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Re: The IHRA definition censors free speech and disrupts the education of Palestinian students and their allies.

Dear Assistant Secretary Lhamon,

We, the undersigned civil rights organizations, write to express our strong objection to the International Holocaust Remembrance Alliance (IHRA) definition of antisemitism and the “Contemporary examples of antisemitism” that accompany it. We urge you not to rely or refer to

IHRA or to any similar definition in the draft rule your office is formulating in response to Executive Order 13899, issued by former President Trump on December 11, 2019.¹

A rule which further codifies the IHRA definition would contravene the purpose of Title VI of the Civil Rights Act and raise serious First Amendment concerns. The IHRA definition of antisemitism is routinely used as an instrument to silence students and scholars who speak about Palestinian rights. The IHRA definition dangerously conflates criticism of the Israeli state with antisemitism, suppressing information and debate about Israeli human rights violations, rather than making it easier to identify discrimination against Jewish students. The IHRA definition is weaponized especially against Palestinian and Muslim academics and students, who are frequently and falsely smeared as antisemitic solely for their speech in support of Palestinian rights. False allegations are often imbued with anti-Muslim, anti-Arab stereotypes that Palestinians are violent and undeserving of freedom or equality.

Concerns that the IHRA definition will be used to reinforce anti-Palestinian racism and to censor constitutionally protected speech are not abstract or theoretical but based on extensive experience, as detailed below.

1. The IHRA definition infringes on free speech rights.

Adopting the IHRA definition would infringe on bedrock First Amendment protections and establish a federal requirement for universities to abrogate their educational missions and violate campus free speech principles.

We are deeply distressed by all forms of bigotry in our nation's schools, including hate that targets Jewish, Arab, Asian, Black, Latinx, LGBTQ, and other vulnerable students. We support long-standing efforts by the Department of Education Office for Civil Rights (OCR) to protect Jewish, Sikh, Muslim, Hindu, and Buddhist students from discrimination.² We appreciate OCR's work to address discrimination based on actual or perceived, shared ethnic characteristics as a form of national origin discrimination. Under current and previous administrations, OCR has already enforced this policy to address multiple cases of antisemitic discrimination.³

¹ Exec. Order No. 13899 of Dec. 11, 2019, <https://www.federalregister.gov/d/2019-27217>.

² See U.S. Department of Education Office for Civil Rights (OCR) Fact Sheet, "Combatting Discrimination Against Jewish Students," <https://www2.ed.gov/about/offices/list/ocr/docs/jewish-factsheet-201701.pdf>; Russlyn Ali, Assistant Secretary for Civil Rights, U.S. Department of Education, "Dear Colleague Letter," Oct. 26 2010, <https://www2.ed.gov/about/offices/list/ocr/letters/colleague-201010.pdf>; Kenneth L. Marcus, Deputy Assistant Secretary for Enforcement, OCR, "Dear Colleague Letter: Title VI and Title IX Religious Discrimination in Schools and Colleges," Sept. 13, 2004, <https://www2.ed.gov/about/offices/list/ocr/religious-rights2004.html>.

³ See Michael D. Todd, Supervisory Attorney, Office for Civil Rights, U.S. Department of Education, Letter (OCR) to Superintendent Laura Toenjes, Kyrene School District, Aug. 2, 2022, <https://www2.ed.gov/about/offices/list/ocr/docs/investigations/more/08191367-a.pdf> (finding the district failed to respond to antisemitic harassment); Abra Francois, Compliance Team Leader, OCR Region I, Letter to Thomas M. Conrad, Superintendent of Schools, Nauset Public Schools, Mar. 11, 2021, <https://www2.ed.gov/about/offices/list/ocr/docs/investigations/more/01191320-a.pdf> (finding failure of Nauset Public Schools to respond to complaints of antisemitic harassment); Timothy Blanchard, Director, New York Office, OCR, Letter to Mark D. LaRoach, Vestal Central School District, May 21, 2012, <https://www2.ed.gov/about/offices/list/ocr/docs/investigations/more/02111270-a.pdf> (regarding failure of Vestal Central School District to respond appropriately to complaints alleging antisemitic harassment); Sheralyn

The IHRA definition of antisemitism, if codified as regulation, would provide no new legal protections for Jewish students who are subjected to discrimination. Rather, the IHRA definition would provide a censorship tool to prevent students from expressing political criticism of Israel or advocacy for Palestinian human rights.

Some of the IHRA definition is uncontroversial and aligns with a traditional understanding of antisemitism.⁴ But the definition radically departs from that understanding with its listing of “contemporary examples of antisemitism,” which include, “Denying the Jewish people their right to self-determination, e.g., by claiming that the existence of a State of Israel is a racist endeavor” and “Applying double standards by requiring of it a behavior not expected or demanded of any other democratic nation.” While purporting to be about antisemitism, the IHRA definition is concerned primarily with Israel.⁵

The guiding examples attached to the IHRA definition falsely conflate political criticism of Israel with antisemitism, placing anyone charged with implementing the definition in the position of government censor. For example, when applying the IHRA definition to evaluate campus complaints, how would an OCR official decide whether students and faculty are applying a “double standard” to Israel? Would there be guidance as to whether, and how much, students and faculty must first criticize other nation states before criticizing Israel? Would universities be required to punish students and faculty who call the Israeli state “racist,” while allowing speech that makes the same critique of the U.S. or other governments? Would a campus discussion be grounds for a federal investigation if it examined Israel’s “Nation State” law (enacted in July 2018, to enshrine the right of national self-determination for Jews only⁶) or other race-based regulations (such as roads connecting illegal Israeli settlements in the occupied West Bank which Palestinians are effectively barred from using)?⁷

Goldbecker, Team Leader, District of Columbia Office, Office for Civil Rights, U.S. Department of Education, Letter (OCR) to Patrick Russo, Henrico County Public Schools, Jan. 7, 2011, <https://www2.ed.gov/about/offices/list/ocr/docs/investigations/more/11101244-a.pdf> (finding failure of the Henrico County Public Schools to respond appropriately to complaints alleging antisemitic harassment).

⁴ International Holocaust Remembrance Alliance, “What Is Antisemitism? Non-legally binding working definition of antisemitism,” <https://www.holocaustremembrance.com/resources/working-definitions-charters/working-definition-antisemitism>. For example, the body of the IHRA definition reads: “Anti-Semitism is a certain perception of Jews, which may be expressed as hatred toward Jews. Rhetorical and physical manifestations of antisemitism are directed toward Jewish or non-Jewish individuals and/or their property, toward Jewish community institutions and religious facilities.” Merriam-Webster defines anti-Semitism as, “Hostility toward or discrimination against Jews as a religious, ethnic or racial group.”

⁵ Seven out of the eleven illustrative examples concern criticism of Israel. Meanwhile, the definition fails to address root causes and interconnections with other forms of discrimination and fails to differentiate between systemic and individual antisemitism. It does not help to identify the different forms of beliefs, tropes, speech, acts, micro-aggressions, discrimination, property damage, and outright personal violence that racism and antisemitism often take.

⁶ See David M. Halbfinger and Isabel Kershner, “Israeli Law Declares the Country the ‘Nation-State of the Jewish People,’” *New York Times*, July 19, 2018, <https://www.nytimes.com/2018/07/19/world/middleeast/israel-law-jews-arabic.html>.

