



October 15, 2020

VIA EMAIL

Ms. Kimberly Richey
Acting Assistant Secretary for Civil Rights
U.S. Department of Education
Office for Civil Rights
400 Maryland Avenue, SW
Washington, D.C. 20202-1100

Dear Ms. Richey:

The Zionist Organization of America (ZOA) files this complaint under Title VI of the Civil Rights Act against the City University of New York School of Law (CUNY Law), alleging that CUNY Law failed to respond appropriately and effectively to a hostile antisemitic environment in violation of Title VI. Prior to filing this complaint, the ZOA attempted to resolve this matter directly with CUNY Law, without success.

A CUNY Law Student Threatens to Light Someone on Fire for Expressing Support for Israel

Last month a deeply troubling video came to light which, [on information and belief](#), was recently uploaded to TikTok by Nerdeen Kiswani, a student at CUNY Law. A female voice is heard in the video (the woman is not seen), saying, “I hate your shirt, I’m gonna set it on fire. I’m serious.” As she makes this threat, the woman ignites a lighter and holds the flame close to a man wearing a sweatshirt bearing the emblem of the Israel Defense Forces (IDF). You can view the video here: <https://www.algemeiner.com/2020/09/30/cuny-law-school-condemns-antisemitism-then-backtracks-amid-controversy-over-idf-sweatshirt-video/>.

After a group called StopAntisemitism.org posted the video on Twitter and identified the woman in the video as Nerdeen Kiswani, the ZOA wrote to Mary Lu Bilek, Dean of CUNY Law, to report suspected misconduct by Ms. Kiswani, in accordance with CUNY’s [Policy on Reporting of Alleged Misconduct](#). In its September 24, 2020 letter to the Dean, the ZOA urged CUNY Law to investigate. If the investigation revealed that Ms. Kiswani did in fact threaten to set fire to another individual simply because that individual expressed support for Israel, then the ZOA urged CUNY Law to condemn Ms. Kiswani and her conduct, and expel her from CUNY Law, consistent with CUNY policies. In addition, the ZOA urged CUNY Law to report Ms. Kiswani to law enforcement because she may have violated New York’s criminal laws.

Apparent Violation of CUNY Rules and Policies and the Law

The ZOA identified for the Dean several CUNY rules and policies that Ms. Kiswani appears to have violated, including the following:

- The Law School’s [Policy on Diversity](#), which expresses its commitment to “fostering respect for the rich diversity of our community, our city, our state, our nation, and, indeed, the world.” CUNY Law places such a premium on compliance with this policy that it encourages that any violation be immediately reported so that reports can be “investigated thoroughly so that appropriate action may be taken.”
- The CUNY Rules of Conduct, or the [Rules for Maintenance of the Public Order](#), which require that:

“A member of the academic community shall not intentionally obstruct and/or forcibly prevent others from the exercise of their rights,” which would include the right to wear what one wants and to freely express one’s support for Israel and the IDF, free from threats of physical violence and harm.

“Each member of the academic community or an invited guest has the right to advocate his/her position without having to fear abuse, physical, verbal, or otherwise from others supporting conflicting points of view.”

“No individual shall have in his/her possession . . . any . . . dangerous instrument or material that can be used to inflict bodily harm on any individual. . . . Nor shall any individual have in his/her possession any other instrument or material which can be used and is intended to inflict bodily harm on an individual . . .”

The ZOA also advised Dean Bilek that Ms. Kiswani’s conduct could be criminal. Under New York law, Ms. Kiswani could be culpable under New York Penal Law § 240.30(3) (aggravated harassment in the second degree); and § 120.15 (menacing in the third degree).

In addition, the ZOA furnished Dean Bilek with information about Ms. Kiswani’s frightening [record](#) of celebrating terrorism, calling for violence against Israelis, glorifying and supporting terrorists, and spreading hatred of Israel on social media. For example, in January 2017, after a Palestinian Arab terrorist drove a truck and deliberately ploughed into four Israeli soldiers, killing them and injuring more than a dozen other people, Ms. Kiswani [applauded](#) that Palestinian Arabs were giving out sweets in celebration of this deadly, unprovoked terrorist act.

