

# No. 25-14171

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## IN THE UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT

PRESTON DAMSKY,

*Plaintiff-Appellee,*

v.

CHRIS SUMMERLIN, IN HIS OFFICIAL CAPACITY AS DEAN OF  
STUDENTS OF THE UNIVERSITY OF FLORIDA

*Defendant-Appellant.*

Appeal from the United States District Court  
for the Northern District of Florida, Gainesville Division

No. 1:25-cv-00275-AW-MAF

### **MOTION OF THE LOUIS D. BRANDEIS CENTER FOR HUMAN RIGHTS UNDER LAW FOR LEAVE TO FILE AN AMICUS BRIEF IN SUPPORT OF APPELLANT**

**The Louis D. Brandeis Center  
for Human Rights Under Law**

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*Attorneys for Amicus Curiae*

## **CERTIFICATE OF INTERESTED PERSONS**

Pursuant to 11th Cir. R. 26.1-1 through 26.1-3, *Amicus Curiae* The Louis D. Brandeis Center for Human Rights Under Law certifies by undersigned counsel the following may have an interest in the outcome of this case:

- a. Galchus, Mollie
- b. Lerman, L. Rachel
- c. Rosen, Richard
- d. The Louis D. Brandeis Center Coalition to Combat Anti-Semitism Inc.
- e. The Louis D. Brandeis Center for Human Rights Under Law

Date: February 9, 2026

The Louis D. Brandeis Center  
for Human Rights Under Law

/s/ L. Rachel Lerman  
L. Rachel Lerman  
Counsel for *Amicus Curiae*

## **CORPORATE DISCLOSURE STATEMENT**

Pursuant to Federal Rule of Appellate Procedure 26.1, *Amicus Curiae* The Louis D. Brandeis Center for Human Rights Under Law certifies that it is a non-partisan, non-profit 501(c)(3) corporation, has no parent corporation, and there is no publicly held corporation that owns 10% or more of its stock.

Date: February 9, 2026

The Louis D. Brandeis Center  
for Human Rights Under Law

/s/ L. Rachel Lerman  
L. Rachel Lerman  
Counsel for *Amicus Curiae*

## MOTION FOR LEAVE TO FILE *AMICUS CURIAE* BRIEF

The Louis D. Brandeis Center for Human Rights Under Law (the Brandeis Center) respectfully moves to file the attached *amicus curiae* brief in support of Appellant Chris Summerlin, pursuant to Federal Rule of Appellate Procedure 29(a) and Circuit Rule 29-1.

On December 30, 2025, counsel for the Brandeis Center asked Appellee’s consent, via e-mail, if they would consent to our filing an *amicus* brief in support of Appellant. The Brandeis Center’s counsel explained that the proposed brief would address (i) Appellee’s “pattern of conduct and rhetoric and its effect on Jewish students and faculty at the University of Florida”; and (ii) “a school’s responsibility to keep its community safe when it is on notice of disruption and/or a potential threat.” On December 31, 2025, Appellee’s counsel sent an email opposing the request, stating that “the areas you outline are separate from and not relevant to the two main legal issues before court.” The Brandeis Center submits that these points are key to the legal issues, namely, whether Mr. Damsky’s statement was a true threat or created a substantial disruption in the context in which it was delivered and received, and whether the school’s decision to expel Mr. Damsky should be accorded significant deference given the careful attention to process and to the context for its decision, including Mr. Damsky’s pattern of disruptive conduct and escalating rhetoric during his two years at the University of Florida Law School. Appellee’s

counsel having opposed our request to file an *amicus* brief in this case, the Brandeis Center states as follows, in support of this Motion:

The Brandeis Center is a nonprofit, non-partisan organization established to advance the civil and human rights of the Jewish people and promote justice for all. The Brandeis Center’s mission includes ensuring that Jewish students and faculty on a college campus are not threatened on the basis of their Jewish identity or prevented from participating in education and employment opportunities afforded students and faculty at the college. To this end, the Brandeis Center engages in research, education, and legal advocacy to combat anti-Semitism on college and university campuses as well as in K-12 schools, the workplace, and other contexts. *See* [www.brandeiscenter.com](http://www.brandeiscenter.com).

The Brandeis Center’s *amicus* brief is filed on behalf of The Louis D Brandeis Center Coalition to Combat Anti-Semitism Inc. (the Coalition), a national membership organization whose members support the Brandeis Center’s mission. The Coalition’s members consist of individuals who have personally been aggrieved by, or have by association been impacted by, anti-Semitism and discrimination.

In response to Mr. Damsky’s statements, including one asserting that “Jews must be abolished by any means necessary,” and the district court’s preliminary injunction order allowing him to return to campus now stayed by this Court, 140 members of the

University of Florida (UF) community have joined the Coalition to ensure their voices are heard by this Court.

The Brandeis Center has a specific interest in ensuring that Jewish students and faculty are not harassed or threatened on the basis of their Jewish identity or prevented from taking advantage of all education and employment opportunities afforded students and faculty generally. As detailed more fully in its proffered brief, the Brandeis Center seeks to ensure that this Court is fully aware of the substantial fear and disruption that Mr. Damsky's continuing presence on campus will generate if the district court's preliminary injunction is not reversed.

The proposed amicus brief draws on the Brandeis Center's experience with and expertise in anti-Semitism, particularly in higher education, to explain how Damsky's post stating that "[a]ll Jews must be abolished by any means necessary" constituted a true threat and was therefore outside First Amendment protection.

