



To:

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cc: Deborah Enix-Ross, *ABA President*
Palmer Gene Vance II, *Chair House of Delegates*

Re: Opposing Reference to IHRA in Proposed ABA Resolution 514

January 20, 2023

Dear Co-Sponsors of Proposed ABA Resolution 514 on Antisemitism,

We write to express our strong objection to the reference to the International Holocaust Remembrance Alliance (IHRA) working definition of antisemitism in proposed ABA Resolution 514.¹

We unequivocally share your concern over the rise in antisemitism in the United States and around the world. We believe that organizations like the ABA, with leadership roles related to the rule of

¹ American Bar Association, House of Delegates 2023 Midyear Meeting Executive Summaries, Proposed Resolution 514, available at https://www.americanbar.org/content/dam/aba/administrative/house_of_delegates/executive-summaries/2023-midyear-executive-summaries.pdf.

law and human rights, *should* speak out against antisemitism and all forms of bigotry. However, the reference to IHRA in Resolution 514 is counterproductive to the urgent work of combatting antisemitism and the protection of other fundamental rights.

The IHRA definition is highly controversial, and its codification has been opposed by a broad cross-section of civil liberties and human rights organizations, as well as scholars, including its lead author. The IHRA definition is routinely used to silence students, scholars, and community advocates who criticize Israel or speak about Palestinian rights, infringing on their rights to free speech, assembly, and association, and reinforcing anti-Palestinian racism. Recent efforts to codify the IHRA definition into law and policy are framed as efforts to fight antisemitism but in fact silence political expression in support of Palestinian rights.

Support by the ABA for the IHRA definition would lend a cloak of legal authority that will encourage state and federal entities to violate the First Amendment and other rights of persons and organizations. Reference to the IHRA definition in Resolution 514 could stifle the ABA's own ability to express support for Palestinian human rights defenders and to convey concerns about Israel and its policies.

We set forth in more detail below our primary concerns about the reference to the IHRA definition of antisemitism in proposed Resolution 514. The Appendix contains examples of how IHRA has been used to censor protected expression in support of Palestinian rights and perpetuate anti-Palestinian racism. **We urge you not to rely on or refer to IHRA or any similar definition of antisemitism in Resolution 514.**

I. The IHRA Definition Infringes on Freedom of Speech and Other Fundamental Rights

The IHRA definition of antisemitism is routinely used as an instrument to silence students and scholars who speak about Palestinian rights. The definition's contemporary examples dangerously conflate criticism of the Israeli state with antisemitism, suppressing information and debate about Israeli human rights violations, rather than making it easier to identify anti-Jewish discrimination. 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—accusations that are often imbued with anti-Palestinian racism and stereotypes. The ABA, in light of its critical role in advancing the rule of law and human rights for all, should pay serious attention to these concerns and refuse to endorse a definition that infringes on fundamental rights.

While purporting to be about antisemitism, the IHRA definition is concerned primarily with Israel. Seven of the 11 contemporary guiding examples attached to the definition concern Israel,²

² Although the examples are not in the text of the ABA resolution, they are core to how the IHRA definition has been understood and deployed. Jamie Stern-Weiner, *THE POLITICS OF A DEFINITION: HOW THE IHRA WORKING DEFINITION OF ANTISEMITISM IS BEING MISREPRESENTED* 6 (2021), available at <https://freespeechonisrael.org.uk/wp-content/uploads/2021/04/The-Politics-of-a-Definition.pdf> (“What pro-Israel activists deem ‘essential’ is ‘the list of examples’ (Israel Ministry of Foreign Affairs), which the [American Jewish Committee] goes so far as to designate the real definition: ‘essentially the definition is the examples’.”) (internal links removed).

including “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.” These guiding examples falsely conflate criticism of Israel with antisemitism³ and have been weaponized to smear anti-Zionism and support for Palestinian rights as *per se* antisemitic.⁴ The ABA cannot implement proposed Resolution 514 without engaging in absurd distinctions. For example, with respect to publishing reports, organizing programs, or sending formal letters of concern, how much must a section or committee first criticize other nation states (and which ones) before criticizing Israel? Who within the ABA would be able to give guidance on this? The inclusion of the IHRA definition in the ABA resolution would stifle the ABA’s ability to engage on key issues related to Palestinian rights, including in support of human rights defenders who are increasingly under attack by Israel for their work on behalf of Palestinian rights.

