

October 30, 2023

**VIA Electronic Mail**

Diane Lopez  
Vice President General Counsel for Harvard University  
Richard A. and Susan F. Smith Campus Center, Suite 980  
1350 Massachusetts Avenue  
Cambridge, Massachusetts 02138-3834

Re: *Response by Harvard and HKS to Anti-Semitic Discrimination and Bias in  
Marshall Ganz's Course and on Campus*

Dear Ms. Lopez:

On June 15, Harvard Kennedy School (HKS) Dean Douglas W. Elmendorf acknowledged in correspondence that the rights of HKS students Amnon Shefler, Matan Yaffe, and Gilad Neumann (collectively, the Students), whom we represent, were violated by faculty member Marshall Ganz. Dean Elmendorf acknowledged that Professor Ganz's conduct violated our clients' freedom of speech and impermissibly discriminated against them as Israelis and as Jews. Admirably, the Dean pledged that Harvard would take the necessary steps to ensure that such violations do not recur.

We applaud Dean Elmendorf's honesty, as well as the conscientious work of his chosen fact finder, External Investigator Allyson Kurker. Thanks to their work, Harvard has admitted that an HKS professor "denigrated" our clients' "identities as Israelis and Jews." Harvard has admitted that this professor "gave preferential treatment" to "Arab and Muslim students" over our clients, who are Israeli and Jewish. Harvard has admitted to this professor's attempts to "silence the Israeli students."

Unfortunately, Harvard and HKS (collectively, the Schools) have not honored Dean Elmendorf's promises. This failure, on top of other failures of leadership, have set the stage for the worsening climate that we have seen for Jewish Harvard students since.

Harvard's failure to promptly and effectively address acknowledged violations of its Jewish and Israeli students' rights is especially dangerous now, in light of the support that over thirty Harvard student groups recently expressed for the murder, kidnapping, and rape of Israeli Jews during the October 7 Hamas pogroms. While

Harvard has taken the important step of admitting the problem, the situation for Jewish and Israeli students at Harvard will only worsen in the face of the University's inaction.

We have reviewed the many statements made by President Gay and HKS faculty in the days following the October 7 assaults. While President Gay has finally “condemned the terrorist atrocities perpetrated by Hamas,” her statements and those of HKS faculty fail to acknowledge that the women, children, babies and elderly persons targeted were targeted because they are Jews. Hamas’ goal is, and always has been, to ethnically cleanse Israel of Jews. The atrocities committed by Hamas on October 7 had nothing to do with the victims “being in the wrong place at the wrong time,” as one HKS statement amazingly asserts. Nor did Hamas slaughter Jews to improve the Palestinians’ quality of life. Hamas does not care for the wellbeing of Palestinians. They use the residents of Gaza as human shields and deny civil rights protections to women and members of the LGBTQ community.

Dean Elmendorf suggested a few days ago that maintaining civility on campus is the “collective responsibility” of the community at large. But the University has its own moral, ethical, and legal responsibility to model the proper response to this tragedy by condemning not only Hamas’ acts of terror but also the conduct of students and faculty who celebrate these barbaric acts by engaging in rallies commending Hamas. The University has the moral right and the legal obligation to use *its own voice* to condemn those who celebrate violent acts of terror, even if the law does not obligate the University to formally sanction or punish those individuals.

The University would unquestionably and properly condemn the waving of nooses by students seeking to intimidate the black community. By the same token, it should condemn the raising of Palestinian flags and adoption of the paratrooper image to intimidate its Jewish students. Instead, however, the University has refrained from even acknowledging the harm to Jews and has engaged in “whataboutism”—blithely equating the acts of Hamas, which terrorizes and targets civilians, to the actions of the IDF, which seeks to minimize civilian deaths while protecting a country that serves as a final refuge for Jews.