The proffered brief discusses (i) the effect of Damsky's speech on the University of Florida Law School's Jewish community; (ii) the backdrop of pervasive campus violence and anti-Semitic attacks against which the reasonableness of the University's response to Damsky's violent statements must be assessed; (iii) Damsky's escalating threatening speech targeting Jews, both before and after his statement that "Jews must be abolished by any means

necessary”; and (iv) the requisite deference given to schools to determine how to ensure school safety and access to their educational and employment opportunities.

To the Brandeis Center’s knowledge, no other amici are filing briefs that may raise similar points. The Brandeis Center has sought to avoid repeating arguments or factual statements in Appellant Summerlin’s Opening Brief.

For the foregoing reasons, the Brandeis Center respectfully requests leave to file the attached *amicus* brief.

Date: February 9, 2026

**The Louis D. Brandeis Center  
for Human Rights Under Law**

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## CERTIFICATE OF COMPLIANCE

This document complies with the word limit of Federal Rule of Appellate Procedure 27(d)(2), because, excluding the parts of the document exempted by Federal Rule of Appellate Procedure 32(f), this document contains 753 words.

This document complies with the typeface requirements of Federal Rule of Appellate Procedure 32(a)(5) and the type-style requirements of Federal Rule of Appellate Procedure 32(a)(6), and 11th Cir. R. 27-1(a)(10), because it has been prepared in a proportionally spaced typeface using Microsoft Word in Times New Roman 14-point font.

Date: February 9, 2026

The Louis D. Brandeis Center  
for Human Rights Under Law

/s/ L. Rachel Lerman

L. Rachel Lerman  
Counsel for *Amicus Curiae*

### **CERTIFICATE OF SERVICE**

Pursuant to Rule 25(d) of the Federal Rules of Appellate Procedure, I hereby certify that on January 19, 2026, I electronically filed the foregoing Motion For Leave To File An *Amicus Curiae* Brief, with the Clerk of the Court for the U.S. Court of Appeals for the Eleventh Circuit by using the appellate CM/ECF system, which will send a notice of electronic filing to all parties in the case via all ECF-registered counsel.

Date: February 9, 2026

The Louis D. Brandeis Center  
for Human Rights Under Law

/s/ Gail Tynkov  
Gail Tynkov

# No. 25-14171

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### **PROPOSED BRIEF OF *AMICUS CURIAE* THE LOUIS D. BRANDEIS CENTER FOR HUMAN RIGHTS UNDER LAW IN SUPPORT OF APPELLANT SUMMERLIN**

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Date: February 9, 2026

The Louis D. Brandeis Center  
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/s/ L. Rachel Lerman

L. Rachel Lerman

Counsel for *Amicus Curiae*

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Pursuant to Federal Rule of Appellate Procedure 26.1, *Amicus Curiae* The Louis D. Brandeis Center for Human Rights Under Law certifies that it is a non-partisan, non-profit 501(c)(3) corporation, has no parent corporation, and there is no publicly held corporation that owns 10% or more of its stock.

Date: February 9, 2026

The Louis D. Brandeis Center  
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/s/ L. Rachel Lerman

L. Rachel Lerman

Counsel for *Amicus Curiae*

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## INTEREST OF *AMICUS CURIAE*

*Amicus Curiae* The Louis D. Brandeis Center for Human Rights Under Law (the Brandeis Center) is a nonprofit, non-partisan organization established to advance the civil and human rights of the Jewish people and promote justice for all.<sup>1</sup> The Brandeis Center’s mission includes ensuring that Jewish students and faculty on a college campus are not threatened on the basis of their Jewish identity or prevented from participating in education and employment opportunities afforded students and faculty at the college. To this end, the Brandeis Center engages in research, education, and legal advocacy to combat anti-Semitism on college and university campuses as well as in K-12 schools, the workplace, and other contexts. See [www.brandeiscenter.com](http://www.brandeiscenter.com).

The Brandeis Center’s *amicus* brief is filed on behalf of The Louis D Brandeis Center Coalition to Combat Anti-Semitism Inc. (the Coalition), a national membership organization whose members support the Brandeis Center’s mission. The Coalition’s members consist of individuals who have personally been aggrieved by, or have by association been impacted by, anti-Semitism and

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<sup>1</sup> This brief was authored and funded solely by the Brandeis Center. No party, party’s counsel, or any other person contributed money to fund the preparation or submission of this brief. FRAP 29(a)(4)(e).

discrimination. The Coalition includes 140 members of the University of Florida (UF) community, including students and faculty.

The Brandeis Center’s brief seeks to ensure that this Court is fully aware of the substantial fear and disruption that Mr. Damsky’s continuing presence on campus will generate if the district court’s preliminary injunction is not reversed. The brief also draws on the Brandeis Center’s experience with and expertise in anti-Semitism, particularly in higher education, to explain how Mr. Damsky’s post stating that “[a]ll Jews must be abolished by any means necessary” constituted a true threat and was therefore outside First Amendment protection.

### SUMMARY OF ARGUMENT

On March 21, 2025, during his fourth semester at the University of Florida Levin College of Law (UF Law), Mr. Damsky posted on X:

My position on Jews is simple: whatever Harvard professor Noel Ignatiev meant by his call to ‘abolish the White race by any means necessary’ is what I think must be done with Jews. ***Jews must be abolished by any means necessary.*** *Damsky v. Summerlin*, No. 1:25-CV-275-AW-MAF, 2025 WL 3282519, at \*2 (N.D. Fla. Nov. 24, 2025) (“PI Order”) (emphasis added).