Concerns that the IHRA definition will be used to censor constitutionally protected speech and reinforce anti-Palestinian racism are not abstract or theoretical, but are based on extensive experience and well documented, as summarized here and in more detail in the Appendix. Citing the IHRA definition (or definitions with similar content), Israel advocates have sent legal complaints and/or threatening letters focused on classroom discussions (UCLA),⁵ guest lectures (Indiana),⁶ film screenings (Pitzer and Pomona Colleges),⁷ youth organizing conferences (University of Michigan),⁸ student resolutions to divest from human rights violations (University of Illinois),⁹ and similar expressive activity. The letters typically threaten legal action if universities do not meet demands to punish students and faculty for speaking about Palestine.

In December 2019, President Donald Trump signed an executive order (EO) directing federal agencies to consider the IHRA definition of antisemitism (including its illustrative examples) when investigating discrimination complaints under Title VI of the Civil Rights Act, which applies to entities that receive federal funding. Since then, Israel advocates have filed at least 16 complaints

³ See Palestine Legal, “Backgrounder on Efforts to Redefine Antisemitism as a Means of Censoring Criticism of Israel,” <https://static1.squarespace.com/static/548748b1e4b083fc03ebf70e/t/5e3858c18f9eda181706a8d2/1580751047471/Backgrounder+on+Efforts+to+Redefine+Antisemitism.pdf> (last updated January 2020).

⁴ See, e.g., Palestine Legal, “State Dept. Push to Label Human Rights Orgs ‘Antisemitic’ Exposes Repressive Intent of Redefinition Efforts,” Oct. 30, 2020,

<https://palestinelegal.org/news/2020/10/30/state-department-push-to-label-human-rights-orgs-antisemitic-exposes-repressive-intent-of-redefinition-efforts>; Jared Kushner, “President Trump Is Defending Jewish Students,” *N.Y. Times*, Dec. 11, 2019,

<https://www.nytimes.com/2019/12/11/opinion/jared-kushner-trump-anti-semitism.html>.

⁵ University of California Los Angeles, OCR Case No. 09202016, filed Oct. 15, 2019, investigation opened Jan. 3, 2020, still pending as of July 30, 2022.

⁶ 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>.

⁷ Letter from Harmeet K. Dhillon on behalf of the David Horowitz Freedom Center 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>.

⁸ 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/>.

⁹ 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>.

with the U.S. Department of Education Office for Civil Rights (OCR) alleging that campus speech about Palestine is threatening to Jewish students and amounts to a Title VI violation.¹⁰ Anti-Palestinian advocates have boasted about the chilling effects of these complaints as a victory, even when the complaints are factually meritless or legally unfounded.¹¹

IHRA has become an instrument of censorship in a context where speech on Palestine is already widely suppressed. Since 2014, Palestine Legal has responded to more than 2,000 incidents of censorship, punishment, or other burdening of advocacy for Palestinian rights.¹² 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.¹³ 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.

As these examples and those in the Appendix illustrate, the IHRA definition infringes on the rights to free speech, association, assembly, and political participation, among others. The inclusion of the IHRA definition of antisemitism in proposed ABA Resolution 514 would place the ABA on the record as supporting a definition that has been weaponized against Palestinians, critics of Israel, and human rights defenders.

II. The ABA Should Refuse to Lend Its Imprimatur to Efforts to Codify a Politicized Definition of Antisemitism

Proponents of the IHRA working definition often promote it as being “non-legally binding.”¹⁴ However, this assertion is belied by the extensive efforts to codify it into law.¹⁵ While efforts to

¹⁰ This is likely an undercount as public information is limited. See “Civil Rights Orgs Letter to OCR,” Palestine Legal, August 31, 2002, *available at* <https://static1.squarespace.com/static/548748b1e4b083fc03ebf70e/t/63b6de30db689e6788acce6/1672928817287/Civil+Rights+Orgs+Letter+to+OCR+8-31-22.pdf>. Additional documentation on file with Palestine Legal.

¹¹ 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> (“[W]e 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.”).

¹² Palestine Legal, 2021 YEAR-IN-REVIEW: PALESTINIAN UPRISING GENERATES RECORD SOLIDARITY—AND FIERCE BACKLASH, <https://palestinelegal.org/2021-report>.

¹³ Palestine Legal and Ctr. For Constitutional Rights, *THE PALESTINE EXCEPTION TO FREE SPEECH*, (2015) <https://static1.squarespace.com/static/548748b1e4b083fc03ebf70e/t/560c2e0ae4b083d9c363801d/1443638794172/P%20alestine+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>.