Both Harvard and HKS have a moral obligation to condemn celebration of the slaughter lest their silence be taken as condoning this obscene behavior. As former Harvard president Larry Summers tweeted last week, “The silence from Harvard’s leadership, so far, coupled with a vocal and widely reported student groups’ statement

blaming Israel solely, has allowed Harvard to appear at best neutral towards acts of terror against the Jewish state of Israel. ... Harvard is being defined by the morally unconscionable statement apparently coming from two dozen student groups blaming all the violence on Israel,” he wrote, adding: “I am sickened.”

Harvard and HKS also have a *legal* obligation to protect their Jewish and Israeli students from anti-Semitic discrimination and harassment, as we explained in our letter of March 29, 2023, which described the treatment to which the Students were subjected in Professor Ganz’s classroom last spring. The Schools have now conceded, based on the detailed findings of an outside investigator, that the Students were indeed subjected to anti-Semitic and anti-Israeli discrimination and harassment in violation of School policies and federal law. But the Schools have remained silent on the matter, perhaps hoping to let it pass unnoticed.

A “sweep it under the rug” approach will only harm the Schools if a hostile environment persists—and, as seems likely given what is taking place on your campus today—increases in the wake of the brutal attack on Israeli civilians by Hamas terrorists.

As we advised Dean Elmendorf and Harvard’s then-President in our letter of March 29, 2023, Title VI of the Civil Rights Act of 1964 (Title VI) requires schools that receive federal funding to respond immediately to discrimination and/or harassment that “negatively affect[s] the ability and willingness of Jewish students to participate fully in the school’s education programs and activities.” A university “must take prompt and effective steps reasonably calculated to end the harassment, eliminate any hostile environment, and prevent the harassment from recurring.”

**Having recognized Professor Ganz’s discriminatory, biased and anti-Semitic conduct targeting the Students on the basis of their shared ethnic, national, and ancestral identity, HKS and Harvard must use the lessons learned from this experience to educate their academic communities.**

Last spring, the Students we represent signed up for Ganz’s course, “Organizing: People, Power, Change,” which was designed to teach students how to lead their “people” to fulfill the democratic purposes of equity, accountability, and effectiveness, because they wished to develop a plan “to harness and unite a majority of diverse and moderate Israelis to strengthen Israel’s liberal and Jewish democracy” at a time of division and social strife within their country. The Students articulated their purpose

as “organizing a growing majority of Israelis[] that act in harmony, building on a shared ethos of Israel as a liberal-Jewish-democracy, being a cultural, economic and security lighthouse.”

But, as you know, this purpose was dismissed as illegitimate by Professor Ganz, who demanded they change it, and subjected them to anti-Israel and anti-Semitic bias and discrimination when they refused. We explained that Professor Ganz violated HKS’ own principles and federal civil rights laws when he denounced their project based on his view that the Jewish State is not a democracy and that the ethnic identity of Jews and Israelis must be suppressed lest they offend the feelings of others.

After HKS received our letter, you wrote to us advising that HKS was planning to investigate our allegations. We responded that, while we had not requested an investigation, we were very pleased to see that HKS was taking our allegations seriously.

External Investigator Allyson Kurker conducted a thorough and detailed investigation, described in her preliminary report of May 19, 2023. On June 14, 2023, Ms. Kurker submitted a 25-page report including her findings and recommendations, which Dean Elmendorf deemed final. He accepted her conclusion that Professor Ganz had violated HKS’ free speech and anti-discrimination policies.

Specifically, Ms. Kurker found that Professor Ganz had run “afoul” of HKS’ own “principles of free speech and free exchange of ideas” when he directed the Students “to change their statement of purpose and topic description” because other students and teaching fellows “objected to the premise of Israel as a Jewish democracy.” (June 14 report at p. 18.)

