

January 17, 2024

VIA E-MAIL

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Re: Civil Rights Violations at American University

Dear Assistant Secretary Lhamon:

I. Introduction

Jewish and Israeli students at American University (“AU”) are being subjected to discrimination, harassment, and intimidation on the basis of their Jewish shared ancestry and ethnic identity and Israeli national origin. These students have been threatened, marginalized, shunned, and made to feel unwelcome in their dormitories, classrooms, and social spaces throughout the campus, which has become a hostile environment.

This hostile environment for Jews and Israelis has been growing for years¹ but has intensified following the October 7 Hamas attack against Israelis. After October 7,

¹The hostile environment for Jewish students at AU has been acknowledged internationally, as has the harm done to Jewish students, which has forced at least one student to transfer out of the university. See Jamie Sharabani, “My Transfer

Jewish and Israeli students have experienced persistent and threatening anti-Semitic rhetoric and conduct on AU's campus. Dormitory doors and posters of Jewish and Israeli students have been vandalized with swastikas and threatening language. Anti-Israel protests have interfered with these students' ability to attend classes or move about the campus freely. Posters of innocent men, women, and children being held hostage by the terrorist group Hamas, are continually torn down by anti-Israel students. Jewish students have been shunned and marginalized in classrooms by their peers and faculty.

Instead of taking prompt and effective steps to rectify this hostile environment as the law requires it to do, AU has ignored the discrimination and harassment that Jewish and Israeli students have endured on its campus. The University has neglected to investigate anti-Semitic conduct or take the necessary steps to eliminate the mistreatment of the students who are being targeted on the basis of their Jewish shared ancestral and/or Israeli identities. The University has failed to meet its legal obligations or enforce its own rules of conduct to protect these students, which, if enforced, would make AU's campus a safer and more welcoming environment for its Jewish and Israeli students. Even worse, the University has chosen to further harass and discriminate against several of these students by subjecting them to a baseless disciplinary hearing for alleged harassment and disorderly conduct based on their recording acts of vandalism.

By permitting and fostering a hostile environment that further marginalizes and excludes Israeli and Jewish students for whom Zionism is integral to their Jewish identity, AU is denying equal access to educational opportunities and services to Jewish students based on their shared ancestry, ethnicity, and national origin in violation of Title VI of the Civil Rights Act of 1964 ("Title VI").

Five Jewish Students represented by the Brandeis Center are under investigation by AU for using their phones to take videos of students vandalizing property by tearing down posters of Israeli hostages. The vandalizers themselves, meanwhile, are not being held accountable. Only the Jewish students are being investigated.

By refusing to take action against perpetrators and incidents of anti-Semitism on its campus, the University is signaling to the AU community that there are no consequences for those who harass, threaten, or shun Jewish and Israeli students. This has only served to embolden hostile students, faculty, and staff at AU to further marginalize Jewish and Israeli students.

out of American University," The Times of Israel, (Dec. 28, 2023), <https://blogs.timesofisrael.com/my-transfer-out-of-american-university/>.

Some of the Jewish and Israeli AU students referenced in this letter are complainants (in addition to being witnesses). At the end of this letter, we have included individualized remedies seeking relief for specific harms experienced by the student complainants. (Students #1, #3, #4, #5, #6, and #7 are student complainants and clients of the Brandeis Center. The remainder of the students referenced in this letter are witnesses.). All of the students referenced in this letter are able and willing to provide testimony to the Office for Civil Rights (“OCR”) about the hostile environment they have experienced at AU.

For the foregoing reasons, and as detailed more fully in this Complaint, the Louis D. Brandeis Center for Human Rights Under Law (the “Brandeis Center” or “LDB”) and Jewish on Campus (“JOC”) on their own behalf and on behalf of the student complainants request that the OCR investigate AU, a recipient of federal financial assistance,² for violations of Title VI and the statute’s implementing regulations.³

II. For Many Jewish students at American University, Zionism is an Integral Component of Their Jewish Ancestral and Ethnic Identity.

Guidance issued in 2004 and 2010 by OCR and in 2010 by the Department of Justice (DOJ) clarified that Title VI covers discrimination against Jews on the basis of their “actual or perceived shared ancestry or ethnic characteristics.”⁴ For many

² See, e.g., American University, Financial Aid: Federal & State Grants, <https://www.american.edu/financialaid/federal-grants.cfm>. American University, Financial Aid: Federal Direct Subsidized and Unsubsidized Loans, <https://www.american.edu/financialaid/subsidized-unsubsidized-loans.cfm>. see also American University, Higher Education Emergency Relief Fund, <https://www.american.edu/financialaid/heerf.cfm#:~:text=At%20AU%2C%203.16%20million%20dollars,approved%20based%20on%20financial%20need.>

³See 42 U.S.C. § 2000d *et seq.*; see also 34 CFR §§ 100.3(b)(1)(i), (iv), (vi).

⁴ See Russlynn Ali, “Dear Colleague Letter” at 2–3, U.S. DEP’T EDUC.–OFFICE FOR C.R. (Oct. 26, 2010) [hereinafter 2010 Dear Colleague Letter], https://www2.ed.gov/about/offices/list/ocr/letters/colleague_201010.pdf.

(explaining a university must take “prompt and effective steps reasonably calculated to end the harassment, eliminate any hostile environment and its effects, and prevent the harassment from recurring”), see also 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 (Sep. 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:

Jews, including many Jewish students at AU, Zionism is an integral component of Jewish ancestral and ethnic identity. Historically and legally, Judaism is understood to be both a faith and an ethnicity. Jews share not only religious traditions but also a deep historical sense of Jewish peoplehood. The Jewish people's history, theology, and culture are deeply intertwined with the Land of Israel.⁵ For many Jews, including many Jewish students at AU, expressing support for the Jewish homeland is a sincere and deeply felt expression of the Jewish people's shared ancestral, religious, and ethnic identification with the Land of Israel.