¹⁴ See “What is Antisemitism? Non-legally binding working definition of antisemitism,” International Holocaust Remembrance Alliance, <https://www.holocaustremembrance.com/resources/working-definitions-charters/working-definition-antisemitism>, last visited January 13, 2023; see also Jamie Stern-Weiner, *THE POLITICS OF A DEFINITION: HOW THE IHRA WORKING DEFINITION OF ANTISEMITISM IS BEING MISREPRESENTED* 6 (2021), *available at* <https://freespeechonisrael.org.uk/wp-content/uploads/2021/04/The-Politics-of-a-Definition.pdf>.

¹⁵ Indeed, upon adoption of the IHRA working definition in 2016, the IHRA chair expressed hopes about this: “By adopting this working definition, the IHRA is setting an example of responsible conduct for other international fora and hopes to inspire them also to take action on a legally binding working definition.” “Working Definition of

adopt federal legislation that incorporates the IHRA definition have not been successful to date, numerous U.S. states and municipalities have incorporated the definition into legislative measures.¹⁶ While their supporters have framed these measures as fighting antisemitism, statements made by lawmakers and pro-Israel advocates underscore the intent of these laws: to target advocacy for Palestinian rights and criticism of Israel and/or Zionism. For example, Randy Fine, the Florida state representative behind Florida’s law adopting IHRA, explained his hopes for what the bills would achieve in these terms: “Students for Justice in Palestine is now treated the same way as the Ku Klux Klan – as they should be.”¹⁷

Some of these laws expand on the IHRA definition specifically to target human rights advocacy. For example, in 2019, Florida adopted legislation to codify the IHRA definition into law and included “focusing peace or human rights investigations only on Israel” as an example of antisemitism.¹⁸ In Arizona, a new state law requires courts to consider criticism of Israel that falls within the IHRA definition as an aggravating factor for hate crimes sentencing in criminal convictions,¹⁹ meaning that criticism of Israel could result in harsher sentences for protesters charged with a crime. Codification of the IHRA definition also gives law enforcement yet another tool to surveil communities who speak out in support of Palestinian rights, continuing the terrible legacy of post-9/11 “counter-terror” surveillance programs that have criminalized constitutionally protected speech and political activism among immigrants and in communities of color.²⁰

In addition to these legislative efforts to codify IHRA, “soft law” efforts that emphasize the definition’s non-binding nature also contribute to infringement on fundamental rights. The former U.N. Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance, Professor Tendayi E. Achiume, pointed out that the “de facto influence [of the IHRA working definition] on the policy and practice of governments and private actors has contributed to violations of the human rights of freedom of expression, assembly and political participation, among others.” She observed that “it is precisely the ‘soft law’ status of the working definition that effectively helps to undermine certain co-existent rights, without offering any remedy or means to legally challenge such violations.”²¹

Antisemitism,” International Holocaust Remembrance Alliance, <https://www.holocaustremembrance.com/stories/working-definition-antisemitism>, last visited January 13, 2023.

¹⁶ See “Legislation,” Palestine Legal, <https://legislation.palestinelegal.org/> (last visited Jan. 17, 2022); Foundation for Middle East Peace, “Using “Anti-Semitism” to Quash Israel Criticism – in Congress & States,” <https://fmep.org/resource/abusing-anti-semitism-quash-israel-criticism-congress-states/> (last visited Jan. 17, 2023).

¹⁷ Lara Friedman, “States Are Moving to Class Criticism of Israel as Antisemitism,” *Jewish Currents*, February 20, 2020, <https://jewishcurrents.org/states-are-moving-to-class-criticism-of-israel-as-antisemitism>.

¹⁸ Fla. Stat. §1000.05(8) (2022), available at <http://laws.flrules.org/2019/59>. Other states have attempted to pass bills with similar language. See, e.g., HB 2819, 55th Leg. (Az. 2022); HB 0103, 102nd Gen. Ass. (Il. 2021); HB 0600, 111th Gen. Ass. (Tenn. 2019).

¹⁹ Az. Rev. Stat. § 41-1750 (2022). See also Isaac Scher, “Three States Push to Curb Pro-Palestine Activism,” *Jewish Currents*, Apr. 26, 2022, <https://jewishcurrents.org/three-states-push-to-curb-pro-palestine-activism>.

²⁰ Danya Zituni, “Several US Cities Have Increased Policing of Palestine Solidarity,” *Truthout*, Dec. 12, 2022, https://truthout.org/articles/several-us-cities-have-increased-policing-of-palestine-solidarity/#gf_1097213664.

