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Can He Really Do That? A Legal Analysis of the Trump's Enforcement of Title VI for Combatting Antisemitism on Campuses

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The Trump Administration has taken unprecedented action to enforce Title VI of the Civil Rights Act of 1964 in a putative attempt to rein in antisemitism on American university campuses. At the time of this submission, these efforts include freezing billions of dollars in federal research dollars to Harvard University, threatening to rescind its tax-exempt status, demanding Columbia University put academic departments into receivership to screen course offerings for antisemitic bias, arresting and seeking removal of international students in the United States with permanent residence status and/or studying on student visas. These actions have significantly impacted key functions of these institutions, stifled crucial scientific research, threatened the autonomy of institutions of higher education, chilled dialogue on campuses, and undermined open inquiry. This presentation will summarize the latest developments and explore the legality and cultural implications of the Administration's approach. The presentation will conclude with alternative approaches to enforcing Title VI and combatting antisemitism on campus that avoid the devastating pitfalls of the current approach.

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Introduction

While antisemitism was a steady problem in the United States on college campuses and in society as a whole prior to the horrific events of October 7 and the launch of Israel's military response, reported incidents of antisemitism on American college campuses and of antisemitic hate crimes in America more broadly spiked significantly after those events.[1]

Although there has always been a moral obligation to combat antisemitism on college campuses, many would argue that imperative is needed now more than ever. To address this need, the Biden Administration and both Trump Administrations have taken several actions, but not all of them were or are consistent with Constitutional limitations. This paper analyzes key actions that the government has taken to combat antisemitism on college campuses through the lens of applicable constitutional and statutory frameworks.

The legal landscape

Title VI of the Civil Rights Act of 1964

All institutions—those publicly and privately operated—that accept federal funds are legally obligated to protect students and faculty from discrimination on the basis of the target's real or perceived race, color, and national origin.[2] Interestingly, religion is not a protected category, under federal anti-discrimination law, except in the context of admissions.[3] In 1987, the Supreme Court decided that Jews and Arabs were protected from discrimination in the context of property rights under 42 U.S.C. § 1982's prohibition on racial discrimination, reasoning that those populations often have shared ancestry and ethnic characteristics.[4]

It was not until 2004, that the U.S. Department of Education adopted this reasoning when the George W. Bush administration interpreted Title VI to prohibit antisemitic harassment (as well as harassment targeting Arab Muslims and Sikhs) when the harassment could be reasonably traced to

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[1] *See* Hillel International, Antisemitism on College Campuses: Incident Tracking Tool, https://www.hillel.org/antisemitism-on-college-campuses-incident-tracking/ (last visited Dec. 3, 2025); *See also* Federal Bureau of Investigation (FBI), Hate Crime Explorer, https://cde.ucr.cjis.gov/LATEST/webapp/#/pages/explorer/crime/hate-crime (last visited Dec. 3. 2025).

[2] Title VI, 42 U.S.C. § 2000d et seq.

[3] Kenneth L. Marcus, *The Most Important Right We Think We Have But Don't: Freedom from Religious Discrimination in Education*, 7 NEV. L.J. 171 (2006) https://scholars.law.unlv.edu/cgi/viewcontent.cgi?article=1423&context=nlj.

[4] *Shaare Tefila Congregation v. Cobb*, 481 U.S. 615, 617 (1987); *See also St. Francis Coll. v. Al-Khazraji*, 481 U.S. 604, 613 (1987)("[W]e have little trouble in concluding that Congress intended to protect from discrimination identifiable classes of persons who are subjected to intentional discrimination solely because of their ancestry or ethnic characteristics.").

the shared ancestry or ethnic characteristic of the targets.[5] While this policy has never been codified into law by Congress, it has been continued by every administration since 2004.

The First Amendment to the U.S. Constitution

It's well-established that the First Amendment to the U.S. Constitution applies in full force at publicly operated institutions of higher education.[6] And while the First Amendment does not require privately operated institutions of higher education to provide students and faculty with free speech or academic freedom rights, many jurisdictions apply contract law to require those institutions to honor any promises they make regarding those values.[7, 8]

One of the bedrock principles embedded in American free speech law is that the First Amendment does not tolerate viewpoint-based discrimination. No matter how offensive, insensitive, or distasteful speech may be, that in and of itself does not strip expression of protection.

Although it is a common misconception, there is no "hate speech" exception the First Amendment.[9] Indeed, the Supreme Court has powerfully explained, "a function of free speech under our system of government is to invite dispute. It may indeed best serve its high purpose when it induces a condition of unrest, creates dissatisfaction with conditions as they are, or even stirs people to anger."[10] There is; therefore, a great deal of expression that may be antisemitic, but is nevertheless protected from punishment by institutions governed by the First Amendment or which have made robust free speech and academic freedom promises to their students and faculty.

Importantly, not all hateful expression is protected under the First Amendment. Three categories of hateful speech fall into exceptions to the First Amendment—speech that incites imminent lawless action, speech that constitutes true threats, and harassment. Each of those exceptions was carefully crafted by the U.S. Supreme Court, with precise definitions to ensure that they were not catch all exceptions that swallow the rule.

