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MISDIAGNOSING ANTI-JEWISH ANIMUS:

How the judiciary's approach to anti-Zionism risks distorting the First Amendment, excusing antisemitism, and imperiling all civil rights.

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ABSTRACT

Bigots try to be cagey. They use dog whistles that encode their animus. They make political pronouncements that, while superficially anodyne, signal which demographic groups are on their team—and which ones aren't. Courts, though, aren't readily tricked. Or at least they're not supposed to be. Because they understand that assessing animus depends on context, they rely on legal tools—like discovery, evidence, and juries—to facilitate a searching examination of that context. So it's surprising and distressing when, suddenly, they start missing all the telltale signs. This is precisely what's happening in cases involving Jews.

*This essay identifies, endeavors to understand, and rebuts the emerging "Anti-Zionism Exception" to antidiscrimination assessments and civil rights law. Using *Torres v Carlson*, a factually jarring but legally straightforward case arising out of the violent seizure of Hamilton Hall at Columbia University, we demonstrate that the court's key rulings—including that anti-Zionism can't be discriminatory because "the Jewish community itself is divided" on the subject; that anti-Zionism can't be evidence of discrimination unless it is "inherently" discriminatory; and that anti-Zionist rhetoric can't be discriminatory because it is "political speech"—are wrong as a matter of law and entirely out of step with how anti-discrimination principles are routinely applied to non-Jews.*

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Far from a jurisprudential outlier, Torres further instantiates an Anti-Zionism Exception. At a minimum, this Exception places Jews and their allies in significant peril. More broadly, though, Torres and its ilk invite an increasingly right-leaning federal judiciary to apply the courts' parsimonious reading of Jewish civil rights laws universally, thereby eroding the rights and liberties for all.

INTRODUCTION

Punching someone is bad. Punching him for racist reasons is worse. So says the American legal system. Any number of criminal¹ and civil² laws prescribe enhanced penalties when bias is present.³ Sometimes the racism is unmistakable. At other times, it hides behind code words or dog-whistles—"thugs"⁴, "urban"⁵, "globalists"⁶, etc.—or else behind facially neutral regulations that prohibit conduct—such as certain types of hair⁷ and dress⁸—that hold particular cultural resonance for members of certain racial groups.

¹ See, e.g., Laws and Policies, U.S. Dep't of Justice, <https://www.justice.gov/hatecrimes/laws-and-policies> (last updated Jan. 24, 2025).

² See, e.g., 42 U.S. Code Chapter 21 — Civil Rights, Legal Info. Inst., <https://www.law.cornell.edu/uscode/text/42/chapter-21> (last visited June 30, 2026).

³ See, e.g., Cal. Penal Code § 422.75, https://leginfo.ca.gov/faces/codes_displaySection.xhtml?lawCode=PEN§ionNum=422.75. (last visited Jun. 28, 2026); California Rules of Court. Rule 4.427, "Hate Crimes." *Judicial Branch of California*, https://courts.ca.gov/cms/rules/index/four/rule4_427 (last visited Jun. 28, 2026).

⁴ Ian Haney Lopez, *Dog Whistle Politics: How Coded Racial Appeals Have Reinvented Racism and Wrecked the Middle Class* (2015); D. Marvin Jones, *He's a Black Male... Something is Wrong with Him!*, 68 U. Miami L. Rev. 1025, 1029 (2014); German Lopez, *The Sneaky Language Today's Politicians Use to Get Away with Racism and Sexism*, Vox (Feb. 1, 2016), <https://www.vox.com/2016/2/1/10889138/coded-language-thug-bossy>.

⁵ See *supra* note 4.

⁶ Ben Sales, *Why Some Jews Are Uneasy That Bannon Called Kushner a 'Globalist'*, Times of Isr. (Apr. 7, 2017), <https://www.timesofisrael.com/why-some-jews-are-uneasy-that-stephen-bannon-called-jared-kushner-a-globalist/>; Peter Beinart, *What Trump Meant When He Calls Gary Cohen a "Globalist,"* Atlantic (Mar. 9, 2018), <https://www.theatlantic.com/politics/archive/2018/03/trump-globalist-cohn/555269/>.

⁷ Hair Discrimination FAQ, NAACP Legal Def. Fund, <https://www.naacpldf.org/natural-hair-discrimination/> (last visited June 30, 2026).

⁸ Cheyanne Mumphrey, *Schools Say Dress Codes Promote Discipline, but Many Black Students See Traces of Racism*, PBS News Hour (Feb. 21, 2024), <https://www.pbs.org/newshour/education/schools-say-dress-codes-promote-discipline-but-many-black-students-see-traces-of-racism>.

No matter: lawmakers, prosecutors, and courts have become increasingly adroit in detecting and counteracting subtle bigotry.⁹

Despite considerable practice and proven track records of supporting victims of racial and religious discrimination, many of these officials have shown themselves less willing or able to protect people who call themselves, or who are alleged by others to be, Zionists. In the United States and across the globe, avowedly anti-Zionist activists are committing crimes and civil offenses against Jews and non-Jews alike. Those who commit these crimes—as well as their legions of apologists—generally argue that while many of their targets are of course Jewish, they are not targeting Jews. Any animus on the part of the protestors, as they’d characterize themselves, is not antisemitic or anti-Jewish. It is, they insist, merely anti-Zionist. According to this account, they are, at worst, attacking a political project rather than a racial, ethnic, or religious group. As if to underscore their claim, they may profess that some of their best friends, or loudest supporters, are Jews.¹⁰

⁹ See, e.g., *Yazdian v. ConMed Endoscopic Techs., Inc.*, 793 F.3d 634, 652 (6th Cir. 2015) (“[T]here may be some instances when the allegedly insubordinate act may be a response to a sort of unspoken, subliminal discrimination in the workplace. For example, a woman who takes a strong position may be considered ‘pushy,’ whereas a man who does the same is ‘assertive.’ One manager may call a black man ‘aggressive’ and a white man ‘passionate’ for the same speech.”); *Gartenberg v. Cooper Union*, 765 F Supp. 3d 245, 268-69 (S.D.N.Y.) (“[T]here are no magic words or phrases needed to show that harassment was motivated by a protected characteristic.... To the contrary, the federal anti-discrimination laws ‘can hear [bigotry] sung in the whistle register.’” (internal citations omitted)); Jasmine Payne-Patterson, *Half of U.S. States Have Passed the CROWN Act to Ban Hair Discrimination*, Econ. Pol’y Inst.: Working Economics Blog (July 1, 2024), <https://www.epi.org/blog/half-of-u-s-states-have-passed-the-crown-act-to-ban-hair-discrimination/>.

¹⁰ See, e.g., Kaityln Cook & Anna Rajagopal, *Columbia’s Gaza Solidarity Encampment: A Timeline*, Institute for Palestine Studies (May 3, 2024), <https://www.palestine-studies.org/en/node/1655523#> (repeatedly emphasizing Jewish support for their efforts); *Jewish Students Reject Claims that Campus Protests for Palestine Have Been Antisemitic*, Forward (May 8, 2024), <https://forward.com/opinion/611164/jewish-students-reject-claims-that-campus-protests-for-palestine-have-been-antisemitic-open-letter/>; Hadas Their, *The Student Encampments Aren’t a Danger to Jews. But the Crackdown Is*, Nation (May 3, 2024), <https://www.thenation.com/article/activism/campus-encampment-police-crackdown-antisemitism-brutality/>; see also Elliot Kaufman, *To Break the “Moral Spine” of the Jews*, Wall St. J., (Aug. 22, 2024), <https://www.wsj.com/opinion/to-break-the-moral-spine-of-the-jews-anti-zionist-loyalty-oaths-progressive-culture-82d094f2>; Alvin H. Rosenfeld, *Antisemitism Moves into the Political Mainstream*, Wall St. J. (Jul. 27, 2025), <https://www.wsj.com/opinion/antisemitism-moves-into-the-political-mainstream-13763ea8>. Cf. Elie Mystal, *We Need to Talk about the GOP’s “Black*

As much as these claims have been dissected, debated, and, regularly, debunked in a variety of settings,¹¹ the courts are just beginning to weigh in. Many are watching closely: will courts treat the alleged targeting of “Zionists” as axiomatically political, and thus immune from allegations of bias based on race, religion, or national origin? Or, instead, will they recognize anti-Zionist animus as plausibly indicative of illicit anti-Jewish discrimination?¹²

The results so far favor for the former outcome: immunity from bias-related liability for actions styled as anti-Zionism. This article homes in on one recent decision, *Torres v. Carlson* as a means of closely examining those fundamental questions as well as an array of broader questions pertaining to the robustness of federal civil rights protections for all Americans. In *Torres*, a federal district court in New York¹³ became the

Friends,” *Nation* (Aug. 27, 2020), <https://www.thenation.com/article/politics/rnc-black-republicans/>.

¹¹ The International Holocaust Remembrance Alliance (IHRA) definition of antisemitism, which is adopted, incorporated by reference, or relied upon by at least 46 nations, the U.S. State Department (under both the Trump and Biden administrations), see *Defining Antisemitism*, U.S. Department of State, <https://www.state.gov/defining-antisemitism/>, a supermajority of U.S. states, CAM Antisemitism Research Center Database of IHRA Definition Adoptions by US States, <https://combatantisemitism.org/government-and-policy/cam-information-hub-database-of-ihra-antisemitism-definition-adoptions-by-us-states-2/>, and numerous major cities, counties, and universities, see *Working Definition of Antisemitism*, International Holocaust Remembrance Alliance, <https://www.holocaustremembrance.com/resources/working-definition-antisemitism>, reflects a widely used international framework for identifying antisemitic conduct, see *About the IHRA Working Definition of Antisemitism*, Anti-Defamation League, <https://www.adl.org/resources/backgrounders/about-ihra-working-definition-antisemitism>.

Among those who don’t fully subscribe to the IHRA definition, many nonetheless raise powerful arguments about the venality of anti-Zionism and the IHRA’s rightful recognition that anti-Zionism may well be racist on its own terms or otherwise run afoul of state guarantees of equal protection.

¹² This is wholly separate from the question of whether Zionism, with or without the presence of anti-Jewish animus, is itself a protected characteristic under normal principles of antidiscrimination law. See Rona Kaufman, *The Court is Wrong: Antizionism Is Discriminatory*, *Times of Israel* (Dec. 9, 2025), <https://blogs.timesofisrael.com/the-court-is-wrong-antizionism-is-discriminatory/>; Stephen E. Sachs, *Zionism and Title VI*, 139 *Harv. L. Rev. F.* 50 (2025); see also *infra* note 48 and accompanying text.

¹³ Decision and Order Granting Defendants’ Motions to Dismiss Plaintiffs’ Federal Claims with Prejudice and State Law Claims Without Prejudice, *Torres v. Carlson*, No. 25-cv-3474 (CM) (S.D.N.Y. 2026) [hereinafter Decision],

latest tasked with adjudicating whether defendants' anti-Zionist conduct may have run afoul of American civil rights law.¹⁴ The court's decision wasn't pretty. Instead of relying on settled antidiscrimination case law, academic literature, or the facts as alleged to assess whether anti-Zionist attitudes and speech might reflect anti-Jewish animus, the court seemed to presume that the defendants' anti-Zionist rhetoric automatically *disproves* any allegation of anti-Jewish animus.

True, this is just one decision in federal district court. But its reasoning reflects a broader phenomenon. Denying the link between anti-Zionist and anti-Jewish activism is finding increasing favor in academic, political, activist, and cultural circles.¹⁵ In criticizing

<https://storage.courtlistener.com/recap/gov.uscourts.nysd.641343/gov.uscourts.nysd.641343.64.0.pdf>.

