

No. 25-1404

In the Supreme Court of the United States

STANDWITHUS CENTER FOR LEGAL JUSTICE, ET AL.,
Petitioners,

v.

MASSACHUSETTS INSTITUTE OF TECHNOLOGY,
Respondent.

*On Petition for a Writ of Certiorari to the
United States Court of Appeals for the First Circuit*

**BRIEF OF THE MANHATTAN INSTITUTE
AS AMICUS CURIAE
IN SUPPORT OF PETITIONERS**

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QUESTIONS PRESENTED

1. Whether the harassers' subjective discriminatory intent is an element of a hostile environment claim under Title VI.
2. Whether the First Amendment bars a plaintiff from pleading a Title VI hostile environment claim based on "protected speech."

TABLE OF CONTENTS

QUESTIONS PRESENTED.....	i
TABLE OF AUTHORITIES.....	iii
INTEREST OF <i>AMICUS CURIAE</i>	1
SUMMARY OF ARGUMENT	1
ARGUMENT.....	2
I. THE FIRST CIRCUIT IMPERMISSIBLY DREW INFERENCES IN FAVOR OF DEFENDANT-RESPONDENT INSTEAD OF PLAINTIFFS-PETITIONERS.....	2
II. THE FIRST CIRCUIT FAILED TO INTERPRET PETITIONERS' ALLEGATIONS HOLISTICALLY	7
III.THE FIRST CIRCUIT PERPETUATED A CIRCUIT SPLIT ON HOW TITLE VI PLAINTIFFS MUST PLEAD TO SURVIVE A MOTION TO DISMISS	11
CONCLUSION	13

TABLE OF AUTHORITIES

Page(s)

Cases

<i>A.G. v. Elsevier</i> , 732 F.3d 77 (1st Cir. 2013).....	9
<i>Ashcroft v. Iqbal</i> , 556 U.S. 662 (2009)	1, 3, 7, 8
<i>Banks v. Cypress Chase Condo. Assoc’n B, Inc.</i> , 616 F.Supp.3d 1316 (11th Cir. 2022)	8
<i>Bell Atlantic Corp. v. Twombly</i> , 550 U.S. 544 (2007)	1, 3
<i>Braden v. Wal-Mart Stores, Inc.</i> , 588 F.3d 585 (8th Cir. 2009)	8
<i>Chapman v. Oakland Living Center, Inc.</i> , 48 F.4th 222 (4th Cir. 2022)	12
<i>EEOC v. Nat’l Educ. Ass’n</i> , 422 F.3d 840 (9th Cir. 2005)	12
<i>Evergreen Partnering Group, Inc. v. Pactiv Corp.</i> , 720 F.3d 33 (1st Cir. 2013)	4
<i>Garcia-Catalan v. United States</i> , 734 F.3d 100 (1st Cir. 2013)	7, 9
<i>Gartenberg v. Cooper Union for the Advancement of Sci. & Art</i> , 765 F.Supp.3d 245 (S.D.N.Y. 2025) ..	9
<i>Jones v. UPS Ground Freight</i> , 683 F.3d 1283 (11th Cir. 2012)	11
<i>Lounds v. Lincare, Inc.</i> , 812 F.3d 1208 (10th Cir. 2015)	12
<i>Morales-Tanon v. Puerto Rico Electric Power Auth.</i> , 524 F.3d 15 (1st Cir. 2008)	3
<i>Newton v. Dep’t of the Air Force</i> , 85 F.3d 595 (Fed. Cir. 1996)	12

<i>Ocasio-Hernandez v. Fortuno-Burset</i> , 640 F.3d 1 (1st Cir. 2011)	4
<i>Perrone v. Johnson & Johnson</i> , 48 F.4th 166 (3rd Cir. 2022)	3
<i>Schatz v. Republican State Leadership Comm.</i> , 669 F.3d 50 (1st Cir. 2012)	3
<i>StandWithUs Ctr. for Legal Justice v. MIT</i> , 158 F.4th 1 (1st Cir. 2025).....	2, 4, 5, 6, 8, 9, 10, 11
<i>StandWithUs Ctr. for Legal Justice v. MIT</i> , 165 F.4th 97 (1st Cir. 2026) (denial of pet. for reh’g).....	3, 10
<i>StandWithUs Ctr. for Legal Justice v. MIT</i> , 742 F. Supp. 3d 133 (D. Ma. 2024)	4
<i>Stewart v. Evans</i> , 275 F.3d 1126 (D.C. Cir. 2002)....	11
<i>Townsend v. United States</i> , 236 F.Supp.3d 280 (D.C. Cir. 2017).....	8
<i>Vaughn v. Pool Offshore Co.</i> , 683 F.2d 922 (5th Cir. 1982)	12
<i>Wyler Summit Partnership v. Turner Broad. Sys., Inc.</i> , 135 F.3d 658 (9th Cir. 1998).....	3