The post went viral. Unsurprisingly, many in the Jewish community at UF Law took the final sentence as a threat, given its context, namely, Mr. Damsky’s pattern of escalating rhetoric advocating for racial violence and the community’s heightened awareness of anti-Semitic incidents, including physical assault, taking place on college campuses across the country in the wake of Hamas’ October 7,

2023, massacre of Israeli Jews. The post was not only likely to substantially disrupt the already uneasy UF campus, it did so, necessitating increased safety measures.

In response to the post, its context, and the disruption affecting the UF campus, the UF Officials Board (the UF Board) held a disciplinary hearing in accordance with school rules. It considered lengthy testimony by Jewish and non-Jewish students and faculty, each of whom Mr. Damsky had a chance to confront, concerning the effect Mr. Damsky's rhetoric had on them and the campus generally. Appellant Chris Summerlin, Dean of Students at UF, ultimately accepted the Board's recommendation that Mr. Damsky should be expelled, based on its reasoned determination that the post was a true threat and/or that it and other incidents of speech and conduct on Mr. Damsky's part were creating a substantial disruption on campus. For either reason (or both), the UF Board and Dean Summerlin properly concluded that Mr. Damsky's post was not subject to First Amendment protection.

The district court disagreed. It ruled that Mr. Damsky was likely to prevail on the merits based on its own conclusion that the call to abolish Jews "by any means necessary" was neither a true threat nor one likely to effect a substantial disruption on campus. The district court's cavalier dismissal of the context and effect on the UF Law community ignores both the law and the practical experience

of Jews on college campuses and substitutes the court’s opinion for the reasoned decision of Appellant Summerlin.

This Court recently granted Appellant Summerlin a stay of the district court’s preliminary injunction order. *Damsky v. Sutherland*, No. 25-14171, 2026 WL 75122 (11th Cir. Jan. 8, 2026) (“Stay Order”). In granting the stay, a majority of the three-judge panel ruled that appellant, not appellee Damsky, is likely to succeed on the merits because his statement that “Jews should be abolished by any means necessary” is not protected speech. *Id.* at \*1. The school “was allowed to regulate Damsky’s speech because, particularly when read in context, his statements were reasonably interpreted as a call for extralegal violence that caused a serious disruption to other students’ educational experiences and the school’s ability to provide its services.” *Id.*

The Brandeis Center agrees with the majority’s conclusion. We propose to file this *amicus* brief to give affected members of the UF community—140 of whom have joined the Brandeis Center’s Coalition—to flesh out some of the critical ways in which the district court erred. Specifically, we discuss the context in which Mr. Damsky asserted that “Jews must be abolished by any means necessary,” including Mr. Damsky’s pattern of making anti-Semitic and racist statements, both before and after this threatening post, and the UF Law Jewish community’s keen awareness of rising anti-Semitism, especially on college

campuses, in the aftermath of Hamas’ brutal October 7, 2023, attack on Israel—manifesting as violence, threats, harassment, discrimination, retaliation, ostracization, and exclusion of Jews from academic spaces. The *amicus* brief also discusses the legal test for true threat, which the district court misapprehended, and which this Court did not reach in its Stay Order.

## ARGUMENT

### **I. THE DISTRICT COURT’S SUBSTANTIAL DISRUPTION ANALYSIS FAILS BECAUSE IT DISREGARDS THE CONTEXT IN WHICH MR. DAMSKY CALLED FOR “JEWS [TO] BE ABOLISHED BY ANY MEANS NECESSARY.”**

#### **A. The district court erred in failing to consider the factual context in which Mr. Damsky’s statements are made and received.**

The U.S. Supreme Court and this Court have repeatedly stressed that context is critical to school officials’ disciplinary decisions. “In the context of the ‘special characteristics of the school environment,’” a school may prohibit “actions which ‘materially and substantially disrupt the work and discipline of the school.’” *Healy v. James*, 408 U.S. 169, 189 (1972) (quoting *Tinker v. Des Moines Indep. Cmty. Sch. Dist.*, 393 U.S. 503, 513 (1969)); *see also Boim v. Fulton Cnty. Sch. Dist.*, 494 F.3d 978, 982-83 (11th Cir. 2007) (citing *Tinker*). While *Tinker* was a high school case, the U.S. Supreme Court in *Healy* upheld application of *Tinker* in cases

involving colleges. 408 U.S. at 180, 188-89 (a showing of substantial disruption could support a college president’s decision to deny a school club recognition).<sup>2</sup>

This Court ruled in 2007 that the relevant context may include “increasing school violence[.]” *Boim*, 494 F.3d at 983-84 (noting ten well-known student-perpetrated shootings in U.S. schools, not including college campuses, in the eight-year period preceding the decision). Given this backdrop of violence—which unfortunately has increased dramatically since 2007—this Court held that the defendant school did not violate a sixth-grader’s speech rights when it disciplined her for describing in her notebook a dream she had about shooting her math teacher in the classroom. “We can only imagine what would have happened if the school officials, after learning of Rachel’s writing, did nothing about it and the next day Rachel did in fact come to school with a gun and shoot and kill her math teacher.” *Id.* at 984.

