AUTHENTICATED
U.S. GOVERNMENT
INFORMATION
GPO

S. HRG. 118–626

A THREAT TO JUSTICE EVERYWHERE: STEMMING THE TIDE OF HATE CRIMES IN AMERICA

HEARING

BEFORE THE

COMMITTEE ON THE JUDICIARY UNITED STATES SENATE

ONE HUNDRED EIGHTEENTH CONGRESS

SECOND SESSION

SEPTEMBER 17, 2024

Serial No. J–118–78

Printed for the use of the Committee on the Judiciary



www.judiciary.senate.gov
www.govinfo.gov

A THREAT TO JUSTICE EVERYWHERE: STEMMING THE TIDE OF HATE CRIMES IN AMERICA

S. HRG. 118–626

A THREAT TO JUSTICE EVERYWHERE: STEMMING THE TIDE OF HATE CRIMES IN AMERICA

HEARING

BEFORE THE

COMMITTEE ON THE JUDICIARY UNITED STATES SENATE

ONE HUNDRED EIGHTEENTH CONGRESS

SECOND SESSION

SEPTEMBER 17, 2024

Serial No. J–118–78

Printed for the use of the Committee on the Judiciary



www.judiciary.senate.gov
www.govinfo.gov

U.S. GOVERNMENT PUBLISHING OFFICE
60–121 WASHINGTON : 2025

COMMITTEE ON THE JUDICIARY

RICHARD J. DURBIN, Illinois, *Chair*

SHELDON WHITEHOUSE, Rhode Island
AMY KLOBUCHAR, Minnesota
CHRISTOPHER A. COONS, Delaware
RICHARD BLUMENTHAL, Connecticut
MAZIE K. HIRONO, Hawaii
CORY A. BOOKER, New Jersey
ALEX PADILLA, California
JON OSSOFF, Georgia
PETER WELCH, Vermont
LAPHONZA BUTLER, California

LINDSEY O. GRAHAM, South Carolina, *Ranking Member*
CHARLES E. GRASSLEY, Iowa
JOHN CORNYN, Texas
MICHAEL S. LEE, Utah
TED CRUZ, Texas
JOSH HAWLEY, Missouri
TOM COTTON, Arkansas
JOHN KENNEDY, Louisiana
THOM TILLIS, North Carolina
MARSHA BLACKBURN, Tennessee

JOSEPH ZOGBY, *Majority Staff Director*
KOLAN L. DAVIS, *Minority Staff Director*

CONTENTS

OPENING STATEMENTS

	Page
Durbin, Hon. Richard J.	1
Graham, Hon. Lindsey O.	3

WITNESSES

Berry, Maya	5
Prepared statement	45
Responses to written questions	98
Goldfeder, Mark	7
Prepared statement	66
Responses to written questions	107
Stern, Kenneth S.	9
Prepared statement	74
Responses to written questions	115

APPENDIX

Items submitted for the record	43

A THREAT TO JUSTICE EVERYWHERE: STEMMING THE TIDE OF HATE CRIMES IN AMERICA

TUESDAY, SEPTEMBER 17, 2024

UNITED STATES SENATE,
COMMITTEE ON THE JUDICIARY,
Washington, DC.

The Committee met, pursuant to notice, at 10:15 a.m., in Room G50, Dirksen Senate Office Building, Hon. Richard J. Durbin, Chair of the Committee, presiding.

Present: Senators Durbin [presiding], Whitehouse, Klobuchar, Blumenthal, Hirono, Padilla, Ossoff, Welch, Butler, Graham, Grassley, Cornyn, Lee, Cruz, Hawley, Cotton, Kennedy, and Blackburn.

OPENING STATEMENT OF HON. RICHARD J. DURBIN, A U.S. SENATOR FROM THE STATE OF ILLINOIS

Chair DURBIN. This meeting of the Senate Judiciary Committee will come to order. I first want to apologize to the witnesses and everyone present. Annually, the Judicial Conference of the United States meets in the Supreme Court and invites me and others to come and say a few words in the morning. That's where I was, so blame the Chief Justice. And I say that facetiously. I was honored to be invited.

This hearing, A Threat to Justice Everywhere: Stemming the Tide of Hate Crimes in America, will come to order. At the outset, I want to acknowledge the possible attempted assassination of former President Trump. I'm relieved that no one was hurt, and I thank the Secret Service and their law enforcement partners for keeping the former President safe. My staff was briefed by the Secret Service over the weekend, and we were asked to keep—we asked them to keep us updated on the investigation. As we will discuss today, violence and threats of violence are always wrong, no matter the motive and no matter the target.

I first held hearings on the growing threat of hate-motivated violence in 2011; again in 2012, after a white supremacist murdered seven worshippers at the Sikh Gurdwara in Oak Creek, Wisconsin. Since I became Chair of this Committee, we've held several more hearings on the subject, including a hearing after the hostage crisis at the Colleyville, Texas synagogue, where we heard compelling testimony from Colleyville's rabbi, Charlie Cytron-Walker.

The FBI's most recent National hate crimes statistics document 11,634 hate crimes, the highest number since the FBI began reporting data. And since the horrific October 7 Hamas attack on Israel, we have seen an increase in attacks on Jewish Americans, Palestinian Americans, Arab Americans, and Muslim Americans. I would like to play a video now to highlight two especially horrific incidents.

[Video eis shown.]

