



US Campaign for
Palestinian Rights

A national coalition of hundreds of groups working
together for freedom, justice, and equality.

Oppose Nomination of Kenneth Marcus for Assistant Secretary for Civil Rights, Department of Education

On October 30, the Senate [received the nomination](#) of Kenneth Marcus to be Assistant Secretary for Civil Rights of the Department of Education. The assistant secretary directs the department's [Office for Civil Rights](#), which administers legislative provisions and departmental policies prohibiting discrimination in educational institutions, investigates complaints of discrimination, negotiates voluntary compliance with anti-discrimination requirements, conducts enforcement proceedings to achieve compliance with anti-discrimination requirements, and researches civil rights issues in federally-funded education programs.

The US Campaign for Palestinian Rights (USCPR), a national coalition of hundreds of groups working together for freedom, justice and equality, strongly opposes this nomination and urges Senators on the Health, Education, Labor and Pensions Committee to vote against this nomination.

USCPR strongly supports the mission of the Office for Civil Rights and firmly believes that students should not face discrimination based on race, national origin, religion, sex, or any other category. The USCPR commitment to anti-racist organizing is enshrined in our [common principles](#), to which all members of our coalition subscribe. It states: "We stand opposed to Islamophobia, anti-Semitism, all forms of racism, and any other expressions of bigotry directed at any person or group."

Our focus on advocating for Palestinian rights, including supporting student groups organizing on campuses to advance this objective, as well as our staunch opposition to anti-Jewish bigotry, inform our stance that Kenneth Marcus is the wrong choice to head the Department of Education's Office for Civil Rights.

The Trump administration has openly declared its intention to quash constitutionally-protected student organizing for Palestinian rights through heavy-handed governmental repression. In Kenneth Marcus, the president has selected the ideal nominee to accomplish this goal. As this memo details, Marcus has a long history of filing spurious Title VI discrimination complaints with the Department of Education designed to intimidate, silence, and repress college students organizing for Palestinian rights. He advocates for the government to punish individuals for organizing boycott campaigns in support of Palestinian rights. The constitutionality of such legislation is currently being challenged by the American Civil Liberties Union (ACLU) in federal court. Finally, Marcus has a troubling history of maligning people who criticize Israeli governmental policies as anti-Jewish bigots and Nazis.

Like many Trump administration nominees, if confirmed by the Senate, Kenneth Marcus would undermine the very mission he is supposed to uphold. Rather than back the rights of college students to organize for Palestinian rights, his record indicates that he would abuse his position in an unconstitutional attempt to silence robust discussion of Palestine on campuses through spurious claims of religious discrimination.

Marcus would advance the Trump administration's unconstitutional attempts to quash organizing for Palestinian rights on college campuses.

On scores of US college campuses, broad coalitions of student groups, often led by chapters of Students for Justice in Palestine, organize for Palestinian rights. This often takes the form of pressuring their universities to divest their portfolios from companies that profit from Israel's military occupation of Palestinian land, and/or boycott products whose companies profit from, or are complicit in, Israel's oppression of Palestinians. In doing so, these students are utilizing time-honored tactics of economic pressure to achieve social change, ruled by the Supreme Court to be First Amendment-protected forms of political speech in *NAACP v. Claiborne Hardware Co.*, 458 U.S. 886 (1982).

In recent years, Israel advocates have attempted to utilize heavy-handed governmental measures to repress student organizing for Palestinian rights on college campuses. In its [2016 platform](#), the GOP condemned the "campus-based BDS (Boycott, Divestment, and Sanctions) campaign against Israel" and paradoxically urged "advocates of academic freedom" to denounce it. Ironically, this opposition to students' political speech for Palestinian rights was immediately preceded in the platform by a statement affirming that "a student's First Amendment rights do not end at the schoolhouse gates. Colleges, universities, and trade schools must not infringe on their freedom of speech and association in the name of political correctness." USCPR agrees that students' freedom of speech must be protected. That is why we vehemently oppose the GOP's plank for "effective legislation to thwart" BDS campaigns on campus or elsewhere.

The Trump campaign's [Israel Advisory Committee](#) echoed these statements and ominously added that "the Trump administration will ask the Justice Department to investigate coordinated attempts on college campuses to intimidate students who support Israel." This committee was co-chaired by Jason Greenblatt, currently the president's Special Representative for International Negotiations, and David Friedman, currently US Ambassador to Israel.

Greenblatt and Friedman play central roles in the Trump administration's formulation of policy toward Israel and the Palestinian people. Through Kenneth Marcus's nomination, it appears that they are implementing their threat to investigate college students' political speech for Palestinian rights.

Marcus would be ruling on spurious claims that Palestine solidarity organizing is tantamount to anti-Semitism, which the Department of Education has repeatedly rejected.

As the founding president of the Louis D. Brandeis Center for Human Rights Under Law, Kenneth Marcus has helped file or otherwise supported baseless Title VI discrimination complaints filed with the Department of Education. Six separate complaints have been filed against UC Irvine, UC Santa Cruz, UC Berkeley, Rutgers University, Barnard College, and Brooklyn College. The gist of all these complaints allege that Palestine solidarity organizing on campus constitutes violations of Title VI anti-discrimination provisions through "harassment" or "intimidation" that "targets" and creates a "hostile educational environment" for Jewish students. As Palestine Legal [notes](#), "to date no such complaint has been sustained or found to have legal merit." The Department of Education has dismissed four of the complaints "with written determination letters stating that the First Amendment protects speech critical of the state of Israel and that such speech does not constitute a civil rights violation." A fifth case was dismissed due to insufficient evidence and a sixth case was settled before it was investigated.