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<sup>2</sup> As noted in the Stay Order, this Court has likewise applied *Tinker* in college as well as high school settings, 2026 WL 75122, at \*2 n.4 (citing *Doe v. Valencia Coll.*, 903 F.3d 1229-31 (11th Cir. 2018)), and to off campus as well as on campus statements, *id.* at \*4. Even the out-of-circuit case on which the district court relied (but whose facts are distinguishable) recognizes that speech that threatens students’ “sense of security” is to be distinguished from speech that is merely offensive. PI Order, 2025 WL 3282519 at \*10 n.13 (citing *Leroy v. Livingston Manor Cent. Sch. Dist.*, 158 F.4th 414, 440 (2d Cir. 2025)). “Schools can and must protect the school community from threats—including those that are not explicit or overt enough to rise to the level of “true threats”—that make students fear for their safety.” *Leroy*, 158 F.4th at 427.

Here, the relevant context, which the UF Board and Dean Summerlin took into account when reaching the decision to expel Mr. Damsky, includes the backdrop of ongoing school violence, which has only worsened since 2007, Mr. Damsky's statements and conduct before and after his "Jews should be abolished" post, and the UF Jewish community's keen awareness of rising anti-Semitism and the resultant danger to Jewish and non-Jewish students, staff, and faculty.

**1. Mr. Damsky's continual and accelerating racist, anti-Semitic, and violent rhetoric was critical context for determining how the UF Law community received and interpreted his statements.**

Mr. Damsky's post "Jews should be abolished by any means necessary" was not an isolated statement. Since his earliest days on campus, Mr. Damsky engaged in conduct and speech that alarmed the UF community.

At the very start of his first year of law school, Mr. Damsky became enraged when he was unable to open a door, and reacted by "banging, kicking, yanking the glass door and yelling, 'Let me in the F-ing door.'" *Damsky*, No. 1:25-CV-275-AW-MAF, Doc. 37-3 (Reporter's Transcript of July 25, 2025, Hearing) at 91. This display of rage made a staff member witnessing it feel physically unsafe. (*Id.*)

During his first semester, Mr. Damsky posted comments about "white replacement" theory in a 1L group chat. (Doc. 37-3 at 116.) As a 2L, Mr. Damsky submitted academic papers advocating for racial violence, which were not taken as

threats, but which left readers wondering if Mr. Damsky were actually calling for “revolutionary extralegal violence.” Mr. Damsky readily acknowledged that he was.<sup>34</sup>

With respect to the Jewish people, Mr. Damsky “quite often discussed how Jews are parasites, the enemies of humanity.” (Doc. 37-3 at 228.) He stated that “his support for Palestine was a means to an end [eliminating Jews].” (*Id.*) And he told a *New York Times* reporter that it “would not be wrong to refer to him as a Nazi.” (*Id.* at 187); see Richard Fausset, *A White Nationalist Wrote a Law School Paper Promoting Racist Views. It Won Him an Award*, N.Y. TIMES, June 21, 2025.

At a UF Law town hall meeting on January 16, 2025 (which Mr. Damsky did not attend), many students spoke out about their fear of Mr. Damsky based on their experiences with him over the first three semesters. Jewish students in particular expressed “their palpable fear of Mr. Damsky” based on the racist and anti-Semitic positions he had expressed even before he posted that “Jews must be abolished by any means necessary.” (Doc. 37-3 at 34.) One Jewish student said she

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<sup>4</sup> Mr. Damsky also made comments in classes “about the criminality of black people [and] specifically about white supremacy being a national state interest[.]” (RT 209:25 – 210:4.) Posting on X, Mr. Damsky “reaffirmed the inherent criminality of black people,” and “[r]eminisced about the days of executing black children for their crimes.” (RT 210:4-9.) Given the racist comments directed at Blacks, two women of color on the faculty questioned whether they could safely come to campus or whether they should teach their classes online. (RT 143:19-23.)

scanned the exits when Mr. Damsky was in the same room, and another said she avoided taking classes with Mr. Damsky “out of fear of what he might do.” (*Id.*)

On January 24, 2025, a law school dean told Mr. Damsky that other students had discussed their reactions to his rhetoric at the town hall and warned him that the UF community regarded his statements as threatening. (Doc. 37-3 at 92-93.) Mr. Damsky “shared that he knew his comments would offend and hurt people.” (*Id.* at 93, 97.) Mr. Damsky acknowledged at his hearing that he had this discussion with the dean and that he understood that at least one student looked for the exits when he entered the room. (*Id.* at 106, 323-24.)

But Mr. Damsky was undeterred. On March 7, 2025, he posted on X that “[t]he Jews are the common enemy of humanity.” (Doc. 37-3 at 180.) After this and into July 2025 if not later, Mr. Damsky continued posting anti-Semitic messages on social media, characterizing Jews as “[a] tribe of rootless, child-killing vice merchants who are[] ‘[e]vil,’ ‘[s]ocially destructive,’ ‘[p]sychopathic,’ ‘[m]urderers,’ and ‘[a] rogue gang of butchers’ who[] ‘[l]ove war, peace as their foe,’ who engage in[] ‘[b]ad faith, nepotistic scheming,’” who are more loyal to Israel than to the United States despite their American citizenship, “who[] ‘[o]ccupy’ the whole American government, who control and manipulate the media, who seek[] ‘[s]upremacy and domination,’ who harm[] ‘Whites in the United States,’ and whom world governments must[] ‘[s]ubdue.’” (*Id.* at 187.)