⁷ See Nir Hasson, “New Jerusalem ‘Apartheid Road’ Opens, Separating Palestinians and Jewish Settlers,” *Haaretz*, Jan. 10, 2019, <https://www.haaretz.com/israel-news/2019-01-10/ty-article-magazine/.premium/new-apartheid-road-opens-separating-palestinians-and-west-bank-settlers/0000017f-e8cc-df2c-a1ff-fedda5460000>.

Application of the IHRA definition will drive OCR investigators into a morass of viewpoint-based distinctions and may compel and punish speech in violation of the First Amendment.

The IHRA definition of antisemitism is especially detrimental to universities, whose missions necessitate respect for freedom of speech, critical inquiry, and unfettered debate.⁸ First Amendment experts across the political spectrum, public commentators, and the re-definition's original drafter have all repudiated its use on college campuses.⁹

The American Association of University Professors (AAUP) recently condemned attempts to apply IHRA in a university setting, likening IHRA to efforts to eliminate teaching about the history of racial violence. AAUP warned that such efforts pose a severe threat to academic freedom, undercutting the purpose of higher education and the public mission of our universities to educate critical thinkers. AAUP “urge[d] the defeat of these legislative initiatives and others of their kind in order to protect the academic freedom that is vital to the preservation of democracy.”¹⁰

Students, professors, and campus administrators across the U.S. have been subjected to a barrage of legal complaints where Israel advocates deploy the IHRA definition as a tool to censor speech critical of Israel or favorable to Palestinian rights. Since 2019, Israel advocates have filed at least 13 complaints with OCR alleging that campus speech about Palestine is threatening to Jewish students and amounts to a Title VI violation.¹¹

⁸ The U.S. Supreme Court has recognized the importance of campus free speech, stating that “[o]ur Nation is deeply committed to safeguarding academic freedom, which is of transcendent value to all of us and not merely to the teachers concerned. That freedom is therefore a special concern of the First Amendment, which does not tolerate laws that cast a pall of orthodoxy over the classroom.” *Keyishian v. Board of Regents*, 385 U.S. 589, 603 (1967).

⁹ Kenneth Stern’s 2017 testimony to the House of Representatives Judiciary Committee is available at <https://docs.house.gov/meetings/JU/JU00/20171107/106610/HHRG-115-JU00-Wstate-SternK-20171107.pdf>; See also Kenneth Stern, “Will Campus Criticism of Israel Violate Federal Law?,” *New York Times*, Dec. 12, 2016, <https://www.nytimes.com/2016/12/12/opinion/will-campus-criticism-of-israel-violate-federal-law.html>; See also Editorial Board, “Enough Already. Not all criticism of Israel is Anti-Semitism,” *Los Angeles Times*, June 8, 2018, <http://www.latimes.com/opinion/editorials/la-ed-anti-semitism-20180608-story.html>, (asserting that freedom of speech on college campuses is under enough pressure without the federal government adding to the problem by threatening to withdraw funding to punish people for expressing their political opinions.); Eugene Volokh, “The University of California, ‘microaggressions,’ and supposedly anti-Semitic criticism of Israel,” *Washington Post*, Aug. 31, 2015, <https://www.washingtonpost.com/news/volokh-conspiracy/wp/2015/08/31/the-university-of-california-microaggressions-and-supposedly-anti-semitic-criticism-of-israel/>; Erwin Chemerinsky and Howard Gillman, “A Bill to Police Campus Speech,” *Wall Street Journal*, Dec. 15, 2016, <https://www.wsj.com/articles/a-bill-to-police-campus-speech-1481846338>; Will Creely, “New federal anti-Semitism act, same First Amendment problem,” Foundation for Individual Rights in Education, May 29, 2018, <https://www.thefire.org/new-federal-anti-semitism-act-same-first-amendment-problem/>.

¹⁰ American Association of University Professors, Committee on Academic Freedom and Tenure, “Legislative Threats to Academic Freedom: Redefinitions of Antisemitism and Racism,” Mar. 2022, <https://www.aaup.org/report/legislative-threats-academic-freedom-redefinitions-antisemitism-and-racism>

¹¹ This is likely an undercount as public information is limited. We are aware of the following:

1. University of California Los Angeles, Case No. 09192070, filed Nov. 19, 2018, investigation opened Jan. 3, 2020, still pending as of July 30, 2022.
2. New York University, Case No. 02192174, filed Apr. 25, 2019, investigation opened Nov. 13, 2019, resolution agreement reached before resolution of investigation Sept. 25, 2020.

Many more complaints have been threatened in legal letters to university administrators, which Israel advocates routinely publish to achieve damaging headlines that embarrass universities. The letters typically threaten legal action if universities do not meet demands to punish students and faculty for speaking about Palestine. Israel advocacy organizations have a demonstrated record of filing abusive complaints and have boasted about their chilling effects as a victory, even when the complaints are factually meritless or legally unfounded.¹²

Citing the IHRA definition (or definitions with similar content), Israel advocates have sent legal complaints and/or threatening letters focused on classroom discussions (UCLA),¹³ guest lectures (Indiana),¹⁴ film screenings (Pitzer and Pomona Colleges),¹⁵ youth organizing conferences (University of Michigan),¹⁶ student resolutions to divest from human rights

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3. University of North Carolina, Case No. 11192215, filed May 22, 2019, investigation opened June 25, 2019, resolution agreement signed before resolution of investigation on Nov. 6, 2019.
 4. Duke University, Case No. 11192214, filed May 22, 2019, investigation opened June 25, 2019, resolution agreement signed before resolution of investigation on Dec. 10, 2019.
 5. University of California Los Angeles, Case No. 09202016, filed Oct. 15, 2019, investigation opened Jan. 3, 2020, still pending as of July 30, 2022.
 6. Bard College, Case No. 02202022, filed Oct. 28, 2019, investigation opened Feb. 3, 2020, still pending as of July 30, 2022.
 7. Columbia University, Case No. 02202063, filed Dec. 19, 2019. As of Dec. 6, 2021, the complaint was still pending.
 8. Columbia University, Case No. 02202064, filed Dec. 23, 2019. As of Dec. 6, 2021, the complaint was still pending.
 9. Georgia Tech, Case No. 04202122, filed Dec. 27, 2019, investigation opened Mar. 4, 2020, resolution reached Jan. 6, 2021.
 10. University of Illinois Urbana-Champaign, Case No. 05202325, filed Mar. 24, 2020, investigation opened Nov. 13, 2020, still pending as of July 30, 2022.
 11. City University of New York (CUNY) School of Law, Case No. 02212010, filed Oct. 15, 2020. On Jan. 24, 2022, and on Jan. 31, 2022, two investigations were opened into CUNY Law, but it is unclear whether either these were based on this specific complaint.
 12. CUNY Hunter College, Case No. unknown, filed Nov. 10, 2021. An investigation was opened into CUNY Hunter College on Feb. 10, 2022, but it is unclear whether this is based on this specific complaint.
 13. City University of New York, Case No. unknown, filed July 19, 2022. Status unknown.

¹² See, e.g., Kenneth Marcus, “Standing up for Jewish Students,” *Jerusalem Post*, Sept. 9, 2013, <https://www.jpost.com/opinion/op-ed-contributors/standing-up-for-jewish-students-325648> (“Seeing all these cases rejected has been frustrating and disappointing, but we are, in fact, comforted by knowing that we are having the effect we had set out to achieve These cases—even when rejected—expose administrators to bad publicity No university wants to be accused of creating an abusive environment 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.”).