Other Authorities

<i>Central Bureau of Statistics: Israel’s Population Nears 10 Million</i> , Jewish News Syndicate.....	10
Ilya Shapiro, <i>Lawless: The Miseducation of America’s Elites</i> (2025).....	1
<i>Jewish Population Change</i> , Pew Rsch. Ctr. (June 9, 2025)	5

Linda Gordon, <i>The Second Coming of the KKK: The Ku Klux Klan of the 1920s and the American Political Tradition</i> (2017).....	7
Matthew Segal, <i>The Anti-Zionism Exception</i> , Tablet (Feb. 2026)	7
Norman J.W. Goda, <i>The Genocide Libel: How the World Has Charged Israel with Genocide</i> , Institute for the Study of Contemporary Antisemitism (February 2025)	5
Roy K. Altman, <i>Israel on Trial: Examining the History, the Evidence, and the Law</i> (2026).....	5

INTEREST OF *AMICUS CURIAE*¹

The Manhattan Institute (MI) is a nonprofit public policy research foundation whose mission is to develop and disseminate new ideas that foster greater economic choice and individual responsibility. MI has historically sponsored scholarship and filed briefs opposing regulations that either chill or compel speech. MI's scholars have also been heavily involved in exposing the crisis in our institutions of higher education—and proposing policy solutions. *See, e.g.,* Ilya Shapiro, *Lawless: The Miseducation of America's Elites* (2025).

MI's interest derives from its interest in the uniform enforcement of Title VI. It files this brief because unpredictable, venue-dependent pleading standards create compliance uncertainty for recipients of federal education funds, leaving students' civil rights—especially Jewish students' civil rights—unprotected.

SUMMARY OF ARGUMENT

The First Circuit departed sharply from well-settled federal pleading standards. Instead of accepting the petitioners' factual allegations as true and drawing all reasonable inferences in the non-moving party's favor—as mandated by *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544 (2007) and *Ashcroft v. Iqbal*, 556 U.S. 662 (2009)—the court below systematically resolved factual ambiguities in favor of MIT and evaluated the complaint's allegations in isolation, not holistically. In particular, by ruling that antisemitic conduct could be shielded from liability under antidiscrimination law if

¹ Rule 37 statement: All parties were timely notified of the filing of this brief. No part of this brief was authored by any party's counsel, and no person or entity other than *amicus* funded its preparation or submission.

accompanied by anti-Zionist statements, the First Circuit has created an “anti-Zionist exception” to Title VI.

Furthermore, by requiring petitioners to plead sufficient facts about the subjective intentions of the harassers at the pleadings stage, the First Circuit has entrenched a circuit split over pleading requirements. While numerous circuits apply an objective test to determine whether a hostile environment exists, the First Circuit now demands a threshold showing of an alleged harasser’s mental state prior to discovery. This Court’s review is urgently needed to restore the uniform pleading standards required by Federal Rule of Civil Procedure 8(a)(2) and to clarify that political framing cannot protect discriminatory conduct.

ARGUMENT

I. THE FIRST CIRCUIT IMPERMISSIBLY DREW INFERENCES IN FAVOR OF DE- FENDANT-RESPONDENT INSTEAD OF PLAINTIFFS-PETITIONERS

Amicus does not ask courts to police protected political speech on college campuses, but it is asking this Court to clarify its guidance for lower courts adjudicating 12(b)(6) motions. When race-neutral or political slogans are deployed in tandem with physical assaults, targeted blockades of Jewish students, and harassment near a Hillel center, *see StandWithUs Ctr. for Legal Justice v. Mass. Inst. of Tech.*, 158 F.4th 1,18–19 (1st Cir. 2025), it is at least plausible that those statements cease to be race-neutral. By not interpreting the allegations in the light most favorable to the nonmoving party, the court denied petitioners the opportunity to prove their allegations during the fact-finding phase of litigation. *See StandWithUs Ctr. for Legal Justice v.*

Mass. Inst. of Tech., 165 F.4th 97, 101 (1st Cir. 2026) (denial of pet. for reh’g) (Dunlap, J. concurring). But *Twombly* and *Iqbal* are clear: federal courts must interpret the allegations in the light most favorable to the plaintiffs at the 12(b)(6) stage, and the Court should grant certiorari to reaffirm this point.