Chair DURBIN. I'd like to acknowledge that my constituent, Hanaan Shahin, Wadea Al-Fayoume's mother, is in the audience. I was honored to join my colleagues Senator Tammy Duckworth and Congresswoman Delia Ramirez, introducing a resolution honoring Wadea. Mrs. Shahin, I'm so sorry for your devastating loss.

We are also joined by Alan Mallinger; his wife, Lauren; and their daughter Amy Rose Mallinger. Alan's mother and Amy's grandmother was one of the 11 congregants murdered at the Tree of Life Synagogue, the deadliest attack on Jews in American history. I thank these survivors personally, and their families and friends, for joining us this morning.

Since 2000, according to Federal law enforcement, white supremacists have been responsible for more homicides than any other domestic extremist group. White supremacists have been more responsible than any other domestic extremist group. And just this month, the Justice Department arrested and indicted the leaders of the Terrorgram Collective, a white supremacist terrorist group that allegedly solicits attacks against minority communities and the assassination of U.S. public officials, including a Jewish Senator.

Free speech is sacred in America, but public officials on both sides of the aisle have a responsibility not to fan the flames of hatred. The former President and his Vice Presidential candidate have both spread the lie that Haitians in Springfield, Ohio are eating cats and dogs. Everyone in public life should condemn antisemitic and racist language and disassociate themselves from demagogues who traffic in it. This type of rhetoric can have deadly consequences. In recent days, there have been numerous bomb and shooting threats in Springfield, Ohio, and schools and other institutions have been forced to close.

And look at the Tree of Life Synagogue shooting. On social media, the shooter claimed that Jewish Americans were conspiring to destroy the white race by encouraging non-white immigrants to invade our country. This antisemitic and racist Great Replacement conspiracy theory was also cited by the white supremacists who murdered 10 Black Americans at the Tops Market in Buffalo in 2022. In recent years, it has been echoed by the former President and other political figures. Political leaders, both Democrats and Republicans, must condemn hate wherever and whenever is it spewed and avoid rhetoric that could incite violence, because hate is inconsistent with who we are as Americans and the diversity that has always strengthened our Nation. With that, I'll turn to the Ranking Member, Senator Graham, for his opening statement.

STATEMENT OF HON. LINDSEY O. GRAHAM,
A U.S. SENATOR FROM THE STATE OF SOUTH CAROLINA

Senator GRAHAM. Thank you, Mr. Chairman. Number one, as to the recent apparent attempt on President Trump's life, I do want to thank the Secret Service agents on the ground for acting quickly and responsibly, but when I heard the acting director say the system worked, I could not disagree more. It did not work. You can't have a man camped out by the golf course for 12 hours with an AK–47 and scope on it, and say the system worked. We're just very fortunate he stuck the barrel through the fence before the President got to the golf hole in question. I want to applaud the Secret Service agent who saw the barrel, but this could've been a completely different story if the man had just waited, saw President Trump, then acted.

The system is just broken. I don't know if it's resources. I asked the acting director before. He said they're fine. I don't buy that. Agents tell me they're working tremendous hours. I'd like to have more agents, not less. I'd like to get the Secret Service back into Treasury, where they were more focused, but we'll talk about that another day. I'm just glad we didn't have a worse outcome, but I think the system is broken.

As to our hearing today, on May the 2nd, 2024, all Republicans wrote a letter to Chairman Durbin: we implore you to promptly hold a Judiciary Committee hearing to confront the flagrant civil rights violations targeting Jewish students on college campuses across America and expose the radical Islamic ideology infiltrating our universities. The goal was to have a hearing about why it's so hard to go to school if you're Jewish.

And it's really hard to go to these schools if you're Jewish. You're being knocked down; you're being spat on. It is just completely out of control. This is not the hearing we're getting, so, we'll work with what we've got. The House has had 10 hearings focused on antisemitism on the rise like it was in the 30's, in my view. We're not talking about fringe elements within any one group or crazy people. They exist throughout society. What happened to the 6-year-old is just horrible. The man will get whatever comes his way, and to me it's not enough.

I'm trying to focus on a systematic problem. America has a systematic problem on college campuses. It is being funded, the DNI says, not by Qatar, but by Iran. So, we have to deal with this. This Committee should act not just in general but specifically about what it's like to be Jewish in America in 2024. And it is not a good story.

So, I want to introduce into the record the original request, if I may, and also introduce into the record a letter I've got from the Union of Jewish Congregations of America, if I may introduce both letters, Mr. Chairman.

Chair DURBIN. Without objection.

[The information appears as a submission for the record.]

Senator GRAHAM. Okay. Now, the problem is really unnerving. Two point 4 percent of Americans are Jewish. Sixty percent of all religious-based hate crimes have been directed against the Jewish people. There's something going on here that needs to be addressed

and better dealt with, and people in charge of these universities need to be held more accountable.

As to what I'm trying to do, I've been working since last April with the Biden administration to find a way to normalize between Saudi Arabia and the State of Israel. That, to me, is the answer to many problems that we face, Israel faces. And I'm a strong advocate for ending the Arab-Israeli conflict. And a beneficiary of that would be a Palestinian community better treated, not run by terrorists, with a more hopeful life and a secure Israel. Count me in for trying to end conflict. Count me in for trying to reconcile the Arab and Jewish communities in the Mideast and anywhere else.