Speech that imminently incites lawless action is not protected by the First Amendment. However, not all calls for violence fall under this narrowly crafted exception. In *Brandenburg v. Ohio*,[11] the

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[5] Kenneth L. Marcus, Office for Civil Rights, U.S. Dep't of Educ., Dear Colleague Letter: Shared ethnicity (Sept. 13, 2004), http://www2.ed.gov/about/offices/list/ocr/letters/colleague-201104.pdf.

[6] *Healy v. James*, 408 U.S. 169, 180 (1972) (internal quotation omitted) ("Yet the precedents of this Court leave no room for the view that, because of the acknowledged need for order, First Amendment protections should apply with less force on college campuses than in the community at large. Quite to the contrary, [t]he vigilant protection of constitutional freedoms is nowhere more vital than in the community of American schools.").

[7] Kelly Sarabyn & Lauren S. Foley, *Free Speech at Private Universities*, 39 Journal of Law and Educ. 145 (2010).

[8] For the remainder of this article, unless otherwise specified, all references to institutions of higher education refer only to those covered by the First Amendment or those that have made meaningful promises of free speech and academic freedom.

[9] Matal v. Tam, 137 S,Ct. 1744, 1764 (2017) (*holding*, "Speech that demeans on the basis of race, ethnicity, gender, religion, age, disability, or any other similar ground is hateful; but the proudest boast of our free speech jurisprudence is that we protect the freedom to express "the thought that we hate.").

[10] Terminiello v. Chicago, 337 U.S. 1, 4 (1949).

[11] 395 U.S. 444, 447 (1969).

Supreme Court held that "the constitutional guarantees of free speech and free press do not permit a State to forbid or proscribe advocacy of the use of force or of law violation except where such advocacy is directed to inciting or producing imminent lawless action and is likely to incite or produce such action." Clarence Brandenburg was a Ku Klux Klan leader who, speaking on film at a rally, urged an audience of Klan members and journalists to send Jews back to Israel and to bury African Americans. In an alternate version of the speech, he instead said, "We're not a revengent organization, but if our President, our Congress, our Supreme Court, continues to suppress the white, Caucasian race, it's possible that there might have to be some revengeance taken.".[12] In concluding that the speech was protected, the Supreme Court distinguished between advocating for violence and imminently inciting it.

The First Amendment does not protect "serious expression[s] of an intent to commit an act of unlawful violence to a particular individual or group of individuals."[9] Importantly, not all threatening expressions fall within this exception. For example, statements that are hyperbolic do not constitute true threats.[10] Moreover, government actors cannot single out certain targets of threatening speech, while leaving others unprotected. That was the lesson of *R.A.V. v. St. Paul*, where the Supreme Court invalidated an ordinance that criminalized symbols and displays like cross burnings that insult, or provoke violence, "on the basis of race, color, creed, religion or gender."[13] The statute was unconstitutional in part because of its selectivity, noting that the ordinance would not criminalize similar threats based on other protected categories like union membership.[14] The selectivity demonstrated that the ordinance was viewpoint based, treating similar speech differently solely on account of the views expressed.

In 2023, the Supreme Court narrowed the doctrine further. In *Counterman v. Colorado*, the Supreme Court held that under the true threats doctrine, in criminal prosecutions of threatening speech, the government must prove that defendants understood that their speech was threatening.[15] At a minimum, the defendant must be reckless, meaning that the speaker was aware "that others could regard his statements as threatening violence and deliver[ed] them anyway."[16]

The third category of hateful speech that remains unprotected under the First Amendment is speech that constitutes discriminatory harassment. The Supreme Court has set separate standards for what constitutes harassment in the workplace from what constitutes harassment in the educational setting: giving students more leeway before their words can get them into trouble. For speech to constitute actionable harassment in the educational setting, it must target an individual on the basis of a protected category, and be "so severe, pervasive, and objectively offensive that it can be said to deprive the victims of access to the educational opportunities or benefits provided by the school."[17]

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[12] *Id.* at 446.
[13] 505 U.S. 377, (1992).
[14] *Id.* at 391.
[15] 600 U.S. 66, 69 (2023).
[16] *Id.* at 79.
[17] *Davis v. Monroe Cty Bd. of Educ.*, 526 U.S. 629, 651 (1999).

One thread that is common amongst all three of these exceptions is that they all have elements that go beyond the viewpoints expressed, which ensures that it is truly expressive *conduct* that is actionable and not merely offensive opinions.

The First Trump Administration's Actions to Combat Antisemitism on College Campuses

On December 10, 2019, President Trump signed Executive Order 13899 on "Combating Anti-Semitism."[18] This executive order was the first time the longstanding policy of interpreting Title VI to prohibit at discrimination against Jews "when the discrimination is based on an individual's race, color, or national origin" was codified in a legally binding document.

The other key component of the executive order is that it directs "all executive departments and agencies (agencies) charged with enforcing Title VI" to "consider" the International Holocaust Remembrance Alliance's (IHRA's) definition of antisemitism, and its accompanying examples, when doing so.[19] The executive order gave no guidance on what would constitute sufficient consideration of the definition or whether the definition must be considered binding.