¹⁴ StandWithUS Ctr. for Legal Just. v. Massachusetts Inst. of Tech., 158 F.4th 1 (1st Cir. 2025); Frankel v. Regents of the University of California, 744 F. Supp. 3d 1015 (C.D. Cal. 2024), <https://becketnewsite.s3.amazonaws.com/20240813183534/injunction.pdf>; Gartenberg v. The Cooper Union, 765 F. Supp. 3d 245 (S.D.N.Y. 2025), Louis D. Brandeis Ctr., Inc. v. Regents of Univ. of Cal., No. 3:23-cv-06133-JD, 2025 WL 1012345 (N.D. Cal. Mar. 31, 2025); see also Landau v. Haverford (E.D. Pa. Jun. 30, 2025) (indicating that allegation of anti-Zionist discrimination, depending on the specifics provided in a well-pleaded complaint, may raise plausible claims of anti-Jewish animus)

¹⁵ See Benjamin Eidelson & Deborah Hellman, *Antisemitism, Anti-Zionism, and Title VI: A Guide for the Perplexed*, 139 Harv. L. Rev. F. 1 (2025); Itamar Mann & Lihi Yona, *Defending Jews from the Definition of Antisemitism*, 71 UCLA L. Rev. 1150 (2024); Peter Beinart, *Debunking the Myth that anti-Zionism is antisemitic*, Guardian (Mar. 7, 2019), <https://www.theguardian.com/news/2019/mar/07/debunking-myth-that-anti-zionism-is-antisemitic>; Adam Louis-Klein, *The Left-Wing Case Against Anti-Zionism*, Atlantic (Jun. 18, 2026), <https://www.theatlantic.com/ideas/2026/06/left-against-antizionism-israel/687616/>; Dave Zirin, *For the People in the Back: Anti-Zionism is not Antisemitism*, Nation (Oct. 31, 2023), <https://www.thenation.com/article/world/antisemitism-zionism-nikki-haley/>; Jennifer Medina, *"Excruciating and Agonizing": A New Reality for Jewish Democrats*, N.Y. Times (Apr. 29, 2026), <https://www.nytimes.com/2026/04/29/us/politics/jewish-democrats-antisemitism-israel.html>; Joseph Burns & Susan Greene, *How New York Democrats Came to Embrace Anti-Zionism*, City Journal (Oct. 6, 2025), <https://www.city-journal.org/article/daniel-patrick-moynihan-new-york-democrats-anti-zionism-israel>; Shaul Kelner, *American Antizionism*, Sources (Summer 2025), <https://www.sourcesjournal.org/articles/american-antizionism>; Benyamin Cohen, *When Does Criticizing Israel Become Antisemitism? Ask Mark Ruffalo*, Forward (Aug. 23, 2026), <https://forward.com/news/846434/mark-ruffalo-paramount-oracle-israel-antisemitism/>; Jim Talamonti, *Jewish Leaders Sound Alarm over DSA Questionnaire*, The Center Square (Aug. 18, 2026), https://www.thecentersquare.com/illinois/article_194ad84a-4eec-493e-9736-4f431b756a56.html; Democratic Socialists of America, Anti-Defamation League,

the *Torres* decision, our aim is not to beat up on one district court judge; it is to rebut the arguments championed by a broad constituency seemingly intent on portraying anti-Zionism as inherently free from bias.

Moreover, if the reasoning in *Torres* is endorsed by the Second Circuit and other courts of appeals, the federal judiciary will substantially weaken the civil rights of Jews, their allies, and anyone else who happens to get in the way of anti-Jewish discrimination. Such a blatant exception cannot stand the tests of the time or scrutiny. Thus an especially parsimonious reading of Jewish civil rights would, sooner than later, also raise real challenges for other plaintiffs, from other protected classes, seeking to vindicate their constitutional and statutory civil rights.

I.

Mariano Torres and Lester Wilson are two men who got in the way. Torres and Wilson were janitors at Columbia University. Neither is Jewish. But like so many trying to go about their studies or jobs in Morningside Heights or around the country since October 7, 2023,¹⁶ Torres and Wilson found their efforts impeded—and their lives imperiled—by those allegedly harboring animus toward Jews and Zionists.

<https://www.adl.org/resources/backgroundunder/democratic-socialists-america-dsa> (describing the political movement's anti-Zionist litmus test); *Survey and Focus Groups of Jewish Union Members Reveal Hostile Rhetoric, Leadership Failures and Systemic Exclusion*, Anti-Defamation League (Aug. 27, 2026), <https://www.adl.org/resources/press-release/new-adl-report-finds-widespread-antisemitism-us-teachers-unions>; Ryan Quinn, *AAUP Faces Criticism for Reversal on Academic Boycotts*, Inside Higher Ed (Aug. 16, 2024), <https://www.insidehighered.com/news/faculty/academic-freedom/2024/08/16/aaup-faces-criticism-reversal-academic-boycotts>;

¹⁶ Since October 7, 2023, schools and workplaces across the United States experienced significant disruption linked to antisemitic harassment and intimidation, including federal civil rights investigations into alleged antisemitism and failures to protect Jewish students at institutions such as Columbia University, Cornell University, and the University of Pennsylvania, Andrew Lapin *Department of Education Opens Investigations of Antisemitism and Islamophobia at 7 Schools in the Wake of Oct. 7*, Jewish Telegraph Agency (Nov. 17, 2023) (<https://www.jta.org/2023/11/17/united-states/departement-of-education-opens-new-investigations-of-antisemitism-and-islamophobia-at-schools-in-the-wake-of-oct-7>); expanded investigations to sweep in Rutgers University, Tulane University, Santa Monica College, Union College, and Montana State University, Andrew Lapin, *Dept. of Education to Investigate Antisemitism on at least 5 more campuses including Rutgers and Tulane*, Jewish Telegraph Agency (Dec. 15, 2023), <https://www.jpost.com/diaspora/antisemitism/article-778236>; and broader

On April 30, 2024, this hostility turned riotous. According to the federal lawsuit filed by Torres and Wilson, masked individuals armed with hammers, knives, bolt cutters, chains, and zip ties stormed Hamilton Hall and confronted the two working men.¹⁷ Torres and Wilson each refused to yield. The janitors' recalcitrance drew the ire of the rioters, who then assaulted the men, detained them, sought to bribe them, and slurred them as "Jew-lover[s]," "Jew-worker[s]," and "Zionists."¹⁸ Eventually, according to their lawsuit, Torres fled, and Wilson was forced out of the building.

The rioters, meanwhile, kept going. None of the confederates, so far as Torres and Wilson's complaint alleges, abandoned their takeover in disgust after hearing the slurs aimed at Torres and Wilson. Instead, they seized the building, broke windows to chain the doors shut, barricaded themselves inside, and unfurled banners declaring an "Intifada."¹⁹

findings documenting antisemitic incidents reported at some 300 U.S. universities, including Columbia, University of Michigan, Stanford, Rutgers, and University of Washington, alongside nationwide campus protest activity and encampments affecting approximately 400 college and university campuses during the 2023–2024 academic year, *Audit of Antisemitic Incidents 2023*, Anti-Defamation League (Apr. 4, 2024), <https://www.adl.org/resources/report/anti-israel-activism-us-campuses-2023-2024>.

Additionally, roads and bridges have been blocked. See, e.g., Jake Offenhartz, *Pro-Palestinian protesters block airport access roads in New York and Los Angeles*, Assoc. Press (Dec. 27, 2023), <https://apnews.com/article/jfk-lax-palestine-protest-israel-airports-dd5981ea903961f77309c27a7b52ed07>. And, of special note, campaigns of disruption have been visited upon leading hospitals, notably Memorial Sloan Kettering (labeled genocide abettors). Luke Tress, *Pro-Palestinian protesters target Memorial Sloan Kettering cancer center, accusing it of "genocide,"* Jewish Telegraph Agency (Jan. 16, 2024), <https://www.jta.org/2024/01/16/ny/pro-palestinian-protesters-target-memorial-sloan-kettering-cancer-center-accusing-it-of-genocide>; see also *Pro-Palestinian protesters gather outside NYU Tisch Hospital in support of Gaza hospital director*, Jerusalem Post (Jan. 6, 2025), <https://www.jpost.com/breaking-news/article-836369>.

¹⁷ Torres v. Carlson, No. 1:25-cv-03474-CM (S.D.N.Y.), First Am. Compl at 4–6 ¶¶108–133 [hereinafter Complaint], <https://brandeiscenter.com/wp-content/uploads/2025/04/2025-04-25-ECF-No-1-Complaint.pdf>.

¹⁸ *Id.* at ¶133.

¹⁹ Joey Garrison, *White House condemns takeover of Columbia University building, use of 'intifada' at college protests*, USA Today (Apr. 30, 2024), <https://www.usatoday.com/story/news/politics/2024/04/30/white-house-condemns-columbia-building-takeover-intifada-rhetoric/73512709007/>

Torres and Wilson later filed a civil lawsuit.²⁰ Relying on the Civil Rights Act of 1871,²¹ also known as the Ku Klux Klan Act, the men argued that they were victimized by an anti-Jewish riot. A provision of that law prohibits people from conspiring to deprive “any person or class of persons of the equal protection of the laws.”²² To qualify for protection under the Act, plaintiffs must generally show that the conspiracy was motivated by “some racial, or perhaps otherwise class-based, invidiously discriminatory animus.”²³ Significantly, although people sometimes make the mistake of portraying Jews as a purely religious group—which risks implying that they can experience discrimination only when it is religious in nature—Jewish people are also subjected to discrimination on the basis of race, shared ethnicity, or ancestry.²⁴

And that’s precisely what the plaintiffs alleged occurred: the rioters, motivated by racism against Jews, had conspired to deprive equal protection of the laws to people who are or are perceived to be Jews or supporters of Jews.²⁵

The lawsuit focused primarily on illegal conduct, not speech. Torres and Wilson sought damages for alleged assault and battery during an illegal building occupation. The janitors weren’t concerned with the rioters’ opinions on world affairs. Surely, the two men had heard more than their fair share as they went about their duties on Columbia’s campus. They were concerned with the crow bars, rope, chains, and zip ties. They were concerned with their seizure of university property. They were concerned with being obstructed, detained, and threatened.

²⁰ Complaint, *supra* note 17.

²¹ Ku Klux Klan Act of 1871, ch. 22, 17 Stat. 13.

²² 42 U.S.C. § 1985.

²³ *Griffin v. Breckenridge*, 403 U.S. 88, 102 (1971).

²⁴ See, e.g., *Shaare Tefila Congregation v. Cobb*, 481 U.S. 615, 617 (1987); *Jews for Jesus, Inc. v. Jewish Cmty. Rels. Council of New York, Inc.*, 968 F.2d 286, 291 (2d Cir. 1992); *see also* *Saint Francis College v. Al-Khazraji*, 481 U.S. 604, 613 (1987) (“[A] distinctive physiognomy is not essential to qualify for [42 U.S.C.] § 1981 protection [against racial discrimination]. If respondent on remand can prove that he was subjected to intentional discrimination based on the fact that he was born an Arab, rather than solely on the place or nation of his origin, or his religion, he will have made out a case under § 1981.”).

²⁵ Complaint, *supra* note 17.

Torres and Wilson also happened to understand the nature of the riot because, allegedly, the rioters made it unmistakable. Jews and those presumed to side with Jews, to act as their agents, or, gasp, to love them, were the problem.

This is precisely the type of situation Congress anticipated when enacting the KKK Act. Congress understood hate crimes to be far more socially, politically, and economically corrosive than ordinary crimes. So, where there is evidence of discriminatory animus, additional or broader avenues for legal redress have long been made available to those injured.²⁶ Equal parts victim and private attorney general, those who sue under the KKK Act are both seeking to be made whole and advancing the state's efforts to punish terroristic behavior and forestall future attacks.²⁷

Yet the court profoundly misapprehended the facts and the law, rendering an erroneous decision that widened what we see as an emerging "Anti-Zionism Exception"²⁸ to civil rights law.

²⁶ Eric Foner, *Reconstruction: America's Unfinished Revolution, 1863–1877* (2014).