On March 21, Mr. Damsky amped up his rhetoric decisively, escalating from mere hate speech to language constituting a true threat and/or likely to substantially disrupt an already distressed campus, when he posted that “Jews must be abolished by any means necessary.” In so doing, he unequivocally lost the shield of First Amendment protection. In response to his post, a Jewish professor at UF Law, Lyrisa Lidsky, asked him whether he was “saying you would murder me and my family? Is that your position?” Instead of answering her, Mr. Damsky indulged in equivocation, making cryptic statements about Professor Ignatiev’s meaning, and observing that a call to kill Whites would be worse than a call to kill Jews:

Did Ignatiev want Whites murdered? If so, were his words as objectionable as mine? If Ignatiev sought genocide, then surely a genocide of all Whites would be an even greater outrage than a genocide of all Jews, given the far greater number of Whites. (Doc. 37-3 at 160-61.)

This sophistry only heightened the security fears of the Jewish community, with students urging Professor Lidsky to take steps to ensure her safety and theirs. Students were afraid to attend Professor Lidsky’s class because they feared Mr. Damsky might target her or that he might come into her classroom and disrupt her class while they were attending. (Doc. 37-3 at 120.) Students “actively avoid[ed]” registering for classes if they knew Mr. Damsky was going to be in them. (*Id.* at 161.)

As a majority of the panel concluded in the Stay Order, “[a] reasonable reader could understand Damsky’s [March 21] post and its use of the word ‘abolished’ to mean that Jews must be murdered,” and as “a call for violence,” Stay Order, 2026 WL 75122, at \*3-4, especially in light of Mr. Damsky’s earlier statements (set forth above and in the Stay Order), *id.*, \*3 n.7.

**2. The recent and rapid rise in anti-Jewish hate, violence, and discrimination in the college setting also provides critical context for understanding how Mr. Damsky’s statements affected UF Law’s Jewish community.**

Mr. Damsky’s posts had a profound impact on UF’s Jewish community because they amplified and brought home to them the anti-Semitic hatred that was raging nationwide and globally. Jewish students, having grown up in an era of mass shootings including ones directed at Jews (e.g., the 2018 shooting at the Tree of Life Synagogue in Pittsburgh) feared what Mr. Damsky might do. Law Professor Zachary Kaufman, the faculty adviser for the Jewish Law Students’ Association, testified at Mr. Damsky’s disciplinary hearing that, “[t]hese events and trends were important contextual factors driving community members’ interpretation of Mr. Damsky’s disturbing behavior and rhetoric”:

Many of our community members were thus terrified that Mr. Damsky would go on a similar murderous rampage. Many of our community members were thus on edge whenever they heard a door slam, a water bottle drop, or any other loud sound. Some students were so concerned about the potential need for self-defense against Mr. Damsky that they carried pepper spray and escorted each other to and from their cars in our law school

parking lot. Several students cried from fear of Mr. Damsky and what he might do. (Doc. 37-3 at 181-82.)

Mr. Damsky's posts and presence also disrupted the law school's academic environment for students who "expressed difficulty in studying for and taking exams" because of their fear that Damsky would stage or incite an attack against Jews at the law school (Doc. 37-3 at 186) and for students who missed classes and academic events to focus on discussing their safety with faculty and administrators. (*Id.* at 182-83.) Some students left campus entirely, seeking "refuge in their apartments or at their parents' homes for the sake of their physical safety and mental health." (*Id.* at 183.) At least one student's parents came to stay with them for multiple weeks. (*Id.*) A number of UF Law students stated that these disruptions "prevented them from achieving their full academic potential and that their grades and career prospects upon which grades in law school are so dependent, thus suffered." (*Id.* at 186-87.)

Professor Lidsky noted that some UF Law students had experienced school shootings, referring to "Parkland survivors in the law school [for whom] the possibility of a mass shooting is not abstract[.]" (Doc. 37-3 at 122.)<sup>5</sup> And soon after

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<sup>5</sup> The 2018 Parkland, Florida high school shooting, which left 17 dead and others injured, was carried out by a student after he was expelled for disciplinary infractions. *See, e.g.*, <https://www.britannica.com/event/Parkland-High-School-Shooting>.

Mr. Damsky was suspended, “a white supremacist at FSU shot and killed innocent victims.” (*Id.*)

The UF Jewish community’s response to Mr. Damsky’s post tracks the response of Jewish individuals across the country to the well-known spike in hate crimes against Jews in the aftermath of the October 7, 2023, massacre of Jews by Hamas. Violence against Jews has since become increasingly common in the United States. The Anti-Defamation League (ADL), which tracks anti-Jewish hate across the country, documented assaults on 250 Jews (or individuals perceived to be Jewish) in 2024, a staggering 21% increase from the previous year.<sup>6</sup> Assaults at Jewish institutions more than doubled between 2023 and 2024, “underscoring a heightened threat environment regarding Jewish physical security.”<sup>7</sup>

At colleges and universities, during the 2023-2024 school year, the ADL recorded 33 assaults across 23 campuses by anti-Israel activists against Jewish students and community members and/or those actually or perceived to be associated with Israel or Zionism.<sup>8</sup>

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<sup>6</sup> *Audit of Antisemitic Incidents 2024*, ANTI-DEFAMATION LEAGUE (Apr. 22, 2025), <https://www.adl.org/resources/report/audit-antisemitic-incidents-2024>.