The IHRA definition of antisemitism defines the term as, "a certain perception of Jews, which may be expressed as hatred toward Jews. Rhetorical and physical manifestations of antisemitism are directed toward Jewish or non-Jewish individuals and/or their property, toward Jewish community institutions and religious facilities."[20] The definition incorporates a list of "contemporary examples":[21]

- Calling for, aiding, or justifying the killing or harming of Jews in the name of a radical ideology or an extremist view of religion;
- Making mendacious, dehumanizing, demonizing, or stereotypical allegations about Jews as such or the power of Jews as collective — such as, especially but not exclusively, the myth about a world Jewish conspiracy or of Jews controlling the media, economy, government or other societal institutions;
- Accusing Jews as a people of being responsible for real or imagined wrongdoing committed by a single Jewish person or group, or even for acts committed by non-Jews;
- Denying the fact, scope, mechanisms (e.g. gas chambers) or intentionality of the genocide of the Jewish people at the hands of National Socialist Germany and its supporters and accomplices during World War II (the Holocaust);
- Accusing the Jews as a people, or Israel as a state, of inventing or exaggerating the Holocaust;
- Accusing Jewish citizens of being more loyal to Israel, or to the alleged priorities of Jews worldwide, than to the interests of their own nations;
- Denying the Jewish people their right to self-determination, e.g., by claiming that the existence of a State of Israel is a racist endeavor;

[18] Exec. Order No. 13899, 84 Fed Reg. 68779 (Dec. 16, 2019).
[19] *Id.*
[20] Working Definition of Antisemitism, International Holocaust Remembrance Alliance, https://holocaustremembrance.com/resources/working-definition-antisemitism (last visited Dec. 8, 2025).
[21] *Id.*

- Applying double standards by requiring of it a behavior not expected or demanded of any other democratic nation;
- Using the symbols and images associated with classic antisemitism (e.g., claims of Jews killing Jesus or blood libel) to characterize Israel or Israelis;
- Drawing comparisons of contemporary Israeli policy to that of the Nazis; [and]
- Holding Jews collectively responsible for actions of the state of Israel.

While there is no constitutional problem using the definition as it was originally intended, for data collection purposes, as the U.S. State Department and countless other nations do, it poses a serious free speech problem, when it is used at the college campus level to determine whether expression should be disciplined as an act of discriminatory harassment or when government regulators use it to evaluate institutional responses to complaints alleging harassment.

Because most hateful speech is protected under the First Amendment, whether speech is in fact-antisemitic is irrelevant in determining whether it is in fact actionable.

But more problematically, the definition is riddled with vagueness and overbreadth problems. The phrase "a certain perception of Jews" is so vague that consensus on what it means in practical terms is impossible to achieve. A statute or regulation is void for vagueness when citizens "must necessarily guess at its meaning."[22] It is overbroad when it punishes both protected and unprotected speech.[23] That the mere expression of "hatred" towards Jews or any other group is constitutes protected speech demonstrates the definition's overbreadth.

The contemporary examples clearly describe protected speech. For example, speech is not stripped of its protection under the First Amendment because it may involve "double standards." Moreover, because one may constitutionally compare any other country's policies to Nazi policies, similar criticisms of Israel are equally protected. The First Amendment's protection is not contingent upon whether the comparison is or is not persuasive.

Executive Order 13899 has not been challenged in court and remains in effect today. However, the only court that has yet weighed in on the constitutionality of campus use of the definition in disciplinary proceedings has expressed serious concern about the constitutionality of that application. For example, in *Students for Justice in Palestine v. Abbott,* a federal district court in Texas stated the following about a university policy that used the IHRA definition in its harassment code (internal citations to the record omitted):[24]

> [A]s a threshold issue, the Court finds the incorporation of this specific definition of antisemitism is viewpoint discrimination. In general, including the word "antisemitism" in speech policies, perhaps in the context of protecting students from discrimination and harassment, is not inherently a First Amendment violation. The Defendants wish to view the speech policies in this vacuum, claiming the

[22] *Broadrick v. Oklahoma*, 413 U.S. 601, 607 (1973) (internal citations omitted). See also *Grayned v. City of Rockford*, 408 U.S. 104, 108 (1972)(*holding* a statute is unconstitutionally vague when it does "not give a person of ordinary intelligence a reasonable opportunity to know what is prohibited, so that he may act accordingly.").
[23] *Gooding v. Wilson*, 405 U.S. 518, 522 (1972).
[24] 756 F. Supp. 3d 410, 425 (W.D. Tex. 2024).

> revised policies do not in fact prohibit any specific expression. But here, the speech policies do not leave "antisemitism" open to constitutional definitions and interpretations, because GA-44 mandated a specific definition. That definition, by incorporation of the IHRA's examples, labels "calling the State of Israel a racist endeavor" and "drawing comparisons of contemporary Israeli policy to that of the Nazis" as antisemitic. And students can be punished for antisemitic speech under the revised speech policies. Plaintiffs follow this thread, reasonably understand that their intended speech is now punishable under the revised policies, and hesitate to engage in such expression. Because of this, [the] Court finds the revised policies are intertwined with GA-44 and the IHRA examples, which identify content-specific expression—like that the State of Israel is a racist endeavor or drawing comparisons between Israel and Nazis. Through the connection to these examples, the policies make that speech punishable, thereby chilling it.