¹³ University of California Los Angeles, Case No. 09202016, filed Oct. 15, 2019, investigation opened Jan. 3, 2020, still pending as of July 30, 2022.

¹⁴ Palestine Legal, “IIPAC Tries to Censor Jamil Dakwar’s Lecture at Indiana University,” Dec. 17, 2018, <https://palestinelegal.org/news/2018/12/17/iipac-jamil-dakwar>.

¹⁵ Harmeet K. Dhillon on behalf of the David Horowitz Freedom Center Letter to President Gabrielle Starr of Pomona College and President Melvin Oliver of Pitzer College, Feb. 3, 2020, <https://drive.google.com/file/d/12jTDUIG3AITOI58VKg8n7MrUEb34icRJ/view>.

¹⁶ Julia Rubin, “Jewish groups urge ‘U’ to cancel student-led pro-Palestine conference,” *Michigan Daily*, Jan. 23, 2020, <https://www.michigandaily.com/news/news-briefs/jewish-groups-urge-u-to-cancel-student-led-pro-palestine-conference/>.

violations (University of Illinois)¹⁷ and similar speech activity. The complaints demand that universities punish students, faculty, and guest speakers who talk about Palestinian history, identity, and conditions, or U.S. and Israeli policy towards Palestinians. The speech activity at the center of these complaints is essential to the educational environment on a vibrant campus of diverse and critical thinkers, and it must remain protected by bedrock free speech policies.

2. The IHRA definition is one part of a widespread effort to suppress Palestine advocacy on campus.

If OCR were to codify the inaccurate and overbroad IHRA definition of antisemitism, it would add an additional instrument of censorship to a context where speech on Palestine is already widely suppressed.

Since 2014, Palestine Legal—a nonprofit legal and advocacy organization supporting people who speak out for Palestinian rights in the U.S.—has responded to more than 2,000 incidents of censorship, punishment, or other burdening of advocacy for Palestinian rights.¹⁸ University and college administrators have canceled lectures, classes, professorships, and entire student organizations because they express support for Palestinian freedom.

The over 2,000 incidents Palestine Legal has documented understate the phenomenon, as many advocates who are unaware of their rights or afraid of attracting further scrutiny stay silent and do not report incidents of suppression. The overwhelming majority of these incidents targeted students and scholars, a reflection of the central role universities play in political movements, including political debate about U.S. foreign policy.

Pro-Israel advocacy groups devote considerable resources to monitor the speech and activities of Palestinian rights advocates and falsely accuse them of antisemitism, based solely on their criticism of Israel, to suppress campus speech on the matter.¹⁹ The following examples describe the landscape of suppression that IHRA operates in.

Censorship of Campus Speakers

In response to false accusations, universities routinely censor Palestine speech – either outright, or by erecting administrative obstacles or abruptly altering school policies.²⁰

¹⁷ Brandeis Center, “Summary of UIUC Title VI Complaint (March 27, 2020), Supplemental Memorandum (June 18, 2020), and Supplemental Letter (October 16, 2020),” <https://brandeiscenter.com/wp-content/uploads/2020/10/Summary-of-Title-VI-Complaint.pdf>.

¹⁸ Palestine Legal, “2021 Year-in-Review: Palestinian Uprising Generates Record Solidarity—and Fierce Backlash,” <https://palestinelegal.org/2021-report>.

¹⁹ Palestine Legal, CCR, “The Palestine Exception to Free Speech: A Movement Under Attack in the US,” Sept. 2015, <https://static1.squarespace.com/static/548748b1e4b083fc03ebf70e/t/560c2e0ae4b083d9c363801d/1443638794172/Palestine+Exception+Report+Final.pdf>; See also, Palestine Legal, “2020 Year-in-Review: The Movement Will Not Be Canceled,” <https://palestinelegal.org/2020-report>; Palestine Legal, “2021 Year-in-Review: Palestinian Uprising Generates Record Solidarity – and Fierce Backlash,” <https://palestinelegal.org/2021-report>.

²⁰ Ibid.

For example, in March 2022, at John Jay College of Criminal Justice, administrators cancelled a student organized conference entitled “Palestine Lives”-citing a failure to meet administrative requirements. The student organizers maintain that they had in fact followed all necessary procedures, and the conference was cancelled for its content.²¹

The same month, Cardozo School of Law censored a campus event featuring Professor Rabab Abdulhadi of San Francisco State University, one week before the lecture was to take place.²² The university cancelled the event, the catering, and the room reservation without communicating with the student organizers from the Cardozo on Israel and Palestine club who had planned the event.

Punishing Campus Speech

Universities often respond to complaints from Israel advocacy groups by investigating and disciplining students and student groups for events and actions that criticize Israeli policy. For example, in the spring of 2014, Northeastern University suspended a student group after members distributed flyers describing Israel’s policy of demolishing Palestinian homes.²³ Public outcry and the threat of legal action forced the university to reverse course and reinstate the group. In 2016, a Palestinian student club at the University of California, Irvine was dragged through disciplinary procedures for protesting a group of Israeli soldiers.²⁴ The soldiers had been physically harassing the students for days prior, and were later revealed to be on the propaganda payroll of the Israeli government. Students at Bard College, San Francisco State University, Georgia Tech, Tufts University, and elsewhere have been similarly dragged through campus discipline processes in response to demands from Israel advocacy organizations arguing that speech supportive of Palestine must be punished.

Violations of Academic Freedom

False accusations of antisemitism pose a severe threat to academic freedom as Israel advocacy groups often target academics who are supportive of Palestinian rights. Smear campaigns against faculty sully reputations, instigate university investigations, and can lead to termination of employment.

For example, in 2021, at the University of California, Los Angeles (UCLA) and the University of North Carolina at Chapel Hill (UNC), Israel advocacy groups launched public campaigns opposing courses on Palestine based on their objections to the instructors’ viewpoints. Loubna Qutami, an assistant professor of Asian American Studies at UCLA, and UNC doctoral

²¹ Middle East Studies Association, Academic Freedom Committee, “Letter to the president of John Jay College of Criminal Justice (CUNY) protesting the cancellation of the Palestine Lives Conference,” June 13, 2022, <https://mesana.org/advocacy/committee-on-academic-freedom/2022/06/13/letter-to-the-president-of-john-jay-college-of-criminal-justice-cuny-protesting-the-cancellation-of-the-palestine-lives-conference>.

²² Daniel A. Segal, “The Palestinian Exception to Academic Freedom at Yeshiva University,” Apr. 26, 2022, <https://academeblog.org/2022/04/26/the-palestinian-exception-to-academic-freedom-at-yeshiva-university/>.

²³ Palestine Legal, CCR, “The Palestine Exception to Free Speech,” Sept. 2015.

²⁴ Palestine Legal, “Press Release: UC Irvine Dismisses Allegations Against Students for Justice in Palestine,” Aug. 23, 2016, <https://palestinelegal.org/news/2016/8/23/press-release-uc-irvine-dismisses-allegations-against-students-for-justice-in-palestine>.

candidate Kylie Broderick were publicly attacked for teaching courses titled “Palestine in Comparative Ethnic Studies Frameworks” and “The Conflict Over Israel/Palestine,” respectively.²⁵ Israel-advocacy organizations combed through and publicized the scholars’ affiliations and social media postings in an effort to cast doubt on their expertise and their fitness to teach the courses. In Broderick’s case, a member of Congress and an Israeli diplomat met with university officials to pressure them to cancel her course. While the courses were not canceled, neither Qutami’s nor Broderick’s university publicly defended them against these personal and professional attacks.