Professor Ganz also “denigrated the Students’ identities as Israelis and Jews.” (*Id.* at p. 22.) For example, “he compared the Students’ purpose to Christian white supremacy in an effort to demonstrate that their claim to ‘Jewish democracy’ was ‘contradictory.’” He also said that “for some, Jewish democracy sounds like what white racist would sound like to others.” (*Id.* at p. 22-23.) Professor Ganz did not deny this; indeed, he actually doubled down on it when interviewed, telling the investigator “that the Students’ description of Israel as a Jewish democracy ... was similar to ‘talking about a white supremacist state.’” (*Id.*)

What’s more, the investigator noted, “Professor Ganz[] [accorded] preferential treatment [to] Arab and Muslim students, who[m] he viewed as a group oppressed by Israel, and his attempts to silence the Israeli Students.” This discriminatory conduct,

Ms. Kurker found, was inconsistent with “[HKS’ principles and] expectations that students enjoy a learning environment free from bias.” (*Id.* at p. 21.)

In addition, Ms. Kurker found that Professor Ganz had created a hostile environment, as defined by the Department of Education’s Office for Civil Rights (OCR) with respect to Title VI of the Civil Rights Act of 1964 (Title VI), which requires schools with federal funding to act quickly to redress and eliminate such environments. By “treat[ing] the Students differently on the basis of their Israeli national origin and Jewish ethnicity and ancestry ... without a legitimate, nondiscriminatory reason for doing so, [Ganz] interfered with and limited the Students’ ability to participate in and benefit from HKS’s educational program.” (*Id.* at p. 20-21.)

As Ms. Kurker correctly observed, Title VI “extends to those who experience discrimination, including harassment, based on their actual or perceived: (i) shared ancestry or ethnic characteristics; or (ii) citizenship or residency in a country with a dominant religion or distinct religious identity,” or “discrimination based on the country, world region, or place where a person or their ancestors come from, *including membership in a religion that may be perceived to exhibit such characteristics, such as Jewish individuals.*” (*Id.* at p. 20, citing January 2023 OCR Fact Sheet, attached to her letter as exh. U, emphasis added; see also exhs. V, W, and X to her letter, documenting OCR guidance.)

OCR has recognized since 2004 that Title VI protects Jews as an ethnic group based on shared ancestry. So has the Department of Justice. Just last month, eight more federal agencies: Departments of Agriculture, Health and Human Services, Homeland Security, Housing and Urban Development, Interior, Labor, and Treasury and Transportation publicly embraced this premise, reflecting the acceptance by essentially the entire domestic wing of the federal government the notion that Jewish Americans are protected under Title VI. (See, e.g., <https://www.usda.gov/media/press-releases/2023/09/28/usda-other-agencies-clarify-protections-title-vi-civil-rights-act>.)

And earlier this year, as Ms. Kurker observed, the White House in its U.S. National Strategy to Counter Antisemitism “raised concerns about college students who are treated differently on campuses based on their actual or perceived views on Israel.” (June 19 letter at p. 21, citing U.S. National Strategy, attached to her letter as Exh. AA.) “On college campuses, Jewish students, educators, and administrators have been derided, ostracized, and sometimes discriminated against because of their actual or perceived views on Israel. All students, educators, and administrators should feel safe and free from violence, harassment and intimidation on their campuses. Far too many

do not have this sense of security because of their actual or perceived views on Israel.” (*Id.*, quoting same.)

Ms. Kurker concluded that the professor’s conduct was out of step with federal and OCR guidance: “Silencing Jewish or Israeli students on the basis that speech about Israel could disrupt or divide a class runs counter to OCR guidance, which provides that no student may be excluded participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving federal financial assistance” on the basis of race, color, or national origin, which includes shared ancestry. (*Id.* at pp. 20-21.) “The cumulative effect of [the professor’s] acts *indeed created a hostile learning environment for the Students based on their Israeli nationality and Jewish ethnicity and ancestry*, and effectively denied them the opportunities of a safe learning environment in the Course.” (*Id.* at p. 23, emphasis added.)