That's not what I'm talking about today. I'm talking about a rise throughout the world, but particularly here, against the Jewish people. Examples of what you face: Columbia University, intifada; Stanford University, somebody wearing a Hamas headband; Princeton University, the Hamas material; Union Station, July the 24th, Hamas is coming. This is all over the country right now.

And let me just say this. Hamas is a homicidal terrorist group dedicated not to uplifting the Palestinian people but destroying the State of Israel. So, when you write Hamas, you're either one of two things: blatantly antisemitic or dumb as a rock. I'll let you pick. Hamas is a terrorist organization. Everybody should condemn Hamas, not use their name routinely and hold up their cause throughout college campuses in America. So, what I hope we can get started in this country is a conversation about what should be the result of attending a school and being picked upon simply because of your religion: in this case, being Jewish. The next one.

One of our witnesses says calling for the genocide of the State of Israel should not get you disciplined. It should. It should. You know, when David Duke was on colleges' campuses in his time, handing out Nazi stuff, he should've been disciplined. I disagree with that. I believe in free speech, but I don't believe in advocating for the killing of an entire class of people. That's not free speech.

So, what we have before us today as a Nation is a moment of choosing. We can choose to ignore this, lump it in with every other problem we've got in the country, or we can focus on it. I prefer to focus on it. I prefer to let the American Jewish community know, enough is enough. We're going to be there for you. We're going to have your back. And we're not rising to the occasion. I would urge my friends on the other side: let's have a hearing focused on this problem, not lumping this problem in with every other problem we have. This is unique to the time in which we live. It is getting out of control.

As to rhetoric, yes, we can all do better. I get that. But this idea that one group is going to destroy America or one person's going to destroy America needs to come to an end. Nobody's going to destroy America. The Iranians would, if they could. So, Mr. Chairman, I hope we can follow-up with another hearing focused on our original request, which is combating antisemitism on college campuses making it really difficult, if you're a Jewish parent, to send your kid to college.

Chair DURBIN. Senator Graham, you and I agree on more than we disagree, and we certainly agree that hate crimes should be treated seriously, whatever their origin, whatever their purpose.

They are unacceptable in this Nation of ours. Prioritizing which group is being discriminated against the worst I don't believe is a valid exercise of our authority here. What we are trying to do is to identify a problem in America that extends beyond the Jewish population to the Arab population to the Palestinian population. All of those hate crimes are unacceptable. All of them are unacceptable.

The letter which you asked me to enter into the record calls on us to pass a bill that I know quite well, the Domestic Terrorism Prevention Act. That bill passed the House of Representatives. It was called by Senator Schumer in the Senate. It's a bill that I sponsored. It was stopped on the floor and filibustered by the Republican side. I don't want to draw a conclusion about their views on hatred and violence, but I think we all ought to acknowledge the fact that work needs to be done, and we shouldn't tie ourselves in knots but should work toward ending hate crimes in America.

At this point, we're going to turn to the witnesses who appear before us. I'll introduce the majority witnesses. The Ranking Member will introduce the minority witness. Our first witness is Maya Berry, co-chair of the Hate Crimes Task Force at The Leadership Conference on Civil and Human Rights. She is also the executive director of the Arab American Institute. We are also joined by Ken Stern, director of the Bard Center for the Study of Hate. Mr. Stern previously served as director of the Division of Antisemitism and Extremism at the American Jewish Committee, where he worked for 25 years. Ranking Member Graham, would you like to introduce your witness?

Senator GRAHAM. Mr. Chairman, our witness is Rabbi Mark Goldfeder. He is CEO and director of the National Jewish Advocacy Center. He was appointed in 2021 to the United States Holocaust Memorial Museum Council. He handles cases involving antisemitism in its many manifestations and has worked with local, State, Federal legislatures on measures to support the Jewish community. He is also an attorney. Thank you.

Chair DURBIN. Thank you, Senator Graham. After I swear in the witnesses, each one will have 5 minutes to provide an opening statement. There will be rounds of questions. Each Senator will have 5 minutes, and please try to remain within your time. So, would each of the witnesses please stand to be sworn in?

[Witnesses are sworn in.]

Let the record reflect that both—that all witnesses have answered in the affirmative. Ms. Berry, you may proceed with your opening statement. Make sure your microphone is on.

STATEMENT OF MAYA BERRY, EXECUTIVE DIRECTOR, ARAB AMERICAN INSTITUTE; CO-CHAIR, HATE CRIMES TASK FORCE, THE LEADERSHIP CONFERENCE ON CIVIL AND HUMAN RIGHTS

Ms. BERRY. Good morning, Chairman Durbin, Ranking Member Graham, and distinguished Members of this Committee. Thank you for convening this hearing today to address the crisis of hate crime in our country. I want to begin by offering my condolences and support to Im [phonetic] Wadea on the tragic loss of her son. I also want to acknowledge the members of the Tree of Life Synagogue

in Pittsburgh, who are also here, and extend my condolences and the support to them, as well. I'm truly sorry for your immeasurable loss, and the commitment that we make to continue to focus on hate is rooted in the need to address the crisis your families in pain have endured.

Understanding the nature of hate crime data, I would suggest this room includes other victims of hate crimes: some who have reported it, others who have not; some where the assailant was charged with a hate crime, and others where they were not. In all cases, it was an assault or a murder, arson or vandalism, or a threat to commit such a crime, and the motivation for committing the crime was based on an individual's action or perceived personal characteristics of the victim's identity. In all cases, it was a crime where the immediate victim was harmed as well as others who may be like them, their community. Hate crimes instill fear in communities, and because the safety of us all is linked—because we are, on a very basic level, all in one community with one another—hate crimes impact our entire country. As we attempt to address this hate crime crisis we are in, we are well served remembering that.