<sup>7</sup> *Id.*

<sup>8</sup> *Anti-Israel Activism on U.S. Campuses, 2023-2024*, ANTI-DEFAMATION LEAGUE (updated Feb. 7, 2025), <https://www.adl.org/resources/report/anti-israel-activism-us-campuses-2023-2024>

During the weeks in fall 2024 leading up to the first anniversary of the October 7 attack, anti-Israel activists physically assaulted at least five different Jewish college students.<sup>9</sup> For example:

- A man wearing a keffiyeh assaulted two University of Pittsburgh students, wearing yarmulkes while walking to Shabbat services at their campus Hillel, striking one with a glass bottle. The perpetrator ripped off one victim's Star of David necklace and inflicted slash wounds on his neck from the shards of broken glass. He was arrested for assault.
- A group of men hurling anti-Semitic slurs assaulted another University of Pittsburgh student, leading the FBI to open a hate crime investigation.
- A group of men assaulted two University of Michigan students in separate incidents near campus. In one case, a group of men assaulted and injured the victim after he responded affirmatively that he was Jewish. In another, the assault took place outside a Jewish fraternity house.

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<sup>9</sup> Simone Weichselbaum, Andrew Blankstein & Chloe Atkins, *Five Jewish College Students Report Being Assaulted in the Last Month, as Oct. 7 Anniversary Approaches*, NBC NEWS (Oct. 2, 2024), <https://www.nbcnews.com/news/investigations/five-jewish-college-students-report-assaulted-last-month-rcna171727>

Americans have watched this trend play out off campus as well.

- In August 2024, prosecutors charged a man with attempted murder as a hate crime for stabbing a visibly Jewish man outside a Brooklyn synagogue while shouting, “Free Palestine.”<sup>10</sup>
- In April 2025, an anti-Israel arsonist set the house of Pennsylvania Governor Josh Shapiro and his family ablaze on the first night of Passover, while they slept inside their home.<sup>11</sup>
- In May, a man shouting “Free Palestine” shot two Israeli embassy staffers to death outside an event for young Jewish professionals at the Capital Jewish Museum in Washington, D.C.<sup>12</sup>
- And in June 2025, a man in Colorado hurled anti-Semitic epithets and Molotov cocktails at Jewish residents attending a peaceful walk in support of

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<sup>10</sup> Patrick McGeehan, *Man Is Charged with Hate Crime in Stabbing Near Brooklyn Synagogue*, N.Y. TIMES (Aug. 11, 2024), <https://www.nytimes.com/2024/08/11/nyregion/brooklyn-stabbing-hate-crime.html>.

<sup>11</sup> *Conference of Presidents Condemns Antisemitic Arson Attack Targeting Governor Josh Shapiro*, CONF. OF PRESIDENTS OF MAJOR AM. JEWISH ORGS. (Apr. 17, 2025), <https://conferenceofpresidents.org/press/conference-of-presidents-condemns-antisemitic-arson-attack-targeting-governor-josh-shapiro/>.

<sup>12</sup> *Alleged Perpetrator of Shooting in Washington, D.C. Charged with Hate Crimes*, U.S. DEP’T OF JUSTICE (Aug. 7, 2025), <https://www.justice.gov/opa/pr/alleged-perpetrator-shooting-washington-dc-charged-hate-crimes>.

Israeli hostages held in Gaza. Many suffered serious burns; an elderly woman who had survived the Holocaust later died of her injuries.<sup>13</sup>

These are just a few examples—there are many more attacks on Jews that do not make national headlines. And the threat has not abated. In August 2025, a man pled guilty to assault as a hate crime for ganging up with four others to physically assault two Ohio State University students because they were identifiably Jewish; one suffered a fractured jaw and the other a fractured nose.<sup>14</sup> A new ADL report reveals that within the past year, nearly one in five (18%) Jewish American respondents experienced assault, threat of physical violence, or verbal harassment due to their Jewish identity, while more than a third (36%) witnessed anti-Semitic physical attacks, threats of violence, or someone expressing a desire to harm Jews.<sup>15</sup> And on January 10, 2026, just after this Court issued its Stay Order, a

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<sup>13</sup> *Justice Department Files Federal Charges Against Alleged Perpetrator of Anti-Semitic Terror Attack in Colorado*, U.S. DEP'T OF JUSTICE (June 2, 2025), <https://www.justice.gov/opa/pr/justice-department-files-federal-charges-against-alleged-perpetrator-anti-semitic-terror>; *Press Release - Pearl Street - Amended and Added Charges*, BOULDER CNTY., CO. (June 30, 2025), <https://bouldercounty.gov/news/press-release-pearl-street-amended-and-added-charges/>

<sup>14</sup> *Man Pleads Guilty to Antisemitic Assault Near College Campus*, U.S. DEP'T OF JUSTICE (Aug. 15, 2025), <https://www.justice.gov/opa/pr/man-pleads-guilty-antisemitic-assault-near-college-campus>

<sup>15</sup> *Portrait of Antisemitic Experiences in the U.S., 2024-2025*, ANTI-DEFAMATION LEAGUE & JEWISH FEDERATIONS OF NORTH AMERICA (Oct. 6, 2025), <https://www.adl.org/resources/report/portrait-antisemitic-experiences-us-2024-2025>.

historic synagogue in Mississippi was badly damaged when a young man set fire to what he called the “synagogue of Satan,” stating, “I finally got [the Jews].”<sup>16</sup>

Given the history of Mr. Damsky’s deportment on campus and the plague of violence and anti-Semitism on college campuses and beyond, the UF Board reasonably decided to expel Mr. Damsky. *See* Stay Order, 2026 WL 75122, at \*3-6 (determining that the fearful response of students, faculty, and staff was reasonable, as was the UF Board’s decision to expel Mr. Damsky).