Dean Elmendorf responded to the report the following day, accepting as final Ms. Kurker’s “findings of fact and conclusions regarding the violations of School policies.” (Elmendorf Letter of June 15, 2023.) He said nothing about Title VI or the White House’s National Strategy to Counter Antisemitism, but he did cite HRK’s Statement on Diversity and Rights and Responsibilities, which provides, *inter alia*, that “[a]ll members of the [HKS] community are entitled to work in an environment that is free from threat, harassment, abuse, or discretion.” (*Id.*) And he pledged to “ensure that the School fulfills these commitments and that the violations of policies that occurred this spring are addressed fully and do not recur.” We applaud Dean Elmendorf’s acknowledgement that Harvard has violated our clients’ rights and must insist that the School do as Elmendorf promised. That is to say, Harvard must fulfill the Dean’s promise that Harvard will ensure that what occurred this spring will not occur – although it has not yet taken even the basic steps that it must take in that direction.

The Dean told the Students he was convening a small group of faculty members to advise him, and that this process would take no more than “a few weeks.” (*Id.* at p. 2.)

The Students responded to the Dean in an email dated June 26, thanking him for accepting the investigator’s findings of fact, and reminding him that “[o]ur goal is not to see anyone punished”:

We want, instead, to ensure that other Jewish and Israeli students (graduate and undergraduate) as well as any other student and faculty, at Harvard not experience the discrimination and harassment that we did at [HKS] by Professor Ganz. To this end, we urge the School to openly discuss the incident, and make clear that anti-



Semitic and anti-Israel bias is no more acceptable than any other form of bias... This message may need to be reinforced by training, since even many educated people seem to be unaware that the kind of rhetoric aimed at us is anti-Semitic. We would be willing to assist by speaking to students, faculty, and administrators, in person or virtually.

The Students waited for the Dean's response as the months ticked by. On September 11, just before he resigned, Dean Elmendorf finally wrote to the Students, personally apologizing for Ganz's policy violations, and advising them that the School was taking "certain personnel actions" that could not be disclosed and "organizing sessions for all faculty members regarding difficult conversations in class among *students with different perspectives*." (Elmendorf Letter of Sept. 11, 2023.)

The Students—and the Brandeis Center—appreciate that HKS has acknowledged the nature of Professor Ganz's wrongdoing. We are nevertheless concerned that HKS has made no public statement or attempted to correct the hostile environment that continues to exist on campus. The Dean's letter, notably, ignores the investigator's findings of anti-Semitism, treating what occurred as a question of "different perspectives." *But this is not a case of viewpoint discrimination.*

This is a case of discrimination based on the Students' *identity* as Jews and Israelis, which Professor Ganz denigrated and sought to suppress. Ironically, Professor Ganz's course purports to ask students, "Who are your people?" The Students' "people" is, of course, the Jewish people, which has had ties to the land of Israel for three millennia and which now inhabits the Jewish State of Israel, as well as the diaspora, where Jews migrated after years of forced exile (or worse) throughout the Middle East and Europe. But this people is evidently not welcome in Professor Ganz's class.

As the Students have requested from the start, HKS should remedy what occurred by (1) having Professor Ganz to apologize to them, (2) having Professor Ganz agree to treat Israeli and Jewish students with the same level of respect accorded others, and (3) ensuring that HKS professors and staff honor HKS' mission of non-discrimination by having them undergo training on anti-Semitism in all of its manifestations.

But none of this has taken place.

Instead, while Dean Elmendorf advised that confidential personnel decisions are in the works, HKS publicly touts Professor Ganz (who continues to teach there) as a civil rights hero. The latest edition of the Harvard Gazette vaunts Ganz's early civil rights work, making no mention of his recent dishonorable conduct. The professor's work on behalf of minorities in the sixties may be admirable, but publicly featuring him in this

fashion, mere months after he was found to have created a hostile environment for his students, suggest the pledge made to the Students that the university would fully address the violations were mere empty words. Harvard, it seems, has no genuine intent to address the anti-Semitism on its campus, choosing instead to publicly celebrate a professor who recently subjected Jewish and Israeli students to bias and discrimination.

