

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MASSACHUSETTS**

ALEXANDER KESTENBAUM and  
STUDENTS AGAINST ANTISEMITISM,  
INC.,

Plaintiffs,

v.

PRESIDENT AND FELLOWS OF  
HARVARD COLLEGE,

Defendant.

Case No. 1:24-cv-10092-RGS

**DEFENDANT’S RESPONSE TO PLAINTIFFS’ MOTION  
FOR LEAVE TO FILE SECOND AMENDED COMPLAINT AND  
A CONTINUANCE OF ORAL ARGUMENT**

Pursuant to Local Rule 7.1(b), Defendant President and Fellows of Harvard College (“Harvard”) respectfully submits this response to Plaintiffs’ Motion for Leave to File Second Amended Complaint And A Continuance Of Oral Argument (Dkt. 54). Harvard takes no position on Plaintiffs’ Motion. If the Court grants Plaintiffs’ Motion, Harvard intends to file a combined Motion to Dismiss and Motion to Strike Plaintiffs’ 130-page Second Amended Complaint and nearly 100 pages of exhibits. The Court’s May 30 hearing would have to be continued to accommodate a new briefing schedule.

Plaintiffs’ request for leave to file yet another complaint addressing ongoing events at Harvard only underscores that their claims are not ripe for judicial resolution. As Harvard explained in its combined Motion to Dismiss and Motion to Strike (Dkt. 35) and its Reply in support of that motion (Dkt. 50), the University is working in real time to address many of the concerns that Plaintiffs have raised in their serial complaints, including by enforcing its policies, following its established disciplinary processes, and engaging in remedial efforts to address and

prevent antisemitism on campus. For example, as Plaintiffs in some cases acknowledge, just in the weeks since Plaintiffs filed their Amended Complaint on March 29, 2024, the University and its individual schools have done the following:

- Terminated the Harvard employee who sent disturbing messages to Mr. Kestenbaum. *See Proposed Second Amended Complaint ¶ 204.*
- Expanded disciplinary investigations into violations of university policy at protests that took place in March 2024.
- Suspended the Harvard Undergraduate Palestine Solidarity Committee based on violations of Harvard College's protest guidelines. *See Proposed Second Amended Complaint ¶ 247.*
- Issued warnings to students participating in the encampment in Harvard Yard and placed more than 20 students on leave in order to abate the disruption caused by the encampment.
- Initiated investigations and disciplinary actions involving more than 60 students and several University staff members based on their involvement in the encampment in Harvard Yard.
- Closed Harvard Yard to the public and established Harvard University ID checks to ensure that the campus community remains safe. *See Proposed Second Amended Complaint ¶ 250.*
- Convened the Presidential Task Force on Combating Antisemitism to identify causes of and contributing factors to anti-Jewish behaviors on campus and recommend approaches to combat antisemitism and its impact on campus.

These developments and others—including the nonviolent end of the encampment in Harvard Yard—demonstrate that Harvard’s response to antisemitism continues to move forward.

Plaintiffs’ proposed Second Amended Complaint is yet another effort to cut this response short and obtain a judicial decree forcing Harvard to substitute Plaintiffs’ preferred approach on Plaintiffs’ preferred timeline for the professional judgment of Harvard’s educators and administrators.

DATED: May 22, 2024

Respectfully submitted,

PRESIDENT AND FELLOWS OF HARVARD  
COLLEGE

By its attorneys,

/s/ Felicia H. Ellsworth

Mark A. Kirsch (*pro hac vice*)  
Gina Merrill (*pro hac vice*)  
KING & SPALDING LLP  
1185 Avenue of the Americas  
34th Floor  
New York, NY 10036  
mkirsch@kslaw.com  
gmerrill@kslaw.com  
Tel: (212) 790-5329  
Fax: (212) 556-2222

Zachary Fardon (*pro hac vice*)  
KING & SPALDING LLP  
110 N. Wacker Drive  
Suite 3800  
Chicago, IL 60606  
zfardon@kslaw.com  
Tel: (312) 764-6960  
Fax: (312) 995-6330

Zoe M. Beiner (*pro hac vice*)  
KING & SPALDING LLP

Felicia H. Ellsworth, BBO #665232  
WILMER CUTLER PICKERING  
HALE AND DORR LLP  
60 State Street  
Boston, MA 02109  
Tel: (617) 526-6000  
Fax: (617) 526-5000  
felicia.ellsworth@wilmerhale.com

Seth P. Waxman (*pro hac vice*)  
Bruce M. Berman (*pro hac vice*)  
Jeremy W. Brinster (*pro hac vice*)  
WILMER CUTLER PICKERING  
HALE AND DORR LLP  
2100 Pennsylvania Avenue NW  
Washington, DC 20037  
Tel: (202) 663-6000  
Fax: (202) 663-6363  
seth.waxman@wilmerhale.com  
bruce.berman@wilmerhale.com  
jeremy.brinster@wilmerhale.com

1700 Pennsylvania Avenue NW  
Suite 900  
Washington, DC 20006  
zbeiner@kslaw.com  
Tel: (202) 626-5575  
Fax: (202) 626-3737

**CERTIFICATE OF SERVICE**

I hereby certify that on May 22, 2024, I caused this document to be filed through the CM/ECF system, where it will be sent electronically to the registered participants as identified on the Notice of Electronic Filing.

*/s/ Felicia H. Ellsworth* \_\_\_\_\_

Felicia H. Ellsworth