Yet the district court paid no attention to this context.<sup>17</sup> This was error.

**B. The district court erred in failing to give the UF Board and Appellant Summerlin the deference they were due.**

This Court held in *Boim* that when school officials apply school rules and discipline a student for his or her speech after reviewing the context in which it was made, courts must afford them “the flexibility to control the tenor and contours of student speech within school walls or on school property, even if such speech *does not* result in a reasonable fear of immediate disruption”—and all the more so if it *does* result in such fear, as in this case, where the campus was already

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<sup>16</sup> *See, e.g.*, Lauren Fichtne, *Mississippi Synagogue Arson Suspect Said “He Finally Got Them” After Starting Blaze, FBI Complaint Says*, CBS NEWS (Jan. 12, 2026), <https://www.cbsnews.com/news/mississippi-synagogue-arsonist-jewish-ties-fbi-complaint/>.

<sup>17</sup> To the extent the district court considered context at all, it focused on the meaning of Professor Ignatiev’s work, which cannot be divined from Mr. Damsky’s posts. This was error.

undergoing substantial disruption when Mr. Damsky’s hearing was held. *Boim*, 494 F.3d at 982 (emphasis added) (citation omitted); see *Healy v. James*, 406 U.S. at 192 (“[A] college has the inherent power to promulgate rules and regulations,” “to discipline,” “to protect itself and its property,” and to “expect that its students adhere to generally accepted standards of conduct.”) (quoting with approval then-Judge Blackmun’s holding in *Esteban v. Cent. Missouri State Coll.*, 415 F.2d 1077, 1089 (8th Cir. 1969) (cleaned up).

The same year *Boim* was decided, the Fifth Circuit likewise held that “[s]chool administrators must be permitted to react quickly and decisively to address a threat of physical violence against their students[.]” *Ponce v. Socorro Indep. Sch. Dist.*, 508 F.3d 765, 772 (5th Cir. 2007). They should not be left to “worry[] that they will have to face years of litigation second-guessing their judgment as to whether the threat posed a real risk of substantial disturbance.” *Id.* These concerns certainly hold true today, where violence on campus has increased to a staggering degree, and schools are all too well aware that they may be held liable for failing to heed warning signs and act to protect their students, staff, and faculty.

The UF Board carefully followed school procedures and took painstaking effort to distinguish between merely offensive speech and threatening or disruptive speech in light of the context set forth above. But instead of giving the Board and

Dean Summerlin the deference it was required to give them, the district court substituted its own view for theirs, ruling that an administrator could not reasonably interpret Damsky's statement, taken *alone*, as threatening or disruptive. *See* PI Order, 2025 WL 3282519 at \*9-10.

In so doing, the district court ignored this Court's admonition in *Boim* that school officials rendering a decision to discipline a student "must have the flexibility to control the tenor and contours of student speech within school walls or on school property, even if such speech does *not* result in a reasonable fear of immediate disruption." *Boim*, 494 F.3d at 982 (citation omitted). Here, disruption had already occurred, and the school reasonably feared it was likely to continue. Under *Tinker* and its progeny, the district court was obliged to consider the factual context in which the speech occurred and was received, and to "react quickly and decisively to address a threat of physical violence against their students[.]" *Ponce*, 508 F.3d at 772.

## **II. THE DISTRICT COURT ERRED IN RULING THAT MR. DAMSKY'S ASSERTION THAT "JEWS SHOULD BE ABOLISHED BY ANY MEANS NECESSARY" WAS NOT A TRUE THREAT.**

Contrary to what the district court concluded, the evidence shows that Mr. Damsky's call to abolish "Jews ... by any means necessary" was a true threat under *Counterman v. Colorado*, 600 U.S. 66 (2023).

As set forth above, Mr. Damsky posted on X in March 2025 that:

My position on Jews is simple: whatever Harvard professor Noel Ignatiev meant by his call to ‘abolish the White race by any means necessary’ is what I think must be done with Jews. Jews must be abolished by any means necessary. PI Order, 2025 WL 3282519, at \*2.

The post went “viral,” alarming the UF community, many of whom read the statement as a call to eliminate Jews “by any means necessary,” a phrase commonly understood to include violence and murder. Whatever Mr. Damsky may have meant by his enigmatic references to Ignatiev, a little-known scholar, a majority of the panel recognized in its January 8 Stay Order that “[a] reasonable reader could understand Mr. Damsky’s post and its use of the word ‘abolish’ to mean that Jews must be murdered.” Stay Order, 2026 WL 75122, at \*3.

The district court itself acknowledged that “those reading Damsky’s words may be justifiably fearful,” given the testimony of many UF Law students, faculty, and staff who interpreted his words to mean what he said—namely, that “Jews should be abolished by any means necessary”—and were fearful for their safety as a result. PI Order, 2025 WL 3282519 at \*6-7. But the district court determined that the recipients’ “justifiable” fear “is not the test” for true threat. *Id.* at \*7. The court was wrong. As the U.S. Supreme Court confirmed in *Counterman*, the recipients’ understanding of and reaction to a statement is critical to true threat analysis.