Twombly stated that courts must accept plaintiffs’ allegations “on the assumption that all the allegations in the complaint are true (even if doubtful in fact)”, 550 U.S. at 555, and that a well-pleaded complaint may proceed “even if it strikes a savvy judge that actual proof of those facts is improbable.” *Id.* at 556. All that must be pleaded is “enough fact to raise a reasonable expectation that discovery will reveal evidence” of the accuracy of the pleadings. *Id.* at 545. Then, in *Iqbal*, the Court ruled that a complaint must defeat a 12(b)(6) motion to dismiss “when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged.” 556 U.S. at 678. Lower courts agree: it is axiomatic that “[w]hen reviewing a district court’s decision on a motion to dismiss, we accept all well-pleaded allegations as true and draw all reasonable inferences in favor of the non-moving party.” *Perrone v. Johnson & Johnson*, 48 F.4th 166, 169 n.1 (3rd Cir. 2022); see also *Wylar Summit Partnership v. Turner Broad. Sys., Inc.*, 135 F.3d 658, 661 (9th Cir. 1998).

First Circuit precedent requires the same. See *Morales-Tanon v. Puerto Rico Electric Power Auth.*, 524 F.3d 15, 17 (1st Cir. 2008). A court “need not accept every imaginable inference,” *Schatz v. Republican State Leadership Comm.*, 669 F.3d 50 (1st Cir. 2012), but the court is “obligated to view the facts of the complaint in the light most favorable to the plaintiffs, and

to resolve any factual ambiguities in their favor,” *Ocasio-Hernandez v. Fortuno-Burset*, 640 F.3d 1, 17 (1st Cir. 2011). As the First Circuit further explained, “[i]t is not for the court to decide, at the pleading stage, which inferences are more plausible than other competing inferences, since those questions are properly left to the factfinder.” *Evergreen Partnering Group, Inc. v. Pactiv Corp.*, 720 F.3d 33, 45 (1st Cir. 2013).

But in evaluating petitioners’ Title VI claims, the court below inverted that standard, systematically resolving factual ambiguities and inferential leaps in favor of MIT and against the petitioners. The lower court refused to accept well-pleaded allegations of antisemitic speech and conduct, instead finding that the protests did not constitute severe, pervasive harassment based on race or national origin. *StandWithUs*, 158 F.4th at 11. In so doing, the First Circuit differed from the district court, which had accepted petitioners’ well-pleaded allegations of antisemitic speech and conduct, but found that MIT was not deliberately indifferent. *See StandWithUs Ctr. for Legal Justice v. Mass. Inst. of Tech.*, 742 F. Supp. 3d 133 (D. Ma. 2024).

For instance, petitioners’ complaint alleged that protesters’ chanting “from the river to the sea, Palestine will be free” and calling for “intifada revolution” carry genocidal, antisemitic connotations. *StandWithUS*, 158 F.4th at 6, n.1. Petitioners alleged that the slogans amount to calls “to wipe out the Jewish people as such.” *Id.* at 19. By following this Court’s guidance and its own precedent, the court below should have found these allegations legally sufficient at the 12(b)(6) stage: at minimum, these slogans contain language advocating the violent destruction of the state of Israel, which houses nearly half of all Jewish

people. See Conrad Hackett, et al., *Jewish Population Change*, Pew Rsch. Ctr. (June 9, 2025), <https://tinyurl.com/4r7zhfp7>. Such conduct is plausibly antisemitic, and the allegations certainly fulfill the low pleading bar set by Rule 12(b)(6), *Twombly*, *Iqbal*, and First Circuit precedent. Instead, the court usurped the role of the factfinder and failed to make reasonable inferences in favor of the plaintiffs-petitioners, finding it *implausible* that such language could be antisemitic.