²⁷ See Jon D. Michaels & David L. Noll, *Vigilante Federalism*, 108 Cornell L. Rev. 1187, 1129 & n. 205 (2023) (recognizing two key elements for private attorney general-type civil right laws: the opportunity to secure "redress for wrongful injury suffered at the hands of the defendant" and the opportunity for "someone who is personally affected by an injury to the public at large to sue on the state's behalf").

²⁸Matthew Segal, *The Anti-Zionism Exception*, Tablet. (Feb. 4, 2026), <https://www.tabletmag.com/sections/news/articles/antizionism-exception>; see also Sachs, *supra* note 12; Zachary D. Fasman & Samuel Estreicher, *Anti-Zionism, Antisemitism and Title VI: College and University Responsibility for Campus Harassment of Jewish Students* (Feb. 2, 2026), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=6038134.

II.

In civil rights law, courts normally use a flexible approach, looking at the “totality of the relevant facts” to ascertain whether someone’s behavior reflected discriminatory animus.²⁹ But in cases involving allegations of animus *against Jews*, a different approach seems to be emerging. Under this approach, behaviors styled as “anti-Zionist” have been deemed inherently not discriminatory, enabling anti-Zionism to function as a sort of get-out-of-legal-liability-free card.³⁰

That appears to be what happened in Torres and Wilson’s case, where the court granted a motion to dismiss their complaint. It is well established that, on a motion to dismiss, a trial court must assume that all of the complaint’s well-pleaded allegations are true, and it must draw all reasonable inferences in favor of the plaintiffs.³¹ The U.S. Supreme Court instructs that, under this rule, a complaint need allege only “enough fact to raise a reasonable expectation that discovery will reveal evidence” that the plaintiffs’ allegations are true.³² The Second Circuit, of course, generally follows those instructions. When resolving motions to dismiss, its district courts—including the Southern District of New York—are to “assume that all well-pleaded factual allegations in the operative complaint are true and draw all reasonable inferences in the plaintiff’s favor.”³³

In moving to dismiss Torres and Wilson’s complaint, the defendants sought to invert that standard. Torres and Wilson had alleged that the defendants engaged in a potent mix of violent and illegal conduct, some speech that was unquestionably derogatory, and some speech that, depending on context, could reasonably be construed as derogatory. Yet the defendants argued that these allegations could not *plausibly* state

²⁹ *Washington v. Davis*, 426 U.S. 229, 242 (1976).

³⁰ *StandWithUS Ctr. for Legal Just.*, 158 F.4th at 16–19; *see Segal*, *supra* note 28. There are well-reasoned opinions that run in the converse direction, including a 2025 decision by a different federal judge on the Southern District. *See Gartenberg v. Cooper Union*, 765 F. Supp. 3d 245 (S.D.N.Y. 2025).

³¹ *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544 (2007); *Ashcroft v. Iqbal*, 556 U.S. 662 (2009).

³² *Twombly*, 550 U.S. at 545.

³³ *Knight v. City of New York*, 164 F.4th 173, 177 (2d Cir. 2026); *see also* “Motions to Dismiss and Moving for Summary Judgment | Best Practices.” *New York State Bar Association*, 8 Nov. 2024, <https://nysba.org/events/motions-to-dismiss-and-moving-for-summary-judgment-best-practices/> (last visited Jun. 29, 2026).

a claim under the KKK Act. One defendant expressly argued that being “an anti-Zionist . . . cannot be equated with anti-Jewish animus.”³⁴

Seeking to invert the motion-to-dismiss standard, by arguing about the alleged facts, is something of a litigator’s Hail Mary. And, like most Hail Mary passes, heaved out of desperation into endzones across America, those attempted in U.S. courtrooms rarely work. But it worked here: the district court granted the motion to dismiss.³⁵

We count four errors in the court’s ruling. Again, in examining them, our goal is not to trash the court’s work. It’s to ensure that this work, in this political and legal climate,³⁶ doesn’t become further instantiated in American public law.

A. The Reality and Inevitability of Mixed Motives.

First, without letting the plaintiffs proceed to discovery or prove their allegations to a jury, the court found that the rioters weren’t focused on harming Jews. Defining the rioters’ objectives in terms of seizing a building and issuing demands related to

³⁴ Reply Brief in Support of its Motion to Dismiss Plaintiffs’ First Amended Complaint at 8, *Torres v. Carlson* (S.D.N.Y. filed Dec. 12, 2025) (No. 1:25-cv-03474), <https://storage.courtlistener.com/recap/gov.uscourts.nysd.641343/gov.uscourts.nysd.641343.58.0.pdf>.

³⁵ Decision, *supra* note 13. Note that the state law claims were dismissed without prejudice.

³⁶ David E. Bernstein & David L. Bernstein, *Supporting Free Speech and Countering Antisemitism on American College Campuses*, Harv. J.L. & Pub. Pol’y: Per Curiam (Summer 2025), <https://journals.law.harvard.edu/jlpp/wp-content/uploads/sites/90/2025/06/Bernsteins-Campus-Free-Speech-vf.pdf>; Dara Horn, *Why the Most Educated People in America Fall for Anti-Semitic Lies*, Atlantic (Feb. 15, 2024), <https://www.theatlantic.com/ideas/archive/2024/02/jewish-anti-semitism-harvard-claudine-gay-zionism/677454/>. Pamela Nadell, testifying before a congressional committee examining antisemitism on college campuses raised concerns about double standards. She raised concerns about who “gets to define what is antisemitism” and noted: “What has become ‘acceptable’ speech and actions, were they to target any other minority group in the United States—whether religious, ethnic, political or another group—they would have been dealt with much more quickly and much more effectively.” Jordana Horn, *The 4th to Testify: Congressional witness Pamela Nadell on the US antisemitism crisis*, Times of Israel (Mar. 5, 2024) <https://www.timesofisrael.com/congressional-expert-witness-pamela-nadell-on-the-sea-change-in-us-antisemitism/#:~:text=A%20second%20recurring%20issue%2C%20Nadell%20said%2C%20%E2%80%9Cis,much%20more%20quickly%20and%20much%20more%20effectively.%E2%80%9D> (quoting Nadell’s testimony).

Columbia's ties to Israel,³⁷ the court seemed to insist that because the rioters had those intentions, they couldn't *also* have had an additional objective: to deprive Jews, "Jew lover[s]," and "Jew worker[s]" of their civil rights, including their right to access their school's buildings without passing through a phalanx of armed gatekeepers intent on (at best) excluding them.

In the world of Jewish civil rights, versions of this reasoning are not uncommon.³⁸ But as a matter of law, that can't be right. The Supreme Court has required KKK Act plaintiffs to show "*some racial*" or otherwise class-based animus.³⁹ It has never required plaintiffs to show that such animus was the defendants' sole motivation.

Nor should it. With apologies to Walt Whitman, even violent bigots contain multitudes.⁴⁰ Klansmen tormenting Black families, for example, may genuinely be motivated by economic anxieties or other feelings of their own inadequacy.⁴¹ But that doesn't mean that their purpose isn't also to deprive Black families of their political and economic rights. For how else, in the view of said Klansmen, can they address those anxieties other than by advancing a *political project* to assert some dominance over Black people?⁴²

Here, assuming Torres and Wilson's allegations are true (as, again, the district court was required to do⁴³), then the rioters were motivated at least in part by a desire to harass, intimidate, and exclude Jews and their perceived allies and colleagues. The

³⁷ *Id.* at 22.

³⁸ E.g., *Landau v. Haverford*, No. 24-2044 (E.D. Pa. Jun. 30, 2025) (vacated as moot) (settlement) (indicating that a professor's refusal to support students for endeavors that involve engagement with the people or institutions of Israel has no legally relevant discriminatory animus given that he will write letters for Jewish students uninterested in engagement with Israel).

³⁹ *Griffin*, 403 U.S. at 102 (emphasis added).

⁴⁰ Walt Whitman, *Leaves of Grass* (1892) (paraphrasing *Song of Myself*).

⁴¹ Tonya Mosely, *Former White Supremacist Explains Why Young White Men Join Extremist Groups*, Here & Now (WBUR) (Aug. 9 2019, <https://www.wbur.org/hereandnow/2019/08/09/why-young-men-join-white-supremacist-groups>).

⁴² Cf. Arlie Russell Hochschild, *Strangers in Their own Land* (2016); John Sides, Michael Tesler, & Lynn Vavreck, *Identity Crisis* (2018); Diana C. Mutz, *Status threat, not economic hardship, explains the 2016 presidential vote*, 19 Proc. Nat'l Acad. Sci. 115 (2018); John Blake, *Return of the "Welfare Queen,"* CNN (Jan. 23, 2012), <https://www.cnn.com/2012/01/23/politics/welfare-queen>.

⁴³ See *supra* notes 31-33 and accompanying text.

defendants allegedly coordinated and then executed the occupation of a core academic and administrative building, declared an “Intifada” in Upper Manhattan (some 5700 miles away from the State of Israel), and attacked janitors while slurring them as “Jew-worker[s]” and “Jew-lover[s].”

Discovery could have shown, and a jury could have found, that this alleged conspiracy was, at least in part, anti-Jewish. The facts might have shown that the defendants did what they did—and said what they said—not just because those defendants wanted to achieve certain policy changes to lessen or terminate campus support for Israel, but also because they wanted to make Columbia inhospitable for Jews and those deemed in league with Jews. To bar them from buildings. To impede studies and scholarship. To isolate them by, among other things, raising the cost of allyship. To limit their participation in campus and civic life. And to exclude them from positions of power.

After all, if the janitors were, as the rioters allegedly said, “working for the Jews,”⁴⁴ wouldn’t it be necessary, in the view of the rioters, to knock those all-powerful Jews down a peg or two?

It’s possible to imagine a more subtle case, one in which people accused of bias could reasonably contend that the rioters’ brand of anti-Zionism didn’t have any indicia of anti-Jewish animus. But that would have to be a case in which said rioters didn’t allegedly toggle freely and fluidly between anti-Zionist and explicitly anti-Jewish slurs. It would have to be a case in which those seeking to portray the term “Intifada” as a benign reference to peaceful struggle had not used that term to describe *their own violent*,

⁴⁴ Complaint, *supra* note 17, at ¶¶ 159, 173.

anti-Jewish riot.⁴⁵ Recall they stormed Hamilton Hall with hammers, knives, bolt cutters, chains, and zip ties.⁴⁶ This Intifada, in other words, was not one of the peaceful ones.⁴⁷

Were the court presented with a more subtle case, the presiding judge might reasonably have occasion to wonder, even doubt, whether the riot was anti-Jewish. In such a hypothetical case, depending on the specific legal claims presented, the court might have to consider whether an anti-Zionist riot, even if not blatantly antisemitic, might still violate victims' civil rights on the basis of national origin or shared ancestry discrimination or as a standalone transgression.⁴⁸

⁴⁵ Bernstein & Bernstein, *supra* note 36; Andrea J. Martin, *From Ambiguity to Accountability: The Case for a Legal Definition of Antisemitism in Academia*, 2025 Pepp. L. Rev. 19 (2025).

Judge John Cronin, Judge McMahon's colleague on the U.S. District Court for the Southern District of New York, likewise recognized as much. See *Gartenberg v. Cooper Union*, 765 F. Supp. 3d 245, 269 (S.D.N.Y. 2025) (explaining that although slogans such as "[l]ong live the intifada" may have multiple meanings, it is plausible, given campus climates in the aftermath of October 7, "that such phrases support at least a plausible inference of animus toward Jews").

⁴⁶ See *supra* note 17 and accompanying text.

⁴⁷ See Adrian Florido, *Chants of 'intifada' ring out from pro-Palestinian protests. But what's it mean?*, NPR (June 4, 2024), <https://www.npr.org/2024/06/04/nx-s1-4958278/intifada-chants-pro-palestinian-protests-israel>.