In 2022, Indiana University Bloomington hired Dr. Taurean Webb, a scholar of Black-Palestinian solidarity in Afro-Christian spaces, to be an associate director of the university’s Center for the Study of Global Change. Shortly after his appointment, the pro-Israel blacklist site StopAntisemitism.org began to smear him on social media, falsely alleging that a congregational study curriculum on Palestine he developed while serving as a proctor for Garrett-Evangelical Theological Seminary in 2016 was antisemitic. The site instructed its readers to call on the university’s president to reprimand Webb, and as a result, he, the Center, and the president’s office have received harassing messages calling for his dismissal.

Palestine Legal has responded to numerous cases where educators are denied tenure, fired, or disciplined for speech supportive of Palestinian rights. The majority of these cases are confidential, but the few public instances are illustrative. In January 2020, Ethical Culture Fieldston School fired Jewish high school history teacher JB Brager for making statements critical of Israel and Zionism.²⁶ In 2022, the Agnes Irwin School in Philadelphia fired Palestinian-American athletic trainer Natalie Abulhawa after parents complained about years-old social media posts criticizing Israel.²⁷ Dr. Steven Salaita, Palestinian-American scholar and tenured professor was infamously terminated by the University of Illinois Urbana-Champaign for tweets critical of the Israeli government’s assault on Gaza in 2014, in response to demands from university donors.²⁸ Although Dr. Salaita settled a lawsuit with the university for violations of his rights, he did not recover his academic career.

Anti-Palestinian Racism

While campaigns against students and scholars are generally characterized by calls for censorship and reputational threats, in several notable instances harassment has crossed the line into physical aggression targeting Palestinians based on their ethnicity. In many more cases, the censorship campaigns are imbued with anti-Palestinian racism and stereotypes, or school administrators blatantly discriminate against Palestinians based on their ethnicity.

²⁵ Palestine Legal, “2021 Year-in-Review: Palestinian Uprising Generates Record Solidarity – and Fierce Backlash.” <https://palestinelegal.org/2021-report>.

²⁶ Palestine Legal, “Firing Bronx History Teacher Over Israel Criticism Chills Free Speech & Human Rights Advocacy,” Jan. 17, 2020, <https://palestinelegal.org/news/2020/1/17/firing-history-teacher-israel-criticism-chills-free-speech-human-rights>.

²⁷ Missarah Mikati, “She was fired for being publicly pro-Palestine. One year later, no one is hiring her,” *Philadelphia Inquirer*, Aug. 23, 2022, <https://www.inquirer.com/news/agnes-irwin-fires-pro-palestine-employee-20220823.html>.

²⁸ Center for Constitutional Rights, “Historic Case: Salaita v. Kennedy, et al.” <https://ccrjustice.org/home/what-we-do/our-cases/salaita-v-kennedy-et-al>.

For example, students of color at UC Berkeley who spoke out in support of Palestinian rights and others who were stereotyped as being aligned with these views faced a slew of shocking physical attacks on campus during the Spring 2020 semester. The attacks included students being followed home, young women wearing headscarves physically assaulted and spat on, a Black student attacked with urine, and more. At a student government meeting about calls to censor a display on campus that had been designed by the club Bears for Palestine, a student publicly announced his plans to join the Israeli military in order to “eliminate Palestinian nationalism and Palestinians from the world.” In the aftermath, Palestinian students were afraid to walk on campus alone.²⁹

In 2021, a Palestinian sixth grader at a public school in California was removed from her class by a counselor and told that a T-shirt bearing the words “Palestine” (in Arabic) and “Free Palestine” promoted violence and made other students feel unsafe. A Palestinian-American high school student in California was forbidden from wearing a Palestinian stole at her graduation ceremony. Though the school allowed other students to wear Kente cloth stoles representing their heritage, the school claimed the Palestinian student’s stole did not meet the criteria for cultural adornment.³⁰

In 2021, George Washington University cancelled trauma support services that its Office for Advocacy and Support (OAS) planned to provide for Palestinians. OAS advertised a virtual processing space for Palestinians impacted by Israel’s forced expulsion of Palestinians in Jerusalem and its killing of hundreds in the Gaza Strip. OAS had provided similar services to other ethnic and religious groups impacted by violence. Within 24 hours of advertising the processing space on Instagram, high-level administrators held an emergency meeting with OAS and directed the office to cancel the event and remove the post.³¹

These cases can be understood not only as suppression that censors protected speech, but as instances that reinforce anti-Palestinian racism³² and interrupt the ability of Palestinian students to obtain an equal education.

²⁹ Palestine Legal, “After Death Threat, Berkeley Students Demand Institutional Support Apr. 3, 2020, <https://palestinelegal.org/news/2020/4/3/after-death-threat-berkeley-students-demand-institutional-support>.

³⁰ Palestine Legal, “2021 Year-in-Review: Palestinian Uprising Generates Record Solidarity – and Fierce Backlash.” <https://palestinelegal.org/2021-report>.

³¹ Palestine Legal, “Anti-Palestinian Discrimination & Retaliation at GW University,” Jan. 28, 2022, <https://palestinelegal.org/case-studies/2022/1/28/anti-palestinian-discrimination-retaliation-at-george-washington-university>.

³² Anti-Palestinian racism, which is an extension of anti-Arab racism, is a distinct form of racism that describes the discriminatory and racist acts against Palestinians and advocates. Arab Canadian Lawyers Association, “Anti-Palestinian Racism: Naming, Framing, and Manifestations,” 2022; Yasmeen Abu-Laban & Abigail B. Bakan, “Anti-Palestinian Racism: Analyzing the Unnamed and Suppressed Reality,” *Project on Middle East Political Science*, Sept. 21, 2021, <https://pomeps.org/anti-palestinian-racism-analyzing-the-unnamed-and-suppressed-reality>; Peter Beinart, “It’s Time to Name Anti-Palestinian Bigotry,” *Jewish Currents*, July 16, 2021, <https://jewishcurrents.org/its-time-to-name-anti-palestinian-bigotry>.

3. IHRA Definition in Action: Case Examples

The following cases illustrate how proponents of the IHRA definition use it to censor protected expression in support of Palestinian rights and perpetuate anti-Palestinian racism on campus.

Arizona State University (ASU)³³

IHRA was cited by student government officials at ASU in March 2022 as a reason to prevent student organizers from hosting Palestinian poet and journalist Mohammed El-Kurd to speak about his newly published poetry collection, *Rifqa*. A student government committee first attempted to condition approval of the event on El-Kurd refraining from criticizing Israel. The committee then questioned student organizers about whether the poetry book and the event would involve speech violating IHRA. The student government officials stated, falsely, that the university and the federal government had adopted IHRA and that they were required by law to adhere to the definition.

Student organizers explained that the event would examine how art, poetry, and creativity can be the product of living through war and being displaced in diaspora, and that El-Kurd's poetry and personal accounts reflect his life experience. The organizers were told the next day that the committee did not want to approve their budget request. The event was only approved after Palestine Legal informed the university that applying IHRA to deny funding based on viewpoint of the speaker would violate the First Amendment.

While the event went forward, the long delays and bureaucratic roadblocks not only caused the student organizers considerable time and stress, they also prevented the organizers from promoting the event as they had planned, resulting in a smaller audience than they would otherwise have expected.