The Biden Administration's Actions to Combat Antisemitism on College Campuses

On May 25, 2023, the Biden Administration published its U.S. National Strategy to Counter Antisemitism.[25] In that document, the Biden Administration set forth a comprehensive plan addressing antisemitism in many contexts, ranging from including in education, sports, pop culture, and online. It described what the administration planned to do and made requests of entities outside of its direct control, like state and local governments and private actors.

As I wrote at the time:[26]

> To the plan's credit, it includes strategies that promote dialogue. For example, with the express purpose of facilitating dialogue, it calls on U.S. Attorney Offices, FBI Field Offices, DOJ Community Relations Service members and others to "undertake targeted engagement with community-based groups including youth, faith leaders, cultural leaders, and civil rights organizers from Jewish communities and other communities victimized by hate crimes." It also declares, "As we confront antisemitism, we do so with profound respect for our democratic traditions, including free expression and speech protected by the First Amendment."

Unfortunately, however, the plan includes several calls for censorship.

Most of its calls for censorship were in sections that dealt with contexts outside of education. But accompanying the plan was a *Dear Colleague Letter,* instructing institutions to adopt a less speech

[25] The White House, *The U.S. National Strategy to Counter Antisemitism* (Report May 5, 2023), https://bidenwhitehouse.archives.gov/wp-content/uploads/2023/05/U.S.-National-Strategy-to-Counter-Antisemitism.pdf (last visited on Dec. 8, 2025).

[26] Joe Cohn, Foundation for Individual Rights and Expression, *Biden Administration's Plan to Address Anti-Semitism Includes Censorship* (Jun. 26, 2023), https://www.thefire.org/news/biden-administrations-plan-address-anti-semitism-includes-censorship (last visited on Dec. 8, 2025).

protective definition of student-on-student harassment than the one required by the Supreme Court.[27]

The Second Trump Administration's Actions to Combat Antisemitism on College Campuses

The second Trump Administration has made combatting antisemitism on college campuses a priority and has taken many unprecedented actions in its pursuit. Those actions include issuing a second executive order on combatting antisemitism, continued demands that institutions use the IHRA definition of antisemitism, arresting and removing international students and faculty for their support of the Palestinian cause, and the withholding billions of dollars of federal funding including research dollars.[28]

Critics assert that several of the Administration's Title VI enforcement actions were unlawful and are pretextual. There is good reason to believe that at least some of the impetus behind the Administration's actions is motivated by a desire to destroy institutions which the administration views as a core part of its political opposition. After all, in a speech titled "[t]he Universities are our Enemies," the Vice President explicitly argued, "I think if any of us want to do the things that we want to do for our country and for the people who live in it we have to honestly and aggressively attack the universities in this country."[29]

Whether the actions are motivated by a good faith desire to curb antisemitism or by animus against institutions of higher education is only relevant to the extent that courts in resolving some aspects of the litigation about those actions may need to determine whether the actions are narrowly tailored to address a significant governmental interest. Combating antisemitism would qualify, but political retribution would not.

Removal of Noncitizens for Expression that Conflicts with the Administration's Middle East Policies

On January 29, 2025, President Trump signed Executive Order 14188 on Additional Measures to Combat Anti-Semitism.[30] A key provision of this executive order instructed the Department of Education and the Department of Homeland Security to:[31]

> include in their reports recommendations for familiarizing institutions of higher education with the grounds for inadmissibility under 8 U.S.C. 1182(a)(3) so that such institutions may monitor for and report activities by alien students and staff relevant to those grounds and for ensuring that such reports about aliens lead, as

[27] Catherine E. Lhamon, Office for Civil Rights, U.S. Dep't of Educ., *Dear Colleague Letter: Antisemitic Harassment* (May. 25, 2023), https://www.ed.gov/sites/ed/files/about/offices/list/ocr/docs/antisemitism-dcl.pdf (hereinafter "2023 Dear Colleague Letter").
[28] This paper does not address the many other actions the Trump Administration has taken to reform higher education, including executive orders to end certain Diversity, Equity, and Inclusion practices or to combat what it deems "gender ideology" because those policies are not part of the efforts to counter antisemitism.
[29] J.D. Vance, "The Universities are the Enemy," The National Conservatism Conference, II, (Nov. 2, 2021)(transcript and video available at https://www.youtube.com/watch?v=0FR65Cifnhw) (last visited on Dec. 9, 2025).
[30] Exec. Order No. 14188, 90 Fed Reg. 8847 (Feb. 3, 2025).
[31] *Id.*

> appropriate and consistent with applicable law, to investigations and, if warranted, actions to remove such aliens.

This provision cites the federal statute that provides that certain activities in support of terrorism are grounds for inadmissibility to the United States. The provision set the stage for what would be a signature feature of the Administration's higher education and immigration policy—the identification and removal of noncitizens in the U.S. who have expressed views on the Israeli-Palestinian conflict that are in tension with the administration's position.