⁴⁸ See *Sumrall v. Ali*, No. 1:25-cv-02277 (D.D.C. Aug. 18, 2026), at 21-22; Sachs, *Zionism and Title VI*, *supra* note 12. Others take a different approach. See Benjamin Eidelson & Deborah Hellman, *Antisemitism, Anti-Zionism, and Title VI: A Guide for the Perplexed*, 139 Harv. L. Rev. F. 1 (2025). Our thinking more closely aligns with Sachs', among others. See, e.g., Kenneth L. Marcus, *Jurisprudence of the New Anti-Semitism*, 44 Wake Forest L. Rev. 371 (2009); Anthony Julius, *Antisemitism Today*, 8 J. Contemp. Antisemitism 133 (2025); Adam Kirsch, *On Settler Colonialism: Ideology, Violence, and Justice* (2024); Naya Lekht, *Scaffolding Anti-Zionism: The Hate We Missed*, Jewish Journal (Nov. 12, 2025), https://jewishjournal.com/cover_story/384910/scaffolding-anti-zionism-the-hate-we-missed/; Tal Fortgang, *Can Civil Rights Law End Antisemitic Discrimination?*, L. & Liberty (Aug. 4, 2025), [https://lawliberty.org/can-civil-rights-law-end-antisemitic-discrimination/#:~:text=Perplexing%20but%20moot%2C%20that%20is.%20Discrimination%20against,of%20antisemitism%20prohibited%20under%20civil%20rights%20law](https://lawliberty.org/can-civil-rights-law-end-antisemitic-discrimination/#:~:text=Perplexing%20but%20moot%2C%20that%20is.%20Discrimination%20against,of%20antisemitism%20prohibited%20under%20civil%20rights%20law; see also); see also Off. for Civ. Rts., U.S. Dep't of Educ., Fact Sheet: Combating Discrimination Against Jewish Students (Jan. 2017), <https://www.ed.gov/media/document/combating-discrimination-against-jewish-students-33779.pdf>.

Still, we reiterate our claim in the text that Torres and Wilson's case need not turn on an evaluation of anti-Zionism on its own terms. Cf. *Gartenberg*, 765 F. Supp 3d at 268 ("Although the Court in no way doubts the sincerity of many Jews' religious, national, and ancestral connections to Zionism and Israel, this case can be resolved without opining on whether conduct or speech

But that was not this case. Given the facts alleged by Torres and Wilson, it is puzzling that the court failed to recognize the riot's anti-Jewish nature and purpose. Again, all the court had to do, and was obligated to do, was recognize that the riot was plausibly anti-Jewish.

It's conceivable that the court's view—namely, that the rioters merely wanted to seize a building and use the unfurled “Intifada” banner to effect transformative changes to Columbia's policies vis-à-vis Israel—reflects confusion over the defendants' tactical and strategic intentions. True, the rioters allegedly deployed the tactic of taking over a building.⁴⁹ But that doesn't mean they did not have broader, anti-Jewish strategic aims.

To suggest otherwise is to ignore the rioters' literal words and actions, as alleged. It is to misunderstand what racism is and how racist objectives are achieved, including by the KKK Act's namesake organization. And it is to misunderstand what a conspiracy is, and how overt acts function.⁵⁰

B. “Political Speech” Is Not a Shield (Let Alone a Sword) Against Anti-Discrimination and Hate Crime Laws.

The second error was equally glaring. In assessing the rioters' alleged objectives, the court seemed to say that the evidence cited by Torres and Wilson could not possibly establish discrimination if it took the form of what the court called “political speech.”⁵¹ This included unfurling “Intifada” banners and slurring Torres and Wilson as “Jew-lover[s]” and “Zionists.”

This assertion is not unique to Judge McMahon's opinion. It is common among those endorsing some version of the Anti-Zionism Exception to suggest that because anti-

hostile to Zionism, itself a term subject to a considerable variety of interpretations, is necessarily antisemitic.”).

⁴⁹ Those tactics, we remind once again, involved purging the building of “Jew worker[s]” and “Jew lover[s].” See Complaint, *supra* note 17.

⁵⁰ It is well established, for example, that a single conspiracy can have multiple impermissible objectives. See, e.g., *Braverman v. United States*, 317 U.S. 49, 53 (1942) (“Whether the object of a single agreement is to commit one or many crimes, it is, in either case, that agreement which constitutes the conspiracy which the statute punishes.”).

⁵¹ See Decision, *supra* note 13.

Zionism is “political,” or conversely that because Zionism is “political,” it follows that anti-Zionist actions are presumptively not anti-Jewish.⁵²

Even assuming Zionism is *merely* political, which we do not, no such conclusion can be drawn. Political speech, when unfettered by concomitant illegal conduct, certainly receives the utmost First Amendment protection. As the U.S. Supreme Court has famously put it, “political speech must prevail against laws that would suppress it.”⁵³

But that robust protection against government censorship does not exempt political speech from being scrutinized for evidence of underlying bias. So, when someone engages in illegal conduct, nothing in our constitutional jurisprudence nor in the KKK Act remotely suggests that their attendant speech, merely because it is “political,” cannot serve as the basis of an animus finding. This is for good reason: political speech and discriminatory animus often go hand in hand. Those advancing discriminatory conspiracies that include seizing buildings, detaining people, and other sundry unlawful acts, will often profess “political” views that align with their animus.

Consider the phrases “America First” and “Spend Your Money With Americans Only.” These are undoubtedly examples of political speech. And shouting those phrases, without more, is undoubtedly free expression protected by the First Amendment. But both phrases happen to have been popularized by the Ku Klux Klan.⁵⁴ So if someone

⁵² See, e.g., Dov Waxman, *Conflating Jews with Israel Is Dangerous – Whether by Antisemites, U.S. Politicians, or the Israeli State*, Zeteo, Aug. 27, 2026 (“Grabbing an Israeli flag worn as a cape during a demonstration may be considered an act of political violence, but it is not an act of antisemitic violence or discrimination.”), <https://zeteo.com/p/conflating-jews-with-israel-is-dangerous>; *Protesting Genocide is Not Hate Speech: Concerning Equation of Anti-Zionism to Antisemitism*, Nat’l Lawyers Guild (Oct. 21, 2024) (characterizing anti-Zionism as “Political Speech . . . Not Implicating Religion or Race”), at <https://www.nlg.org/protesting-genocide-is-not-hate-speech/>; *On Antisemitism, Anti-Zionism and Dangerous Conflations*, Jewish Voices for Peace (Nov. 9, 2023) (“Being an anti-Zionist means opposing the political ideology of Zionism”), at <https://www.jewishvoiceforpeace.org/2023/11/09/antisemitism-dangerous/>; Benjamin Moser, *Anti-Zionism isn’t the same as antisemitism. Here’s the history*, Wash. Post, Jan. 2, 2024 (arguing that equating opposition to Zionism with opposition to Judaism is a “political” maneuver designed “to discredit Israel’s opponents as racists”).

⁵³ *Citizens United v. Federal Election Comm’n*, 558 U.S. 310, 340 (2010).

⁵⁴ Ann Diamond, *The Original Meanings of the “American Dream” and “America First” Were Starkly Different From How We Use Them Today*, Smithsonian Magazine, Oct. 2018, at <https://www.smithsonianmag.com/history/ behold-america-american-dream-slogan-book-sarah-churchwell-180970311/>; National Museum of African American History and Culture, *Token*

shouts them while committing a violent crime targeting Black people or their perceived sympathizers, that *political* speech—beyond failing to excuse the crime—may demonstrate that the crime was motivated by anti-Black racism.⁵⁵

To be sure, context matters. Someone might use the phrase “America First” for benign reasons that have nothing to do with the KKK or racism. But that is precisely why questions of discriminatory intent are generally not suitable for resolution on a motion to dismiss, before the plaintiff has even taken discovery.⁵⁶ The notion that “political speech” confers immunity from accusations of racism, such that a plaintiff cannot even survive a motion to dismiss if they allege that political speech was infected with racism, is not how civil litigation generally works.

Nor should it work that way under the KKK Act. It would be surpassingly odd if, in enacting that Klan-inspired legislation, Congress had created a loophole so vast that it would enable the Klan itself to escape liability, simply because it conjoins racist conduct with political speech. Of course, Congress did no such thing. Instead, as the KKK Act’s history demonstrates, Congress was especially concerned with the KKK’s deployment of racism for political ends. “The central theme of the bill’s proponents,” the Supreme Court recognized, “was that the Klan and others were forcibly resisting efforts to emancipate [Black Americans] and give them equal access to *political power*.”⁵⁷

In other words, the KKK Act exists precisely because Congress understood that racist conspiracies are often intertwined with political aims. Indeed, racism commonly involves seeking to impose collective punishment—including collective *political* punishment—thereby holding an entire race to account for the supposed misdeeds of

with KKK slogans “SYMWAQ,” “MIAFA” and “Non Silba Sed Anthar”, at https://nmaahc.si.edu/object/nmaahc_2013.231.2 (last visited Sept. 1, 2026).

⁵⁵ See *supra* notes 1-3 and accompanying text; see also Gartenberg, 765 F. Supp 3d at 267 (“[C]ourts have long recognized that there is no constitutional problem with using ... offensive speech as evidence of motive or intent.”) (internal citations omitted).

⁵⁶ See, e.g., *Carter v. State of R.I.*, 68 F.3d 9, 12 (1st Cir. 1995) (“Determining the presence or absence of discriminatory ‘intent’ based on evidentiary proffers at summary judgment entails a quintessential *factual* assessment . . .”).

⁵⁷ *United Bhd. of Carpenters & Joiners of Am., Loc. 610, AFL-CIO v. Scott*, 463 U.S. 825, 836 (1983) (emphasis added).

individual members.⁵⁸ Construing a crucial civil rights law to evaporate whenever people sprinkle some political speech into their racism would frustrate Congress's intent and, threaten to turn civil rights law into a license to discriminate.

We chose to highlight a vintage Klan dog-whistle for a particular reason. Like those who traffic in coded language today, the Klan was adept at leveraging ostensibly non-racist language to parry allegations of discriminatory intent. If speech were some magical trump card, then the Klansmen wouldn't have had to be so arch. They could have just stuck with the most explicit and vile of racial epithets.

Judge McMahon's ruling whiffed on the law. Declaring an "Intifada," shouting about "Zionists," or screaming "Jew lover" and "Jew worker" ought not immunize defendants from allegations of bias. Instead, those alleged facts, among others, should have served to bolster Torres and Wilson's claims, effectively guaranteeing that the plaintiffs' allegations more than suffice for the case to proceed toward discovery.

Needless to say, allowing the lawsuit to proceed in no way suggests, let alone, secures a merits finding in the plaintiffs' favor. Judge McMahon deemed it significant, for example, that "Intifada" can mean "uprising."⁵⁹ Perhaps a jury would have found that the defendants in Torres and Wilson's case unfurled their "Intifada" banners with that benign meaning in mind.

But, again, this was a decision on a motion to dismiss, for which the district court was supposed to "accept as true all of the factual allegations set out in [the] complaint, draw inferences from those allegations in the light most favorable to plaintiff[s], and construe the complaint liberally."⁶⁰ Given that the defendants did not use the term "Intifada" in connection with a peaceful protest, but rather a violent building takeover at which people hurled anti-Jewish slurs, was it *plausible* that the "Intifada" banners at Hamilton Hall reflected an anti-Jewish purpose? Of course it was. If Torres and Wilson's

⁵⁸ Michelle Alexander, *The New Jim Crow* (2020); Khaled A. Beydoun, *On Terrorists and Freedom Fighters*, 136 Harv. L. Rev. F. 1, 4 (2022) (criticizing the fact that "Muslims, transnationally, have been 'raced' as terrorists"); *Detroit Synagogue Attack Shows Danger of Justifying Violence Against Jews*, Jerusalem Post (Mar. 15, 2026), <https://www.jpost.com/opinion/article-889915>; *Anti-Israel Activists Blame All Jews... and Their Allies*, Jewish News Servs. (Jun. 19, 2026), <https://www.jns.org/wire/the-focus-project/anti-israel-activists-blame-all-jews-and-their-allies>.