Marcus acknowledged that these dismissals have been "frustrating and disappointing" in a candid [article](#) he wrote in *The Jerusalem Post*. "But we are, in fact, comforted by knowing that we are having the effect we had set out to achieve," he wrote. "These cases—even when rejected—expose administrators to bad publicity. . . Israel haters now publicly complain that these cases make it harder for them to recruit new adherents . . . Needless to say, getting caught up in a civil rights complaint is not a good way to build a resume or impress a future employer." In other words, Marcus admits that the purpose of these frivolous complaints is not to protect Jewish students from discrimination, but to harass universities that support their students' rights to engage in Palestine solidarity, weaken Students for Justice in Palestine and related groups, and punish students advocating for Palestinian rights by curtailing their career prospects.

If confirmed by the Senate, Marcus would be empowered to ensure that future meritless complaints against students advocating for Palestinian rights would find favor with the Department of Education, resulting in further repression against Palestine advocacy on campus. Having failed from the outside to pressure the Department of Education into adopting the repressive posture that advocacy for Palestinian human rights is tantamount to anti-Jewish bigotry, Marcus would now work from within the department to enforce his rejected views.

Marcus advocates for the government to punish people who exercise their First Amendment right to organize boycotts for Palestinian rights.

Nearly two dozen states have passed legislation designed to punish individuals, organizations, and businesses that support boycotts for Palestinian rights. Often, these laws prohibit a state from contracting with those who support BDS campaigns. In some cases, individuals and businesses must sign a loyalty oath certifying that they have not boycotted Israel and will refrain from doing so for the duration of the contract. These laws inspired widespread condemnation when the city of [Dickinson, Texas](#), a suburb of Houston hard-hit by Hurricane Harvey, initially denied aid to residents who refused to sign such a pledge. In Kansas, the ACLU recently filed suit in federal court ([Koontz v. Watson](#)) challenging the constitutionality of a similar law.

On the federal level, Congress is currently considering the [Israel Anti-Boycott Act](#) (S.720/H.R.1697), the most draconian of all anti-BDS bills introduced to date. This bill would imprison individuals for up to 20 years and fine them \$1 million for furnishing information in support of an international organization's call to boycott Israel or its illegal settlements.

Marcus unequivocally supports using the heavy hand of the US government to suppress Americans' First Amendment-protected right to engage in boycotts for Palestinian rights, a form of economic pressure the Supreme Court has validated as protected political speech. In an [article](#) he wrote in 2014, Marcus advocated for "Justice department [sic] enforcement" of "an effective anti-boycott bill." Such blatant disregard for Americans' First Amendment rights should disqualify Marcus from any governmental position charged with the oversight of civil rights in education.

Marcus alleges criticism of Israel is anti-Semitic and smears those who support Palestinian rights.

In a 2014 address to the [Israel Forever Foundation](#), Marcus articulated the view that anti-Semites have learned to shield their bigotry by referring to Israel instead of Jews, and that therefore criticisms of Israel should be recognized as hatred of Jewish people and treated as such. Discussing his work at the Brandeis Center, Marcus explained that:

"When we find anti-Semitism or racism, typically the response is fairly quick, that they will respond to it, often very firmly. But there is an exception. It's the Israel exception. You can be as hateful as you want to be, but if you know the magic word and you mutter 'Israel' on your breath when you do it, it will be mistaken for a political expression.... But if in some way you are smart enough....to make this about Israel in some fashion, then whether it's university administrators or government officials, all of a sudden people won't want to deal with this. They'll say there's a freedom of expression and everyone has a right. They'll say this is a conflict among students but they won't recognize that hate against Jews even when the word Israel is mentioned is hate and needs to be addressed not in a special way, but in the very same way in which we address it all across the board."

In other words, according to Marcus, political speech critical of Israel or in support of Palestinian rights is anti-Semitic. No better illustration of Marcus's twisted logic exists than his maligning of President Jimmy Carter, who in his book *Palestine: Peace Not Apartheid* argued that Israel could become an apartheid state if it does not end its occupation of the Palestinian West Bank, a view seconded by former Israeli prime ministers Ehud Barak and Ehud Olmert, as well as former Secretary of State John Kerry. On Twitter, Marcus accused Carter of harboring "anti-Semitic principles" and spoofed the title of his book by claiming to have written a book entitled "Carter: Peacenik or Neo-Nazi." He also

approvingly cited Israel's jailing of a former Member of Congress who attempted to break its illegal blockade of Gaza and asked, "Is Jimmy Carter next?"



Conclusion

The Trump administration has been explicit in its intention to use the machinery of government to crack down on political speech in support of Palestinian rights on college campuses. Kenneth Marcus is the ideal candidate to accomplish this blatantly unconstitutional aim. Marcus was nominated by the Trump administration to be Assistant Secretary for Civil Rights of the Department of Education, and if confirmed, would act from within the Department of Education to achieve what he failed to do from without: conflate campus organizing for Palestinian rights with anti-Jewish discrimination in an effort to deter, silence, and ultimately suppress criticism of Israel on campus. His robust advocacy for legislation to punish people exercising their First Amendment-protected right to boycott for Palestinian rights illustrates his fundamental unfitness for a position charged with overseeing civil rights in education.

The Senate should unequivocally reject Kenneth Marcus's nomination.