CUNY Law’s Inadequate Response to the Violent Threat

By the time the ZOA sent its letter to the Dean, CUNY Law had responded to Ms. Kiswani’s violent threat by posting a message on Twitter, stating that CUNY Law “[stands against hate and antisemitism](#).” There was no condemnation of Ms. Kiswani’s conduct or any evidence that she would be held accountable for threatening violence in violation of CUNY rules and policies and the law. Instead, the message downplayed the seriousness and dangerousness of the conduct depicted in the video, describing it as “[provocative and hurtful to many in our community and beyond who have seen it](#).”

In fact, as the ZOA wrote to Dean Bilek, threatening to light someone on fire because they support Israel is not just “provocative and hurtful.” It is criminal. And it is frightening and dangerous to every Jew – particularly at CUNY Law – who supports the Jewish state.

Dean Bilek responded to the ZOA’s letter in an email on September 27, 2020. She advised us that CUNY Law was “working on a response.”

By October 1, 2020, CUNY Law had not responded. In the meantime, the media [reported](#) that CUNY Law had withdrawn its lukewarm statement against hate and antisemitism, and actually apologized for issuing the statement – calling it a “mistake.”

Also, instead of condemning Ms. Kiswani’s violent threat, the Dean justified it, wrongly claiming that Ms. Kiswani had simply “[exercised her First Amendment right to express her opinion](#).” Threatening to light someone on fire for supporting Israel was not the expression of an opinion protected under the First Amendment. Also, in disregard of the [International Holocaust Remembrance Alliance \(IHRA\) working definition of antisemitism](#), the Dean failed to recognize the connection between anti-Israelism and antisemitism, [stating](#), “I know the difference between opposition to Israel’s armed forces (or Israel’s policies towards Palestine) and antisemitism, and the student’s post was clearly expressing the former.”

The ZOA raised CUNY Law’s troubling backtracking with Dean Bilek in an email on October 1, 2020, and requested that she confirm the steps that CUNY Law was taking in response to Ms. Kiswani’s violent threat. In a letter dated September 30, 2020, and emailed to the ZOA the next day, Dean Bilek wrote: “The City University of New York and its Law School take seriously our obligations to comply with the law and adhere to the University’s policy consistently and uniformly. In addition to the policies you mention in your letter, the Law School takes seriously its obligations under FERPA and under the First Amendment.”

The Dean’s response did not allay concerns about CUNY’s inadequate response to Ms. Kiswani’s conduct. Based on CUNY Law’s withdrawal of its weak statement against hate and antisemitism, its apology for issuing the statement, and its justification of Ms. Kiswani’s conduct as an exercise of her rights under the First Amendment, it seems obvious that CUNY Law decided not to investigate and sanction Ms. Kiswani. Dean Bilek referred to CUNY Law’s obligations under FERPA (the Family Educational Rights and Privacy Act), but we do not believe that revealing CUNY Law’s decision to excuse Ms. Kiswani’s conduct would amount to a violation of FERPA. Also, the Dean’s apparent justification of Ms. Kiswani’s physical threat as an exercise of her First Amendment rights was wrong. There is no First Amendment right to light someone on fire because you do not like their views.

Palestine Legal, an advocacy group with a history of supporting anti-Israel students and student groups, is now supporting Ms. Kiswani, and has tried to diminish the seriousness of her actions. Palestine Legal [claims](#) that the video was filmed three years ago, before Ms. Kiswani was a CUNY Law student, that the man wearing the IDF sweatshirt was a friend of Ms. Kiswani and purportedly did not know that he was “wearing the logo of an occupying force responsible for widespread violence against Palestinians.” Palestine Legal also claims that the man was not a CUNY Law student and was not threatened by Ms. Kiswani’s “jest.”

