

October 23, 2020

**Summary of UIUC Title VI Complaint (March 27, 2020), Supplemental Memorandum (June 18, 2020), and Supplemental Letter (October 16, 2020)**

Over the past five years, the Jewish and pro-Israel students at the University of Illinois at Urbana-Champaign (“UIUC”) have been subjected to a hostile environment of anti-Semitism. The anti-Semitism comes from both ends of the political spectrum: Jewish and pro-Israel students are peppered with swastikas by white supremacists on the extreme right while being labeled white supremacists by the extreme left. The situation has deteriorated to such an extent that in December 2019, the UIUC student body president circulated a university-wide email condemning the “epidemic of antisemitism on this campus.” This poisonous atmosphere has hindered the ability of Jewish and pro-Israel students to participate in UIUC’s classes and activities.

Title VI of the Civil Rights Act of 1964 prohibits discrimination on the basis of race, color, and national origin in educational institutions that receive federal funding. Title VI forbids discrimination against Jews on the basis of their “actual or perceived shared ancestry or ethnic characteristics.”<sup>1</sup> “[W]hen the conduct is sufficiently severe, pervasive, or persistent so as to interfere with or limit a [Jewish] student’s ability to participate in or benefit from the services, activities, or opportunities offered by a school,” 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.”<sup>2</sup> As recently clarified in Executive Order 13899, a Title VI recipient is legally obligated to “enforce Title VI against prohibited forms of discrimination rooted in anti-Semitism as vigorously as against all other forms of discrimination prohibited by Title VI.”<sup>3</sup> Denying the Jewish people’s right to self-determination—*i.e.*, anti-Zionism—is a form of anti-Semitism.<sup>4</sup>

After numerous requests, UIUC, a recipient of federal financial assistance, has made some efforts to address some of the countless instances of hostility and discrimination against Jewish and pro-Israel students. But those efforts have been wholly inadequate. In fact, in some cases, UIUC staff members were *complicit* in fostering this hostility and discrimination. Title VI

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<sup>1</sup> See, e.g., U.S. Department of Education, Office for Civil Rights, “Dear Colleague Letter” (Oct. 26, 2010) (“2010 Dear Colleague Letter”), available at <http://bit.ly/2UjcWDs>, at 5; see also, e.g., Thomas E. Perez, Assistant Attorney General, U.S. Department of Justice, *Title VI and Coverage of Religiously Identifiable Groups* (Sep. 8, 2010), available at <http://bit.ly/2QrKoGM>; U.S. Department of Education, Office for Civil Rights, “Dear Colleague Letter” (Sep. 13, 2004), available at <http://bit.ly/33w85Tn>.

<sup>2</sup> 2010 Dear Colleague Letter, *supra*, at 2–3.

<sup>3</sup> Exec. Order 13899, 84 Fed. Reg. 68779 (Dec. 11, 2019), § 1.

<sup>4</sup> See International Holocaust Remembrance Alliance, *Working Definition of Antisemitism* (May 26, 2016), available at <http://bit.ly/2U2BuBs> (“IHRA Definition”).

requires UIUC to recognize the seriousness of this problem, and devote the necessary resources to combat the scourge of anti-Semitism and anti-Zionism on its campus.

This complaint is brought on behalf of all Jewish and pro-Israel students on UIUC's campus.

### **Abbreviated List of Incidents**

1. In 2015 and 2016, at least five swastikas were found on or near UIUC's campus, including a swastika on a car parked less than a block away from the UIUC Hillel.



2. The UIUC Chabad Center for Jewish Life menorah was vandalized four times in two years: once in April 2015, once in August 2015, once in February 2016, and once in October 2017.
3. In March 2017, a UIUC Vice Chancellor removed a Jewish student from the UIUC Campus Student Elections Commission during a referendum campaign to determine whether UIUC should divest from Israeli companies. The Vice Chancellor later justified her decision by saying: "she's Jewish, I had to remove her because she's biased."
4. On September 4, 2017, rocks were thrown through the window of a Jewish fraternity on UIUC's campus. The police told the fraternity members that without suspects there was not much they could do.
5. In the wake of the well-known August 2017 white supremacist rally in Charlottesville, Virginia, Students for Justice in Palestine at UIUC ("SJP") organized a rally on UIUC's campus entitled "Smashing Fascism: Radical Resistance Against White Supremacy." SJP

promoted the rally by insisting that “[t]here is no room for fascists, white supremacists, or Zionists at UIUC.” SJP later argued on its Facebook page that there exists an “unholy union of American fascists, white supremacists, and Zionists,” and encouraged “violent resistance”—including, if necessary, “full-scale armed conflict”—in response. During the rally itself, SJP’s president led the crowd in a chant of, “No Zionists! No KKK! Resisting fascists all the way!”