Why do I say a hate crime crisis? Because our government's official hate crime statistics provide the data confirming this crisis. From 2015 to 2022, we have seen a 99 percent increase in hate crime: 99 percent increase from just under 6,000 reported hate crimes in 2015 to 11,643 in 2022. The FBI's 2023 data has not been released yet, but based on the state data AI has pulled in preparation for this hearing, it is likely we will see yet another consecutive-year increase. Every single year since the 2016 Presidential election, the trajectory has been a dangerous increase of hate crimes in our country.

Anti-Black or African-American hate crimes continue to be a plurality of all hate crimes reported. There were 3,424 in 2022. Anti-Asian or Pacific Islander hate crime saw a major spike in hate, the most acute stages during the COVID–19 pandemic and its surrounding discourse by some elected officials. Anti-Muslim hate crimes were nearly 5 percent of all reported hate crimes during the 2016 Presidential election and the discussions of a Muslim ban. The only year with a higher record was 2001, in the post-9/11 backlash.

Anti-Hispanic and Latino hate crimes have shown a persistent increase, with a record-breaking 738 hate crimes in 2022. The annual number of reported hate crimes targeting the Latino community has increased in the last 7 years on a manner that has outpaced the overall increase of all reported hate, and while we've seen an increase—all of this while we've seen an increase in anti-immigrant rhetoric and xenophobia, particularly being experienced right now by the Haitian-American community.

LGBTQ and hate crime almost doubled from 2015 to 2022, with 1,925 on record in 2022. And while the annual number of hate crimes based on sexual orientation now represents a smaller share of all the hate crimes reported each year, that is not the case with gender identity hate crimes, which have increased 4 percent—all reported in 2022.

With regard to Arab Americans and Jewish Americans, we took a deep dive into the data after October 7 by examining available State-level data from 27 States and the District of Columbia. And with all the necessary caveats about State-level versus Federal data, here, too, the data confirms what we know. Anti-Arab has increased from 104 in 2022 to 180 in 2023; anti-Jewish from 1,311 to 2,073. Further, isolating our October-December for the 21 States and DC where we could do that, it shows about half of all of the incidents reported in 2023 occurred in the last 3 months: October, November, and December. That's a 54 percent increase for Arab Americans. I'm sorry. Yes, 54, and 49 for Jewish Americans.

Wadea Al-Fayoume's murder in his home in Illinois; the attempted murder of Hisham Awartani, Kinnan Abdalhamid, and Tahseen Aliahmad in Vermont, while three college students were out for a walk, wearing their keffiyehs and speaking occasionally in Arabic, is another example, as is the unnamed 25-year-old Brooklyn man attacked with a baseball bat after being defamed. The backlash effect is real for both communities, and the historic levels of hate crimes we're experiencing harm individuals, communities, and our country. We can and must respond more effectively. Thank you again for the opportunity to testify before you today, and I look forward to your questions.

[The prepared statement of Ms. Berry appears as a submission for the record.]

Chair DURBIN. Thank you, Ms. Berry. Rabbi Goldfeder. Would you make sure your microphone is on? Thank you.

STATEMENT OF MARK GOLDFEDER, DIRECTOR, NATIONAL JEWISH ADVOCACY CENTER, ATLANTA, GEORGIA

Rabbi GOLDFEDER. Chairman Durbin, Ranking Member Graham, Members of the Committee, good morning. My name is Mark Goldfeder. I'm director of the National Jewish Advocacy Center, a nonprofit legal organization that combats antisemitism in all of its forms. It is an honor to appear before you to address this important topic, and I also extend my condolences to the families of the victims. May God comfort you.

Senators, it is no secret that antisemitism has skyrocketed since Hamas's brutal October 7 massacre. On college campuses across the country, between hiding from mobs in libraries, avoiding dining halls because of death threats, and removing Nazi symbols from Chabad houses, Jewish students have been subjected to campaigns that employ classic antisemitism tropes and calls for them to be removed from campus if they dare identify as Zionists, which the vast majority of Jews do. In 2023, antisemitism assault incidents increased by 45 percent, vandalism by 69 percent, and antisemitic harassment increased by 184 percent.

Those aren't speech incidents. Those are hate crimes. Let me be clear. Hate speech, no matter how offensive, is protected by the First Amendment, but assault and battery, arson, trespassing, vandalism, breaking and entering, destruction of property, harassment, and true threats are all examples of unlawful antisemitic behavior and hate crimes that have happened in the last few months and that can and should be regulated, which brings me to the next point.

In hearing about hate crimes, why am I focusing specifically on anti-Jewish hate crimes? Three reasons. First, there is an acute problem taking place right now, before our very eyes. The majority of religiously motivated hate crimes are committed against Jewish people, and the numbers are getting worse. We need to deal with that reality now, before more people get hurt. Second, it's not about Jewish exceptionalism. It's about equality. There's an equal protection problem here, and it's definitional, and it can be fixed.