Harassing, marginalizing, demonizing, and excluding these Jewish students on the basis of the Zionist component of their Jewish identity is just as unlawful and discriminatory as attacking a Jewish student for observing the Sabbath or keeping kosher.

When Jewish students at AU are treated differently than other students for demonstrating pride in their Jewish ancestral heritage, they are being targeted for disparate treatment on the basis of their "actual or perceived shared ancestry or ethnic characteristics" in violation of Title VI.

III. Statement of Facts.

A. Student 1, an Israeli American student, is spit on by fellow students, and his piano recital flyer is vandalized with anti-Semitic language and symbols.

Student 1 is a 22-year-old junior at American University, majoring in computer science and music. He is a Jewish Israeli American who works two jobs to help pay for school. He gives piano lessons and is a Teaching Assistant in the Computer Science Department.

A number of his family and friends were murdered during the Oct. 7 attack by Hamas and in the following weeks. Rather than providing support during this difficult time, Student 1 reports that half of his AU friends are no longer speaking to him. They refuse to engage with him or make eye contact because he is Israeli and Jewish.

Dear Colleague Letter, U.S. DEPT OF EDUC.–OFFICE FOR C. R. (Sep. 13, 2004), <https://www2.ed.gov/about/offices/list/ocr/religious-rights2004.html>.

⁵ See Alyza D. Lewin, Zionism: The Integral Component of Jewish Identity that Jews are Historically Pressured to Shed, 26 ISRAEL AFFAIRS 330 (2020), available at <https://brandeiscenter.com/wp-content/uploads/2020/08/Zionism-The-integral-component-of-Jewish-identity-that-Jews-are-historically-pressured-to-shed.pdf>.

While walking home on campus after a pro-Israel vigil, Student 1, who had the Israeli flag draped over his shoulders, was yelled at by protestors who called him a “Zionist pig.” Two individuals on scooters wearing keffiyehs and face masks yelled and spat at him as they passed by. Student 1 reported the assault. He also filed a Title IX report, but the school made no response, leaving Student 1 feeling isolated and fearful of displaying his Israeli identity. Following this assault, his mother advised him to hide his Star of David under his shirt for safety.

But Student 1’s Israeli identity was already known to many. He was spat at four more times on or around AU’s campus. Fellow students continue to scream obscenities at him and call him a “Zionist Killer.” He has not reported these incidents to AU’s Title IX Office or the Office of Student Accountability and Restorative Practices (“OSARP”) due to the administration’s lack of response to the first report.

In early November 2023, Student 1 and other recital performers advertised their upcoming December 10 recital by placing posters in approved locations on campus. These posters included an image of five men playing poker at a table, replacing one of the men’s faces with Student 1’s face.

On November 10, 2023, Student 1 discovered that one of the recital posters had been vandalized. In bright yellow marker, Student 1’s face was crossed out, a swastika was drawn on the poster, and the words “DEATH TO THE ZIONISTS HITLER WAS RIGHT” was written across the poster [Exhibit 1]. Student 1 immediately reported the vandalized poster to the AU administration. It took nearly a week for the administration to release a statement condemning the vandalism. After AU’s campus newspaper, *The Eagle*, reported on the incident and included identifying details without permission, Student 1 experienced increased harassment and unwanted attention on campus. AU administrators, however, made no effort to identify the perpetrators or inform Student 1 if it had taken any steps to ensure that other concert posters would not be similarly vandalized and that Student 1 would not be targeted at his piano recital due to his Jewish and Israeli identity.

The FBI sent two plain-clothed officers to the recital on December 10 to provide protection for Student 1 because AU was unable to ensure his safety. That the FBI needed to be called in demonstrates the level of physical threat to which Student 1 was subjected. The situation on campus for Jews like Student 1 has deteriorated to such a degree because AU has long been derelict in its duty of care and protection of Jewish students on campus.

The University’s response to the incidents targeting Student 1 has been wholly inadequate. It took the administration five days to contact Student 1 after the

vandalism incident, and even then, only one Dean emailed him, nearly a week after the event, to inquire about his well-being. This was only after Student 1 notified his professors that the administration had not offered him any support. AU's failure to investigate the spitting incident Student 1 reported, left the student feeling abandoned by the University and demonstrated the University's lack of care and concern.

Student 1 has suffered tremendously this semester. He has lost wages from both of his jobs. He canceled five piano lessons in October, November, and December because he was anxious and "frightened for his safety and well-being" on AU's campus. He has been unable to earn the maximum number of hours each week as a teaching assistant ("TA") for the same reason. His anxiety and stress only increased after the recital poster was vandalized. Lost wages are significant as Student 1 relies on them for food, rent, and payment towards his tuition. Because of his strained financial situation, Student 1 was unable to go home over Thanksgiving.

Student 1 has also suffered physically and emotionally. He feels socially isolated as he continues to face harassment from his peers all over AU's campus, including classrooms and the University gym. He suffers from night terrors because of his constant stress and anxiety, and his doctor advised him that his cortisol levels are elevated. He would like to speak with a therapist but is afraid to go to any of the counselors at AU because he fears they are biased against Israelis. He is unable to afford private counseling.

Student 1 is angry and frustrated that the University has done nothing to prevent him from being targeted and harassed based on his Jewish ancestry and ethnicity and Israeli national origin. When a piece of paper with an anti-Palestinian message was found in a Palestinian staff member's office, AU's President, Sylvia Burwell sent an email to the AU community on the same day, condemning the note as "vile and dehumanizing," and offering support to the staff member.⁶ Yet, President Burwell did not issue any statement on Student 1's behalf following either the incident with the vandalized poster or any of the spitting incidents. Instead, after Student 1's face was vandalized on a public poster with clear anti-Semitic graffiti, the university sent an email to the AU community that merely restated the university's policies on postering and made no mention whatsoever of the anti-Semitism.⁷ The University failed to call out and condemn the public anti-Semitic

⁶ Sylvia Burwell, "Threatening Anti-Palestinian Note in Kerwin Hall, Office of the President Announcement, (Oct. 25, 2023), <https://www.american.edu/finance/memos/actions-to-support-community-safety.cfm>.