6. In Fall 2018, a swastika was painted on a wall of a school building that faced a Jewish sorority, and a swastika was drawn on the dormitory room door of a Jewish UIUC freshman. Later, a swastika was drawn inside a men’s restroom on campus, as well as in a basement tunnel located east of the Main Quad.



7. The same semester, a Jewish and pro-Israel UIUC student applied for a vacant spot on the UIUC Student Senate. A different Jewish applicant for a vacant Senate slot had a resume filled with Jewish and pro-Israel activity, and did not so much as receive an interview. This was not standard practice, as all other applicants who sought contested spots on the Senate received interviews. After hearing that the student government was hostile to pro-Israel Jews, the student wiped his resume of Jewish and pro-Israel activity before submitting his application. The student received an interview, and was ultimately selected to fill the vacant spot.
8. In a March 25, 2019 column in UIUC’s student newspaper, one Jewish student wrote the following:

In my time as a student at the University, I have been targeted for my Jewish identity on multiple occasions. As a freshman, my name and pictures were shared on social media captioned with anti-Semitic slurs. I was kicked off of a University committee because of my religion as a

sophomore. I filed dozens of reports with the campus bias team documenting discrimination against me because of my religion that went unaddressed. Now in my senior year, the University Board of Trustees has not responded after I presented a log of over 30 documented acts of discrimination which occurred over two and a half years.

9. Each year in the spring, SJP sponsors a week-long “Israel Apartheid Week” on UIUC’s campus. On or around April 12, 2019, the Illini Public Affairs Committee (“IlliniPAC”), a student group, set up a pro-Israel table as a counterpoint to SJP’s programming. SJP members walked up to the IlliniPAC table and began yelling at the IlliniPAC members. One IlliniPAC member was called a “Nazi” and “white supremacist.” An SJP supporter spat on another IlliniPAC member, claiming that because IlliniPAC is connected to the American-Israel Public Affairs Committee (“AIPAC”), and AIPAC has dual loyalty, the IlliniPAC member was not a true citizen of the United States. Another SJP supporter insisted, while pointing towards the Jewish students at the table: “they fucking stole a country, and they don’t want to fucking admit it.”
10. In September 2019, a Jewish UIUC student returned to her dorm room to discover that her mezuzah was missing. This followed earlier incidents, where a student had a mezuzah ripped off of his door by another resident of his dormitory. And during the 2018-2019 academic year, his mezuzah was ripped off from the door of his apartment.
11. On the morning of September 10, 2019, a man stood on the Main Quad with a sign declaring that the Holocaust was a hoax. The sign featured a blue Star of David—similar to the Star of David on the Israeli flag—above the word “Extortion” and three dollar signs. One student, a granddaughter of a Holocaust survivor, reported the man to campus police and was told that nothing could be done because the speaker was exercising his First Amendment rights. The speaker was eventually led away by campus authorities at about noon.





12. The following day, September 11, 2019, the man was spotted again on campus holding up a sign that said, “Israel Nuked WTC.”



13. During a mandatory diversity training session on September 25, 2019, a UIUC Multicultural Advocate gave a presentation titled “Palestine & Great Return March: Palestinian Resistance to 70 Years of Israeli Terror.” The presentation implied that the very existence of a Jewish state was a racist endeavor. The presentation also glorified violence against Jews: it depicted Leila Khaled, a prominent member of the Popular Front for the Liberation of Palestine (“PFLP”), as a positive symbol of Palestinian resistance. (The U.S. State Department has designated PFLP a Foreign Terrorist Organization, and the Office of Foreign Assets Control (“OFAC”) has designated PFLP a Specially Designated Global Terrorist entity). The presentation also contained a slide titled “martyrdom,” which was defined as

“[s]acrificing of the heroes who are killed in the battles of the enemy,” and “[d]eath which is desired by a warrior.”