Third, it's important to address antisemitism in the context of the broader hate crimes conversation because what starts with the Jews never ends with the Jews. It did not take very long for the chants to morph from Death to Israel to Death to America, and from spray-painting Hillel houses and desecrating menorahs to disrupting Pride marches, defacing George Washington's statue, and vandalizing the Freedom Bell. Stopping antisemitic hate crimes is a matter of self-preservation for all Americans, because even if you aren't Jewish, they are coming for you next. Just ask them. They aren't shy.

And so, I'd like to talk about solutions. Here are three practical steps to stem the tide of unlawful hate directed against Jewish Americans, to the benefit of all Americans. First, please use your oversight powers to ensure that our laws are enforced as written. This includes, of course, Title VI of the Civil Rights Act, but also laws like the Immigration and Nationality Act, that deal with foreign students providing support to terrorist organizations. Student groups are openly working as agents of Hamas. They are handing out recruitment flyers on our campuses on a daily basis. My organization, NJAC, has brought five anti-terrorist suits since October 7, to go after some of these bad actors, but we should not have to do that.

Second, Congress should clarify or ask the DOJ to clarify what should be obvious: the First Amendment is not a free pass to threaten, harass, intimidate, or otherwise violate the rights of others. And, finally, because Jewish identity is so multifaceted, without a standard definition for authorities to reference when they're analyzing the intent behind illegal, discriminatory actions—not speech—it is too easy for antisemites to hide behind this ambiguity and commit unlawful acts against Jews with impunity.

The Antisemitism Awareness Act solves this problem by requiring the relevant authorities to consider, as contextual, rebuttable evidence, the International Holocaust Remembrance Alliance, IHRA, definition of antisemitism. And, no, the Act does not curb speech. It's not a he-said, she-said debate. You can go ahead and read the operative language yourself. Title VI violations, by definition, do not include speech.

The definition also contains appropriate safeguards that take into account the importance of nuance and context in situations that involve allegations of discriminatory intent—for example, the explicit caveat that all of the examples given are not dispositive but could, taking into account the overall context, be evidence of antisemitism. There are very few things that the Bush, Obama, Trump, and Biden administrations have agreed on, but the IHRA definition is one of them, not to mention a supermajority of U.S. States that

have embraced it and the vast majority of Jewish people across every ideological spectrum.

Of course, Jews are not monolithic, and there is a small minority within the Jewish community that does not support it, but they do not represent the Jewish community, which has spoken in a loud and clear voice. Every major Jewish organization in this country, by estimates of membership over 90 percent of American Jews, support this bill wholeheartedly. That is more than a consensus, Senators. That is a mandate. Nor is the bill merely symbolic. Of course, our current laws should capture antisemitism, but in practice, they don't. I'm general counsel to 24 Hillels in the State of Georgia. In one instance last October, a group of students surrounded a Jewish peer, threw him to the ground, said, we're going to kill you, your family, and all Israelis. The boy is not Israeli, just Jewish. Police decided it was not a hate crime because he said Israel, not Jew.

I'll conclude by pointing out the obvious. Protecting Jewish people does not come at the expense of any other group. You can be vigorously pro-Palestinian without being antisemitism. You can even be virulently antisemitic without committing unlawful actions. But all too often, that is not what is happening. I stand ready to work with the Committee and any Member on this important matter and welcome your questions. Thank you.

[The prepared statement of Rabbi Goldfeder appears as a submission for the record.]

Chair DURBIN. Thank you very much, Rabbi. Mr. Stern.

STATEMENT OF KENNETH S. STERN, DIRECTOR, BARD CENTER FOR THE STUDY OF HATE, BROOKLYN, NEW YORK

Mr. STERN. Chairman Durbin, Ranking Member Graham, and the other honorable Members of the Committee, my name is Kenneth Stern. I direct the Bard Center for the Study of Hate, and I also worked at the American Jewish Committee for 25 years, where I directed the Division on Antisemitism and Extremism.

I want to share a framework to think about antisemitism and hate and hate crime and the campus and democracy. When people hate, whether they hate people of another race, religion, nationality, sexual orientation, or politics, they create simplicity and certainty. They are seduced by binary good-bad thinking and drawn to symbols. This is a human characteristic, rooted in how we divide the world into us and them. And people who want to combat hate—we're human, too, and not immune from the seductive illusion and comfort of simple answers to complicated questions.

Antisemitism is, at heart, conspiracy theory that sees Jews as conspiring to harm humanity. It's offered as an explanation for what goes wrong in the world. It appears on the right and on the left. It's also the philosophical backbone of much white supremacy. But we tend to think about antisemitism as only what people say about Jews or Israel and not enough about how vilification of anyone among us can create a conveyor belt to antisemitism.

As Senator Durbin mentioned, Alan, Lauren, and Amy Mallinger are in the audience today. Rose Mallinger, Alan's mother, Lauren's mother-in-law, Amy's grandmother, was murdered at the Tree of

Life Synagogue. That shooting was clearly an act of antisemitism, but the background noise to the Tree of Life massacre was fear of immigrants. The synagogue was targeted because it had participated in a program supporting them. But you won't find, sitting here today, the relatives of the 23 people killed when Mexicans and Mexican Americans were targeted at the Wal-Mart in El Paso. No one would call that an act of antisemitism. But the two shooters had nearly identical ideologies; they just chose different targets.

To fight antisemitism and any form of hate requires a wide lens to understand these movements and what draws people to them, not simple filters that may be comforting. Strong democratic institutions, including the protection of free speech, are also important. That doesn't mean ignore hateful speech. It means we don't use levers of the state to chill or suppress speech we don't like, creating free-speech martyrs in the process.