²¹ Report of the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance, Combating glorification of Nazism, neo-Nazism and other practices that contribute to fuelling contemporary forms of racism, racial discrimination, xenophobia and related intolerance ¶ 75, General Assembly, UN Doc A/77/512 (Oct. 7, 2022) (by E. Tendayi Achiume), available at <https://documents-dds-ny.un.org/doc/UNDOC/GEN/N22/618/67/PDF/N2261867.pdf?OpenElement>.

The ABA's inclusion of the IHRA definition in proposed Resolution 514 would lend the ABA's imprimatur to efforts to codify the IHRA definition, implicating the ABA in the censorship of constitutional protected speech and anti-Palestinian discrimination that have been its principal features.

III. The IHRA Definition is Highly Controversial and Broadly Opposed

The IHRA definition is highly controversial, and its codification has been opposed by a broad cross-section of civil liberties groups, human rights organizations, editorial boards of major newspapers, along with hundreds of Jewish and Palestinian advocates and scholars.²² The lead author of the definition, Kenneth Stern, notes that the IHRA definition was drafted to collect data and gather statistics and has repeatedly argued against its domestic use in legislation or policy.²³

²² See, e.g., Corey Balsam, "Who's against adopting the IHRA antisemitism definition?" *Times of Israel*, Dec. 9, 2020, <https://blogs.timesofisrael.com/whos-against-adopting-the-ihra-antisemitism-definition/>; ACLU, "ACLU Statement on Senate Introduction of 'Anti-Semitism Awareness Act,'" May 23, 2018, <https://www.aclu.org/press-releases/aclu-statement-senate-introduction-anti-semitism-awareness-act>; FIRE, "FIRE statement regarding executive order on campus anti-Semitism," Dec. 10, 2019, <https://www.thefire.org/news/updated-fire-statement-regarding-executive-order-campus-anti-semitism>; 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>; Editorial Board, "Editorial: Trump's campus anti-Semitism order could undermine free speech," *Los Angeles Times*, Dec. 12, 2019, <https://www.latimes.com/opinion/story/2019-12-12/trumps-order-on-campus-anti-semitism-could-undermine-free-speech>; Editorial Board, "Trump's Executive Order and the Rise of Anti-Semitism," *N.Y. Times*, Dec. 11, 2019, <https://www.nytimes.com/2019/12/11/opinion/trump-bds-movement-israel.html>; Editorial Board, "Why Trump's Judaism executive order is too narrow and too broad," *Washington Post*, Dec. 12, 2019, https://www.washingtonpost.com/opinions/why-trumps-judaism-executive-order-is-too-narrow-and-too-broad/2019/12/12/04abcf20-1d16-11ea-b4c1-fd0d91b60d9e_story.html; Azeezah Kanji et al., "Repression of speech and scholarship on Palestine needs to end," *Al Jazeera*, Oct. 1, 2020, https://www.aljazeera.com/opinions/2020/10/1/repression-of-speech-and-scholarship-on-palestine-needs-to-end/?fbclid=IwAR0PtgDWY505Ho3dwj3z6d9_XkBfpc6LZC0wPI57eO4rE0lv7KpWbGvKoVA (open letter signed by 1400+ lawyers and academics noting that "The clampdown [on speech and scholarship on Palestine] threatens to be further exacerbated by the institutionalisation of the International Holocaust Remembrance Alliance (IHRA) definition of anti-Semitism"); "Palestinian rights and the IHRA definition of antisemitism," *The Guardian*, Nov. 29, 2020, <https://www.theguardian.com/news/2020/nov/29/palestinian-rights-and-the-ihra-definition-of-antisemitism> (open letter from 122 Palestinian and Arab academics, journalists and intellectuals expressing concerns about the IHRA definition); "First Ever 40+ Jewish Groups Worldwide Oppose Equating Antisemitism with Criticism of Israel," *Jewish Voice for Peace*, July 17, 2018, <https://www.jewishvoiceforpeace.org/2018/07/first-ever-40-jewish-groups-worldwide-oppose-equating-antisemitism-with-criticism-of-israel/>; Progressive Israel Network Groups Oppose Codification of IHRA Working Definition of Antisemitism, Citing Strong Potential for Misuse," *Progressive Israel Network*, Jan. 12, 2021, <https://www.progressiveisraelnetwork.org/progressive-israel-network-groups-oppose-codification-of-ihra-working-definition-of-antisemitism-citing-strong-potential-for-misuse/>; Palestinian Human Rights Organizations Council, "PHROC Concerns on Special Rapporteur's Adoption of IHRA Definition of Anti-Semitism" Oct. 13, 2019, https://www.ohchr.org/sites/default/files/Documents/Issues/Religion/Submissions/PHROC_ResponsetoReport.pdf; "128 scholars warn: 'Don't trap the United Nations in a vague and weaponized definition of antisemitism,'" *EU Observer*, Nov. 3, 2022, <https://media.euobserver.com/9e86df02ddf67c6046d190b65e4380df.pdf>.