The professor is no civil rights champion when it comes to minorities he personally finds distasteful, namely, Jewish Israelis. He is in fact a civil rights violator, who undisputedly trampled the rights of members of his class without hesitation or apology, denigrating the Students' identity and preventing them from participating fully in his class.

The Harvard community may well need training to be able to hold civil discussions among people of disparate viewpoints. But that is not the issue here. The Students' experience at the hands of Professor Ganz involves identity discrimination, which is not only prohibited under HKS rules, but *is against the law*. While the investigator did not make legal findings or conclusions of law, her findings of bias, discrimination, and hostile environment strongly support the inference that Title VI was violated here.

We commend HKS for investigating and accepting findings that Professor Ganz's behavior violates HKS principles. However, HKS's response cannot stop there. As the Students have requested throughout, their experience should be publicly acknowledged and renounced by HKS. Training should be provided to the HKS and Harvard communities so that they are able to recognize anti-Semitism. The community must understand that treating Israelis and Jewish supporters of Israel as pariahs is not a matter of politics or viewpoint; it's a matter of discrimination. It must be eradicated at schools that receive federal funding—to say nothing of schools that hold themselves out as institutions that seek to hold themselves to a higher standard.



**Harvard and HKS must take affirmative steps to educate their communities to recognize anti-Semitism that targets Jews on the basis of their shared ethnic and ancestral identity.**

For many Jews, including many Jewish and Israeli students at Harvard and HKS, identifying with and expressing support for the Jewish homeland is a sincere and deeply felt expression of their Jewish ethnic and ancestral identity.<sup>1</sup> Anti-Semitism directed at Jewish ethnicity is often part of a concerted strategy to marginalize Jewish students on campus and make them feel unwelcome.<sup>2</sup>

As the Students' experience demonstrates, anti-Semitic bias and discrimination are often directed at Jews as a people rather than just as a religious or faith community.<sup>3</sup> Those who are hostile to the modern State of Israel frequently seek to deny or erase the ancestral connection of the Jewish people to the Land of Israel. With increasing frequency, this form of anti-Semitism manifests on university campuses as vilification, shunning, marginalization, harassment and/or exclusion of Jewish students whose connection to Israel is integral to their Jewish identity. Rhetoric that demonizes and delegitimizes the Jewish state often encourages and facilitates such discriminatory conduct.<sup>4</sup>

In January 2023, the Department of Education affirmed its commitment to the Executive Order, which incorporates the International Holocaust Remembrance Alliance Working Definition of Anti-Semitism (the IHRA Definition) when it issued a factsheet on discrimination based on shared ancestry.<sup>5</sup> In addition, the Department of

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<sup>1</sup> Alyza D. Lewin, *Zionism: The Integral Component of Jewish Identity that Jews are Historically Pressured to Shed*, 26 ISRAEL AFFAIRS 330 (2020), <https://www.tandfonline.com/doi/abs/10.1080/13537121.2020.1754577>.

<sup>2</sup> See, generally, U.S. Commission on Civil Rights, Briefing Report: Campus Anti-Semitism (July 2006), p. 3, <https://www.usccr.gov/files/pubs/docs/081506campusantibrief07.pdf>.

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

<sup>4</sup> “*Understanding Campus Antisemitism*,” AMCHA INITIATIVE, (July 2020), available at <https://amchainitiative.org/wp-content/uploads/2020/07/Antisemitism-Report-2019.pdf>.