⁷American University, Actions to Support Community Safety, (Nov. 16, 2023), <https://www.american.edu/finance/memos/actions-to-support-community-safety.cfm>.

targeting of a Jewish Israeli student but did not hesitate to publicly condemn an anti-Muslim message found on campus. This disparate treatment of Jews and Muslims is discriminatory. It sends a message to the AU community that Jewish and Israeli students are not entitled to the same consideration and protections afforded to others on the basis of their shared ancestral and ethnic heritage and national origin.

B. Swastikas in the first-year dormitories for three consecutive years

Student 2 is a Jewish freshman who lives with a Jewish roommate in Letts Hall, a first-year dormitory at AU. On October 19, he discovered that a large swastika had been drawn on his door in black ink. Another Jewish student down the hall also discovered a swastika drawn in black ink on his door, and on information and belief, a third Jewish student's door was in the process of being vandalized when the student opened the door and interrupted the perpetrator, who fled. A bathroom on the same floor was also vandalized with a swastika and a Nazi slogan.⁸ Later that evening, the second student whose door had been vandalized received a text message from an unknown number that said, "I know who you are, jew."

This is not the first time that first-year dormitories have been vandalized with swastikas. In Anderson Hall, another first-year dormitory, a swastika was found on a ceiling tile in a bathroom in September 2022 — during Rosh Hashanah, the Jewish New Year. In September 2021, four symbols — two swastikas, Nazi SS bolts, and a Star of David— were found carved into a men's bathroom stall in Anderson Hall between Rosh Hashanah and Yom Kippur, the holiest Jewish holiday.

Although AU President Sylvia Burwell condemned the October 19 vandalism as a "hateful act of anti-Semitism,"⁹ the University has yet to take effective steps to identify the perpetrators, hold them accountable and prevent the anti-Semitic vandalism of first-year dormitories from reoccurring. Due to the University's repeated failure to respond effectively, swastikas have been found in the freshman dorms every year for the last three years. This year, in fact, the vandalism targeted Jewish students even more directly than in the past. In addition to being greeted by swastikas in the common space bathrooms, this year Jewish students found swastikas on their dorm room doors. Recent AU alum [REDACTED] relates the administration's dismissal of her complaints about the swastika vandalism:

⁸ Jordan Young, "Swastikas and 'Nazi slogan' found on doors of Jewish students' rooms in Letts Hall," *The Eagle*, (Oct. 20, 2023), <https://www.theeagleonline.com/article/2023/10/breaking-swastikas-and-nazi-slogan-found-on-doors-of-jewish-students-rooms-in-letts-hall>.

⁹Sylvia Burwell, (Oct. 20, 2023), <https://t.e2ma.net/message/z31dgh/fklozjc>.

As a student, I met with various AU officials, from the Kay Spiritual Life Center to the President's Office and the Office of Equity and Title IX, urging them to take immediate action when the first swastika appeared. Every time, I was met with the same response: "Don't overreact. This is an isolated incident. AU isn't plagued by antisemitism. You're making a fuss over nothing." Now, three years later, I pose this question: Do you still hold the same view?¹⁰

Indeed, after Student 2 reported the swastika on his door to campus police, they recommended that he take a self-defense class.

Despite today's climate of heightened anti-Semitism, the University only thought to inform the FBI about the anti-Semitic vandalism on campus, *after* the FBI had already been brought in to investigate a threat made against a Palestinian TA.¹¹ Only at that point, as an afterthought, did it occur to the university to alert the FBI to the fact that there were AU students harassing and intimidating Jewish first-year students by marking the doors of the Jewish student rooms with threatening swastikas.

C. Jewish and Israeli students, along with a pro-Israel group, face harassment and discrimination by university officials for exposing vandalism on campus.

1. AU selectively enforces its Student Conduct Code

Students 3-7 are Jewish and Israeli students at AU who are members of a student group called Students Supporting Israel ("SSI"). On November 5, 2023, Students 3, 4, 5, and 6 participated in the #BringThemHomeNow campaign, hanging up flyers of hostages taken by Hamas in the same locations as other students' flyers. Many of the hostages in the posters were related or personally known to Students 3-6. While they were putting up their flyers, other students followed them and tore the posters down.

¹⁰ Michal Cohen, "Three Consecutive Years of Swastikas: The Ongoing Crisis at American University," *The Times of Israel*, (Oct. 26, 2023), <https://blogs.timesofisrael.com/three-consecutive-years-of-swastikas-the-ongoing-crisis-at-american-university/>.

¹¹ Jackie Benson, "FBI investigates death threat against Palestinian employee at American University", *NBC News Washington D.C.*, (Oct. 26, 2023), <https://www.nbcwashington.com/news/local/fbi-investigates-death-threat-against-palestinian-employee-at-american-university/3455917/>.

While tearing down the flyers, the students shouted at Students 3-6, telling them that “Israelis aren’t real people,” and accusing the Jewish students of supporting apartheid and genocide against the Palestinian people.

Students 3-6 were aware that other Jewish and Israeli students had had their hostage posters similarly defaced and torn down. When the Jewish and Israeli students had complained to administrators about the defacing and removal of their posters, the administrators had claimed there was little that could be done without direct proof. Because the administration had failed to take any action in the absence of concrete evidence, Students 3-6 used their phones to record the public conduct of students who were ripping down the posters and disparaging Jews and Israelis.

AU has a postering policy that states, “No community member should remove or deface any poster.”¹² Yet, when the administration received the recording demonstrating that AU students were intentionally violating this rule, no action was taken against the students who vandalized the posters. When presented with evidence documenting AU students violating the University’s student code of conduct,¹³ the University failed to hold the perpetrators accountable.

American University students violated AU’s policy by (a) removing and defacing posters of the hostages held by Hamas in Gaza that members of AU’s Jewish community had put up, and (b) harassing and disparaging Jewish and Israeli students by claiming “Israelis aren’t real people,” after they ripped down the

¹² American University, Actions to Support Community Safety, (Nov. 16, 2023), <https://www.american.edu/finance/memos/actions-to-support-community-safety.cfm>.