Bard College³⁴

False accusations of antisemitism based on the logic of IHRA have resulted in nearly three years of misguided investigations into campus speech about Palestine at Bard. In October 2019, student activists protested a panel featuring Ruth Wisse, a retired Harvard professor with a history of bigoted anti-Palestinian remarks. The protest involved several students silently holding signs with quotes from Wisse such as, "Palestinian Arabs are people who breed and bleed and advertise their misery." After this protest, one of Wisse's co-panelists published an article falsely claiming that she and the other panelists were targeted for being Jewish.

Bard College opened an investigation into two students who were involved with the protest, after Israel advocates accused them of harassment and discrimination. These students were forced to testify before a panel of professors during finals week, dealing not only with disciplinary procedures but also a public smear campaign against them. Ultimately, Bard cleared them of any wrongdoing.

³³ Palestine Legal, "ASU Students Overcome IHRA Roadblock to Mohammed El-Kurd Event," May 10, 2022, <https://palestinelegal.org/news/2022/5/10/asu-students-overcome-ihra-roadblock-to-mohammed-el-kurd-event>

³⁴ Palestine Legal, "Bard Students Exonerated After Protesting Anti-Palestinian Speaker," Sept. 22, 2021, <https://palestinelegal.org/case-studies/2021/9/22/bard-students-exonerated-after-protesting-anti-palestinian-speaker>.

Nonetheless, false accusations continued, and in February 2020, OCR opened an investigation into Bard College for National Origin Discrimination Involving Religion, just weeks after Trump's executive order on IHRA.³⁵ The students were once again questioned about their activism, this time by a federal investigator from OCR. As of July 2022, the investigation was still under way, and the campus remains under a chilling shadow of uncertainty as to whether campus members are permitted to express support for Palestine without facing punishment.

Butler University³⁶

Pro-Israel students proposed a resolution to adopt IHRA in the fall of 2020 as a response to two events that included references to Palestine activism: an art exhibit which displayed posters about boycotts for justice, including Palestine, and a know your rights event about safe protesting, which was jointly hosted by Students for Justice in Palestine (SJP) and the student government. During the initial debate on the IHRA resolution, the only two Palestinians in student government were excluded from participating in discussions and were unable to share the direct impact the resolution would have on Palestinians on campus. Because of the concerns of members of the campus community about the detrimental impact of IHRA, the resolution was dropped, but accusations equating Palestine advocacy with antisemitism continued to pressure campus administrators to suppress speech about Palestine.

Months later the administration abruptly cancelled a lecture by the preeminent activist and scholar Angela Davis without warning or discussion just three days before the event was scheduled to take place. The cancelation occurred after complaints about Angela Davis's vocal support for Palestinian freedom from pro-Israel students. The administration claimed that the student organizers had not followed proper procedures. The administration pointed to bureaucratic hurdles which had only been implemented earlier that year in response to other events relating to Palestine and the proposed IHRA resolution.

The Angela Davis event went forward eventually although it was delayed weeks. The accumulated stress on the Palestinian student at the center of these controversies caused severe interruptions to her education, including constant anxiety; hyper visibility and the feeling that everyone on campus was staring at her; a loss of physical security to the point she was advised by administrators not to walk to her car alone; loss of sleep; loss of appetite and a loss of weight; and ultimately the inability to apply to graduate school that year.

California Ethnic Studies Model Curriculum³⁷

The California Department of Education removed Palestine from a draft model curriculum for Ethnic Studies, after a pressure campaign by pro-Israel groups argued that

³⁵ Case No. 02202022, filed Oct. 28, 2019, investigation opened Feb. 3, 2020, still pending as of July 30, 2022. The complaint is not publicly available.

³⁶ Palestine Legal, "Palestinian Students & Angela Davis Overcome Censorship Attempts at Butler University," Sept. 22, 2021, <https://palestinelegal.org/case-studies/2021/9/21/palestinian-students-angela-davis-overcome-censorship-butler-university>.

³⁷ Gabi Kirk, "Authors of California Ethnic Studies Curriculum Decry Cuts to Arab Studies," *Jewish Currents*, Feb. 3, 2021, <https://jewishcurrents.org/authors-of-california-ethnic-studies-curriculum-decry-cuts-to-arab-studies>; Gabi

references to Palestinian perspectives and movements in a sample lesson plan violated the rights of Jewish students. The Ethnic Studies Model Curriculum went through a politicized revision that removed mention of Palestine as a place, demoted Arab American studies to a secondary appendix, and included the IHRA definition of antisemitism. The changes to the curriculum so undermined the purposes of ethnic studies that the entire 20-person advisory committee of ethnic studies experts appointed to create the curriculum removed their names from the draft.

Florida State University³⁸

In June 2020, Ahmad Daraldik made history as the first Palestinian-American president of the Florida State student senate. Days later, his detractors surfaced a photo of Ahmad in Palestine standing next to a statue of Nelson Mandela, with a caption expressing outrage at the Israeli occupation. Almost immediately Ahmad faced a harassment campaign attempting to shame him for sharing his experiences as a Palestinian. Ahmad was broadly attacked as unfit for office, based on the IHRA definition and a similar rationale that speech describing Palestinian life under Israeli occupation is antisemitic.

Ahmad endured months of anti-Palestinian bullying including dozens of Islamophobic, racist, violent and misogynistic private messages; Florida legislators pressuring students to take action against him, including via threats to withdraw state funding for the school; three petitions calling for Ahmad's removal and even expulsion; two university measures adopting the IHRA definition; two resolutions passed by city councils in Florida condemning Ahmad; a statement released by the FSU administration condemning Ahmed for "anti-Israel rhetoric," which was later edited to refer to "antisemitic remarks"; and a mission on Act.il, an app partially funded by Israel, urging social media users to send pre-drafted messages to FSU complaining about Ahmad in return for rewards, badges, and online points.

From the stress of constant bullying messages and the pressure campaign against him, Ahmad had difficulty sleeping, fell ill, fell behind academically, was blocked from participating in student government, lost his sense of security, was unable to function on a daily basis and was unable to speak about being Palestinian without causing further disruptions to his education.

Middlebury College³⁹

In March 2021, after the Students for Justice in Palestine (SJP) club at Middlebury College in Vermont launched a campaign to raise awareness about Israeli apartheid, Palestinian and Jewish students were harassed and vilified by Israel advocates and accused of violating IHRA. The group was falsely accused of antisemitism and terrorism, their posters were vandalized, its Palestinian co-president received veiled threats, and its Jewish co-president was pressured by the college to delete language critical of Zionism from SJP's website.

Kirk, "Attacks From Pro-Israel Groups Threaten California's Ethnic Studies Curriculum," *Jewish Currents*, May 7, 2020, <https://jewishcurrents.org/attacks-from-pro-israel-groups-threaten-californias-ethnic-studies-curriculum>.

³⁸ Palestine Legal, "Student Leader Challenges Anti-Palestinian Campus Climate at FSU," Apr. 13, 2021 <https://palestinelegal.org/case-studies/2021/4/13/student-leader-challenges-anti-palestinian-campus-climate-at-florida-state-university>.

³⁹ Palestine Legal, "Middlebury College Refuses to Support Palestinian Student Harassed After Criticizing Israeli Apartheid," May 12, 2021, <https://palestinelegal.org/news/2021/5/12/middlebury-college-refuses-to-support-palestinian-student-harassed-after-criticizing-israeli-apartheid>.

Amidst the false accusations, the Palestinian co-president was approached multiple times—including while brushing her teeth in her dorm—with threats warning her of another student’s anger and “retaliation” because people were “afraid he’d do something.”