There are further examples where the First Circuit refused to draw reasonable inferences in petitioners' favor. Petitioners alleged that accusing Israel of committing genocide against Palestinians is antisemitic. *StandWithUs*, 158 F.4th at 18. The lower court dismissed that claim because a "genocide scholar" had endorsed the same allegation. *Id.* at 19. But this is a contentious subject, and a citation of one scholar's writing proves nothing beyond what that particular scholar believes. Other scholars of law, genocide, and antisemitism have argued that singling out Israel with accusations of genocide is a classic antisemitic blood libel. See, e.g., Norman J.W. Goda, *The Genocide Libel: How the World Has Charged Israel with Genocide*, Institute for the Study of Contemporary Antisemitism (Feb. 2025), <https://tinyurl.com/yhs9723n>; Roy K. Altman, *Israel on Trial: Examining the History, the Evidence, and the Law* (2026) ("And now we have a blood libel repackaged for a twenty-first century audience: the claim that Israel has perpetrated a genocide in Gaza. . . . It's anti-Semitism pure and simple: applying one definition of genocide to the Jewish State and a separate, more lenient definition to everyone else.").

The lower court "reject[ed] plaintiffs' implicit contention that the choice to criticize Israel's actions in

Gaza—rather than, for example, choosing to criticize some other alleged atrocity elsewhere in the world—necessarily manifests antisemitism.” *StandWithUs*, 158 F.4th at 18. But the question is not whether such “criticism” is “necessarily” antisemitic. It is whether *in this case*, based on the particular nature of the criticisms—the language critics employed, the assumptions they relied upon, and the manner in which they expressed them—such expression is *plausibly* antisemitic. Rejecting allegations that protestors fixating on Israel could have been antisemitic is an unwarranted inference in the respondents’ favor.

Even more bizarre, the lower court defended claims of Israeli genocide as political statements because “even prominent Israelis have lodged the same accusation.” *Id.* But claims for anti-black discrimination can be filed against black police chiefs and claims for sexual harassment can be filed against female bosses. Following this Court’s guidance, the First Circuit should not have dismissed the complaint.

Likewise, the First Circuit recognized that a few protesters at MIT celebrated the October 7 massacres of Jewish Israelis. *Id.* But it interpreted these justifications as merely anti-Israel, again refusing to draw reasonable inferences in favor of the non-moving party. *Id.* Doing so would have found that the celebration of the massacre of Jewish people—regardless of citizenship status—is at least plausibly antisemitic.

Thus the lower court created an anti-Zionist exception to federal antidiscrimination law. Hiding behind the coded language of anti-Israel speech is one way that antisemites can disguise their views—and the First Circuit has made that easier. *See id.* at 19 (interpreting slogans only “on [their] face”). By claiming that

antisemitic speech is only a criticism of Israel, and not targeted at all Jews, they seek to claim that their speech is merely political and not also antisemitic. See Matthew Segal, *The Anti-Zionism Exception*, Tablet (Feb. 2026), <https://tinyurl.com/24ww9v6b> (explaining how the First Circuit’s “anti-Zionism exception” “obscures that, in context, anti-Zionism can involve discrimination based on national origin and race.”).

But giving a free pass to antisemites in this way would be akin to saying that the KKK was merely a political organization, because it endorsed candidates for office and took positions on political topics—even ones not explicitly tied to race, such as opposing Catholic schools. See Linda Gordon, *The Second Coming of the KKK: The Ku Klux Klan of the 1920s and the American Political Tradition* (2017). Similarly, a Confederate flag could be said to be a political symbol arguing for states’ rights—but it means something different when waved outside a Black Lives Matter protest. The Court should clarify recurring questions like these.

II. THE FIRST CIRCUIT FAILED TO INTERPRET PETITIONERS’ ALLEGATIONS HOLISTICALLY

Parsing allegations individually, rather than holistically, is a departure from standard court practice at the 12(b)(6) stage—but this is exactly what the lower court did. *Iqbal*, 556 U.S. at 679. Such an approach sets a high bar to Title VI antisemitic complaints, all but ensuring that antidiscrimination cases will suffer from heightened pleading requirements, despite even First Circuit precedent warning against doing just that. *Garcia-Catalan v. United States*, 734 F.3d 100, 103 (1st Cir. 2013) (specifying that it is “manifestly improper to import trial-stage evidentiary burdens into

the pleading standards.”). The First Circuit’s error even implicates substantive law. Under Title VI, a school can be held liable if it was “‘deliberately indifferent’ to ‘severe, *pervasive* and objectively offensive’ harassment.” *StandWithUS*, 158 F. 4th at 11 (quoting *M.L. ex rel. D.L. v. Concord Sch. Dist.*, 86 F. 4th 501, 511 (1st Cir. 2023)) (emphasis added). Applying a “pervasive” standard implies looking at the facts as a whole to determine the presence of harassment.