### Symbolism- Kuffiyeh & Flag



### Martyrdom

- Not a “victim.”
- Not a bloody and accidental happening.
- Sacrificing of the heroes who are killed in the battles of the enemy.
- Death which is desired by a warrior, selected with all the awareness, logic, reasoning, intelligence, understanding, consciousness, and alertness that a human being has.



14. Between October 7 and October 11, 2019, individuals reported finding multiple swastikas drawn in various locations across UIUC's campus.
15. On October 23, 2019, following public outcry over the September 25, 2019 presentation, SJP sponsored an Illinois Student Government ("ISG") resolution insisting that the presentation of September 25th "had no [a]nti-Semitic content in it," and condemning "conflation of Anti-Zionism and Anti-Semitism." During the debate over the resolution, students held up signs with statements like "Free Palestine, Fuck Zionists" and "Fuck Nazis, Support Palestinians." (It was clear to all that the reference to "Fuck Nazis" was a reference to the Zionist students who were present.). The resolution ultimately passed with 29 votes in favor, four against, and four abstaining. SJP later issued a press release celebrating victory over "white supremacist forces"—*i.e.*, the Jewish and pro-Israel student body—"on this campus."



16. On November 15, 2019, during an SJP "Emergency Rally for Gaza" on the heart of UIUC's campus, a speaker referred to Bahaa Abu al-Atta and Khaled Faraj—two deceased Palestinian Islamic Jihad commanders—as "martyrs," and encouraged the crowd to hold a moment of silence in their memories. (Palestinian Islamic Jihad—like PFLP—has been designated a Foreign Terrorist Organization and a Specially Designated Global Terrorist entity by the U.S. State Department and OFAC, respectively.)

17. On January 30, 2020, a rock was thrown through a window of a Jewish fraternity on UIUC's campus. In addition, in February, a different UIUC Jewish fraternity's window was shattered by a concrete block.
18. On February 5, 2020, SJP introduced a resolution in the Illinois Student Government Senate titled "Violations of Human Rights in University Investments" (Resolution 03.61). The resolution called for the University to divest from three companies that supply defense technology to Israel. Although the resolution cited multiple countries, it referenced Israel a strikingly disproportionate number of times. On February 13, 2020, the ISG debated the resolution, during which a Jewish pro-Israel UIUC student was called a Nazi to her face. The resolution ultimately passed, with 20 in favor, nine against, and seven abstentions.
19. On February 28-29, 2020, a student reported that someone had drawn swastikas and male genitalia on a whiteboard hanging in Wardall Hall. The drawings first appeared on Friday, February 28 and were erased; then they were redrawn on Saturday, February 29.
20. On September 14, 2020, two members of UIUC SJP authored an ISG resolution titled "Human Rights Violations in University Investments." The resolution called on UIUC to divest from certain companies that do business with Israel, and also called on UIUC's Chancellor to create a human rights task force to evaluate the university's investments in various corporations and index funds. The resolution linked divestment from Israel to pressing social and racial justice issues like criticism of police brutality and environmental harm. The resolution's goal was to drive a wedge among politically progressive students on UIUC's campus—isolating Jewish and pro-Israel UIUC students from all the others.
21. On September 21, 2020, the ISG Committee on Diversity and Inclusion held a meeting to discuss the September 14 resolution. During this meeting, an ISG Senator proposed an amendment that would add a Jewish cultural center—such as Hillel or Chabad—to the list of student groups represented on the resolution's task force. According to a meeting attendee, one of the resolution's authors responded, "I would absolutely include a Jewish student on the committee, *but they could not be affiliated with Jewish student orgs on campus that I know of, like Chabad or Hillel.*" A UIUC faculty advisor was present at this meeting—and heard the author's statements—yet said nothing.
22. On September 23, 2020, the ISG Senate held a virtual Zoom meeting to discuss the resolution discussed above. A Jewish and pro-Israel ISG Senator had prepared a statement to read during the debate, and followed the proper procedure to enter the "virtual" speaking queue to speak. The ISG Chair, however, precluded her from speaking by closing debate. The resolution ultimately passed the Senate by a vote of 22 in favor, 11 against, and 7 abstentions.
23. On October 14, 2020, the Jewish and pro-Israel ISG Senator discussed above announced her resignation from the ISG Senate, as a direct result of the persistent harassment that she received from her fellow ISG Senators on the basis of her Jewish and Zionist identity. In her resignation letter to the ISG Senate—on which she cc'd UIUC's Chancellor—the Senator



declared that the “sole focus” of the “majority of students” on ISG has become to “make sure that Jewish and Pro-Israel students on campus”—like her—“do not feel safe and welcome.” She continued:

I knew from my first time coming to an ISG meeting that there is a lot of hate here. There are a lot of members who are here to make sure that they have a forum to spew anti-Israel anti-Semitic hate speech, directly in the face of Jews. I thought that you, being my peers on this campus, at such a difficult period of time in our nation would be a forum of people interested in bettering the common good for those of us on campus. I decided to join you to try and bring to you a voice from a person who believes in so many of the same causes you purport to be trying to tackle. But I have come to understand that this is not a place where any of you really care about human rights, fairness, no hate having a home here, because none of you are willing to take a chance and listen to what I have to say because you are jaded by your hate of Jews and Israel. Unfortunately, it is clouding your ability to represent all students on campus . . . .

I hereby resign my position as a Senator.

### **Application of Title VI**

Title VI forbids discrimination against Jews on the basis of their “actual or perceived shared ancestry or ethnic characteristics.”<sup>5</sup> In determining whether an action is anti-Semitic, Executive Order 13899 tasks OCR with considering the working definition of anti-Semitism adopted on May 26, 2016 by the International Holocaust Remembrance Alliance (“the IHRA Definition”), as well as IHRA’s list of “Contemporary Examples of Anti-Semitism.”<sup>6</sup> Under the IHRA Definition, “contemporary examples of anti-Semitism” include eleven items.<sup>7</sup> All eleven items are met in this case.

- a) *Calling for, aiding, or justifying the killing or harming of Jews.* Vandalism of Jewish property on campus—such as the UIUC Chabad menorah, mezuzahs of Jewish UIUC students, and the UIUC Jewish fraternity houses—constitute direct threats against UIUC’s Jewish student body. SJP also justifies the killing or harming of Jews by openly praising Palestinian terrorists. This includes the University-mandated and sanctioned MA presentation, which glorified “martyrdom” against Israel and positively depicted a PFLP terrorist as a symbol of Palestinian resistance. It also includes SJP’s “Emergency Rally for Gaza,” during which two Palestinian Islamic Jihad commanders were called “martyrs” and a moment of silence was held in the commanders’ memories.

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<sup>5</sup> See, e.g., 2010 Dear Colleague Letter at 5.

<sup>6</sup> Exec. Order 13899, 84 Fed. Reg. 68779 (Dec. 11, 2019), § 2.

<sup>7</sup> See IHRA Definition, *supra*.

- b) *Making mendacious, dehumanizing, demonizing, or stereotypical allegations about Jews as such or the power of Jews as collective.* On the eighteenth anniversary of 9/11, a man stood on UIUC’s campus and held up a sign accusing Israel of orchestrating the attacks.
- c) *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.* The sign referenced in the previous category would apply here as well.
- d) *Denying the fact, scope, mechanisms (e.g. gas chambers) or intentionality of the Holocaust.* On September 10, 2019, an individual stood on UIUC’s campus and held up a sign stating that the “Holocaust is a Hoax.”
- e) *Accusing the Jews as a people, or Israel as a state, of inventing or exaggerating the Holocaust.* The “Holocaust is a Hoax” sign described above included a blue Star of David—similar to the Star of David on the Israeli flag—above the word “Extortion” and three dollar signs.
- f) *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.* A UIUC Vice Chancellor insisted that a Jewish UIUC student could not vote on an Israel-related resolution because she was Jewish and therefore “biased.”
- g) *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.* SJP openly and repeatedly calls Zionists “racists” and compares them to KKK members and white supremacists. The MA presentation implied that the very existence of a Jewish state was a racist endeavor, and SJP defended the content of the presentation repeatedly, including by sponsoring a resolution condemning the equation of anti-Zionism and anti-Semitism.
- h) *Applying double standards by requiring of Israel a behavior not expected or demanded of any other democratic nation.* In February 2020, the Illinois Student Government passed Resolution 03.61, a resolution that disproportionately singled out Israel for using defense equipment to protect its citizens.
- i) *Using the symbols and images associated with classic antisemitism.* Numerous swastikas have been found on UIUC’s campus.
- j) *Drawing comparisons of contemporary Israeli policy to that of the Nazis.* SJP and its supporters routinely call Jewish Zionists on campus “Nazis” and “white supremacists.”
- k) *Holding Jews collectively responsible for actions of the State of Israel.* On April 12, 2019, an SJP supporter insisted, while pointing towards Jewish students: “they fucking stole a country, and they don’t want to fucking admit it.”