⁵⁹ Decision, *supra* note 13, at 23.

⁶⁰ *Xeriant, Inc. v. Auctus Fund LLC*, 141 F.4th 405, 411 (2d Cir. 2025).

complaint were viewed in the light most favorable to them, as was required, could discovery have yielded additional evidence to support their allegations of animus? Of course it could.

And lest anyone think otherwise, allowing Torres and Wilson’s lawsuit to proceed—based on a recognition that racist conspiracies can be intertwined with political speech—would in no way expose defendants to legal liability for protected speech. The First Amendment, of course, broadly protects offensive speech.⁶¹ As the Supreme Court has explained, “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.’”⁶² Likewise, speech on matters of public concern “occupies the highest rung of the hierarchy of First Amendment values, and is entitled to special protection.”⁶³ To put it more bluntly, there is no “hate speech” exception to the First Amendment. People can spout bigoted nonsense, and the government generally can’t sanction them.

But when speakers cross the line from protected speech into unprotected harassment or criminal conduct, their activities cannot be shoehorned into the First Amendment.⁶⁴ For instance, according to settled Supreme Court precedent, states and the federal government may punish conduct (or punish illicit conduct more severely) if the government can establish that the defendant selected his victim based on race, gender, or some other protected characteristic.⁶⁵ In that situation, far from being immune from scrutiny, bigoted speech can help prove discriminatory motive or intent.⁶⁶

And that is what allegedly occurred at Hamilton Hall. The takeover of that building, and the alleged assaults against Torres and Wilson, were not protected speech.

⁶¹ U.S. Const. amend. I.

⁶² *Matal v. Tam*, 582 U.S. 218 (2017) (internal quotation omitted).

⁶³ *Snyder v. Phelps*, 562 U.S. 443, 452 (2011) (quoting *Connick v. Myers*, 461 U.S. 138, 145 (1983)).

⁶⁴ *Bernstein & Bernstein*, *supra* note 45.

⁶⁵ *Wisconsin v. Mitchell*, 508 U.S. 476, 489-490 (1993) (“The First Amendment... does not prohibit the evidentiary use of speech to establish the elements of a crime or to prove motive or intent.”).

⁶⁶ *Id.* at 486–90.

And under the case law described above, the speech of the alleged rioters can be used to ascertain whether their illicit conduct was motivated by bias.

Indeed, failing to scrutinize the speech and motivations of people who commit unlawful conduct could shake the foundations of American civil rights law. Consider, for example, the attempted mass murder of preschoolers at a Michigan synagogue in March 2026. A Lebanese-American man named Ayman Ghazali allegedly packed his truck with an AR-15, ample ammunition, and \$2000 worth of explosives, and then rammed his vehicle into the front entrance of a synagogue full of Jewish children.⁶⁷ Some have sought to add context, perhaps even justification—specifically, they have noted that some of the assailant’s family members, reportedly including one or more members of Hezbollah, were killed by an Israeli airstrike in Lebanon.⁶⁸ They even suggested that the would-be murderer tried to kill American Jewish children in Michigan due to “displaced rage” over Israel.⁶⁹ (Displaced, but not random. Temple Israel was some 20 miles north of Ghazali’s

⁶⁷ The FBI classified the case as “Hezbollah-inspired act of terrorism.” *Temple Israel attack: FBI calls synagogue assault “Hezbollah-inspired act of terrorism,”* Fox 2 Detroit (Mar. 30, 2026), <https://www.fox2detroit.com/news/temple-israel-synagogue-attack-fbi-providing-update-after-gunman-drove-truck-building>.

⁶⁸ *Dearborn Heights mayor draws backlash over response to Michigan synagogue attack*, Jewish News Servs (Mar. 13, 2026), <https://www.jns.org/u.s.-news/dearborn-heights-mayor-draws-backlash-over-response-to-michigan-synagogue-attack/>; Gabby Deutch, *Abdul El-Sayed, on Temple Israel terrorist: “Hurt people do hurt people,”* Jewish Insider (Apr. 8, 2026), <https://jewishinsider.com/2026/04/abdul-el-sayed-on-temple-israel-terrorist-hurt-people-do-hurt-people/>. Dr. Abdul El-Sayed has since said, “To anybody who feels like my comments might have been hurtful, I’m really sorry. That was not my intention.” Geoff Harris, *Michigan Senate nominee Abdul El-Sayed apologizes to Jewish caucus over past remarks*, KRCR (Aug. 31, 2026), <https://krcrtv.com/news/nation-world/michigan-senate-nominee-abdul-el-sayed-apologizes-to-jewish-caucus-over-remarks-hasan-piker-temple?teaserSource=trending>. Livestreamer Hasan Piker, with whom Dr. El-Sayed previously campaigned, has weighed in more broadly, opining that if Jews indicate that they are “singularly invested in Israel,” then “eventually someone’s going to come around and take action. . . . Not against the state of Israel, mind you, but against American Jews.” Andrew Lapin, *El-Sayed seeks daylight from Hasan Piker as Democrats condemn streamer’s latest remarks against Jews*, Jewish Telegraph Agency (Aug. 25, 2026), <https://www.jta.org/2026/08/25/politics/el-sayed-seeks-daylight-from-hasan-piker-as-democrats-condemn-streamers-latest-remarks-about-jews>.

⁶⁹ *Abdul El-Sayed Reflects on Temple Israel Attack*, Abdul for Senate (Mar. 13, 2026), <https://perma.cc/L5QA-L6GJ>. It is possible that El-Sayed didn’t know that Ghazali’s brother, the presumed target of the strike, was reportedly a Hezbollah senior commander. Tal Shalev & Oren Liebermann, *Israel says brother of Michigan synagogue assailant was Hezbollah commander killed in*

home.⁷⁰ Grim as it is to contemplate, surely there were closer preschools—but presumably most of the others weren’t Jewish synagogue schools, let alone schools located in one of the most Jewish neighborhoods in the entire Midwest.⁷¹)

Again, civil rights law appropriately recognizes that racial, religious, and national-origin motivations are aggravating rather than mitigating facts: lashing out at members of a protected demographic group, based on the perceived misdeeds of other members of that (or a related) demographic group, is textbook discrimination.

To be clear, Judge McMahon’s ruling is less rhetorically provocative than remarks aimed at explaining away discriminatory violence. But the ruling’s implications for civil rights law are no less troubling. While politicians and commentators make their case to the public, leaving citizens free to agree or disagree with a sympathetic characterization of the Michigan synagogue attack, Judge McMahon’s ruling denied Torres and Wilson any opportunity to make their case to a jury. It therefore precluded jurors, as constitutionally authorized representatives of the community, from deciding for themselves whether what happened at Hamilton Hall was anti-Jewish.

Consider the implications of political-speech immunity for other acts of discriminatory violence. In October 2024, for example, a man pled guilty to a federal

strike, CNN, (Mar. 15, 2026), <https://www.cnn.com/2026/03/15/us/michigan-synagogue-attacker-brother-hezbollah>; Chuck Rose, “*Hearty Congratulations*”: Abdul El-Sayed Hailed Mosque Opening Alongside Holocaust-Denier and Imam Who Asked Allah “To Grant Victory to Our Brothers in Iran,” Wash. Free Beacon (Jul. 6, 2026), <https://freebeacon.com/elections/hearty-congratulations-abdul-el-sayed-hailed-mosque-opening-alongside-holocaust-denier-and-imam-who-asked-allah-to-grant-victory-to-our-brothers-in-iran/> (reporting on a “eulogy for Hezbollah fighters Ibrahim and Kassim Ghazali,” brothers of “Ayman Ghazali, who attacked a Jewish school... four days after the memorial” El-Sayed attended). At the time, Hezbollah was launching rockets into civilian neighborhoods in the north of Israel. Cristina Goldbaum, *Despite Its Weakness, Hezbollah Plunges Lebanon Back Into War*, N.Y. Times (Mar. 2, 2026), <https://www.nytimes.com/2026/03/02/world/middleeast/lebanon-hezbollah-israel-strikes.html>. We take no position on the proportionately or prudence of Israel’s response.

⁷⁰ Philissa Cramer, *Suspect in Michigan synagogue attack identified as Ayman Ghazali, an immigrant from Lebanon*, Jewish Telegraph Agency (Mar. 13, 2026), <https://www.jta.org/2026/03/13/united-states/suspect-in-michigan-synagogue-attack-identified-as-ayman-ghazali-an-immigrant-from-lebanon>.

⁷¹ Katherine Rosman, *Temple Israel Is One of the Largest Reform Temples in the U.S.*, N.Y. Times (Mar. 12, 2026), <https://www.nytimes.com/2026/03/12/us/temple-israel-west-bloomfield-synagogue.html>

crime after he allegedly broke into and damaged property belonging to the Center for Islamic Life at Rutgers University in New Jersey.⁷² The federal government expressly cited the defendant's alleged theft of a Palestinian flag, among other facts, in charging him with a crime requiring proof that the defendant "intentionally obstruct[ed], by force or threat of force, including by threat of force against religious real property, any person in the enjoyment of that person's *free exercise of religious beliefs*, or attempts to do so."⁷³

Yet, according to the logic of those who say that politically motivated attacks can't be anti-Jewish, the break-in at Rutgers couldn't have been anti-Muslim because the targeting of the Palestinian flag suggests that the intruder might have had political motives.

But, as we've been insisting, that logic is wrong. Particularly when a crime appears to intertwine politics and animus, as occurred in both the Rutgers case and the takeover of Hamilton Hall, an inference of animus is more than plausible. To the extent Judge McMahon's ruling and various activists suggest otherwise vis-à-vis Jews and Jewish allies, that is not a customary approach to antidiscrimination; it is the emerging Anti-Zionism Exception at work.

C. Civil Rights Violations Are Not Gauged via Referenda.

Third, the court appeared to dismiss the idea that anti-Zionist rhetoric can be racist partly because "the Jewish community itself is divided over whether anti-Zionism is inherently antisemitic."⁷⁴ Once again, that perspective is not unique to the district court in *Torres*. The First Circuit has also advanced this theory.⁷⁵ Likewise, it has become

⁷² U.S. Dep't of Justice, New Jersey Man Pleads Guilty to Federal Hate Crime for Breaking into Center for Islamic Life at Rutgers University and Destroying Property, Oct. 10, 2024, at <https://www.justice.gov/archives/opa/pr/new-jersey-man-pleads-guilty-federal-hate-crime-breaking-center-islamic-life-rutgers>.

⁷³ 18 U.S.C. § 247(a)(2) (emphasis added); see Information at 2 ¶3, *United States v. Beacher*, No. 3:24-cr-00656 (D.N.J. Oct. 9, 2024).

⁷⁴ Decision, *supra* note 13, at n.5.

⁷⁵ *StandWithUS v. MIT*, 158 F. 4th 1, 17 (1st Cir. 2025) (cataloging what it describes as an "absence of consensus [that] reflects ongoing debate as to the relationship between anti-Zionism and antisemitism"); see also Ezra Klein, *Why American Jews No Longer Understand One Another*, N.Y. Times (Jul. 25, 2025), <https://www.nytimes.com/2025/07/20/opinion/antisemitism-american-jews-israel-mamdani.html>; Shaul Magid, *The Zionist consensus among US Jews has collapsed. Something*

fashionable within the anti-Zionist world to argue that particular anti-Zionist positions cannot reflect discrimination against Jews because the speakers themselves are either Jewish or know Jews who agree with them.⁷⁶

These arguments, both in *Torres* and elsewhere, are badly mistaken. Both as a matter of fact and a matter of law, heterodox thinking within the Jewish community on issues relating to Zionism does not determine when anti-Zionism reflects anti-Jewish discrimination.