In *Iqbal*, this Court advised that evaluating complaints for legal sufficiency under Rule 12(b)(6) is a “context-specific task that requires the reviewing court to draw on its judicial experience and common sense.” 556 U.S. at 679. Lower courts have followed this rule: complaints must be interpreted holistically at the 12(b)(6) stage, which means evaluating them under the totality of the circumstances, rather than individually parsing the allegations. *See Banks v. Cypress Chase Condo. Assoc’n B, Inc.*, 616 F.Supp.3d 1316, 1321 (11th Cir. 2022) (“No one factor is dispositive—courts are to consider them in their totality.”); *Braden v. Wal-Mart Stores, Inc.*, 588 F.3d 585, 596 (8th Cir. 2009) (“application of Rules 8 and 12(b)(6) is a ‘context-specific task,’ and our ultimate conclusions rest on the totality of the specific allegations in this case” (citing *Iqbal*, 556 U.S. at 679)); *see also Townsend v. United States*, 236 F.Supp.3d 280, 298 (D.D.C. 2017) (“Thus, at the motion-to-dismiss stage, the guiding lodestar is whether, assuming the truth of the factual allegations, *taken collectively*, whether the inferences of discrimination drawn by the plaintiff are reasonable and plausibly supported.”) (citations omitted) (emphasis added). The First Circuit itself has explained that “the critical question is whether the claim, viewed *holistically*, is made plausible by the cumulative effect of

the factual allegations[.]” *A.G. v. Elsevier*, 732 F.3d 77, 82 (1st Cir. 2013) (emphasis added).

A holistic evaluation of the legal sufficiency of a complaint is incompatible with a parsimonious, “mechanical” review of individual allegations. *Garcia-Catalan*, 734 F.3d at 101. But the court below consistently refused to interpret specific allegations within their entire context. Chanting “from the river to the sea, Palestine will be free,” in the context of “the deadliest massacre of Jews since the Holocaust in a manner that reasonably appears to celebrate and glorify that same violence,” may plausibly support “an inference of animus towards Jews.” *Gartenberg v. Cooper Union for the Advancement of Sci. & Art*, 765 F.Supp.3d 245, 269 (S.D.N.Y. 2025). Those phrases and descriptions appeared in a case with markedly similar facts to the instant case. There, the district court faced the same issues but addressed the facts in the complaint more holistically. The court noted in particular that the slogan “from the river to the sea,” “which refers to the land between the Jordan River and the Mediterranean Sea, where roughly half of the world’s Jewish population resides—has recently been described in a bipartisan resolution passed by the House of Representatives as antisemitic precisely because it suggests ‘the eradication of the State of Israel and the Jewish people.’” *Id.* at 269 (quoting H.R. 894, 118th Cong. (2023)). Although the slogan plausibly carries antisemitic content by itself, the context only enhances that inference—shouted while an academic department at MIT held an event for a writer who wrote online, “Come on settlers, we will slaughter you . . . What Hitler did to you was a joke.” *StandWithUs*, 158 F.4th at 8. Of course, Hitler did not slaughter “settlers.” Protesters calling for the destruction of a state that is 74% Jewish in conjunction

with campus voices belittling antisemitic genocide appears, in context, more than plausibly antisemitic. See *Central Bureau of Statistics: Israel's Population Nears 10 Million*, Jewish News Syndicate, <https://ti-nyurl.com/747d554j> (last visited July 9, 2026).

Nor was this the only instance of the First Circuit's impermissibly "deconstructing the events and looking at them individually, rather than as a whole." *Stand-WithUs*, 165 F.4th at 101 n.2 (denial of pet. for reh'g) (Dunlap, J. concurring). Under a totality-of-the-circumstances approach—as required by Rule 12(b)(6)—the panel should have considered how supposedly race-neutral, political speech coexisted with well-pleaded allegations of protesters shoving a Jewish student, *StandWithUs*, 158 F.4th at 7, protesters excluding another Jewish student from a university lobby and lawn because of her race and national origin, *id.* at 7, and the placement of a protest encampment adjacent to a Hillel center after a visiting author urged students "to go to MIT Hillel and confront MIT's *Jewish* students there about Gaza." *Id.* at 8 (emphasis added).