## **How the Above Incidents Have Negatively Impacted UIUC’s Jewish and Pro-Israel Student Body**

Conduct creates a “hostile environment” for purposes of Title VI 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.”<sup>8</sup> The discriminatory conduct outlined above has created a hostile environment for UIUC’s Jewish and pro-Israel student body. The incidents have the net effect of promoting the marginalization and alienation of Jewish and pro-Israel students in four distinct ways:

- a) *Threats of Physical Violence.* During SJP’s anti-Zionist demonstrations and debates surrounding Israel-related resolutions in the Illinois Student Government, Jewish students often report being verbally assaulted. Multiple Jewish Greek organizations at UIUC have warned their members not to wear the symbols of these organizations (or, indeed, *any* Jewish symbols) as a result of this increased risk of harassment. Many Jewish and pro-Israel students fear for their safety, and carry means for self-defense while walking around campus.
- b) *Discrimination From Membership in Student Groups.* The prevailing climate in many UIUC registered student organizations is one that is deeply hostile to Jewish and pro-Israel students. These organizations often have little to do with Israel, and are often at the forefront for advocating for progressive political causes on campus. Many Jewish students who identify with these organizations’ goals are not admitted or are otherwise reluctant to join the organizations because of this fierce anti-Zionism and anti-Semitism. Indeed, as noted above, a Jewish and pro-Israel ISG Senator *resigned* due precisely to the hostile climate in the ISG towards individuals like her.
- c) *Impact on Schoolwork.* The efforts made by Jewish and pro-Israel UIUC students to combat the discrimination they face on campus routinely takes a toll on their schoolwork.
- d) *Hostile Environment for Prospective Students.* A Jewish UIUC tour guide who often speaks with prospective Jewish students and their families informed us that many Jews have told him that they are extremely hesitant to attend UIUC because of UIUC’s hostile climate towards Jewish and pro-Israel students. Many Jews do not attend UIUC because they do not believe that they will be welcome. It is well-known in the Chicago-area Jewish community that there are problems on UIUC’s campus relating to anti-Semitism and anti-Zionism, and that is a factor in the decisions made by families about attending UIUC.

## **UIUC’s Response**

When a hostile environment under Title VI exists, 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.”<sup>9</sup> In addition, per Executive Order 13899, a Title VI recipient must “enforce Title VI against prohibited forms of discrimination

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<sup>8</sup> 2010 Dear Colleague Letter, *supra*, at 2.

<sup>9</sup> 2010 Dear Colleague Letter, *supra*, at 2–3.

rooted in anti-Semitism as vigorously as against all other forms of discrimination prohibited by Title VI.”<sup>10</sup> UIUC has failed on both counts.

UIUC has long been put on notice of the developing hostile environment on its campus. Apart from complaints that Jewish UIUC students have made directly through UIUC’s Bias Assessment & Response Team (“BART”), multiple concerned Jewish organizations have communicated directly with Chancellor Jones’s office. But the UIUC administration under Chancellor Jones has simply not provided the community of pro-Israel, Jewish students with a discrimination-free academic environment. In fact, in some instances, UIUC employees have been *complicit* in fostering this hostile environment—from the UIUC staff members who organized the September 25, 2019 presentation to the UIUC Vice Chancellor who removed a Jewish student from the CSEC because “she’s Jewish.”

In general, UIUC’s responses have fallen into three categories. First, in the face of most instances of anti-Semitism and anti-Zionism, the University simply did nothing. Second, in response to other incidents, UIUC took actions that were obviously inadequate on their face. Third, in some instances, UIUC took steps that might in other contexts have been sufficient, but—as indicated by the continuing anti-Semitic and anti-Zionist incidents—were insufficient in UIUC’s particular case.