<sup>5</sup> See STATEMENT FROM U.S. ASSISTANT SECRETARY FOR CIVIL RIGHTS ON TITLE VI PROTECTION FROM DISCRIMINATION BASED ON SHARED ANCESTRY OR ETHNIC CHARACTERISTICS (Jan. 4, 2023), <https://brandeiscenter.com/statement-from-u-s-assistant-secretary-for-civil-rights-on-title-vi-protection-from-discrimination-based-on-shared-ancestry-or-ethnic-characteristics/>. In her email, Assistant Secretary for Civil Rights Catherine Lhamon,

Education re-affirmed its commitment to the Executive Order as recently as May 2023, when it directed university administrators to the Questions and Answers on Executive Order 13899 as a resource in OCR guidance issued contemporaneously with the White House National Strategy on Countering Antisemitism.<sup>6</sup> As the IHRA Definition states, criticism of Israel similar to that leveled against any other country, is not anti-Semitism. But demonizing the Jewish State, denying the Jewish people the right to self-determination—and/or subjecting Israel to double standards are another thing altogether. These are classic earmarks of anti-Semitism.

Professor Ganz’s speech and conduct were anti-Semitic. And the celebration of Hamas atrocities is anti-Semitic as well as unconscionable. The University has contributed to these expressions of anti-Semitism by remaining silent, in contrast to the many times it has used its voice to castigate campus speech that reflects hate against other minority groups.

**Harvard and HKS should not wait any longer to publicly denounce what took place in Ganz’s class, as well as the student conduct celebrating the carnage that took place in Israel on October 7.**

Harvard’s failure to speak out against anti-Semitism masked as anti-Zionism has only emboldened the student groups who are now celebrating Hamas’ atrocities. The silence needs to end.

We urge the Schools to consider the statement published by Harvard’s Jewish Law Students Association:

This weekend, more than 700 Jews [now over 1300] were murdered. In quiet homes, at a desert rave, and on the streets of Israel’s suburbs, Hamas terrorists raped, tortured, and killed civilians. Over 100 people, including

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notes, “Additional resources, including a Questions and Answers guide released in January 2021 that affirms OCR’s commitment to complying with Executive Order 13899 on Combatting Anti-Semitism are available on the Shared Ancestry or Ethnic Characteristics page of OCR’s website.”

<sup>6</sup> Dear Colleague Letter, U.S. DEP’T OF EDUC.–OFFICE FOR C. R. (May. 23, 2023), available at [https://www2.ed.gov/about/offices/list/ocr/docs/antisemitism-dcl.pdf?utm\\_content=&utm\\_medium=email&utm\\_name=&utm\\_source=govdelivery&utm\\_term](https://www2.ed.gov/about/offices/list/ocr/docs/antisemitism-dcl.pdf?utm_content=&utm_medium=email&utm_name=&utm_source=govdelivery&utm_term) ≡.

families, teenagers, children, and at least one Holocaust survivor, are now held captive by Hamas in Gaza.

We the Jewish Law Students Association of Harvard Law School believe that every person should condemn these heinous acts. The crimes committed this weekend are beyond protest, beyond resistance – they are crimes against humanity that Jews have not faced since the Holocaust. Holding anyone responsible for these atrocities other than the terrorists who committed them is repugnant.

Hundreds of Jewish students at HLS [and other Harvard undergraduate and professional schools] have connections to these tragedies. So many students have family, friends, and colleagues in Israel. We mourn with our community for the lives lost, we pray for the safe return of those held captive, and we hope for a speedy end to this conflict.

And we urge you, HLS students, to stand by your Jewish classmates this week. Comfort, console, and stand up for Jewish students after one of the worst weekends in our history.

University leadership should heed this sound advice and take the steps the Brandeis Center and the Students have asked Harvard and HKS to take, for the sake of the three Israeli Students who experienced anti-Semitic harassment and discrimination last spring, for the students who remain on campus and are experiencing it now, and for the University's sake. The Schools should consider not only their reputation but their legal obligations.

We are available to discuss this issue at your convenience.

Sincerely,



Kenneth L. Marcus  
*Chairman and Founder*



L. Rachel Lerman  
*General Counsel*



Alyza D. Lewin  
*President*