The Israel advocacy group StandWithUs wrote the college demanding it “take action” against SJP. StandWithUs relied on the IHRA definition to argue that the university’s failure to punish SJP for creating a website describing Israel as an apartheid state was antisemitic.⁴⁰ The letter also falsely accused SJP of having links to “designated terror organizations, including Hamas, Islamic Jihad and the Popular Front for the Liberation of Palestine.”

As a result of the threats she faced and the lack of action from administrators, the Palestinian co-president of SJP did not leave her room for four or five days out of fear for her physical safety—except to go to class and get food from the dining hall. She was able to sleep only three to four hours a night and lost seven pounds during this period.

Amidst chilling IHRA legal threats from StandWithUs, Middlebury refused multiple requests by students to the administration asking for protection from further threats and attacks.

New York University (NYU)⁴¹

In spring 2022, after NYU Law Students for Justice in Palestine (LSJP) engaged in a public email exchange about Palestine with their classmates, the Brandeis Center tried to reignite a formerly settled Title VI complaint and pressure NYU into adopting the IHRA examples.

The latest controversy dates back to April 2019 when a group of Israel advocates filed a complaint with OCR against NYU. The allegations in the complaint focused on the organizing efforts of the undergraduate Students for Justice in Palestine (SJP) club, including their support for boycotts for Palestinian rights and false allegations that SJP is connected to or founded by terrorist organizations. The complaint was filed a week after the NYU chapter SJP received a school award for their on-campus organizing and coalition building. The complaint alleged that despite NYU’s frequent and official condemnations of SJP’s activism, NYU did not adequately punish or stifle the Palestine activists in the NYU community.

In September 2020, NYU voluntarily entered a resolution agreement with OCR, agreeing to amend its discrimination policy to add shared ancestry and ethnic characteristics as protected categories. NYU released a statement affirming that the university does not tolerate discrimination or harassment. Nothing in the agreement suggested the university should prohibit or in any way suppress anti-Zionist political expression. In fact, NYU *explicitly declined* to adopt the IHRA examples of antisemitism, and explained: “[NYU] will devise its own examples to

⁴⁰ <https://www.standwithus.com/post/standwithus-to-middlebury-college-take-action-against-rising-antisemitism>

⁴¹ Palestine Legal, “Palestine Legal Urges NYU to Stop Politically-Motivated Investigation of Law Students,” May 27, 2022, <https://palestinelegal.org/news/2022/5/27/palestine-legal-urges-nyu-to-stop-politically-motivated-investigation-of-law-students>

implement the new policies and...will affirm its long-held commitment to academic freedom and free speech.”⁴²

This did not settle demands from Israel advocacy organizations to censor campus speech supportive of Palestinian rights.

On April 7, 2022, the vice president of the NYU campus group Law Students for Israel initiated a political dialogue by sending a school wide email that condemned “acts of Palestinian terror.” In response, members of LSJP wrote a message of their own contesting this framing and condemning the illegal occupation of Palestine. LSJP’s message provided important political context: Israel’s foundational displacement and ethnic cleansing of Palestinians and its ongoing colonial and apartheid practices. The message also announced a film screening.

Pro-Israel law students reacted by sending a slew of targeted messages to individual LSJP members accusing them of playing into antisemitic tropes and demanding that they retract their statement and condemn Palestinian resistance. When LSJP declined to do so, pro-Israel students submitted complaints to school administrators and leaked the emails to the press. Articles proliferated in right-wing publications falsely accusing the LSJP students (nearly half of whom are Jewish) of antisemitism. The students were also profiled on a harassing blacklisting website.

The Brandeis Center misrepresented the 2020 resolution agreement and continued to argue that NYU should not tolerate political speech critical of Israel (such as boycott campaigns for Palestinian rights or the email exchange between law students, which Brandeis Center mischaracterized as targeting Jewish students at NYU). The Brandeis Center argued that OCR must monitor NYU for tolerating such political speech and that NYU must adopt IHRA examples to comply with the law.⁴³ Several outlets went so far as to imply that the 2020 agreement between NYU and OCR required NYU to revoke the academic scholarships of individuals who signed onto the LSJP statement.⁴⁴

Pomona & Pitzer College⁴⁵

In February 2020, the David Horowitz Freedom Center (DHFC) threatened to sue Pomona and Pitzer Colleges under Title VI of the Civil Rights Act, alleging that the colleges’

⁴² Kery Murakami, “NYU Settles Anti-Semitism Case,” *Inside Higher Ed.*, Oct. 2, 2020, <https://www.insidehighered.com/news/2020/10/02/new-york-university-settles-anti-semitism-case-education-department>.

⁴³ Letter from Alyza Lewin and Arthur Traldi, Brandeis Center, to Catherine Lhamon Assistant Secretary for Civil Rights, May 31, 2022, <https://brandeiscenter.com/wp-content/uploads/2022/05/May-31-2022-Letter-to-Asst-Secretary-Lhamon-OCR-regarding-NYU.pdf>.

⁴⁴ Mosaic Magazine, “NYU Law School May Face Federal Scrutiny for Anti-Semitism on Campus,” Apr. 14, 2022, <https://mosaicmagazine.com/picks/israel-zionism/2022/04/nyu-law-school-may-face-federal-scrutiny-for-anti-semitism-on-campus/>; Aaron Sibarum, “Under Federal Scrutiny, NYU Law School Faces Uproar Over Anti-Semitism,” *Washington Free Beacon*, Apr. 13, 2022, <https://freebeacon.com/campus/under-federal-scrutiny-nyu-law-school-faces-uproar-over-anti-semitism/>.

⁴⁵ Erika Schwerdfeger, “Right-wing foundation to sue Pomona, Pitzer,” *The Student Life*, Feb. 21, 2020, <https://tsl.news/pitzer-pomona-claremont-college-david-horowitz-lawsuit-anti-semitism/>; Middle East Studies Foundation Committee on Academic Freedom Letter to Presidents Dr. Melvin Oliver and Dr. Gabrielle Starr, Feb. 20, 2020, <https://mesana.org/advocacy/committee-on-academic-freedom/2020/02/20/allegations-of-anti-semitism-at-pitzer-and-pomona-colleges>.

tolerance for campus speech on Palestine violated the IHRA definition. In a threat letter to the colleges followed by a media blitz, DHFC argued that the colleges were in violation of IHRA, and therefore Title VI, because they allowed the student club Students for Justice in Palestine (SJP) to promote boycott, divestment and sanctions (BDS) campaigns. They argued that the BDS movement is founded by someone who calls Israel racist, in violation of IHRA. Other alleged IHRA violations included campus film screenings, academic lectures on Palestine-Israel and art installations. DHFC underlined their argument with anti-Palestinian, anti-Muslim stereotypes alleging—falsely—that BDS is funded by the “terrorist organization, Hamas” and that SJP promotes violence.

Although the DHFC is widely viewed as an extremist hate group⁴⁶ and the complaint was absurd, the threat letter and ensuing media coverage thrust the colleges into a public relations crisis. The threat scared administrators, chilled students, and caused confusion about whether free speech favorable to Palestinian rights would be tolerated.

Tufts University

In November 2020, the Tufts University student body voted overwhelmingly to oppose Tufts University Police Department’s collaboration with the Israeli military, triggering multiple investigations into false allegations of antisemitism and demands from the Brandeis Center for the university to adopt the IHRA definition.