On March 8, 2025, pursuant to the new removal policy, U.S. Immigration and Customs Enforcement (hereinafter "ICE") arrested pro-Palestinian activist, legal permanent resident, and recent Columbia University graduate student, Mahmoud Khalil, and began removal proceedings against him.[32] Several others, including Tufts graduate student, Rümeysa Öztürk, who had merely written an op-ed supporting the Palestinian cause, similarly had their visas revoked, were arrested, and placed into removal proceedings.[33]

Defending the arrests and removal proceedings, Secretary of State Marco Rubio told reporters:[34]

> If you apply for a visa to enter the United States and be a student, and you tell us that the reason you are coming to the United States is not just because you want to write op-eds but because you want to participate in movements that are involved in doing things like vandalizing universities, harassing students, taking over buildings, creating a ruckus, we are not going to give you a visa...

This left little doubt that the Administration views expression in agreement with disfavored political movements sufficient to justify arrests and removals of noncitizens lawfully present in the United States.

Unsurprisingly, the policy has led to federal litigation. This paper will discuss two lawsuits challenging it. Those lawsuits have progressed, but remain pending.

Öztürk has been released on bail pending the adjudication of her lawsuit which raised free speech and due process claims.[35] The Court noted that she had raised a substantial claim of a First Amendment violation (internal citations to the record and footnotes omitted):[36]

> The record before this Court shows that the only speech at issue is Ms. Ozturk's op-ed, and her arrest and detention clearly constitute adverse action. On April 18, the Court offered the government the opportunity to rebut Ms. Ozturk's evidence

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[32] Chelsea Bailey, *Who is Mahmoud Khalil? Palestinian Activist Detained by ICE Over Columbia University Protests*, CNN (Mar. 11, 2025) https://www.cnn.com/2025/03/11/us/mahmoud-khalil-columbia-ice-green-card-hnk.
[33] Lexi Lonas Cochran, *Rubio Defends Detention of Tufts Graduate Student Rumeysa Ozturk*, The Hill (Mar. 27, 2025) https://thehill.com/homenews/education/5217879-rubio-defends-turkish-student-arrest/.
[34] *Id.*
[35] *Öztürk v. Trump*, 2:25-cv-374, (D. Vt 2025) https://www.aclum.org/app/uploads/2025/05/140_order_granting_mapp_release.pdf.
[36] *Id.* at 17.

> showing that her op-ed is the but-for cause of her detention. The government has not done so. Meanwhile, Ms. Ozturk has introduced significant evidence demonstrating the irregular nature of the government's actions. The Court therefore concluded that Ms. Ozturk has presented, at the very least, a substantial claim of a First Amendment violation.

A decision that analyzed the relevant First Amendment issues has been issued in the other lawsuit, *AAUP v. Rubio*.[37] That lawsuit was not brought by individuals targeted for removal, but instead by membership organizations of faculty, concerned about the chilling effect the ideological removal policy was having on classroom discourse and research. In its Septemner 30, 2025 decision on the merits, the trial Court issued a blistering rebuke of the administration's claim that noncitizens in the United States lawfully may be removed on account of speech that does not fall within an exception to the First Amendment (internal footnote omitted):[38]

> This case -- perhaps the most important ever to fall within the jurisdiction of this district court -- squarely presents the issue whether non-citizens lawfully present here in United States actually have the same free speech rights as the rest of us. The Court answers this Constitutional question unequivocally "yes, they do." "No law" means "no law." The First Amendment does not draw President Trump's invidious distinction and it is not to be found in our history or jurisprudence. No one's freedom of speech is unlimited, of course, but these limits are the same for both citizens and non-citizens alike.
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> [...]
>
> Having carefully considered the entirety of the record, this Court finds by clear and convincing evidence that the Secretary of Homeland Security Kristi Noem and the Secretary of State Marco Rubio, together with the subordinate officials and agents of each of them, deliberately and with purposeful aforethought, did so concert their actions and those of their two departments intentionally to chill the rights to freedom of speech and peacefully to assemble of the non-citizen plaintiff members of the plaintiff associations.

The opinion further explained:[39]

> [t]he Plaintiffs have alleged, and here have proved, a discrete practice of targeting pro-Palestine and anti-Israel speech, which arose from a kind of intentional ratcheting-up of [130] the Executive Orders' instruction to target antisemitic harassment and violence, while referencing a definition of antisemitism that

[37] *Am. Ass'n of Univ. Professors v. Rubio*, No. 25-10685-WGY, 2025 LX 417279 (D. Mass. Sep. 30, 2025).
[38] *Id.* at *6-7.
[39] *Id.* at *142.

> includes protected speech such as comparing Israel's policies to those of the Nazis...

The Court has not yet fashioned relief.

Federal Funding Freezes and Rescission of Tax-Exempt Status

Combatting antisemitism was one of the stated objectives of the second Trump Administration's reform agenda.[40] One of the most aggressive tactics the Trump Administration has used to reform higher education is to withhold massive amounts of federal funding to pressure institutions to make significant changes in how they operate.

American institutions of higher education rely heavily on federal funding which often account for a huge portion of their overall revenue. For example, in the 2022-23 academic year, the Massachusetts Institute of Technology received approximately $1.6 billion in federal grants and research contracts, accounting for approximately 48% of the institution's total revenue.[41] While Harvard University *only* received $688 million in federal funding, accounting for *only* approximately 15% of its total revenue in that same period,[42] it's easy to see how the mere threat of losing federal dollars would dramatically impact the institution's operations.