UIUC has also failed to combat anti-Semitism as vigorously as it has combated other forms of bigotry on its campus prohibited by Title VI. For example, on September 1, 2019, a noose was found hanging in an elevator in a UIUC residence hall.<sup>11</sup> UIUC police immediately began an investigation and arrested the alleged perpetrator, another UIUC student, the following day.<sup>12</sup> The UIUC police department later issued a statement insisting that “[w]e do not tolerate incidents that are perceived by others to be a threat to their safety, and we will always respond quickly to identify offenders and hold them accountable for those actions.”<sup>13</sup> On September 5, 2019, Chancellor Jones circulated a mass email to the UIUC community concerning the incident.<sup>14</sup> Chancellor Jones explained that the student had been banned from campus, and that “the Vice Chancellor for Student Affairs and the Vice Chancellor for Diversity, Equity and Inclusion have begun a series of meeting opportunities to allow students safe places to discuss the incident and any concerns they have.”<sup>15</sup> UIUC’s swift, immediate, and unequivocal response to this racist incident contrasts greatly with its deficient responses to the anti-Semitic and anti-Zionist incidents on its campus, as outlined above.

### **The First Amendment**

We recognize that, “as a threshold issue and throughout the processing of [a] complaint[,] all actions taken by OCR must comport with First Amendment principles,” and OCR “will not . .

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<sup>10</sup> Exec. Order 13899, 84 Fed. Reg. 68779 (Dec. 11, 2019), § 1.

<sup>11</sup> Rebecca Wood, *Student Arrested After a Noose Found in Allen Hall*, The Daily Illini (Sep. 3, 2019), available at <https://bit.ly/2WyH4xn>.

<sup>12</sup> U. of I. Police News, *Student Arrested After Noose Found at Residence Hall*, Illinois University Police Department (Sep. 3, 2019), available at <https://bit.ly/2WyH4xn>.

<sup>13</sup> *Id.*

<sup>14</sup> Available at <https://bit.ly/2QEGpGQ>.

<sup>15</sup> *Id.*



. require recipients to encroach upon the exercise of [First Amendment] rights.”<sup>16</sup> However, the First Amendment does not protect the much of the conduct outlined above—such as threats and vandalism,<sup>17</sup> express discrimination,<sup>18</sup> and fighting words.<sup>19</sup> In addition, even as to speech that *is* protected under the First Amendment, nothing would bar the University from condemning the content of such speech, and properly labelling it as bigoted. As OCR has long acknowledged, “while the First Amendment may prohibit a school from restricting the right of students to express opinions . . . , *the school can take steps to denounce those opinions and ensure that competing views are heard.*”<sup>20</sup> Thus, the First Amendment would not prevent UIUC from condemning SJP’s repeated rhetoric that Zionism is a form of racism, akin to a Nazi or white supremacist ideology. It would also not prohibit UIUC from releasing a statement recognizing that, for most members of the UIUC Jewish student body, Zionism is an integral part of their Jewish identity, and constitutes a Jewish “ancestral or ethnic characteristic.”

## **Conclusion**

For the foregoing reasons, we strongly urge OCR to open an investigation into UIUC’s compliance with Title VI.

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<sup>16</sup> Case Processing Manual, *supra*, at § 109.

<sup>17</sup> *See, e.g., McCullen v. Coakley*, 573 U.S. 464, 492 (2014) (noting that “generic criminal statutes forbidding assault, breach of the peace, trespass, vandalism, and the like” may curtail speech without running afoul of the First Amendment); *R.A.V. v. City of St. Paul, Minn.*, 505 U.S. 377, 388 (1992) (“[T]hreats of violence are outside the First Amendment . . . .”)

<sup>18</sup> *See, e.g., Rumsfeld v. Forum for Acad. & Institutional Rights, Inc.*, 547 U.S. 47, 60 (2006) (noting that a law that “affects what [a] school[] must *do*” rather than “what [it] may or may not *say*” regulates conduct rather than speech (emphasis in original)); *id.* at 62 (“Congress . . . can prohibit employers from discriminating in hiring on the basis of race. The fact that [such a law] will require an employer to take down a sign reading ‘White Applicants Only’ hardly means that the law should be analyzed as one regulating the employer’s speech rather than conduct.”).

<sup>19</sup> *See Cohen v. California*, 403 U.S. 15, 20 (1971).

<sup>20</sup> U.S. Department of Education, Office for Civil Rights, *Revised Sexual Harassment Guidance: Harassment of Students by School Employees, Other Students, or Third Parties* (Jan. 2001), available at <http://bit.ly/2J29EPH>, at 22 (emphasis added). OCR rescinded this guidance on other grounds earlier this year.