There have been antisemitic attacks on campus and, of course, as we know, hate directed at Palestinian, Arab, and Muslims, too. But there's a distinction being lost in much of this debate. No student should be the victim of bullying and harassment, intimidation, true threats, or discrimination, but there's an unfortunate expectation that a student should be protected from hearing things that cut them to their core. A university must be a place where students expect to be physically safe, not intellectually safe; where they're helped to ponder why that otherwise friendly student has views seen as ignorant at best, evil at worst.

The questions we should be asking are, how do we improve the campus to encourage the intellectual imagination and emotional empathy? How do we use the tools from the academy to break down the us-versus-them problems outside the campus, too? There's an elephant in the room: the IHRA definition. And I'm happy to discuss why I believe codifying it will harm the fight against antisemitism, but let me conclude with things that I believe will help reduce antisemitism and other forms of hate.

First, increase academic focus, both in teaching and research, on human hate and what to do about it. There are a number of hate study centers, but there should be more. Two, provide more funding to OCR and for the National strategy on antisemitism. Three, we need better data on hate crimes.

Four, we also need data on the cost of hate crimes. Hate crimes don't only have a moral cost. They don't only traumatize families and communities. They cost each of us a veritable hate tax. My Bard colleague Mike Martell created an economic template to estimate the costs of hate crime, using the 2012 murder at the Sikh temple in Wisconsin as a case study. And we're working with laypeople from the EDL in Phoenix to approximate the cost of hate crime there. Why isn't the government computing these costs?

And, finally, the other day I was explaining a project we're developing with Boston University to help victims of hate crime find support, whether it be how to report a hate crime or counseling or other resources, using AI and social media to help them. We're in discussions with the Eradicate Hate Global Summit to see if they can incorporate some aspects of the planning into their work. The person asked, why isn't Congress figuring out creative ways to help

more victims of hate crime, instead of you? It's a good question. Thank you.

[The prepared statement of Mr. Stern appears as a submission for the record.]

Chair DURBIN. Thank you all for your testimony, and I'm sure there are some questions coming from my colleagues here. I guess one of the fundamental threshold questions is whether we can segregate—I hate to use that word—whether we can separate one type of hate crime and say, this is the worst; this is the priority; to the exclusion of the others, we're only going to deal with one. Ms. Berry.

Ms. BERRY. Thank you, Senator. My position is, I think not. We've worked collectively as a community to understand the nature of these hate crimes. As you said in your opening remarks, we have the highest number ever reported since the FBI started collecting the data in 1991. And the response has to be one that acknowledges all targeted communities are being impacted. So, our response has to be one that acknowledges that and, as a result, understands that singling out any one community doesn't actually get us all safer. I certainly agree that different communities are targeted at different times and perhaps for different reasons, but the underlying issue is one of hate and a crime, and we must respond accordingly.

Chair DURBIN. Rabbi, do you believe that language being used by politicians that dehumanize certain groups adds to this atmosphere of hate crime?

Rabbi GOLDFEDER. Thank you, Senator, for the question. I think that all extreme political rhetoric is dangerous. Just look at the two recent attempts on President Trump's life. And I think that both sides should absolutely do their best to tone it down.

Chair DURBIN. And do you believe that, as politicians, if we set out to dehumanize groups like immigrants, does that have an impact on the conversation about hate crimes?

Rabbi GOLDFEDER. Thank you, Senator. I think no group should ever be dehumanized, period.

Chair DURBIN. I couldn't agree with you more. Mr. Stern, you give the example of the El Paso Wal-Mart and the Pittsburgh synagogue and believe that, though the targets were different, the motivation was the same. Explain that.

Mr. STERN. Well, and you had mentioned, Senator, the Buffalo shooting, too. If you look at the ideologies of the three shooters, they were a combination of seeing—hating immigrants, seeing people of color as a threat, and believing—as my colleague Eric Ward, you know, articulated very well in an article called Skin in the Game, the white supremacy—the backbone of it is antisemitism. So, you can't really separate them all as saying, well, this is a problem only in one sense; this is a problem in another sense. They feed on each other.

And I agree with the rabbi that, you know, antisemitism is a threat to democracy, a miner's canary, and so forth. But the flip side is also true: that vilifying anyone among us is a conveyor belt to antisemitism and helps people see the world as, why are we losing? Why were people at Charlottesville talking, Jews will not replace us? Because they saw that they were losing a place in society,

they felt—and they thought that Jews were behind it. Again, antisemitism is Jews conspiring to harm humanity and giving an explanation for what goes wrong in the world. So, that's how I see these things as related.

Chair DURBIN. Ms. Berry, how do you draw the line—the conversation in a free society like America, when it comes to how far you can go? Can I disagree with Bibi Netanyahu and still stand up for Israel?

Ms. BERRY. That's entirely up to you, Senator, and I think the answer would certainly be yes. The issue is not the matter of speech, in terms of if it's objectionable or not, but why are you targeting an individual, and are you committing a crime in the process of targeting that individual? If you're targeting a person because of a protected category, that's a hate crime.

And the importance of the point you're making about dehumanization and speech I think is absolutely critical, because, for example, I might say something, but that's entirely different than you would, Senator, the Chair of the Judiciary Committee saying something. Your standing in our society is such that you hold a certain importance as an elected official, and when our elected officials are engaging in dialog—again, not about policy disagreements, because you can have policy disagreements. It's when you target specific communities as the source of those problems; that's where we find ourselves in the place that we are, which is that we see spikes in hate against specific communities after comments are made.