On February 28, 2025, The Trump Administration's Task Force to Combat Anti-Semitism announced that it was investing 10 institutions of higher education, regarding potential failures to protect Jewish students on their campuses.[43]

The Department of Education (hereinafter "ED"), the General Services Administration (hereinafter "GSA"), and the Department of Health and Human Services (hereinafter "HHS") sent Harvard a letter on April 3, issuing demands for several policy reforms "the government view[ed] as necessary for Harvard to implement to remain a responsible recipient of federal taxpayer dollars."[44] A revised letter was sent a week later.[45] Several of the demands dealt with topics unrelated to combatting antisemitism, for example the demand to revise the institution's hiring and

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[40] Press Release, U.S. Dep't of Just., *Justice Department Announces Formation of Task Force to Combat Anti-Semitism* (Feb. 3, 2025) https://www.justice.gov/opa/pr/justice-department-announces-formation-task-force-combat-anti-semitism.

[41] Jason Cohn, *How Much Federal Funding Do Colleges and Universities Receive?*, Urban Wire (May 8, 2025) https://www.urban.org/urban-wire/how-much-federal-funding-do-colleges-and-universities-receive.

[42] *Id.*

[43] Press Release, U.S. Dep't of Just., *Federal Task Force to Combat Antisemitism Announces Visits to 10 College Campuses that Experienced Incidents of Antisemitism* (Feb. 28, 2025) https://www.justice.gov/opa/pr/federal-task-force-combat-antisemitism-announces-visits-10-college-campuses-experienced.

[44] Letter from Josh Gruenbaum, Comm'r of Fed. Acquisition Serv., Gen. Servs. Admin., Sean R. Keveney, Acting General Counsel, U.S. Dept. of Health & Human Servs., and Thomas E. Wheeler, Acting General Counsel, U.S. Dept. Of Ed., to Harvard Univ., Apr. 3, 2025 (on file with the Harvard Crimson) https://www.thecrimson.com/widget/2025/4/4/harvard-demands-letter/.

[45] Letter from Josh Gruenbaum, Comm'r of Fed. Acquisition Serv., Gen. Servs. Admin., Sean R. Keveney, Acting General Counsel, U.S. Dept. of Health & Human Servs., and Thomas E. Wheeler, Acting General Counsel, U.S. Dept. Of Ed., to Harvard Univ., Apr. 11, 2025 (on file with Harvard Univ.) https://www.harvard.edu/research-funding/wp-content/uploads/sites/16/2025/04/Letter-Sent-to-Harvard-2025-04-11.pdf.

admissions policies.[46] But the letter also demanded Harvard: initiate an independent investigation into academic departments that according to the government, "most fuel antisemitic harassment or reflect ideological capture[;]" and make reforms to its student disciplinary process to ensure that the policies are sufficient to prevent disruptions to "scholarship, classroom learning and teaching, or other aspects of normal campus life.[47] Moreover, the letter also demanded Harvard:[48]

> adopt a new policy on student groups or clubs that forbids the recognition and funding of, or provision of accommodations to, any student group or club that endorses or promotes criminal activity, illegal violence, or illegal harassment; invites non-students onto campus who regularly violate campus rules; or acts as a front for a student club that has been banned from campus.

Harvard promptly rejected the terms of the letter, citing its First Amendment rights.[49] The Administration responded by freezing a whopping $9 billion to Harvard was set to receive.[50] It also revoked Harvard's ability to enroll international students.[51]

Escalating the conflict with Harvard University further, also in April, and again in May, the Trump Administration threatened to revoke Harvard University's tax-exempt status.[52] Under Internal Revenue Code (IRC) Section 501(c)(3), most private non-profit and public higher education institutions in the United States enjoy tax-exempt status because of their core mission to provide education and produce research. This exempts them from paying federal income tax on revenues related to their mission or state and local property taxes on buildings and land used for educational purposes; allows them to issue tax-exempt bonds to fund major construction projects and other capital improvements; and makes charitable donations to these institutions deductible on the donors' federal tax returns.

If institutions of higher education were to lose their tax-exempt status, it would collectively cost them hundreds of billions of dollars annually. Some have estimated that should Harvard University lose its tax-exemption status, it would cost the institution as much as $800 million annually.[53]

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[46] *Id.*
[47] *Id.*
[48] *Id.*
[49] Letter from Alan M. Garber, Pres. Harvard University to Members of the Harvard Community (Apr. 14, 2025) https://www.harvard.edu/president/news/2025/the-promise-of-american-higher-education/.
[50] Kanishka Singh, *Harvard Plans to Borrow $750 Million After Federal Funding Threats*, Reuters, (Apr. 8, 2025) https://www.reuters.com/world/us/harvard-plans-borrow-750-million-after-federal-funding-threats-2025-04-07/.
[51] Letter from Kristi Noem, Sec. Dept. of Health and Hum. Servs. to Harvard, May 22, 2025 (on file with Harvard Univ.) https://www.harvard.edu/research-funding/wp-content/uploads/sites/16/2025/05/S1-Ltr-to-Harvard-05222025_Redacted.pdf.
[52] Andy Rose and Taylor Romine, *Trump Says the Government Will Revoke Harvard's Tax-Exempt Status. The University's President Says that Would be Illegal*, CNN, May 2, 2025, https://www.cnn.com/2025/05/02/us/white-house-harvard-tax-status.
[53] Eric Kelderman, *What Revoking Tax-Exempt Status Would Mean for Harvard — and the Rest of Higher Ed,* Chron. of Higher Ed., *Apr. 17, 2025, https://www.chronicle.com/article/what-revoking-tax-exempt-status-would-mean-for-harvard-and-the-rest-of-higher-ed.*