Even if all of Palestine Legal's claims are true, and even if the video was a sick joke or some sort of hoax, Ms. Kiswani did not disclose any of that when she recently posted the video. She plainly sought to send a message that is frightening and dangerous to every Jew – particularly Jews at CUNY – who supports the Jewish state: If you express your Jewish identity by expressing your support for Israel, then you could be physically threatened and violently attacked. CUNY Law's response to the video exacerbated Ms. Kiswani's intimidating conduct by sending the message to the CUNY community that you can make violent threats against Israel supporters and CUNY Law will justify your conduct and not hold you accountable.

It is impossible to imagine that CUNY Law would have responded the same way had one of its students posted a video in which the student threatens to light another person on fire because that person is wearing a Black Lives Matter sweatshirt. Joke or no joke, we believe that CUNY Law would have immediately publicly condemned the perpetrator and his/her conduct, sanctioned the perpetrator, and issued a forceful statement that CUNY Law does not tolerate anti-Black racism – and would have been right to do so.

CUNY Law has a History of Failing to Protect Jewish Students from a Hostile Antisemitic Environment

This is not the first time that CUNY Law has tolerated conduct that poses a threat to Jewish students who express their Jewish identity by showing their support for Israel. Rafaella Gunz started as a student at CUNY Law in September 2019 and, as she heartbreakingly [wrote](#), she faced unrelenting harassment simply because she is Jewish and supports the right of Jews to live in their ancestral homeland. She was perceived by other students as “a danger” merely because she “mentioned the Israel Defense Forces in a borderline positive way.”

One of Ms. Gunz's teaching assistants was a member of the anti-Israel, antisemitic hate group that calls itself “Students for Justice in Palestine” (SJP) – the same group that Ms. Kiswani is [involved](#) in. The teaching assistant confronted Ms. Gunz, challenged her pro-Israel views, and made it clear that Zionists – those who support the right of Jews to live in their religious and ancestral homeland – were not welcome at CUNY Law. “You should have known what you were getting into by coming here,” the teaching assistant [reportedly told](#) Ms. Gunz. In other words, if you are Jewish and express your support for the Jewish state of Israel, then you should expect – and accept – that CUNY Law would be hostile to you.

After her article was published, Ms. Gunz endured a “[campaign of harassment](#)” at CUNY Law during which she was falsely accused of being Islamophobic, a racist, and a liar. She was also targeted in a [petition](#) that bore the heading, “Solidarity with Palestine at CUNY Law” and the title, “Student Law Student groups, Students, Alumni and Faculty stand with SJP and Palestinian students.”

The petition accused “a subset of Zionists” of “choos[ing] to weaponize the genuine threats of anti-Semitism elsewhere in our society as a tactic to repress activism and harass and threaten Palestinian students and Muslim students more broadly.” Although the petition did not name her, Ms. Gunz understood that the attack on “Zionist activists” was an attack on her, since she was the only Jewish student at CUNY Law expressing her Jewish identity by supporting Israel.

The petition was endorsed by numerous student groups, students, alumni and even faculty – so many that Ms. Gunz “broke down.” Her grades suffered, she had difficulty focusing and she experienced panic attacks. She reached out for help and support at CUNY Law, but reported that “no one helped me, no one came to my defense. Nothing.” Ultimately, she left the school.

CUNY Law sent the message to Ms. Gunz – and everyone else at CUNY Law – that if you are Jewish and express your Jewish identity by supporting the Jewish state of Israel, you are not welcome at the school. Then, CUNY Law sent the message to the entire community that it is acceptable to physically threaten someone with violence simply because they express their support for Israel. CUNY Law is not just tolerating a hostile antisemitic learning environment; it is also legitimizing and facilitating it, in violation of Title VI of the Civil Rights Act.

We respectfully urge you to investigate whether CUNY Law is living up to its legal obligations under Title VI and if it is not – as we believe – then hold the school accountable.

We would be pleased to answer any questions and furnish you with additional information, including but not limited to our written exchanges with CUNY Law. We are reachable by email (Morton Klein at mklein@zoa.org, and Susan Tuchman at stuchman@zoa.org) and by phone at (212) 481-1500.

Thank you and we look forward to hearing from you.

Respectfully,



Morton A. Klein
National President



Susan B. Tuchman, Esq.
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