Let's start with the district court's claim, in *Torres*, that Jews disagree about whether anti-Zionism is "inherently antisemitic." By inserting the modifier "inherently," the ruling effectively erected an obstacle just for people claiming anti-Jewish animus. Other civil rights plaintiffs don't have to show that anyone, let alone *every* Black or gay or Muslim person, thinks the words or actions at issue in their cases are inherently discriminatory. To defeat motions to dismiss, those plaintiffs have needed to show only that those words or actions were plausibly discriminatory in the context of their specific cases. That's it.

Requiring civil rights plaintiffs to show that anti-Zionism is inherently antisemitic not only disserves those plaintiffs, but also undermines the coherence of civil rights law. What does it matter if some Jews think anti-Zionism is not *inherently* anti-Jewish? Calling someone a "Jew" isn't inherently bigoted either. As Adam Sandler has proven,⁷⁷ it might be downright celebratory. Yet that characterization in a different setting can undoubtedly be racist. If someone menaces a woman on the subway, attacking her while calling her "a Jew" (or "Jew-lover"),⁷⁸ most judges would view such an utterance as evidence of anti-Jewish animus. The fact that any one of those judges may have a Jewish best friend or a

new is emerging, Guardian (Oct. 7, 2025), <https://www.theguardian.com/world/commentisfree/2025/oct/07/american-jews-zionism>.

⁷⁶ Mann & Yona, *supra* note 15.

⁷⁷ *Weekend Update: Adam Sandler on Hanukkah* — SNL, YouTube (Aug. 6, 2013), <https://www.youtube.com/watch?v=KX5Z-HpHH9g>.

⁷⁸ Amidst the January 6 attempted insurrection, one rioter was heard querying "Where's the big Jew?," meaning then-Senate Majority Leader Chuck Schumer, as mobs scrambled throughout the Capitol chasing down members of Congress. Luke Broadwater, *For Chuck Schumer, a Dream Job Comes with Tall Orders*, N.Y. Times (Mar. 9, 2021), <https://www.nytimes.com/2021/03/09/us/politics/chuck-schumer-senate-majority-leader.html?action=click&module=Top%20Stories&pgtype=Homepage>.

Jewish sister-in-law who uses the term with some affection (or to mean something quite different) would be entirely immaterial. And suggestions to the contrary would be equal parts risible and cringy.

It is therefore surprising to see a court hold that anti-Zionism—including using the term “Zionist” as a slur—*can’t*, as a matter of law, ever be antisemitic or racist.

We struggle with this seemingly insupportable legal conclusion. More to the point, we have not seen, and have difficulty imagining, courts making the same mistake—that is, applying an impossibly stringent standard—with respect to other groups and other code words or symbols. Some Black people are reportedly⁷⁹ comfortable⁸⁰ with the Confederate⁸¹ flag.⁸² Some may reject the claim that the term “thug” is racially coded, noting, for example, its use by none other than President Barack Obama.⁸³ But we have little reason to expect judges to suddenly start using evidence of differing opinions within the Black community as a basis for determining that *all* Black people were estopped from alleging racism.

And although our focus here is on the Anti-Zionism Exception that seems to be creeping into public discourse and American public law, we note once again that we

⁷⁹ *Photos: They’re Black and They’re Proud of the Confederate Flag*, Atlanta J.-Const., <https://www.ajc.com/news/state--regional-govt--politics/photos-they-black-and-they-proud-the-confederate-flag/by06A6ywMrqi7mYP9A1jmO/> (last visited July 17, 2026).

⁸⁰ *Opinion: Black Student Defends His Confederate Flag*, CNN (Dec. 5, 2011), <https://www.cnn.com/2011/12/05/us/black-student-defends-his-confederate-flag>.

⁸¹ Gene Demby, *‘It’s Like Having a Crazy Family Member’: On Southern Black Folks and the Rebel Flag*, NPR: *Code Switch* (June 25, 2015), <https://www.npr.org/sections/codeswitch/2015/06/25/417513637/its-like-having-a-crazy-family-member-on-southern-black-folks-and-the-rebel-flag>.

⁸² *United Shades of America with W. Kamau Bell: This Black Woman Is Proud of Confederate Flag*, CNN (May 21, 2018), <https://www.cnn.com/videos/tv/2018/05/21/usoa-alabama-ron-3.cnn>.

⁸³ Deroy Murdock, *The T-Word Is Not the N-Word*, Nat’l Rev. (May 5, 2015), <https://www.nationalreview.com/2015/05/t-word-not-n-word-deroy-murdock/>; Ernie Suggs, *“Thug:” factual description or racial code?*, Atl. J. Const. (May 7, 2015) (noting divided opinions). *But see The Racially Charged Meaning Behind the Word “Thug,”* NPR (Apr. 30, 2015), <https://www.npr.org/2015/04/30/403362626/the-racially-charged-meaning-behind-the-word-thug> (quoting John McWhorter as saying “thug today is a nominally polite way of using the N-word. Many people suspect it, and they are correct” while also recognizing context, speaker, and audience all matter such that “Barack Obama saying it means something different from the white housewife... who says it.”).

would equally oppose any comparable exception.⁸⁴ If students claiming to be opposed to Palestinian statehood had taken over a school building, violently accosted two janitors, and slurred them as “Muslim-lovers” and “Palestinianists,” we would reject a legal ruling asserting that such taunts could not, as a matter of law, have been anti-Muslim so long as some Muslims oppose the creation of a Palestinian state.⁸⁵

The truth is that no minority group is monolithic. And diversity within a racial, ethnic, or religious group can’t be a reason to weaken civil rights protections for that group. What is more, Supreme Court precedent makes clear that “[b]ecause of the many facets of human motivation, it would be unwise to presume as a matter of law that human beings of one definable group will not discriminate against other members of their group.”⁸⁶ Black police officers are capable of racial profiling.⁸⁷ Female bosses are capable of discriminating on the basis of gender against other women.⁸⁸ And, yes, some Jews may discriminate against fellow Jews, including Zionist American Jews and Israeli Jews.⁸⁹

⁸⁴ See *supra* note 72 and accompanying text.

⁸⁵ Cf. Sachs, *supra* note 12, at 58-61 (using hypotheticals to imagine how civil rights laws, and lawyers, would react to analogous efforts to decouple a national movement to statehood from those whose shared ancestry ties them to such a national movement).

⁸⁶ *Castaneda v. Partida*, 430 U.S. 482, 499 (1977); see also *Oncale v. Sundowner Offshore Servs., Inc.*, 523 U.S. 75, 78 (1998).

⁸⁷ Jamiles Lartey & Wilbert L. Cooper, *Tyre Nichols’ Death: How Black Officers Alone Can’t Stop Brutal Policing*, Marshall Project (Jan. 28, 2023), <https://www.themarshallproject.org/2023/01/28/tyre-nichols-memphis-black-police-brutality#:~:text=Tyre%20Nichols%20died%20on%20Jan.%2010%20in,a%20baton%20and%20shocking%20him%20with%20Tasers.;> see also *United States v. Hylton*, 590 F. App’x 13, 16-17 (2d Cir. 2014) (holding, in a Fair Housing Act case, that the district court had did not committed clear error in crediting Black tenant’s testimony as to racially discriminatory comments by homeowner’s husband, notwithstanding the defense’s claims that the husband “could not have made the racially discriminatory comments attested to by [the tenant] because [the owners] are themselves black”).

⁸⁸ See, e.g., *Johnson v. Transportation Agency, Santa Clara Cty.*, 480 U.S. 616, 624-25 (1987) (considering such a claim).

⁸⁹ E.g., Kiara Alfonseca, *Student protesters denounce antisemitism amid criticism over pro-Palestinian encampments at college campuses* ABC News (Apr. 26, 2024), <https://abcnews.com/US/student-protesters-denounce-antisemitism-amid-criticism-pro-palestinian/story?id=109643275> (noting that both Zionist Jews and anti-Zionist Jews allege that their counterparts are fostering an antisemitic climate); see also *infra* note 91 and accompanying text.

Civil rights champions, typically keenly attuned to the problem of tokenization among Black Americans and women,⁹⁰ should not struggle with this concept. Does anyone seriously think that if college campuses were to experience a wave of violence against those supportive of an independent Tibetan nation, the application of civil rights laws should hinge on whether (enough?) Tibetans in America prize such a project? Again, we hope no civil rights advocate would make such an argument, and that no court would accept it.

Jews are no different. And, significantly for Torres and Wilson, the Second Circuit has already said as much. In a 2004 holding, the Second Circuit held that Jews are perfectly capable of discriminating against other Jews.⁹¹ So, when someone says their beliefs cannot reflect discrimination against Jews because they are offering those beliefs “as a Jew,” they are wrong as a matter of law.⁹²

Just as important, such discrimination need not arise from hatred. Some Jews might hold their fellow Jews to stricter standards than they apply to other groups. Of late, Jews have singled out their fellow Jews or Israelis for asserting their civil rights,⁹³ for engaging in self-governance practices common the world over,⁹⁴ and for centering their

⁹⁰ Phenix S. Halley, *All the Times Clarence Thomas Betrayed the Black Community*, *The Root* (Apr. 30, 2026), <https://www.theroot.com/all-the-times-clarence-thomas-betrayed-the-black-commun-2000102611/slides/2>; Rebecca Kaplan, *Rep. Bennie Thompson Defends Calling Clarence Thomas an “Uncle Tom,”* CBS News (Apr. 30, 2014), <https://www.cbsnews.com/news/rep-bennie-thompson-defends-calling-clarence-thomas-an-uncle-tom/>; Andrea Sachs, *Phyllis Schlafly at 84*, *Time* (Apr. 6, 2009), <https://time.com/archive/6914321/phyllis-schlafly-at-84/> (describing widespread opposition among women to Schlafly’s anti-feminist politics).

⁹¹ *Feingold v. New York*, 366 F.3d 138, 155 (2d Cir. 2004) (“We also reject the district court’s suggestion that an inference of discrimination cannot be drawn because Feingold was fired by another Jew.”); *see also* *Danzer v. Norden Sys., Inc.*, 151 F.3d 50, 55 (2d Cir. 1998) (“[T]he proposition that people in a protected category cannot discriminate against their fellow class members is patently untenable.”).

⁹² *Id.*; cf. generally Sarah Hurwitz, *As a Jew: Reclaiming Our Story from Those Who Blame, Shame, and Try to Erase Us* (2025).

⁹³ Mann & Yona, *supra* note 15 (arguing against the fortification of civil rights protections for American Jews out of concern for would-be defendants while expressing no corresponding concern for would-be defendants alleged to violate other civil rights).

⁹⁴ Natan Sharansky & Gil Troy, *The Un-Jews*, *Tablet* (Jun. 15, 2021), <https://www.tabletmag.com/sections/news/articles/the-un-jews-natan-sharansky> (emphasizing anti-Zionist’s singular focus on Jewish nationalism while ignoring or endorsing other people’s ethnonationalist projects).

suffering.⁹⁵ So the mere fact that some Jewish people hold a particular viewpoint—about, say, Zionism or Halachism, for that matter—cannot establish, as a matter of law or fact, that the viewpoint is incapable of being discriminatory across all cases and contexts.

As to the specifics, whatever the views of anti-Zionists, many Jews, including those experiencing the lion's share of harassment and violence on college campuses, in and around synagogues and summers camps, and across the United States, feel that a connection to the ancient and present Jewish homeland (aka Zionism) is constitutive of their religious, ethnic, or national identities.⁹⁶ As noted above, many jurisdictions and

⁹⁵ Peter Beinart comes to mind as someone who supported, among other things, Black Lives Matter while insisting American Jews de-emphasize surging antisemitism because of what's happening in Gaza is far worse. Compare Peter Beinart, *IfNotNow Is The Jewish Black Lives Matter*, Forward (Apr. 4, 2017), <https://forward.com/opinion/368082/ifnotnow-is-the-jewish-black-lives-matter/>; Peter Beinart, *The Shame of the American Jewish Establishment*, Jewish Currents (Jul. 29, 2026), <https://jewishcurrents.org/the-shame-of-the-american-jewish-establishment> with Peter Beinart, *Being Jewish After the Destruction of Gaza: A Reckoning* (2025).