Unsurprisingly, Harvard filed two lawsuits seeking redress. And on June 23, 2025, a federal court issued a preliminary injunction blocking the government's prohibition on Harvard enrolling international students, stating, "Harvard is entitled under the Constitution to take a "hard line" when it comes to academic freedom, and it is entitled to air its grievances with the government publicly without meeting its 'demise.' Thus, Harvard is likely to succeed on the merits of its retaliation claim.".[54]

In September, Harvard's lawsuit over the funding freeze resulted in a permanent injunction against the government.[55] The court issued a final order, requiring the government to restore the funding on October 20, 2025.[56]

During the showdown with Harvard, the Administration was also acting against other institutions. Alleging Title VI violations, the Trump Administration also froze significant funds to other top institutions of higher education, including $1 billion in funding to Cornell University,[57] $790 million to Northwestern University,[58] $510 million to Brown University,[59] and $400 million to Columbia University.[60]

On October 1, 2025, the Trump Administration invited nine universities— Brown University, Dartmouth College, the Massachusetts Institute of Technology, the University of Pennsylvania, the University of Arizona, the University of Southern California, the University of Texas at Austin, the University of Virginia, and Vanderbilt University—increased access to federal funding if they entered into an agreement with the Administration. This proposed "Compact for Academic Excellence in Higher Education" set forth 10 conditions.[61]

Two of the compact conditions are especially relevant to combatting antisemitism. For example, it generally calls on institutions to protect free speech on campus and academic freedom. While that is arguably a reasonable condition, it's worth noting that several of the conditions set forth in the compact are inconsistent with those values. Even the section on free speech and academic freedom calls for institutions to commit to taking adverse action against speech it deems incitement that

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[54] *President and Fellows of Harvard College v. DHS*, 788 F. Supp. 3d 182, 205 (D. Ma 2025).
[55] *President & Fellows of Harvard Coll. v. United States Dep't of Homeland Sec.*, No. 1:25-cv-11048-ADB, 2025 WL (D. Mass. Sept. 3, 2025).
[56] *President and Fellows of Harvard College v. United States Department of Homeland Security*, No. 1:25-cv-11048, (D. Mass. Oct. 20, 2025).
[57] Selina Wang and Arthur Jones, II, *Trump Administration Halts $1 Billion for Cornell, $790 million for Northwestern, White House Officials Say, ABC News,* (Apr. 9, 2025) https://abcnews.go.com/US/trump-administration-halts-1-billion-cornell-790-million/story?id=120653323.
[58] *Id.*
[59] Roma Shah, *What You Need to Know About the White House's Plan to Freeze $510 Million at Brown*, Brown Daily Herald (Apr. 4, 2025), https://www.browndailyherald.com/article/2025/04/what-you-need-to-know-about-the-white-houses-plan-to-freeze-510-million-at-brown.
[60] Jennifer Peltz, *Trump Administration Cancels $400M in Grants and Contracts with Columbia University,* AP (Mar. 7, 2025), https://apnews.com/article/columbia-university-protests-antisemitism-palestine-israel-9c209ce040e4b60d2702b40b9c2fb321.
[61] Compact for Academic Excellence in Higher Education, (Oct. 1, 2025), https://www.washingtonexaminer.com/wp-content/uploads/2025/10/Compact-for-Academic-Excellence-in-Higher-Education-10.1.pdf.

would fail the Supreme Court's incitement test set forth in *Brandenburg*. The language in question reads, "[s]ignatories shall adopt policies prohibiting incitement to violence, including calls for murder or genocide or support for entities designated by the U.S. government as terrorist organizations." To qualify as unlawful incitement speech must be reasonably likely to produce imminent lawless acts.

The other directly relevant condition calls on would be signatories to agree to regulate admissions of foreign students to "screen out students who demonstrate hostility to the United States, its allies, or its values; and to provide instruction in American civics to all foreign students." Is any form of criticism of U.S. or Israeli policy sufficient hostile to qualify? And because the U.S. has many allies, are international students to be screened out for criticism of any of them? The free speech problems with this condition are obvious and extensive.

Theoretically, the compact seeks to sidestep some of institution's available First Amendment defenses against some of the conditions by framing the arrangement in contractual terms. But this theory is only viable if an institution consents. If funding to institutions that reject the compact was adversely impacted, those institutions would likely have strong First Amendment retaliation claims. One other consideration is that faculty and students whose rights may be infringed by the compact may have grounds to sue to assert their academic freedom and free speech rights.

