.pennmedicine.org/about/mission-and-history/commitment-to-diversity-equity-and-inclusion>.

⁵⁹ Duke-University of North Carolina: Title VI of the Higher Education Act Notice of Letter Regarding the Duke-UNC Consortium for Middle East Studies, 84 Fed. Reg. 48919 (Sept. 17, 2019) <https://www.govinfo.gov/content/pkg/FR-2019-09-17/pdf/2019-20067.pdf>

⁶⁰ Jared Mitovich, "Penn Middle East Center Loses all Federal Funding, a 'Devastating' Blow to its Future," The Daily Pennsylvania, (Sept. 8, 2022), <https://www.thedp.com/article/2022/09/penn-middle-east-center-defunded-department-of-education-grants#:~:text=to%20your%20inbox.-.Penn%20Middle%20East%20Center%20loses%20all%20federal%20funding%2C%20a,devastating%20blow%20to%20its%20future&text=The%20Penn%20Middle%20East%20Center,Middle%20Eastern%20studies%20on%20campus>

⁶¹ 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>

⁶² See, Duke-University of North Carolina: Title VI of the Higher Education Act Notice of Letter Regarding the Duke-UNC Consortium for Middle East Studies, 84 Fed. Reg. 48919 (Sept. 17, 2019) <https://www.govinfo.gov/content/pkg/FR-2019-09-17/pdf/2019-20067.pdf>

Furthermore, Penn must be consistent in how it responds to discriminatory, hateful rhetoric. In 2022, Penn Law School Dean Theodore Ruger did not hesitate to denounce law Professor Amy Wax, claiming that she had made “anti-intellectual and racist comments” about Asian immigrants which, Ruger claimed, were “diametrically opposed to the policies and ethos of this institution.”⁶³ Ruger even asked Penn’s Faculty Senate to initiate disciplinary proceedings against Wax, saying she invited a white supremacist to lecture to her class.⁶⁴ In contrast, the university has previously been permissive of anti-Jewish speakers such as Mohammed El-Kurd and Noura Erakat, who spoke at an event on Penn’s campus last March.⁶⁵ Mr. El-Kurd is a Palestinian activist notorious for promoting anti-Semitic conspiracy theories, including modern-day blood libels against Jews. Ms. Erakat has repeatedly opposed Israel’s right to exist and shared her approval for military campaigns to end Israel’s existence. She is also a speaker at the upcoming conference.

When it comes to anti-Semitism, Penn appears to apply a double standard. Jewish and Israeli students are entitled to the same protections as other groups. The University must treat anti-Semitism just as it treats hate speech against other minority groups.

VI. Penn should take the following actions to address the negative impact this Festival will have on Penn’s Jewish community.

For the foregoing reasons, we urge Penn’s administration to take the **following steps** to demonstrate unequivocal support for its Jewish community in light of the upcoming Festival being hosted on Penn’s campus.

1. Withdraw all funding for the event. Penn should not continue to fund or support this festival as this is seen as an endorsement. For the same reason,

⁶³ 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>.

⁶⁴ Colleen Flaherty, “What a Professor Can’t Say,” Inside Higher Ed (Mar. 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>.

⁶⁵ penn.against.the.occupation, INSTAGRAM, (Mar. 23, 2023), <https://www.instagram.com/p/CpvgV4SjG5K/?hl=en>.

Penn should not allow its name or any of its logos to be used in association with the Festival.

2. Confirm that *all* student attendance at the Festival is optional and that no graded class activities will be “structured around” the Festival events, so students who do not attend the Festival will not be disadvantaged. Professors who still choose to utilize programming from the conference in their classes should be advised not to use content from the conference that is anti-Semitic.
3. Issue a strong statement that makes clear that the University will monitor the Festival closely and forcefully condemn any programming that disparages members of the Jewish community.
4. Provide education about anti-Semitism. Penn must speak out and educate its community about anti-Semitism. Penn should create training for administrators and professors and consider hosting a conference addressing anti-Semitism in all its forms so that people can better recognize harassment and discrimination that targets Jews.
5. Institute more strict review and approval policies to ensure that the University does not inadvertently fund hate-filled programs in the future.
6. 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:

*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.*⁶⁶
7. Create a full-time staff position responsible for ensuring that (i) Jewish students are properly supported on campus and (ii) being proactive in combatting anti-Semitism throughout the University.

⁶⁶ 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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8. Incorporate the IHRA definition of anti-Semitism into University policies. While we are pleased that you plan to refer to IHRA in Penn's future training, it is imperative that this definition, including all of its examples, be emphasized throughout Penn's diversity, equity, and inclusion education, training, orientations, and anti-discrimination compliance activities.

Thank you for your attention to this matter. We are available at the emails listed below to share our expertise on these issues and further discuss our recommendations with you.

Sincerely,

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