To the extent it matters, we see no incompatibility between Jews supporting Black Lives Matter and also being outraged by the fact that since October 7, 2023, about 70% of all religion-based hate crimes in America targeted Jews. Menachem Wecker, *Jews targeted in 69% of religion hate crimes in 2024, 71% since October 2023, per FBI data*, Jewish News Serv. (Aug. 5, 2025), <https://www.jns.org/jews-targeted-in-69-of-religion-hate-crimes-in-2024-71-since-october-2023-per-fbi-data/> Jews make up approximately 2.4% of the American population. *Jewish Americans in 2020*, Pew Res. Ctr. (May 11, 2021), https://www.pewresearch.org/religion/2021/05/11/the-size-of-the-u-s-jewish-population/?gad_source=1&gad_campaignid=23983542891&gbraid=0AAAAA-ddO9HTS37SvBZGPT1uahUGODD52&gclid=Cj0KCQjw-MDTBhCgARIsAKAkdlTm4Hg3LBt5TZ9j5_LWguu8vtyUOJOXSJIVt-1JChz3QI6ZYS_AF_YaAnEkEALw_wcB.

⁹⁶ In part because the term “Zionist” has been repurposed or weaponized as a slur, and used as a basis for, among other things, excluding those so labeled from social, civic, and economic spaces, it appears from survey data that a majority of American Jews are now unwilling to label themselves as Zionists. That said, according to those same surveys, 88% believe that “Israel has the right to exist as a Jewish, democratic state.” Mimi Kravetz, *The “Zionism” gap: What JFNA data really shows about Jews, Israel and Zionism today*, Jewish Telegraph Agency (Feb. 4, 2026), <https://www.jta.org/2026/02/04/ideas/the-zionism-gap-what-data-really-shows-about-jews-israel-and-zionism-today>; Arno Rosenfeld, *Most American Jews aren’t “Zionist”—so what are they?* Forward (Feb. 11, 2026), <https://forward.com/news/antisemitism-decoded/804502/american-jews-zionist-zionism-survey/>.

government agencies in the United States and nations around the world have explicitly recognized that forms of anti-Zionism may well be antisemitic.⁹⁷

Needless to say, anti-Zionist Jews aren't required to feel the same way. But neither are they empowered to deprive other Jews of the protections of this country's civil rights laws.⁹⁸

Drilling down even further, if that deeply felt connection between many Jews and Israel weren't enough to defeat an emerging Anti-Zionism Exception in civil rights law, the alleged facts of this case would be. The ease of fluency with which the rioters toggled among calling the janitors "Jew-lover," "Jew-worker," men who were "working for the Jews," and "Zionist," should have sufficed in this case to bring Torres and Wilson well within the protection of the KKK Act.

⁹⁷ See *supra* note 11 and accompanying text.

⁹⁸ Cf. Mann & Yona, *supra* note 15 (supporting the limiting of Zionist Jews' civil rights remedies for, among other reasons, the sake of anti-Zionist Jews). Consider too one of the most prominent anti-Zionist Jews in America, Peter Beinart. Beinart strenuously objects to the claim that anti-Zionist discourse is antisemitic or a form of anti-Jewish animus. Peter Beinart, *Debunking the Myth that Anti-Zionism is Anti-Semitic*, Forward (Feb. 27, 2019), <https://forward.com/opinion/419988/debunking-the-myth-that-anti-zionism-is-anti-semitic/>. Yet he was just as forceful in insisting that the term "globalist," is an antisemitic epithet. Beinart, *Globalist*, *supra* note 6. Presumably there are anti-globalist Jews who experience the term very differently from Beinart. See, e.g., Melanie Phillips, *Globalism is not a Jewish concept*, Jewish News Servs. (Mar. 22, 2018), <https://www.jns.org/column/melanie-phillips/globalism-is-not-a-jewish-concept>. We doubt Beinart would concede that some Jews' comfort with the term "globalist" negates any claim of bias brought by those who share Beinart's view.

D. Civil Rights Laws Protect Allies of Protected Classes—and Innocent Bystanders

Fourth, the court seemed to think it mattered that Torres and Wilson were neither themselves Jewish nor trying to defend Jews. In the court's view, because Torres and Wilson alleged that the conspiracy targeted Jews, supporters of Jews, and perceived supporters of Jews, they could not prevail under the KKK Act unless they were one of those three things.⁹⁹ But because Torres and Wilson also alleged that the rioters accosted them because they were happy to accost "anyone who got in their way," they could not establish that they were targeted for being Jews, supporters of Jews, or perceived supporters of Jews.¹⁰⁰

This is a thornier issue than some other aspects of the court's opinion. But still, we think the district court got it wrong.

When someone alleges an anti-Jewish conspiracy under the KKK Act, whether they're incorporated into Sandler's *Chanukah Song* lyrics or considered a *chaver* by Columbia's Jewish community is completely irrelevant. The KKK Act nowhere requires proof that plaintiffs are themselves members of the disfavored group, or allies of that group, or even perceived allies of that group. Instead, it provides a cause of action whenever, "in furtherance of the object of" a prohibited conspiracy, the conspirators take an action "whereby another is injured in his person or property." Not "a member, ally, or perceived ally of the targeted group."¹⁰¹ Just "another." Under the statute's plain text, any *other* person harmed by an act undertaken as part of the conspiracy can sue.

Accordingly, as the Third Circuit has concluded, "a § 1985(3) plaintiff need not be a member of the class against which a conspiracy directs its invidiously discriminatory animus, even if in practice this is most often the case."¹⁰² Thus, even if the rioters had set

⁹⁹ Decision, *supra* note 13, at 25–28.

¹⁰⁰ *Id.*

¹⁰¹ 42 U.S.C. § 1985(3).

¹⁰² *Farber v. City of Paterson*, 440 F.3d 131, 141 (3d Cir. 2006); *Novotny v. Great Am. Fed. Sav. & Loan Ass'n*, 584 F.2d 1235, 1244 (3d Cir.1978) (en banc) ("members of a conspiracy to deprive women of equal rights are liable under s 1985(3) to persons who are injured in furtherance of the object of the conspiracy, whether male or female"), vacated on other grounds, 442 U.S. 366 (1979); *Richardson v. Miller*, 446 F.2d 1247, 1249 (3d Cir.1971) (concluding that plaintiff had made out a claim under the KKK Act even though "the plaintiff is not a member of the class allegedly discriminated against"); *see also* *Cutting v. Muzzey*, 724 F.2d 259, 260 (1st Cir. 1984) (holding that subdivision developer had standing to bring civil rights action under 42 U.S.C. §§ 1983, 1985, and

their sights on Torres and Wilson only because the advancing agitators were willing to harm anyone who got in their way, that would have placed the janitors under the KKK Act's protections. Here, of course, Torres and Wilson adequately alleged that they were in fact perceived as supporters of Jews—and expressly slandered as “Jew Lovers”—not just because they were initially in the way, but because they refused to yield.¹⁰³ But to make clear across the universe of such claims, including those involving less damning allegations, under the KKK Act, plaintiffs need only be victims—collateral damage, if you will—of those who sought to target that disfavored group.

And for good reason. If white, Christian neighbors refuse to allow the Klan to scamper across their yard to reach a Black or Jewish family's home—and are assaulted for their troubles—the defiant neighbors are, justly, afforded a civil rights remedy. No one quizzes the victims on their religious convictions, samples their DNA, or probes their motives. Those neighbors' motives may range from racial solidarity to human decency to an abiding but stunningly superficial commitment to preserve a newly sodded lawn. It's of no concern. Were legislators and courts to say otherwise, campaigns of racial or religious subordination could advance solely but still quite effectively through the systematic targeting of third parties, leaving vulnerable minorities even more isolated and defenseless.¹⁰⁴

American courts should be wise to this reality because, sadly, violent racist conspiracies are not ancient history. Current movements targeting Jews and Zionists have closely followed a period of racial unrest in which, although many harms certainly hurt members of racial minorities, some did not.

1988 alleging that conditions imposed by town planning board on development of subdivision were result of racial animus toward purchasers with Italian surnames, even though developer was “apparently not . . . of Italian origin”). *But see* Canlis v. San Joaquin Sheriff's Posse Comitatus, 641 F.2d 711, 721 (9th Cir. 1981) (“The law of this circuit is clear: the plaintiff must be a member of the class discriminated against to claim the benefits of s 1985(3).”).

¹⁰³ See Complaint, *supra* note 17, at 36 ¶122 (“Then another Occupier shouted, “Why are you defending them?” and “What are you, a Jew-lover?” They repeatedly called him “Jew-lover.”).

¹⁰⁴ Jon D. Michaels & David L. Noll, *Vigilante Nation* (2024) (describing laws enabling private parties to target abortion providers and coaches who support transgender students' right to compete in scholastic athletics and explaining how those laws seek to deter would-be allies from supporting the reproductive rights of pregnant women and the civil rights of women and transgender children).

Consider the 2017 Unite the Right rally in Charlottesville, Virginia. The rally was avowedly white nationalist and antisemitic, and included armed neo-Nazis and Klansmen, among others.¹⁰⁵ Yet the violence that the organizers unleashed was hardly confined to Black and Jewish targets; it reached any number of white Christians deemed to be, like Torres and Wilson, “traitor allies.”¹⁰⁶ A diverse group of plaintiffs—“white, brown, and black; Christian and Jewish”¹⁰⁷—sued under the KKK Act. In *Sines v. Kessler*, a federal district court in Virginia rejected the defense’s argument that claims brought by non-Black, non-Jewish plaintiffs should be dismissed. Citing Supreme Court precedent, which we too introduced above,¹⁰⁸ the *Sines* court held that the KKK Act “was enacted ‘to combat the prevalent animus against [Black Americans] and their supporters.’”¹⁰⁹

Like the Charlottesville plaintiffs, Torres and Wilson have “plausibly alleged that they were attacked because of their support” of a protected class.¹¹⁰ The barrage of anti-Jewish epithets hurled at the pair of janitors surely does the trick. While it is true that neither *Sines* nor Third Circuit opinions like *Farber* are controlling in the Second Circuit, those opinions¹¹¹ suggest a blueprint for contemporary civil rights’ plaintiffs to get their day in court.¹¹²

¹⁰⁵ For a discussion of the under-examined role of antisemitism in the events that unfolded in Charlottesville in 2017, see James Loeffler, *EXCEPTIONAL HATRED: ANTISEMITISM AND THE FIGHT OVER FREE SPEECH IN MODERN AMERICA* (2026).

¹⁰⁶ *Sines v. Hill*, 103 F. 4th 233 (4th Cir. 2024).

¹⁰⁷ *Sines v. Kessler*, First Amended Complaint (Jan. 5, 2018), <https://clearinghouse-umich-production.s3.amazonaws.com/media/doc/111794.pdf>.

¹⁰⁸ See *supra* note 57 and accompanying text.

¹⁰⁹ *Sines v. Kessler*, 324 F. Supp. 3d 765 (W.D. Va. 2018) (quoting *United Bhd. of Carpenters & Joiners v. Scott*, 463 U.S. 825, 836 (1983)).

¹¹⁰ *Id.*

¹¹¹ Dahlia Lithwick, *Lady Justice, Women, the Law, and the Battle to Save America* (2022); Neil MacFarquhar, *Charlottesville Lawsuit Puts Rising Intolerance on Trial*, N.Y. Times (Oct. 28, 2019), <https://www.nytimes.com/2019/10/28/us/charlottesville-civil-rights-trial.html>.

¹¹² For a more critical view of *Sines*, see Loeffler, *Exceptional Hatred*, *supra* note 102.

III.