¹³ American University’s Student Conduct code defines harassment as, “an intimidating, severe, hostile, or coercive act –whether physical, verbal, cyber/electronic (including, but not limited to e-mail, social media, instant messaging, etc.), which is intentional and/or persistent. It also lists it as a violation of university regulations.” See <https://www.american.edu/policies/students/upload/2023-2024-student-conduct-code-2.pdf>

posters. Despite this evidence, the University chose to ignore those who violated the policy and instead investigate the Jewish students who documented the infractions. By turning the situation on its head and treating the perpetrators as the victims, the University demonstrated a disregard for the facts, held its Jewish and Israeli students to a double standard, enforced its code of conduct in a discriminatory fashion, and retaliated against Jewish students for attempting to engage in the legally protected activity of attempting to protect their civil rights.

2. Jewish and Israeli students who lawfully gather evidence are accused of violating university rules and subjected to baseless disciplinary hearings.

On November 15, the Office of Student Accountability and Restorative Practices (“OSARP”) opened an investigation into five Jewish students (Students 3-7) based on OSARP’s receipt of a video several of them had taken showing students tearing down hostage posters.¹⁴ Students 3-7 did not publicize the video or the names or faces of the students tearing down the posters. The videos were lawfully taken of persons acting in a public space, without expectation of privacy, in a state that does not require the consent of both parties to make a recording.

The students took the videos to support their claims of anti-Semitic vandalism, because their previous complaints had been summarily dismissed for lack of evidence. They shared the videos they recorded with the Brandeis Center for the purpose of filing this Complaint.

From the outset, the University has used its investigation to harass and intimidate the Jewish and Israeli students. Students 3-7 first became aware of the investigation on November 15, when they received emails from the Office of the Dean of Students asking for a meeting to help gather information about an unspecified situation. The email stated the meeting was not mandatory and Students 3-5 attended. During the meeting, faculty members demanded to see the students’ cellphones to ensure that they were not recording the conversation. The students were not informed that they were subjects of the investigation. Instead, administrators told the students in vague terms that they were gathering information and asked the students questions such as where and why they had put

¹⁴ The Referral Forms for Students 3-7 state, “Case materials indicate that videos on social media resulted in significant harassment of individuals in the AU.”

up their hostage posters. The students informed the administrators that they had put up posters where they saw other posters and that they had asked the students tearing the posters down why they were removing the posters.

On December 5, Students 3-7 received emails from OSARP requesting their attendance at a disciplinary conference; this was the first time that Students 3-7 learned that they were being investigated for disciplinary infractions. Student 7, the President of SSI, was sent a notice in his capacity as president of the organization, even though he did not participate in making videos or putting up posters himself, and SSI played no role whatsoever in these incidents.

OSARP charged Students 3-7 with harassment and disorderly conduct for recording students tearing down hostage posters because, according to OSARP, the students tearing down the posters were merely “removing unauthorized postings.”¹⁵ This allegation is pure pretext. First, the students removed the Jewish students’ hostage posters from authorized locations as well as from alleged “unauthorized” locations. Second, the students who removed the hostage posters replaced them with their own posters. Third, according to University policy, “No community member should remove or deface any poster.”¹⁶ This applies to all posters, no matter where they are placed. According to University policy, posters that are placed in unauthorized locations will be removed *by the University*, not by students. Fourth, at the time the recorded incident occurred, there were other posters that had been put up in the same unauthorized locations. Neither the students nor the University took any steps to remove those other posters from the same locations. Fifth, on information and belief, the University has taken no action against students who placed pro-Hamas posters in the same unauthorized locations.

OSARP has also charged the Jewish students with making recordings on other dates at other locations, an allegation manufactured out of whole cloth. There is no basis for these additional charges. Complainants can show that they were in class, off campus, or with other students at the time of the alleged violations.

Until and even after the Brandeis Center wrote to the University on behalf of Students 3-7 (whom the Brandeis Center identified as its clients), the students received a flood of emails from OSARP demanding that they appear in person for a disciplinary conference during final exams period or immediately after (when the school was closed and the students had left campus) or be judged in absentia. OSARP repeatedly refused to accommodate the students’ requests to hold the

¹⁵ Complainants 2-6 were each sent a Student Conduct Case Referral Form (Referral Form) summarizing the incident and alleged violation. Each Referral Form describes the flyers put up by Complainants 2-5 as “unauthorized.”

¹⁶ <https://www.american.edu/finance/memos/actions-to-support-community-safety.cfm>

disciplinary conferences in January, threatening that the students would forfeit their right to testify if the hearings were not scheduled in December. The University only agreed to reschedule the hearings after the Brandeis Center sent a second letter to the University, drafted separate request letters for each of the five students, arranged for the students to send FERPA statements to the administration, and helped the students secure a faculty support person to assist them during the hearing.

OSARP has continued to harass Students 3-5 who long ago made plans to study abroad during the Spring 2024 semester. On December 21, AU's study abroad advisor notified Students 3-5 that *“any disciplinary action resulting in probation occurring after [the students’] admission into their [study abroad] program may result in American University rescinding and revoking [the students’] participation and program enrollment... students will not receive a refund and will be responsible for any expenses incurred on [their] behalf prior to the date of withdrawal from the program.”* This threat by the University to deny these students their study abroad opportunities as a consequence of the University's meritless and retaliatory investigation is unjustifiable. It has placed Students #3, #4, and #5 in an untenable position. They cannot cancel their study abroad plans at this late date, nor should they have to. Yet they are being told that they could be expelled from their study abroad programs and their tuitions forfeited if they continue with their long-held plans to study abroad.