Our communities are targeted. We saw it during the pandemic. We see it now when we talk about immigrants the way that we do. We certainly see it across the board. I'm going to remind us again that anti-Black racism as an issue is the reason we continue to have a plurality of all hate crimes targeting the Black community.

And the final point I would make is that since the hate crime data was collected, the anti-Jewish category in religion has always been the top category. There is undoubtedly a problem of antisemitism in this country. That goes without saying, and the data has verified that. It's, what are we doing to respond to it in the whole-of-society approach that is correctly focused on the actual problem?

Chair DURBIN. Thank you very much. Senator Graham.

Senator GRAHAM. To each witness—start with you, Ms. Berry. Do you believe it's very difficult right now for Jewish students to attend colleges in America?

Ms. BERRY. I think it can be for individual Jewish students.

Senator GRAHAM. No, I said, is it?

Ms. BERRY. It can—it depends on the individual students and——

Senator GRAHAM. Well, okay.

Ms. BERRY [continuing]. What they're encountering, yes.

Senator GRAHAM. Rabbi, do you think it is?

Rabbi GOLDFEDER. Yes, almost impossible.

Senator GRAHAM. Mr. Stern.

Mr. STERN. Senator, it depends on the campus. For many, absolutely so, but I would also add one other thing: that there are some Jewish students who are anti-Zionists, whose Judaism leads them to that position, and they are also getting——

Senator GRAHAM. Mr.——

Mr. STERN [continuing]. Spat on.

Senator GRAHAM. I'm trying to establish a baseline. The reason we wrote the letter is so we see playing out before our eyes just an assault on Jewish students in colleges. I'm looking at systems, here. Does anybody—let me ask you. DNI said Iran—we have observed actors tied to Iran's government posing as activists online, seeking to encourage protests and even providing financial support to protesters. Does anybody doubt that? Okay. Mr. Stern, is it Hamas's goal to destroy the Jewish state?

Mr. STERN. Absolutely. Hamas is——

Senator GRAHAM. Is it Hezbollah's goal to destroy the Jewish state?

Mr. STERN. Absolutely.

Senator GRAHAM. Is it Iran's goal to destroy the Jewish state?

Mr. STERN. Yes.

Senator GRAHAM. Okay. Ms. Berry, do you agree with that?

Ms. BERRY. I think these are complicated questions. I really don't want——

Senator GRAHAM. No, it's not. There's nothing——

Ms. BERRY [continuing]. To talk about foreign policy.

Senator GRAHAM [continuing]. Complicated about it. That's the most——

Ms. BERRY. Yes.

Senator GRAHAM [continuing]. Ridiculous testimony——

Ms. BERRY. Senator——

Senator GRAHAM [continuing]. Ever given in this Committee.

Ms. BERRY. Yes. So——

Senator GRAHAM. If you think it's——

Ms. BERRY [continuing]. All of those——

Senator GRAHAM [continuing]. Complicated to figure out that Hamas, Hezbollah, and Iran wants to kill all the Jews——

Ms. BERRY. Yes.

Senator GRAHAM [continuing]. I should not listen to anything else you've got to say.

Ms. BERRY. Okay. May I——

Senator GRAHAM. And I won't.

Ms. BERRY. Senator——

Senator GRAHAM. Rabbi——

Ms. BERRY. If I may, Senator——

Senator GRAHAM. Rabbi—Rabbi——

Ms. BERRY. I think we started——

Senator GRAHAM [continuing]. Do you believe—do you believe that Hamas, Hezbollah, and Iran are out to kill all the Jews and destroy Israel?

Rabbi GOLDFEDER. I believe they're out to destroy the Jewish state and kill all the Jews——

Senator GRAHAM. Okay.

Rabbi GOLDFEDER [continuing]. Both.

Senator GRAHAM. So, I do, too. And I believe Iran's behind this. And what I would like this Committee to do is deal with the systematic problems that exist regarding what's going on on American colleges today. What's going on on colleges today? There's an organized effort to intimidate, harass, and physically assault Jewish

students. What's going on today is an effort on multiple fronts to wipe Israel off the map. This is not an academic discussion. As to what should happen, Mr. Stern, if a student on a college campus uses the N-word against African-American students, should they be expelled?

Mr. STERN. I think if a student goes and harasses another student, says that to their face, that could be absolutely a matter for discipline.

Senator GRAHAM. Yes.

Mr. STERN. However, I think if they're just standing up there with a sign or saying, this is what I think or a word I'm choosing, and not threatening somebody——

Senator GRAHAM. Yes.

Mr. STERN [continuing]. And not harassing——

Senator GRAHAM. Yes.

Mr. STERN [continuing]. Then that should be deplored——

Senator GRAHAM. But——

Mr. STERN [continuing]. But it should not be the subject of discipline.

Senator GRAHAM. But do you agree with me it's—if African-American students are being called the N-word and harassed and belittled by other students, those students should pay a price for that?

Mr. STERN. I think if there's any type of harassment. Doesn't matter the word.

Senator GRAHAM. Yes.

Mr. STERN. But if students are being harassed——

Senator GRAHAM. Well, the word does matter, if you're African American.