We ascribe no malice to the district court. We have no desire, let alone reason, to suggest bad faith.¹¹³ But that is precisely why we are alarmed, and why we think this ruling—and the fate of the reasoning it wields—is so important. Why did Judge McMahon treat plaintiffs’ allegations with skepticism and hostility, an approach that the Supreme Court deems anathema at the motion-to-dismiss stage? Why too was the court so quick to buy into a set of deeply problematic assumptions about the forms that anti-Jewish bias can take? Why did it draw attention to differing opinions within the Jewish community, as if looking for reasons to ensure this case never gets in front of a jury? That these errors arose in good faith could make it all the more likely that they could make their way into other opinions in other courts.

Judge McMahon’s tenure on the bench isn’t one marked by anything approximating callousness or penuriousness vis-à-vis civil rights plaintiffs. And her ruling here doesn’t, on its face, impede the progress of any other group of civil rights plaintiffs. Instead, the Clinton-appointed judge’s opinion was painstakingly particularized, misdiagnosing alleged animus seemingly only when directed against people who are Jewish or Jewish-adjacent. While recognizing an across-the-board retrenchment of civil rights would be even more destructive to liberal democracy in America, there is nonetheless an acute danger that arises when one group, and one group alone at a moment of special,¹¹⁴ even acute peril,¹¹⁵ is denied the equal protection of the law.

¹¹³ Cf. *Force v. Palestinian Authority*, 25-cv-8582 (S.D.N.Y. Aug. 10, 2026) (denying motion to dismiss lawsuit against the Palestinian Authority and the Palestinian Liberation Organization alleging violations of the Antiterrorism Act in connection with the so-called “pay-for-slay” program) (McMahon, J.).

¹¹⁴ *Jews Targeted in 69% of Religion Hate Crimes in 2024, 71% Since October 2023, per FBI Data*, Jewish News Servs (Aug. 5, 2025), <https://www.jns.org/jews-targeted-in-69-of-religion-hate-crimes-in-2024-71-since-october-2023-per-fbi-data/>.

¹¹⁵ Am. Jewish Comm., *The State of Antisemitism in America 2025 Report* (2026), <https://www.ajc.org/AntisemitismReport2025>.

As of this writing, Torres and Wilson have noticed an appeal to the U.S. Court of Appeals for the Second Circuit,¹¹⁶ and the stakes of that appeal couldn't be higher. We see at least four options.

First, if the Second Circuit narrowly upholds the decision based on Judge McMahon's reasoning, it will join the First Circuit in endorsing an Anti-Zionism Exception that extends from Bridgehampton, New York, all the way to Bangor, Maine. Affirmance by the Second Circuit would, further, make clear that two of the historically most liberal judicial and political districts may well weigh facts, interpret laws, and employ logic differently when Jewish civil rights are at issue. Allowing Judge McMahon's ruling to stand will not only wrong Torres and Wilson, whom the court recognizes were treated "despicabl[y]"¹¹⁷ but also signal to other non-Jews—everyone from laborers to police officers to university presidents¹¹⁸—that they too are at the mercy of an anti-Jewish mob. Just as dangerously, the ruling may embolden more anti-Jewish agitators, effectively furnishing them with a legal roadmap to harass.

Second, the bid by some progressive advocates to apply a narrow view of discrimination against Jews, while continuing to insist on a broad view for other groups, could backfire wildly.¹¹⁹ The federal courts are trending to the right, and the U.S. Supreme

¹¹⁶ See Torres v. Carlson (SDNY docket), <https://www.courtlistener.com/docket/69947324/torres-v-carlson/>.

¹¹⁷ Decision, *supra* note 13; see also Sharon Otterman, *Judge Vacates Punishments of Columbia Students Who Occupied a Building*, N.Y. Times (Mar. 3, 2026), <https://www.nytimes.com/2026/03/03/nyregion/columbia-protesters-discipline.html>.

¹¹⁸ Press Release, U.S. Att'y's Off., E.D. Mich., Department of Justice Indicts Eight Conspirators Who Threatened University of Michigan Officials, Businesses, and the Jewish Federation (June 10, 2026), <https://www.justice.gov/usao-edmi/pr/departement-justice-indicts-eight-conspirators-who-threatened-university-michigan>.

¹¹⁹ For example, although in many respects this article disagrees with the views expressed by Eidelson and Hellman concerning the interplay between anti-Zionism and antidiscrimination law, we agree on at least one thing: "[C]onstruing anti-Zionist and anti-Israel activities as anti-Jewish discrimination" requires nothing more than viewing "antidiscrimination law in ways that progressives have long advocated." Eidelson and Hellman, *supra* note 15, at 2. We are perhaps more blunt about this about-face than Eidelson and Hellman. But we have all apparently noticed the progressive community's carveout of Jews from its otherwise robust conception of discrimination.

Court is currently as conservative as that Court has been in the past 90-plus years.¹²⁰ If Torres and Wilson’s appeal reaches conservative judges, whether at the Second Circuit or the U.S. Supreme Court, they could affirm the ruling and universalize Judge McMahon’s treatment of plaintiffs alleging anti-Jewish animus to all civil rights plaintiffs.

After all, adopting a narrow view of antidiscrimination law only for Jews, however popular that approach might be in certain circles, is a profoundly unserious move. Some judges might decide that the tension inherent in Judge McMahon’s opinion—and the muted reactions to surging antisemitism by traditional champions of civil rights¹²¹—ought better be resolved not by restoring antidiscrimination protections for Jews, but instead by narrowing antidiscrimination protections for everyone.

Third, the Second Circuit could narrowly reverse Judge McMahon’s ruling and restore some order to civil rights law. As we’ve said, Judge McMahon’s decision merits reversal on any number of grounds, none of which would require a reviewing court to confront the district court’s apparent endorsement of the Anti-Zionism Exception.

Fourth, and preferably, the Second Circuit could reverse the error-riddled ruling and make clear that, as a matter of law, anti-Zionism can surely constitute unlawful discrimination. The court of appeals would not need to make factual findings. Rather, it would have to note only that anti-Zionist animus may well constitute discrimination on racial, religious, and/or shared identity grounds (for the reasons we proffered above, or for any number of other reasons recognized by scholars, legislatures, governors, and mayors). While an appellate court often endeavors to rule on the narrowest ground possible, in this case—given its stakes and given the district court’s evident errors—a Second Circuit panel’s pragmatic and jurisprudential reasons for reaching the anti-

¹²⁰ Adam Liptak, *A Transformative Term at the Most Conservative Supreme Court in Nearly a Century*, N.Y. Times (Jul. 1, 2022), <https://www.nytimes.com/2022/07/01/us/supreme-court-term-roe-guns-epa-decisions.html>.

¹²¹ Some have certainly suggested as much. See Yaakov Menken & Kayla Gubov, *Democrats have abandoned the fight against campus antisemitism*, Jewish News Servs. (May 19, 2025), <https://www.jns.org/opinion/rabbi-yaakov-menken/democrats-have-abandoned-the-fight-against-campus-antisemitism>; Jennifer Bayer Michaels, *I Want a Democratic Party that Believes Jewish Lives Matter*, Wall St. J. (Dec. 3, 2025), <https://www.wsj.com/opinion/i-want-a-democratic-party-that-believes-jewish-lives-matter-18ba1edf>; Peter Savodnik, *When Jew Hate Doesn’t Count*, Free Press (Jun. 10, 2024), <https://www.thefp.com/p/antisemitism-kill-zionist-white-house>.

Zionism question may well override the circuit's laudable default commitment to judicial minimalism.¹²²

A Second Circuit panel's decision to address anti-Zionism might further be warranted in light of public officials' and civil rights organizations' uneven responses not just to the normalization of the Anti-Zionism Exception but also to the normalization of surging violence aimed at Jews and their allies exercising any number of their constitutional rights.¹²³ Assailants, often bearing the talismanic banner of anti-Zionism, have sought to inflict violence Jews and their perceived allies holding vigils,¹²⁴ speaking

¹²² Northwest Austin Mun. Utility Dist. v. Holder, 557 U.S. 193 (2009); Poventud v. City of New York, 750 F.3d 121, 127 n. 7 (2d Cir. 2014) (en banc); Cass R. Sunstein, *The Supreme Court, 1995 Term — Foreword: Leaving Things Undecided*, 110 Harv. L. Rev. 4 (1996).

¹²³ We can't help but note that self-righteous harassment and violence, with even the slimmest hints of legal endorsement, is already corrupting our culture and our politics and visiting harms on plenty of non-Jews, too. The MAGA right's dalliances with legal vigilantism targeting principally Black and LGBTQ+ persons are by now well understood. Cf. Michaels & Noll, *supra* note 104, at 121 (describing rightwing counterprotesters encouraging drivers to ram into a Black Lives Matter march, explaining that "You can run them over. [Governor Ron] DeSantis said so!").

¹²⁴ Christal Hayes & Ana Faguy, *Man shouting "free Palestine" injures eight in Colorado*, BBC News (June 2, 2025), <https://www.bbc.com/news/articles/cev47ze8vp3o>.

at¹²⁵ or merely attending civic events,¹²⁶ attending preschool classes,¹²⁷ sitting down to Passover seders,¹²⁸ convening in synagogues,¹²⁹ and even voting on federal legislation.¹³⁰

Absent such an intervention, the violence inflicted on a disfavored group, and on a legal regime that insists on the abjuration of favoritism, will continue compounding.

¹²⁵ Grace Gilson, *Jewish Democrats back Michigan AG Dana Neussel's decision to skip state party convention*, Jewish Telegraph Agency (Jul. 31, 2026), <https://www.jta.org/2026/07/31/politics/jewish-democrats-back-michigan-ag-dana-nessels-decision-to-skip-state-party-convention>; *The Toll of Hate*, Chicago Mag. (Oct. 30, 2024), <https://www.chicagotribune.com/2024/10/30/the-toll-of-hate/> (characterizing the harassment of the one Jewish alderperson in the City of Chicago whose public attendees of council meetings “charge[d her] with genocide”).

¹²⁶ Eric Tucker, Michael Kunzelman, & Alana Durkin Richer, *Court papers say suspect in embassy killings declared, “I did it for Palestine, I did it for Gaza”*, Associated Press (May 22, 2025), at <https://apnews.com/article/israel-embassy-jewish-museum-shooting-10307b3b1a2a337e76730736b12ebbc>.

¹²⁷ See *supra* notes 67-71 and accompanying text.

¹²⁸ Gabby Deutch, *Gov. Josh Shapiro now says anti-Jewish hate is a “motivating factor” in arson attack at residence*, Jewish Insider (Oct. 15, 2025), <https://jewishinsider.com/2025/10/gov-shapiro-says-anti-jewish-hate-a-motivating-factor-in-arson-attack-at-governors-residence/>.

¹²⁹ Ayala Or-El, *Pro-Palestinian Protest Turns Violent at Wilshire Boulevard Temple Event*, Jewish Journal (Dec. 5, 2025), <https://jewishjournal.com/community/385349/pro-palestinian-protest-turns-violent-at-wilshire-boulevard-temple/>; Allen Devlin, *Graphic Details Released on Alleged Violent Disruption at NYC Synagogue*, CBS News (Aug. 16, 2026), <https://www.cbsnews.com/newyork/news/central-synagogue-attack-manhattan-larry-montes/>.

¹³⁰ Matthew Shea, *Smith says he was pressured to vote against Israel aid by violent, far-left activists*, Jewish Insider (Jul. 16, 2026), <https://jewishinsider.com/2026/07/smith-says-he-was-pressured-to-vote-against-israel-aid-by-violent-far-left-activists/>; see also U.S. Dep’t of Justice, Department of Justice indicts eight conspirators who threatened University of Michigan officials, businesses, and the Jewish Federation (June 10, 2026), at <https://www.justice.gov/usao-edmi/pr/departments-justice-indicts-eight-conspirators-who-threatened-university-michigan> (alleging that, as part of a campaign of harassment against University of Michigan officials, activists spray-painted the home of a Provost with both Hamas-inspired inverted red triangles and, again, the words “Free Palestine”).