These actions by OSARP are harassing, discriminatory and retaliatory. Rather than investigate the students who harassed the Jewish and Israeli students and publicly defaced and removed the flyers that the Jewish students had posted with pictures of Israelis held hostage in Gaza, the University has chosen to retaliate against the Jewish and Israeli students who recorded the infractions and complained about the anti-Semitism. Indeed, the University has chosen not only to prosecute the Jewish and Israeli students, but also to threaten the Jewish, pro-Israel student organization on campus (SSI) even though that organization had no connection whatsoever to the incident. By singling out the Jewish and Israeli students for interrogation and discipline, OSARP and by extension AU is subjecting these students to disparate treatment based on their Jewish identity and Israeli national origin in violation of Title VI.

D. AU permits rallies supporting Hamas to interfere with and interrupt classes on campus in contravention of school rules.

On November 9, 2023, the University permitted a massive and disruptive pro-Palestinian protest to take place on its campus as part of “Shut it Down for Palestine,” a nationwide rally. This protest, in which AU faculty and students participated, occurred throughout AU's campus during the day and inside the

School of International Service (“SIS”) building during class hours. The protestors were in the atrium and every floor next to the classrooms, using noise amplification devices such as megaphones. They were heard chanting “from the river to the sea” and calling “for the end of Israel’s slaughter” throughout the building, including in classrooms.

Faculty could not conduct classes because of the constant shouting coming through the walls. Student 3 described the situation as follows:

With the extra noise, it was extremely difficult to focus on class. I had to ask my professor to repeat important points of her lecture many times, which was frustrating for her and me... When I brought up my frustration with my professor, she told us to ignore them and had to raise her voice to teach over the chanting. Our windows were closed, and yet it was still so loud. The students had megaphones and were purposefully being disruptive to get attention. This overwhelming event resulted in students, including myself, having anxiety attacks and some had panic attacks for fear for their safety. The American University Police Department (“AUPD”) was called and did nothing to de-escalate the situation ...In the last 40 minutes of my class, we tried to stay on topic, but I was shaking and felt like I was going to cry. I was scared, frustrated, and sad that this had become our reality.

This protest later moved to the front of Mary Graydon Center (“MGC”), blocking the entrances to the building. MGC is the central student hub of AU’s campus, containing the dining hall, restaurants, classrooms, and spaces for student organizations. Many students were late to class as they could not get past the protestors. Student 8 stated:

While the AUPD was there, they did nothing and let the protestors block the entrance. We were too scared to approach the protestors and go in. AUPD and other staff members told us that it was too dangerous. A Jewish student tried, and a staff member stopped them. Feeling unsafe on the Quad, a Hillel staff member suggested we go to their office to decompress and have a safe space. We complied and left to go to the Hillel office. The whole situation was frightening and intimidating, and I felt the AU staff was helpless and ineffective. They sat around watching the rally, waiting for it to end, rather than shutting it down so the protestors weren’t taking over an academic building or blocking an entrance to an important building like MGC.

The protest violated AU’s policy on Campus Protests. AU policy requires that “protests do not disrupt or interfere with classes, operations, normal use of

university facilities, or other university-sponsored programs.”¹⁷ The policy also states that protests should not “create a volume of sound that prevents members of the University from conducting their normal activities,” and “protest activity should not obstruct pedestrian...traffic on campus; prevent the free movement of people on campus, including entry and exit from university buildings” and that violations of these policies are actionable under the student code of conduct or university employment policies.”¹⁸

When Jewish students have held events on campus in the past, such as Israel Fest, AU administrators have required the Jewish students to abide by university policies including restrictions on amplified sound designed to ensure that classes are not disrupted. Students at the November 9, 2023, protest, however, were permitted to use megaphones and amplified sound indoors at sound levels that were extremely disruptive.

University administrators, faculty, and AU police sat idly by as the protest lasted for hours, continuing to disturb the peace inside and outside campus buildings. No steps were taken to quell the disturbance. Rather than enforce University policies designed to ensure that Jewish students (and all students) can attend class free from harassment and discrimination, the University chose instead to give its tacit approval to the event by having campus police inform Jewish students that they would have to deal with the noise because the campus police would do nothing to interfere with the out-of-control and disruptive rally. On information and belief, demonstrators who violated the University’s policies were not subjected to disciplinary action by the University.

By failing to enforce its policies against students who harass and contribute to a hostile environment toward Jewish and Israeli students, AU has facilitated the creation of the hostile environment on campus and enabled it to flourish.

E. Jewish and Israeli students are harassed and shunned in dormitories and classrooms.

- 1. A Jewish student is harassed and made to feel unwelcome in her dorm.**

¹⁷ American University, Actions to Support Community Safety– Campus Protests (Nov. 16, 2023), <https://www.american.edu/finance/memos/actions-to-support-community-safety.cfm#:~:text=Posting%20Policy%E2%94%80No%20unapproved,university%20beginning%20Friday%2C%20November%2017.>

¹⁸ *Id.*

Student 9 is a freshman living in Centennial Hall in a suite. On October 17, she was doing homework when she overheard her suitemates engaging in a heated discussion accusing Israel of committing genocide against the Palestinians. This conversation escalated into a confrontation where both suitemates accused Student 9 of supporting genocide and ethnic cleansing, and began swearing at her. They called her a “white privileged wealthy girl from New York City who knew nothing.” They also rationalized and downplayed the severity of the October 7 Hamas attack against Israel.

A student’s dorm room is their home away from home and they should feel welcome and comfortable in the place where they do their homework and sleep at night. Instead, Student 9 was faced with continued hostility and anti-Semitic comments from her suitemates. When Student 9 reported the anti-Semitism to the housing office, the only solution they offered was that she could move and find new housing. The Housing Office failed to take any action to address the ongoing anti-Semitism in Student 9’s suite, which only worsened. Eventually, the anti-Jewish hostility from her suitemates was so bad that Student 9 had to move to another suite on a different floor in Centennial Hall.

2. Jewish students are harassed and shunned in their classes by peers and faculty.

Student 10, who is of Persian-Jewish descent and is the only Jewish student in her Farsi class, was berated and ostracized by other students based on her Jewish identity.