In *Counterman*, the U.S. Supreme Court held that the test for the speaker’s intent, at least in criminal and defamation cases, is recklessness, the lowest level of

*mens rea* (discussed *infra*), after clarifying that the “existence of a threat depends not on the mental state of the author, but on what the statement conveys to the person on the other end.” 600 U.S. at 74 (citing *Elonis v. United States*, 575 U.S. 723, 733 (2015)). Recipients’ understanding of a message is essential to assessing the existence of a threat because true threats by definition “subject individuals to ‘fear of violence’ and to the many kinds of ‘disruption that fear engenders.’” *Id.* (quoting *Virginia v. Black*, 538 U.S. 343, 360 (2003)). As explained in this Court’s Stay Order, there is a host of evidence, mostly in the form of testimony at Mr. Damsky’s disciplinary hearing and sworn affidavits, that students, staff, and faculty feared violence and experienced “the many kinds of disruption that fear engenders.” 2026 WL 75122 at \*2-5. The district court erred in setting aside this evidence based on its mistaken understanding that the UF community’s reaction was immaterial to true threat analysis. PI Order, 2025 WL 3282519 at \*6-7.

The district court not only ignored the threat test—namely, “what the statement conveys to the person on the other end”—it imposed an incorrect one in its place, stating that “the test is whether Damsky’s posts constituted ‘a serious expression’ that he *meant* ‘to commit an act of unlawful violence.’” *Id.* at \*7 (quoting *Counterman*, 600 U.S. at 74). This language was taken out of context. It appears in a portion of the *Counterman* opinion distinguishing true threats from “jests, hyperbole, or other statements that when taken in context do not convey a

real possibility that violence will follow (say, “I am going to kill you for showing up late”). *Counterman*, 600 U.S. at 72-74 ((citations omitted). Damsky’s statement that “Jews must be abolished by any means necessary” cannot plausibly be taken as jest or hyperbole.

With respect to *mens rea*, *Counterman* holds, at least in the context of criminal and defamation cases, that the standard is the very lowest level of intent—recklessness, meaning that the speaker needs only to be “aware that others could regard his statements as threatening violence and deliver[] them anyway.” *Id.* at 79 (cleaned up; citation omitted). The district court declined to decide whether the *Counterman* state-of-mind test that applies to defamation and criminal matters applies in this civil case. PI Order, 2025 WL 3282519, at \*7 n.10. Instead, the district court committed clear error by raising the state-of-mind level to one of the higher *mens rea* levels (such as intent) expressly rejected in *Counterman*. See 600 U.S. at 78-82. Nothing in *Counterman* (or any other case we are aware of) provides a reason to apply a heightened standard to civil cases, where liability does not result in criminal charges.

Assuming *arguendo* that the recklessness standard applies generally to civil cases, there is ample evidence that Mr. Damsky was aware that the Jewish community could regard his statements as threatening and continued making them, which is all that this standard requires.

As discussed above, a law school dean met with Mr. Damsky after the January 2025 town hall meeting to discuss student reactions to his messages, telling him how “his rhetoric could cause fear in others.” (Doc. 37-3 at 93.) At his disciplinary hearing months later, Mr. Damsky acknowledged that the dean told him his words were offensive (*id.* at 106, 324) and recalled her telling him that a student reported that she looks for exits whenever she is in the same room as Mr. Damsky (*id.* at 323.) Given this testimony and the conspicuous safety measures being taken by students, faculty, and administrators even before the March 21 post, a fact finder is likely to find that Mr. Damsky was “aware that others could regard his statements as threatening violence and delivered them anyway.” This Court should hold that Appellant will likely prevail on the merits because Mr. Damsky’s statement, taken in context, constitutes a true threat and falls outside the protection of the First Amendment.

## CONCLUSION

For the foregoing reasons and the reasons stated in this Court's Stay Order and Appellant's Opening Brief, this Court should reverse the district court's order granting Mr. Damsky a preliminary injunction.

Date: February 9, 2026

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### **CERTIFICATE OF COMPLIANCE**

This brief complies with the word limit of Federal Rule of Appellate Procedure 29(a)(5) because it contains 5399 words, excluding the parts exempted by Federal Rule of Appellate Procedure 32(f).

This brief complies with the typeface requirements of Federal Rule of Appellate Procedure 32(a)(5) and the type-style requirements of Federal Rule of Appellate Procedure 32(a)(6), because it has been prepared in a proportionally spaced typeface using Microsoft Word in Times New Roman 14-point font.

Date: February 9, 2026

**The Louis D. Brandeis Center  
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/s/ L. Rachel Lerman  
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## CERTIFICATE OF SERVICE

Pursuant to Rule 25(d) of the Federal Rules of Appellate Procedure, I hereby certify that on February 9, 2026, I electronically filed the foregoing Proposed Brief of *Amicus Curiae* The Louis D. Brandeis Center for Human Rights Under Law, with the Clerk of the Court for the U.S. Court of Appeals for the Eleventh Circuit by using the appellate CM/ECF system, which will send a notice of electronic filing to all parties in the case via all ECF-registered counsel.

Date: February 9, 2026

The Louis D. Brandeis Center  
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