For years before the referendum, Tufts Students for Justice in Palestine (SJP), a student club of mostly Arab, Palestinian, and Jewish students dedicated to Palestinian human rights, had engaged in organizing and education to build diverse coalition of more than 40 student organizations. Throughout the campaign, SJP students and their allies faced online smears and attacks. For example, Ryan Fournier, a conservative political commentator with close to a million followers on Twitter, posted a video to his account alleging that Tufts SJP is antisemitic and asking his followers to call the university. Several outlets ran stories falsely accusing SJP of hateful conducted targeted at Jewish students.

During the student government’s referendum approval process, prior to the student body vote, SJP requested the recusal of a representative who had publicly opposed their campaign in his position as president of Tufts Friends of Israel. The student government denied this recusal request, and SJP submitted a complaint asking the student government to investigate. In February 2021, the Brandeis Center sent a letter to the university calling on Tufts to investigate and punish the SJP students who had filed the complaint. The letter made the false allegation that SJP called for the student to recuse himself from the referendum vote because of his Jewish ethnicity, ignoring the fact that SJP had not called on any other Jewish student senators to recuse themselves. The letter called on the university to adopt the IHRA definition of antisemitism. Over the course of several weeks, pro-Israel outlets picked up the story, accusing students with SJP of antisemitism for supporting Palestinian human rights. Out of fear of further harassment against SJP members and student senators, many of whom were Muslim, Arab, or other people of color, SJP withdrew their complaint. SJP members also declined to publicly defend themselves against the false accusations to avoid further harassment.

⁴⁶ Southern Poverty Law Center, “David Horowitz,” <https://www.splcenter.org/fighting-hate/extremist-files/individual/david-horowitz>.

In the time since the Brandeis Center letter, university administrators have launched multiple investigations into false allegations of antisemitism lobbed at pro-Palestine activism on campus, even privately threatening to de-charter SJP, which would cut the organization off from university funding entirely.

University of California, Berkeley – 2018 Vigil⁴⁷

In November 2018, Jewish students at UC Berkeley organized a vigil to jointly mourn the deaths of Palestinian children killed in Gaza and Jewish people killed in a shooting at the Tree of Life synagogue in Pittsburgh. The students faced a barrage of online harassment accusing them of antisemitism. A pro-Israel attorney told the media that he filed a civil rights complaint with the Department of Education relying on the IHRA definition. He argued that the vigil would portray “Israel as a barbarian and racist nation,” running afoul of the definition.⁴⁸ The students spent weeks of their semester responding to the false accusations and canceled the event. They lost study time, and the chance to mourn publicly as Jews and Palestinians together. A student organizer described, “As a Jewish student, I deeply care about antisemitism because it affects me and my family personally, and because it informs my concern about oppression of Jews and Palestinians and all people—it’s why I do what I do.”

University of California, Berkeley – 2016 Course Suspension⁴⁹

In September 2016, UC Berkeley suspended a course called “Palestine: A Settler Colonial Analysis” mid-semester, following complaints from Israel advocacy organizations who claimed the course was antisemitic under the “State Department definition”—a substantially similar definition to IHRA.

Israel advocacy organizations led a media campaign against the course, prompting the university to falsely accuse the Palestinian-American student facilitator Paul Hadweh of failing to follow procedures. After outcry over the blatant academic freedom violations, the university reinstated the course and issued a delayed partial apology to the student facilitator. However, the university did nothing to remedy the lasting harms.

The students in the course lost weeks of course time. The student facilitator, Paul, was depicted falsely in international media coverage (extending to Israeli, Arab, European, national, and local media outlets) as a student who violated university policies and attempted to indoctrinate his peers with antisemitic thinking.

For the weeks that followed the reinstatement, Paul was forced to devote himself full time to defending his reputation. He fell irreparably behind in an intensive Hebrew language course, which he eventually had to drop. Paul lost sleep, had trouble concentrating, and was

⁴⁷ Ed Pilkington, “Revealed: rightwing push to suppress criticism of Israel on US campuses,” *The Guardian*, Oct. 17, 2019, <https://www.theguardian.com/us-news/2019/oct/16/conservative-activists-want-to-outlaw-antisemitism-in-public-education-why-is-that-a-bad-thing>.

⁴⁸ Aaron Bandler, “Pro-Israel Students File Complaint to Department of Education About SJP Vigil at Berkeley,” *Jewish Journal*, Nov. 13, 2018, <https://jewishjournal.com/news/united-states/241882/pro-israel-students-file-complaint-department-education-sjp-vigil-berkeley/>.

⁴⁹ Palestine Legal, “UC Berkeley Suspended Course on Palestine,” Oct. 17, 2017, <https://palestinelegal.org/case-studies/2017/10/13/uc-berkeley-suspended-course-on-palestine>.

consumed with the anxiety of potential consequences to his future and his family. In December 2016, following the suspension, the Israeli government denied Paul a permit to cross from the West Bank to Jerusalem for Christmas. Paul's church had applied on his behalf, as it had successfully done in previous years. This was the first time his permit was denied.

University of California Los Angeles – 2018 Student Conference⁵⁰

In November 2018, students from throughout the United States and Canada gathered on the campus of the University of California, Los Angeles (UCLA), for the eighth annual National Students for Justice in Palestine conference, which convened students from diverse backgrounds to discuss achieving equality for Palestinians. The conference faced overwhelming pressure from Israel advocacy groups demanding that the university shut it down. Efforts included legal threats from Israel advocacy organizations; petitions from pro-Israel students and alumni falsely accusing Palestinian students of supporting terrorism; politicians, including the Los Angeles City Council⁵¹ and a member of Congress, demanding UCLA take unconstitutional action to cancel the conference; and aggressive protests before and during the conference where protestors hurled racist insults and reportedly physically assaulted three students. During one protest, an LA City Council member spoke to the crowd, suggesting that student attendees of the conference were “plotting terrorism.”

The university itself issued an unsubstantiated claim of trademark infringement⁵² and demanded that the conference alter its logo. The university also required an overwhelming presence of administrators, campus police, and private security throughout the conference.

Within hours of the conference beginning, the Zachor Legal Institute, an anti-Palestinian group that has repeatedly demanded criminal investigation of human rights activists, filed a federal complaint against UCLA claiming that discussing Palestinian rights was an attack on Jewish students. After OCR opened an investigation into the complaint, the Zachor institute celebrated with headlines such as “US Ed. Dept investigating UCLA over anti-Zionist SJP conference on campus,” and named Trump's Executive Order as a tool to “deal with” speech such as this student conference on Palestine.⁵³ The OCR investigation remains open, and the campus remains under a shadow of uncertainty about whether Palestine advocacy is permissible.⁵⁴

⁵⁰ Palestine Legal, “Student Group Harassed, Defamed and Threatened with Lawsuit Over Conference,” Nov. 1, 2018, <https://palestinelegal.org/case-studies/2019/2/4/nsjp-2018-conference-case>; Inga Hwang, “National Students for Justice in Palestine conference goes on despite on-campus protest,” *Daily Bruin*, Nov. 18, 2018, <https://dailybruin.com/2018/11/18/national-students-for-justice-in-palestine-conference-goes-on-despite-on-campus-protest>.

⁵¹ PEN America, @PEN America, Nov. 8, 2018, <https://twitter.com/PENAmerica/status/1060638748537434113> (“The Los Angeles City Council's resolution calling on UCLA to cancel a conference organized by National Students for Justice in Palestine represents unwarranted interference by government in protected speech at a public university.”)