On November 3, Student 10 was speaking with other classmates about comedian Amy Schumer before the start of class when another student overheard and maligned Amy Schumer for being a Zionist, stating, “F*ck Amy Schumer, she’s a Zionist, f*ck all Zionists.” Student 10 was deeply offended by the statement and informed the other student that she was also a Zionist. In response, the other student grabbed her belongings and announced, “I do NOT want to sit on the same side of the room as this Zionist!” She then walked to the opposite side of the room and continued screaming “You have blood on your hands! You are responsible for genocide! Your people are killing innocent Palestinians!”

The rest of the students in class watched in silence as the student who was berating Student 10 walked across the room to sit elsewhere. Mortified, Student 10 ran out of the classroom and called her mother, who suggested she call the AU police. AU sent a police officer to speak with both students and concluded that there were no issues for the University to address. Yet, Student 10 remains nervous and apprehensive about attending the remaining Farsi classes, where the other student continues to publicly shun her. Neither the professor nor the administration offered any support to Student 10 or addressed the conduct of the other student.

Student 11 is a Jewish senior, who was enrolled in a communications course called Visual Literacy taught by Professor [REDACTED]. On November 6, [REDACTED] asked students to raise their hands if they had attended the pro-Palestine march that weekend, and asked them to share pictures of the protest, which she projected onto a large screen at the front of the classroom. She asked students to discuss their photos and experiences and spoke out about her own experience and how powerful and meaningful the rally was for her. At one point, an image of a sign showing a Star of David in a trash can reading “Keep the world clean” was projected onto the large screen. [REDACTED] made eye contact with Student 11, and many of her classmates turned around to stare at her. Student 11 was so uncomfortable she left the class in tears.

Professor [REDACTED] knew Student 11 was Jewish, as she regularly wears her Star of David necklace. [REDACTED] also knew that the October 7 Hamas attack profoundly disturbed Student 11, who had previously emailed the professor explaining how she felt.¹⁹ Yet, far from showing consideration, [REDACTED] showed no sensitivity Student 11 after sharing her own support for the Hamas terrorists. Student 11 notified the University's Office of Diversity and Inclusion of the incident, but it took no action on the Student's behalf.

The biased and hostile treatment of Jewish and Israeli students at AU is an inevitable result of the University fostering an environment where it is acceptable to degrade, shun, and marginalize these students – even inside the classroom - on the basis of their Jewish ancestral and ethnic identity and Israeli national origin.

IV. American University has violated Title VI

A. The University has discriminated against its Jewish and Israeli students and subjected them to disparate treatment.

Title VI prohibits discrimination on the basis of race, color, and national origin in educational institutions that receive federal funding.²⁰ Guidance issued by the OCR and DOJ in 2004, 2010, 2017, and 2023 specifies that Title VI covers discrimination against Jews on the basis of their “actual or perceived shared ancestry or ethnic characteristics.”²¹

¹⁹ Student 11 emailed [REDACTED] on October 9 and explained her “inability to attend class because of [her] emotional state and fear of being on campus due to recent anti-Semitic events.” The professor authorized her request afterward.

²⁰ See 42 U.S.C. § 2000d et seq.

²¹ See *Dear Colleague Letter*, U.S. DEP'T OF EDUC.—OFFICE FOR C. R. (Nov. 7, 2023), available at <https://www2.ed.gov/about/offices/list/ocr/letters/colleague-202311-discrimination-harassment-shared-ancestry.pdf>. See also *FACT SHEET: Protecting Students from Discrimination Based on Shared Ancestry or Ethnic*

According to Executive Order 13899 (the “Executive Order”), 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.”²² The Executive Order incorporates the International Holocaust Remembrance Alliance Working Definition of Anti-Semitism (the “IHRA Definition”), which states that “the denial to Jews of opportunities or services available to others” is “antisemitic discrimination.” As the IHRA Definition states, criticism of Israel similar to that leveled against any other country is not anti-Semitism. But demonizing the Jewish State, calling for its destruction, blaming Jewish students for the actions of the Israeli government, denying the Jewish people the right to self-determination—and/or subjecting Israel to double standards are classic earmarks of anti-Semitism.

Discriminatory actions include selective enforcement of rule violations, failure to adequately address and investigate anti-Semitic incidents on campus, and disparate treatment of students on the basis of their Jewish ethnic identity and Israeli national origin.

AU has failed to enforce its policies uniformly and has instead selectively enforced rule violations on a discriminatory basis. When the University became aware that

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

²² EO 13899, §1. *See also* Questions and Answers on Executive Order 13899 (Combatting 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>.

students on their campus were tearing down the images of innocent men, women, and children being held hostage by the terrorist group Hamas in violation of AU's poster policy, the only people that the school found it worthwhile to investigate were the Jewish and Israeli students who confronted the vandals. Further, the University has turned a blind eye to policy infractions committed by pro-Palestinian protestors who have disrupted classes and blocked academic building entrances preventing students from getting to class - a denial of educational opportunities for these students.

AU has failed to investigate repeated notices of students tearing down Jewish students' fliers, investigate reports of students spitting on a Jewish Israeli student on campus, failed to investigate disruptive protests inside academic buildings and on their campus, failed to investigate Jewish student's claims of harassment in classroom and dormitories by students and staff; and failed to adequately investigate swastikas drawn on first-year dormitories allowing them to become a regular occurrence at AU. The administration is not effectively addressing anti-Semitism on its campus.

The Interim Dean of Students, [REDACTED] reportedly told Jewish and Israeli students and their parents that their feelings of being unsafe are outside of his and the University's control. He also told Jewish students that if they wanted to feel safe, they should go to Hillel and went on to mock them for becoming emotional. The University's claim that it cannot guarantee the safety and security of its Jewish and Israeli students is both disturbing and unacceptable.

B. AU has retaliated against its Jewish and Israeli students for gathering evidence of potential Title VI violations in support of their efforts to defend their civil rights.