The last example is particularly instructive as to how the lower court erred. Heeding the visiting author's call, protesters next to the Hillel held up signs calling Zionism a genocidal, racist ideology that must be extirpated. *Id.* at 8–9. This action deterred some Jewish students from celebrating Passover at the Hillel. *Id.* at 9. Despite these well-pleaded allegations, the court found that plaintiffs had alleged "no facts to plausibly indicate" that the protesters chose the space adjacent to the Hillel for any reason other than "for its prominent location and preferred terrain for tents." *Id.* at 19–20. But petitioners alleged that a prominent author had urged students to set up encampments at the

Hillel to “confront MIT’s *Jewish* students.” *Id.* at 8 (emphasis added). By interpreting the complaint’s allegations holistically, the First Circuit should have found that the encampment’s location was a plausible allegation of antisemitic conduct. It should have likewise found that the totality of the circumstances amounted to a plausible allegation of antisemitic harassment at MIT.

III. THE FIRST CIRCUIT PERPETUATED A CIRCUIT SPLIT ON HOW TITLE VI PLAINTIFFS MUST PLEAD TO SURVIVE A MOTION TO DISMISS

Title VI requires the protection of people against discrimination “on the ground of race, color, or national origin” from any program receiving federal financial assistance. U.S.C. §2000d. Adopting an intent-based approach to showing discrimination, the First Circuit held that petitioners did not plausibly allege that antisemitic and anti-Zionist speech “were driven by antisemitism.” *StandWithUs*, 158 F.4th at 18.

This holding has perpetuated a circuit split about what is needed to show liability under Title VI. The Eleventh Circuit, *Jones v. UPS Ground Freight*, 683 F.3d 1283, 1297 (11th Cir. 2012), and the D.C. Circuit, *Stewart v. Evans*, 275 F.3d 1126, 1133 (D.C. Cir. 2002), agree with the First Circuit that the discriminatory intent of the harassers must be satisfactorily alleged at the pleadings stage. In contrast, five circuits hold that the discriminatory intent of individuals perpetrating harassment is not an element in antidiscrimination claims, instead focusing on whether there was objective discrimination and deliberate indifference of the institution receiving federal funds. *See Chapman v. Oakland Living Center, Inc.*, 48 F.4th 222 (4th Cir.

2022); *Vaughn v. Pool Offshore Co.*, 683 F.2d 922, 925 n.3 (5th Cir. 1982); *EEOC v. Nat’l Educ. Ass’n*, 422 F.3d 840, 844 (9th Cir. 2005); *Lounds v. Lincare, Inc.*, 812 F.3d 1208 (10th Cir. 2015); *Newton v. Dep’t of the Air Force*, 85 F.3d 595, 599 (Fed. Cir. 1996).

Rule 8(a)(2) requires a complaint to include “a short and plain statement of the claim showing that the pleader is entitled to relief.” But the subjective rule adopted by the First Circuit would require lengthy complaints that allege facts concerning the states-of-mind of speakers as well as the severity of the hostile environment and the alleged indifference of the institution. Such mental states are hard to show at the pleadings stage, transforming Rule 12(b)(6) into a difficult test for many plaintiffs to pass, in contravention of *Twombly* and *Iqbal*.

The First Circuit’s insistence on treating all plausibly antisemitic allegations as “only” anti-Zionist further highlights this difficulty: any plausibly antisemitic allegation could easily be disguised as anti-Zionist *ex post facto*. Discrimination on the basis of race or national origin could escape liability merely because the discriminators claim to have the intent of only targeting their political opponents—who just happen to all have the same racial characteristics. In such an environment discovery would be necessary to find the facts, but, given the heightened pleading standards created by the First Circuit, antisemitic antidiscrimination complaints would hardly ever reach discovery. Antisemitic discrimination would receive a free pass as long as a respondent knows to say “no, I was just engaged in anti-Zionism” after being haled into court.

The intention-based approach to Title VI violations that the First Circuit has proposed would advance the

summary-judgment stage into the pleadings, having the effect of perverting the course of litigation from the well-understood progression of initial allegations to the discovery of evidence and then to the finding of fact. This premature summary-judgment mechanism would deepen inconsistent pleading standards across circuits—allowing antidiscrimination claims to sail through the pleadings and discovery in courts that adopt the objective test, while rendering them still-born in courts that adopt the intentional test.

The Court should resolve this circuit split.

CONCLUSION

By construing disputed factual allegations in favor of respondents, refusing to view the petitioners' allegations under the totality of the circumstances, and forcing a premature evaluation of subjective intent, the First Circuit misapplied Rule 12(b)(6) and created a heightened pleading regime that shields discrimination under the guise of political speech.

For the foregoing reasons, and those stated in the petition, the Court should grant certiorari.

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