⁵² Palestine Legal, “UCLA Falsely Claims Bear Used by Palestinian Rights Group is a Trademark Violation,” Nov. 7, 2018, <https://palestinelegal.org/news/2018/11/7/ucla-bear-trademark-nsjp>.

⁵³ Jeremy Sharon, “US Ed. Dept investigating UCLA over anti-Zionist SJP conference on campus,” *J Post*, Jan. 9, 2020, <https://www.jpost.com/diaspora/us-ed-dept-investigating-ucla-over-anti-zionist-sjp-conference-on-campus-613664>.

⁵⁴ OCR Case No. 09192070, filed Nov. 19, 2018, investigation opened Jan. 3, 2020, still pending as of July 30, 2022.

University of California Los Angeles – 2019 Class Discussion⁵⁵

In 2019, UCLA subjected anthropology professor Kyeyoung Park to an unwarranted investigation after a student complained about comments critical of Zionism made by a guest lecturer, Dr. Rabab Abdulhadi, during Park’s course on “Constructing Race.” Dr. Abdulhadi discussed the interrelations of Zionism, colonialism, and Islamophobia. StandWithUs filed a Title VI complaint arguing that Dr. Abdulhadi’s comments, which did not mention Jews, were antisemitic according to the IHRA definition.⁵⁶ Again, an OCR investigation into the complaint appears to remain open and academic freedom to teach about Palestine is in question.⁵⁷

University of Illinois-Urbana Champaign

In response to campus advocacy for Palestine⁵⁸—including student efforts to oppose the false conflation between antisemitism and criticism of Israel—the Brandeis Center filed a complaint with OCR in 2020 against the University of Illinois Urbana-Champaign, relying on the IHRA definition to argue that tolerating Palestine advocacy on campus violates Jewish students’ rights. The complaint focused primarily on advocacy by Palestinian students and their allies, including a divestment resolution, rallies against racism, and a presentation on protests in Gaza. The complaint referred to 23 alleged incidents intermixing and equating antisemitic acts such as vandalizing a menorah with expression of pro-Palestinian views such as calling for divestment from companies complicit in violating Palestinian rights.⁵⁹ The complaint remains under investigation.⁶⁰

The pressure this investigation has put on the university has made the campus climate particularly hostile to Palestinian activism. Days after the investigation was opened, the university chancellor issued a statement demanding that students who “identify with Israel” be included in all “campus activities aimed at fighting racism and achieving social justice.”⁶¹ This statement was later invoked in a complaint by professors against a campus civil rights group advocating against hateful ideologies, including Zionism. In another instance the university made a statement mischaracterizing a talk critical of Zionism, calling the talk exclusionary and

⁵⁵ Palestine Legal, “UCLA Wrongly Investigates Lecture Linking Zionism with White Supremacy,” May 31, 2019, <https://palestinelegal.org/news/2019/5/31/ucla-wrongly-investigates-lecture-linking-zionism-with-white-supremacy>

⁵⁶ StandWithUs, “OCR Responds to SWU and Zachor Legal Institute Title VI Filings Against UCLA 1-3-20,” Jan. 9, 2020, <https://www.standwithus.com/post/u-s-department-of-education-s-ocr-opens-investigation-on-alleged-ucla-title-vi-violation>.

⁵⁷ OCR Case No. 09202016, filed Oct. 15, 2019, investigation opened Jan. 3, 2020, still pending as of July 30, 2022.

⁵⁸ Palestine Legal, “UIUC Students Organize Against Efforts to Equate Anti-Zionism and Antisemitism,” Oct. 30, 2019, <https://palestinelegal.org/news/2019/10/30/uiuc-students-organize-against-efforts-to-equate-anti-zionism-and-antisemitism>.

⁵⁹ Independent Jewish Voices, “IHRA Definition at Work,” <https://www.ijvcana.org/ihra-definition-at-work/>.

⁶⁰ OCR Case No. 05202325, filed Mar. 24, 2020, investigation opened Nov. 13, 2020, still pending as of July 30, 2022.

⁶¹ UIUC Office of the Chancellor, “Joint Statement on Anti-Semitism,” Nov. 16, 2020, <https://blogs.illinois.edu/view/6231/1530347443>.

unrepresentative of university values, and incorrectly denying the fact that the university had sponsored the talk.⁶² The university later apologized for this statement.⁶³

University of Massachusetts Amherst⁶⁴

In April 2019, a group of anonymous pro-Israel students filed a lawsuit relying on the IHRA definition asking the court to force the cancellation of a panel discussion at the University of Massachusetts Amherst. The lawsuit, which was filed with the help of the anti-Palestinian group Americans for Peace and Tolerance, argued that the event, “Not Backing Down: Israel, Free Speech and the Battle for Palestinian Human Rights,” would cause “irreparable harm” to Jewish students on campus. The lawsuit was dismissed but not without considerable volunteer resources to defend against the legal bullying.

4. Conclusion

Proponents of the IHRA definition employ it as a censorship stick, and as a hook to file abusive civil rights complaints that disrupt the education of Palestinian students and their allies.

Campaigns based on the IHRA definition have caused disruptions including years-long investigations of faculty and student speech that poison the environment of academic freedom; widespread censored speech on serious matters of foreign policy and racial justice; frivolous lawsuits draining university and community resources; Palestinian-American students denied their right of freedom to travel in Palestine; students denied the ability to mourn in public; scholarships threatened; courses interrupted or failed; the inability to participate in student government; the exclusion of Palestine in curricula; and severe stress in response to cyber-bullying and defamatory and racialized accusations. All of this results in untold hours of chronic anxiety, lost sleep, lost appetite, and lost learning time for students and faculty who dared to voice their experiences as Palestinians, or their political criticisms of the Israeli state.

To avoid infringing on bedrock campus free speech protections and undermining OCR’s mandate to protect vulnerable students against discrimination, OCR must reject the IHRA definition of antisemitism.

For further information, please be in touch with Liz Jackson, Palestine Legal Senior Staff Attorney, at ljackson@palestinelegal.org, 510-206-6800.

Sincerely,

Liz Jackson, Senior Staff Attorney, Palestine Legal, on behalf of:

⁶² Email from Vice Chancellor for Diversity, Equity & Inclusion Sean C. Garrick, “A message regarding an event today,” Apr. 13, 2022, <https://massmail.illinois.edu/massmail/1540841668.html>.

⁶³ Email from Vice Chancellor for Diversity, Equity & Inclusion Sean C. Garrick, et al., “A collaborative statement on academic freedom and critical conversations,” Apr. 21, 2022, <https://massmail.illinois.edu/massmail/1336051131.html>.

⁶⁴ Palestine Legal, “UMass Amherst: Lawsuit Attacking Free Speech Event,” May 31, 2019, updated Dec. 13, 2019, <https://palestinelegal.org/case-studies/2019/5/31/umass-amherst>.

Palestine Legal
Adalah Justice Project
American Muslims for Palestine
Arab Resource and Organizing Center
Asian Americans Advancing Justice – Asian Law Caucus
California Scholars for Academic Freedom
Center for Constitutional Rights
Friends of Sabeel North America
Middle East Children’s Alliance
Muslim Justice League
National Lawyers Guild
National Students for Justice in Palestine
Partnership for Civil Justice Fund
Project South
US Campaign for Palestinian Rights
Washington Ethnic Studies Now
Xicanx Institute for Teaching and Organizing

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