Title VI prohibits a university from retaliating against a student for "bring[ing] concerns about possible civil rights problems to [the] school's attention."²³ As outlined in OCR's April 24, 2013 "Dear Colleague Letter," "once a student . . . complains formally or informally to a school about a potential civil rights violation," the "recipient is prohibited from retaliating . . . because of the individual's complaint," "including intimidating, threatening, coercing, or in any way discriminating against the individual." OCR has made clear that it intends to "*vigorously enforce* this prohibition against retaliation."²⁴

AU has violated Title VI's anti-retaliation prohibition. Instead of taking concrete action to address complaints of anti-Semitic discrimination on its campus, the University has chosen to investigate Students 3-7, the Jewish and Israeli students,

²³April 24, 2013 "Dear Colleague Letter"; see also 34 C.F.R. § 100.7(e).

²⁴ April 24, 2013 "Dear Colleague Letter" (emphasis added).

and SSI, a Jewish student group, for collecting evidence to prove the anti-Semitic conduct on AU's campus. Students 3-7 are being subjected to baseless disciplinary hearings solely because they complained about and documented the harassment of Jewish students being perpetrated by pro-Palestinian students who were vandalizing posters of Jewish hostages. The groundless investigation and disciplinary hearings targeting the Jewish and Israeli students constitute retaliation. The university's retaliatory actions have only served to further harass, intimidate, and marginalize Jewish and Israeli students on AU's campus.

C. AU has permitted a hostile environment for Jewish and Israeli students to develop and flourish on its campus.

For purposes of Title VI, harassment creates a "hostile environment" when based on the totality of the circumstances, the harassment "is subjectively and objectively offensive and is so severe or pervasive that it limits or denies a person's ability to participate in or benefit from the recipient's education program or activity."²⁵ A Title VI recipient "must take immediate and effective action to respond to harassment that creates a hostile environment"²⁶ Further, a university can violate Title VI if peer harassment "is sufficiently serious that it creates a hostile environment and such harassment is encouraged, tolerated, not adequately addressed, or ignored by school employees."²⁷ And a university must respond to discriminatory harassment when such harassment "negatively affect[s] the ability and willingness of Jewish students to participate fully in the school's education programs and activities."²⁸

AU has failed to take *effective steps* "reasonably calculated to end the harassment, eliminate any hostile environment, and prevent the harassment from recurring." Instead, the administration is actively fostering and encouraging a hostile

²⁵ See November 7, 2023 "Dear Colleague Letter" at 2; see also 2010 Dear Colleague Letter (stating that harassment creates a "hostile environment" when it "is sufficiently severe, pervasive, or persistent so as to interfere with or limit a student's ability to participate in or benefit from the services, activities, or opportunities offered by a school").

²⁶ See 2023 Dear Colleague Letter, supra note 22, at 2 (emphasis added); see also 2010 Dear Colleague Letter, supra note 22 at 2-3 (stating that a Title VI recipient "must take prompt and effective steps reasonably calculated to end the harassment, eliminate any hostile environment, and prevent the harassment from recurring").

²⁷ See 2010 Dear Colleague Letter, supra note 22, 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>.

²⁸ See 2010 Dear Colleague Letter, supra note 62, at 5–6.

environment towards the very students being harassed and marginalized on their campus.

As a result of the hostile environment on campus, many Jewish students have been fearful, anxious, isolated, and uncomfortable at AU. Some have lost friends following the October 7 Hamas attack for no other reason than their Jewish identity. Others have become more concerned and frightened about their safety at school. The following statements were provided to the Brandeis Center by AU students, many of whom are Complainants and Witnesses in this complaint. These students asked that their names be withheld to protect their identities.

Student 3: “I have never been one to shy away from showing my Judaism loud and proud, but now I always carry a sense of fear with me. I am constantly checking my surroundings to make sure no one is following me. I get dirty looks often on campus, and people whisper things under their breath when they see me. I wish it weren’t like this, but this is our new reality.”

Student 4: “Since Oct 7th I have been called an imperialist, white supremacist, fascist, and so much more by my peers both to my face and on social media. What’s even worse I have lost so many of my ‘dear friends’ who do not approve of my advocacy or do not feel comfortable being associated with a Jewish Zionist. After seeing the death threats online and graffitied I raised my concerns about my safety multiple times to various faculty and administrators. The last administrator I talked to even told me that my safety is within myself, and he can’t do anything to make me feel safe. I have never felt safe as a Jew at AU and Oct 7 has only made that worse. Oct 7th was not the first time my parents asked me to take off my Jewish necklaces when on campus and I’m afraid it won’t be the last if changes are not made.”

Student 5: “It is heartbreaking to see how little Israeli lives matter at American University. When I stand up for my people, I am only met with hate and hostility rather than support or understanding. This hostility is intensified by the University administration's failure to adequately address and protect the needs of their Jewish students. It's exhausting to constantly defend my people, especially when those in authority are not taking my safety and well-being seriously.”

Student 8: “We had a meeting with various members who work in resident life to discuss safety procedures and the incident/investigation into the swastikas that were found drawn on the doors of Jewish students. During the meeting, we were told no progress had been made on finding the person who drew the graffiti. Afterward, I approached employees who work in both resident life and academics and asked them since this is the third year in a row in which anti-Semitic graffiti has been found in first-year dorms, what will the school do differently next year to prevent a similar incident? All the employees who I talked to had no answer. They

said they hadn't thought about it, or believed it wouldn't happen again, or had no ideas on how to prevent it. Some didn't even realize this type of incident had happened before."