²³ Kenneth S. Stern, Written Testimony Before United State House of Representatives Committee on the Judiciary, November 7, 2017, Hearing on Examining Anti-Semitism on College Campuses, <https://judiciary.house.gov/wp-content/uploads/2017/10/Stern-Testimony-11.07.17.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>.

First Amendment experts and commentators across the political spectrum have repudiated the codification of the IHRA definition in law or policy.²⁴ In March 2022, the American Association of University Professors (AAUP) Committee on Academic Freedom and Tenure condemned attempts to codify IHRA, arguing these laws “expand the definition of antisemitism to encompass political speech, with several discriminatory effects.” The 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.”²⁵

The former U.N. Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance expressly called on states “to suspend the adoption and promotion of the working definition and the examples attached to it,” as a result of “the controversial status and divisive effect of the [IHRA definition] and its negative impact on human rights.”²⁶ The IHRA definition is so controversial and widely opposed that hundreds of prominent scholars in Jewish, Holocaust, Palestine/Israel, and Middle East studies have launched projects aimed at developing a less problematic definition as a corrective to IHRA’s conflation of criticism of Israel with antisemitism and its infringement on free speech and Palestinian rights.²⁷

Moreover, institutions have shown that combatting antisemitism can be accomplished without requiring the use of the IHRA definition. In January 2023, despite significant pressure from pro-Israel advocates on the U.S. Department of Education Office for Civil Rights (OCR) to adopt the IHRA definition in complying with the executive order adopted by former President Trump on Combating Anti-Semitism, OCR declined to do so.²⁸

²⁴ See, e.g., 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/>.

²⁵ 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>.

²⁶ Report of the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance, Combating glorification of Nazism, neo-Nazism and other practices that contribute to fuelling contemporary forms of racism, racial discrimination, xenophobia and related intolerance ¶¶ 78, 94, General Assembly, UN Doc A/77/512 (Oct. 7, 2022) (by E. Tendayi Achiume), available at <https://documents-dds-ny.un.org/doc/UNDOC/GEN/N22/618/67/PDF/N2261867.pdf?OpenElement>.

²⁷ The Jerusalem Declaration on Antisemitism, <https://jerusalemdeclaration.org/> (last visited Jan. 17, 2023); The Nexus Document, <https://israelandantisemitism.com/the-nexus-document/> (last visited Jan. 17, 2023). These alternative definitions are flawed in their own right. See, e.g., Jewish Voice for Peace, “Principles for Dismantling Antisemitism: A Progressive Jewish Response to the Jerusalem Declaration,” April 5, 2021, <https://www.jewishvoiceforpeace.org/2021/04/jerusalem-declaration/>.

²⁸ Dep’t. of Education Office for Civil Rights, Fact Sheet: Protecting Students from Discrimination Based on Shared Ancestry or Ethnic Characteristics (Jan. 2023), <https://www2.ed.gov/about/offices/list/ocr/docs/ocr-factsheet-shared-ancestry-202301.pdf>. See also Palestine Legal, “Palestine Legal Welcomes Ed Dept’s Decision to Combat Antisemitism Without IHRA Definition in New Factsheet,” Jan. 5, 2023, <https://palestinelegal.org/news/2023/1/5/palestine-legal-welcomes-ed-depts-decision-to-combat-antisemitism-without-ihra-definition-in-new-factsheet>.

The widespread criticism of the IHRA definition strongly signals its controversial nature. It also highlights the growing concern about its instrumentalization to infringe on freedom of expression and other fundamental rights. The ABA should not lend its credibility to this controversial and highly politicized definition of antisemitism.

IV. The IHRA Definition is the Wrong Way to Fight Antisemitism

The ABA's express reference to the IHRA definition of antisemitism in proposed Resolution 514 encourages and reinforces efforts by those who wish to undermine the ability of organizations and individuals to speak about Palestinian rights. The ABA plays an important role in supporting the rule of law and human rights. **We strongly urge the ABA to remove any reference to the IHRA definition** in proposed Resolution 514 on antisemitism.