As of December 15, 2025, seven institutions—Brown University, Dartmouth College, the Massachusetts Institute of Technology, University of Arizona, University of Pennsylvania, University of Southern California, and the University of Virginia—have rejected the compact.[62] Vanderbilt provided "feedback" without accepting or rejecting the offer, while the University of Texas, Austin has remained silent on it.[63]

An Alternative Constitutional Approach to Combat Antisemitism on College Campuses

The rise of antisemitism is causing serious problems for students on many campuses across the United States. Enforcing anti-discrimination laws properly is not in tension with free speech or academic freedom. After all, if an institution is discriminating against a class of people, those people are not truly free to study, free to teach, or free to research.

With reports of Jewish students and faculty being harassed, buildings being occupied and classes and events being disrupted by protesters, and even reports of vandalism and violence, it's clear there is a need for the federal government to hold institutions that are failing to address this conduct accountable. University campuses need to be places where all students of all viewpoints and backgrounds feel free and able to participate fully without harassment. But unconstitutional solutions are no solutions at all because they are likely to be struck down by courts. A focus on constitutional solutions is necessary.

With respect to classroom offerings that may include antisemitic content, institutions must generally avoid engaging in viewpoint-based regulation of course content. Instead they should focus

[62] Lexi Lonas Cochran, *Here are the Colleges Rejecting Trump's Funding Compact*, The Hill (Oct. 21, 2025) https://thehill.com/homenews/education/5558934-colleges-reject-donald-trump-administration-compact/.
[63] *Id.*

on germaneness and standards of scholarship, when applicable. Institutions can insist their faculty instruction is scholarly and not pure activism. As I wrote previously:[64]

> Importantly, even when academic freedom allows a professor to teach from a particular perspective, they may not discriminate against students who wish to explore that topic from a different perspective. Professors must treat students with alternative views fairly and grade them on the basis of the quality of their arguments.
>
> Moreover, the right to teach from one's perspective on contested issues is not a license to ignore facts that may be contrary to the professor's view, nor should any responsible professor hide such facts from their students. Academic freedom protects the right for people including professors to draw differing conclusions from evidence, but it does not protect activism that is evident when established facts are ignored and "alternative facts" are fabricated.

If curriculum is biased against Israel, institutions should take steps to add faculty or courses that present the alternate point of view.

Institutions must resist the temptation to censor students or faculty for expressing views that may be antisemitic. A better approach to combatting antisemitism on college campuses requires institutions and the federal government to focus on addressing conduct and not protected speech. Institutions should review and revise their policies to ensure that they faithfully track the Supreme Court's standards on incitement, true threats, and harassment. They should also prohibit substantial and material disruptions to their functioning and to campus events in reserved locations as allowed by the First Amendment caselaw. State and federal law should require public institutions to use these sensible constitutionally required standards. Congress should also help by making religion a protected class for anti-harassment purposes.

The adoption of good policies, however, is meaningless if they are selectively enforced or ignored altogether. Violations of university policies that are consistent with free speech and academic freedom principles and jurisprudence (where applicable) must be consistently met with proportional discipline at the conclusion of procedures that offer meaningful due process.

The federal government should investigate credible complaints alleging institutional failures to combat antisemitism, but it must close frivolous complaints promptly, and it must not cut procedural corners when taking enforcement action. Funding freezes and revocation of tax status are extraordinary penalties that have wide ranging implications on the institutions, faculty, students, and society at large—for example, when medical research is halted, potentially life-saving break throughs can become unrealized. It's no accident that the IRS Code and Title VI itself set robust frameworks with multiple opportunities for cure, before the harshest penalties are noncompliance are triggered. And it's crucially important, to ensure their credibility and legality, that enforcement of anti-discrimination laws is performed in a non-retaliatory manner.

Efforts to fight antisemitism, however, cannot rely exclusively on legal mechanisms. Efforts must also be made to change a culture. Antisemitism—like all forms of bigotry—is taught and cannot

[64] Joe Cohn, *NY Governor's Actions Pose Significant Threat to Academic Freedom*, Free the Inquiry, (Mar. 12 2025), https://heterodoxacademy.substack.com/p/ny-governors-actions-pose-significant.

survive where people's assumptions about each other are challenged through lived, positive experience.

One important step that institutions should take is to review the activities of their student-life administrators to make sure their efforts don't further antisemitism by promoting an anti-Zionist view of "social justice." Student life administrators should avoid fanning flames and avoid pitting students against each other.

Moreover, campus administrators should focus on creating opportunities once people arrive on campus for multicultural collaboration and collaboration across ideological differences. This approach builds on the strength of the university as a community dedicated to shared learning and the growth and success of all its community members.

Campuses did not become enclaves of antisemitism overnight, and it is unlikely that trend will reverse without investing the time and effort in challenging the assumptions and behaviors that allow antisemitism to fester. We cannot censor our way out of bigotry. To reverse the tide of antisemitism, we must use legal tools against conduct that is unlawful while we consistently engage those who express Jew hatred that is protected by the First Amendment and challenge their arguments through dialogue.

Institutions should also create programming that develops students' skills to disagree constructively. The battle for the hearts and minds of the next generation of students depends on our ability to talk to one another and our ability to persuade. To succeed in this crucial task, institutions of higher education and the federal government must adopt a comprehensive approach that is principled and consistent with free speech and academic freedom.