Student 12: "On October 11th, I attended a pro-Israel rally on the quad. I stood on the outskirts of the rally to listen to what the counter-protestors were saying. While a speaker was crying about the death of Jewish babies, dozens of counter-protestors screamed that the proven death of these babies was 'misinformation' and they asked that we 'show proof,'... Later, the same student remarked 'Oh, and look how they're all white. I don't see a single Jew of color in the crowd' and I immediately shouted, 'What about me?' and she stuttered out of shock and embarrassment and then said 'Why aren't you there with them?' (Referring to how I'm watching the rally from the sidelines) and I responded, 'Because I'm hearing all the things you're saying, and they're disgusting-' and then I got cut off by a dozen people shouting at me all at once. And as I turned around and walked away, they all shouted verbatim 'Walk away fascist walk away.' Up until this point in the rally, I had hidden that I'm a Jew by using wording like 'People are mourning' instead of 'My people are mourning' when talking to the counter-protestors. The first time I talked to them, I didn't reveal I was Jewish, and they did not call me a fascist as I walked away. The second time I talked to them, I did reveal that I am Jewish, and I was called a fascist as I walked away. One of the counter-protestors was someone I used to call a friend, and she had even waved to me before I confronted them. She ended up being one of the same people who was screaming at me, calling me a fascist after I revealed I was Jewish. I was stunned that someone whom I used to call friend would turn on me so quickly, just because they had found out I am Jewish."

III. Suggested Remedies

For the foregoing reason, the Brandeis Center and JOC urge OCR to require AU's administration to take the following steps to protect its Jewish and Israeli community and to ensure that members of the AU community are held accountable for engaging in or supporting discriminatory conduct.

- A. Dismiss the disciplinary hearings and all charges against Students 3-7, and SSI by OSARP. AU should investigate its Title IX office's procedures and policies to ensure that all complaints of anti-Semitism are properly investigated and to ensure that Jewish students are not retaliated against for taking actions to protect their rights when AU fails to do so.
- B. Compensate Student 1 for lost wages and counseling. Student 1 has lost wages from both of his jobs because of the trauma he has endured on AU's campus this semester. AU should compensate Complainant 1 for lost wages and cover the costs of therapy to address the anxiety, emotional distress, and

trauma he has suffered as a direct result of AU's hostile environment and repeated threats to his safety.

- C. Compensate Students #3,4, and 5 in the event that the University interrupts their study abroad this semester. These students should receive a full refund for their tuition, should be reimbursed for the costs of their flights and housing, and should be compensated for any other damages or loss they experience as a result of the University's discriminatory and retaliatory conduct.
- D. Ensure that all students have equal access to university residential facilities and services provided by residential staff on a non-discriminatory basis and are provided with a safe environment protected from harassment, discrimination, and harm, by:
 - a. establishing and/or revising existing policies and procedures to ensure that no AU student is harassed, assaulted, or excluded from full access to the benefits of campus, on the basis of shared ancestry. AU should provide notice to its community of this change and train all staff about such revised and/or new policies.
 - b. conducting a full investigation of discriminatory and harassing conduct against Jewish students, including through AU's internal grievance process, on the basis of their shared ancestral identity and take all appropriate measures, including disciplinary matters such as suspension or termination, or selection of replacement staff, that are recommended as a result of the investigation.
- E. Ensure that the AU community understands and recognizes the type of anti-Semitic discrimination that targeted Jewish students in this case by, without limitation:
 - a. Incorporating the IHRA working definition of anti-Semitism, including its guiding examples, into AU's Policy Against Unlawful Discrimination, Harassment, and Retaliation ("*policy*"), consistent with Executive Order 13899 and the values of free speech and academic freedom; and
 - b. Providing training on anti-Semitism to university administrators, faculty, students and staff – including mandatory training for residential staff – based upon AU's revised policy. The training should familiarize residential staff, administrators and other members of the community with traditional as well as contemporary anti-Semitic stereotypes and conspiracy theories and their social and political functions, so that the campus community will be able to better identify and respond to anti-Semitic incidents in the future, particularly those that involve Jewish shared ancestry connected to Israel.

- F. Enforce its code of conduct, which applies to ALL students, employees, and faculty members, in a manner that treats all individuals equally regardless of race, color, or national origin, including shared ancestry. The school should announce that any member of the community who engages in discriminatory conduct in violation of Title VI and AU's code of conduct will be held accountable, including by suspension and expulsion. AU should enforce its policies against vandalism and make clear that defacing students' doors, posters, or other property violates University policy and will not be tolerated.
- G. Issue a statement denouncing anti-Semitism in all its forms and recognizing that Zionism is a key component of Jewish identity for many students at AU. We strongly recommend that AU use or model its statement on the following language:

We condemn antisemitism in all its forms. We recognize that Zionism is a key component of the shared ancestral and ethnic identity of many Jewish Americans. Efforts to exclude Zionists and make AU students feel unwelcome and unsafe expressing this part of their Jewish ancestral and ethnic identity is contrary to our university's basic values of mutual respect and inclusion. Our staff are key leaders on our campus who are charged with fostering and facilitating community development and inclusion for all students, including Jewish students who define their Jewish identity as including Zionism. Anti-Semitic vandalism, harassment, assault, and targeting are unacceptable. Our college must be a place characterized by inclusivity and the free and open exchange of ideas.

AU is committed to taking all necessary actions, including discipline where appropriate, to address and ameliorate discrimination and harassment based on actual or perceived shared ancestry or ethnic characteristics, including anti-Semitism that manifests as anti-Zionism. To that end, the University will utilize the IHRA Working Definition of anti-Semitism as required by law when investigating and responding to incidents of harassment and discrimination to determine whether they are motivated by anti-Semitic animus or bias. AU encourages the AU community to educate itself about the many manifestations of anti-Semitism by reading and studying the IHRA Definition and its contemporary examples.

- H. Appoint an independent investigator to examine the campus climate for its students, faculty, staff, with specific attention to the climate for Jewish and Israeli members of the AU community; charge the investigator with conducting a campus climate survey to address the climate for students, and especially for Jewish and Israeli students; and carry out such recommendations as are made by the investigator based upon the survey and additional analysis.
- I. Create a Task Force comprised of Jewish student leaders and Jewish faculty members that will provide input to the AU administration about how best to address and improve Jewish life on the AU campus, including how to address and ameliorate anti-Semitic harassment and discrimination based on shared ancestry or ethnicity.

IV. Conclusion

For the foregoing reasons, OCR should conduct an investigation into AU's compliance with Title VI based on the events described above.

Respectfully Submitted,



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Exhibit 1