Sincerely,



Meera Shah
Senior Staff Attorney
Palestine Legal



Maria Lahood
Deputy Legal Director
Center for Constitutional Rights

Appendix: 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.²⁹

Arizona State University (ASU)³⁰

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 College³¹

False accusations of antisemitism based on the logic of IHRA have resulted in over 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.

²⁹ These examples are drawn from a coalition letter to the Department of Education's Office for Civil Rights. "Civil Rights Orgs Letter to OCR," Palestine Legal, August 31, 2002, *available at* <https://static1.squarespace.com/static/548748b1e4b083fc03ebf70e/t/63b6de30db689e6788acce6/1672928817287/Civil+Rights+Orgs+Letter+to+OCR+8-31-22.pdf>.

³⁰ 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>

³¹ 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>.

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.

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.³² The students were once again questioned about their activism, this time by a federal investigator from OCR. As of December 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 University³³

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 cancellation 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.

³² OCR Case No. 02202022, filed Oct. 28, 2019, investigation opened Feb. 3, 2020, still pending as of Dec. 30, 2022. The complaint is not publicly available.

³³ 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>.

California Ethnic Studies Model Curriculum³⁴

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 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 University³⁵

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.

³⁴ 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 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>.

³⁵ 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>.

Middlebury College³⁶

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.

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.³⁷ 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)³⁸

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

³⁶ 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>.

³⁷ StandWithUs, "StandWithUs to Middlebury College: Take Action Against Rising Antisemitism," May 12, 2021, <https://www.standwithus.com/post/standwithus-to-middlebury-college-take-action-against-rising-antisemitism>.

³⁸ 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-studentsnbsp>.

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 implement the new policies and...will affirm its long-held commitment to academic freedom and free speech.”³⁹

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.⁴⁰ 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.⁴¹

³⁹ 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>.

⁴⁰ 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>.

⁴¹ 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-

Pomona & Pitzer College⁴²

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' 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 group⁴³ 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

Semitism,” *Washington Free Beacon*, Apr. 13, 2022, <https://freebeacon.com/campus/under-federal-scrutiny-nyu-law-school-faces-uproar-over-anti-semitism/>.

⁴² 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>.

⁴³ Southern Poverty Law Center, “David Horowitz,” <https://www.splcenter.org/fighting-hate/extremist-files/individual/david-horowitz> (last visited Jan. 17, 2023).

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.

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 Vigil⁴⁴

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.⁴⁵ 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 Suspension⁴⁶

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

⁴⁴ 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>.

⁴⁵ 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/>.

⁴⁶ 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>.

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 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 Conference⁴⁷

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 Council⁴⁸ 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 infringement⁴⁹ 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.

⁴⁷ 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>.

⁴⁸ 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.”)

⁴⁹ 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>.

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.⁵⁰ The OCR investigation remains open, and the campus remains under a shadow of uncertainty about whether Palestine advocacy is permissible.⁵¹

University of California Los Angeles – 2019 Class Discussion⁵²

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.⁵³ Again, an OCR investigation into the complaint appears to remain open and academic freedom to teach about Palestine is in question.⁵⁴

University of Illinois-Urbana Champaign

In response to campus advocacy for Palestine⁵⁵—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.⁵⁶ The complaint remains under investigation.⁵⁷

⁵⁰ 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>.

⁵¹ OCR Case No. 09192070, filed Nov. 19, 2018, investigation opened Jan. 3, 2020, still pending as of Dec. 30, 2022.

⁵² 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>

⁵³ 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>.

⁵⁴ OCR Case No. 09202016, filed Oct. 15, 2019, investigation opened Jan. 3, 2020, still pending as of Dec. 30, 2022.

⁵⁵ 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>.

⁵⁶ Independent Jewish Voices, “IHRA Definition at Work,” <https://www.ijvcanada.org/ihra-definition-at-work/>.

⁵⁷ OCR Case No. 05202325, filed Mar. 24, 2020, investigation opened Nov. 13, 2020, still pending as of Dec. 30, 2022.

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.”⁵⁸ 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 unrepresentative of university values, and incorrectly denying the fact that the university had sponsored the talk.⁵⁹ The university later apologized for this statement.⁶⁰

University of Massachusetts Amherst⁶¹

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.

⁵⁸ UIUC Office of the Chancellor, “Joint Statement on Anti-Semitism,” Nov. 16, 2020, <https://blogs.illinois.edu/view/6231/1530347443>.

⁵⁹ 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>.

⁶⁰ 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>.

⁶¹ 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>.