Mr. STERN. Well——

Senator GRAHAM. Let——

Mr. STERN [continuing]. What I'm saying is that no harassment should be tolerated——

Senator GRAHAM. Well, right. There you go. That's good. So, the idea that you could hold somebody accountable for using words makes sense to me, because free speech is a concept that we all hold near and dear, but words start wars. Words can incite violence. You can't yell fire in a theater. So, what I would say that's going on here is that we have to deal with the problem at its roots, first identifying it. America has many problems. There are people hateful to each other. That's been with us since there's been a country. We live in a unique moment in America, I think—and I'm trying to get us to focus on that moment—about not only a rise of antisemitism but an effort by agents of Iran and other powers to divide us here at home.

What's so sad is that October the 7th was designed to destroy the reconciliation between Saudi Arabia and Israel. All the intel shows us that Iran struck Israel in such a vicious way to stop the reconciliation between Saudi Arabia and Israel. I believe that with all my heart. I don't want them to win. I want to normalize between Saudi Arabia and Israel. I want a better life for the Palestinian community. And it can never happen without Hamas being destroyed and never coming back. It can never happen without

Hezbollah and Iran being contained. It can never happen without security for the state of Israel.

So, what I would say without any hesitation—that what's going on in America on our campuses is worthy of a discussion all of its own. We need to get to the bottom of it and start holding people accountable who run these schools. Thank you.

Chair DURBIN. Senator Whitehouse.

Senator WHITEHOUSE. Thanks very much, Chairman. Let me start by agreeing with Senator Graham that the peace framework that is being developed in the Middle East would be the very best outcome both for Israel and for the Palestinian people; that there are deliberate efforts out there to try to interfere with the conclusion of that piece, framework; and we're simply going to need to fight our way through those to achieve that goal. I would also concur with his statement that there are people hateful to each other in this country, but Ms. Berry, I'd like to ask you, in addition to people hateful to each other in this country, is there also strategically deployed misinformation and disinformation designed to accelerate and foment that hatefulness? And could you talk a little bit about that behind-the-scenes or backstage effort to make the hatefulness of some people worse and draw others into it?

Ms. BERRY. Thank you, Senator Whitehouse. You're absolutely right. And I regret that Senator Graham has left the room, because what I would've added was that the point he's making about foreign actors attempting to sow division in our country is quite real. Certainly, Iran was that. We saw a lot of it happening during the 2020 election, as well, where a particular line of potential division would then be inundated on the various social media platforms with fake—disinformation and misinformation targeting those communities, just literally to spread the hatred. So, an individual may or may not have taken that position at all, but rather all of a sudden inundated with these memes that are reinforcing this small potential idea I had, and I'm running with it. And it's——

Senator WHITEHOUSE. And our intelligence——

Ms. BERRY [continuing]. Highly problematic.

Senator WHITEHOUSE [continuing]. Services have pointed also to Russia as an agent of——

Ms. BERRY. That's correct.

Senator WHITEHOUSE [continuing]. Disinformation and misinformation intended to interfere with and disrupt our elections to the point where the Department of Justice has announced criminal allegations. So, what would your recommendations be for going directly at that problem of strategic and, particularly, foreign misinformation and disinformation designed to damage our democracy using hate as its tool of destruction?

Ms. BERRY. The good news is that the Department of Justice, I think, is taking this very seriously and has. The challenge for us is that we continue to be in this space with the social media platforms not, frankly, responding adequately to the spread of hate on their sites. So, until we have a better sense of how we can address that, one would argue actually that Twitter—X, formerly known as Twitter, has now taken us to a place where it's gotten considerably worse; where even the other social media platforms, for example, who had complete programs in place to address the 2020 election

have not prepared those same programs to protect us from disinformation, because I think the landscape has changed dramatically.

Senator WHITEHOUSE. Would it be helpful to better understand the financing of these groups and to have better resources to trace back from the domestic attack——

Ms. BERRY. Yes.

Senator WHITEHOUSE [continuing]. On our democracy using hatred back to the foreign interests that finance this, likely through multiple intermediary shell organizations, to try to obscure their hand in that glove?

Ms. BERRY. I think that's exactly why the Department of Justice is such a critical player in this space: the need to address this. It's different than maligned actors who kind of put this information out. There's clearly an agenda in play here, and I would suggest part of the—excuse me, Senator, for this point, but part of the reason it was difficult to address the first question sort of correctly is what I was trying to say is that we have state actors that are attempting to influence our democracy in a very harmful way. To suggest that a national movement and a national organic student movement that's come together to support Palestinian human rights is the same thing is really highly problematic. And the final point I would—if I may, I would make—what I was saying was the part that's complicated——

Senator WHITEHOUSE. Well, my time's about to——

Ms. BERRY. I apologize.

Senator WHITEHOUSE [continuing]. Run out, so let me——

Ms. BERRY. Yes.

Senator WHITEHOUSE [continuing]. Just make my last point, which is that they call these covert operations for a reason, and I think we'd all be better off if there were much more visibility into the financial links behind these front groups that propagate this kind of poison, so that press, public, not just the technical money laundering experts at the Department of Justice, but more spotlights of American democracy can be put on these schemes. Thanks very——

Ms. BERRY. Thank you.

Senator WHITEHOUSE [continuing]. Much. My time is expired.

Ms. BERRY. Thank you.

Chair DURBIN. Senator Grassley.

Senator GRASSLEY. Yes. Mr. Chairman, before I ask questions, I have two articles. One highlights actors with ties to Iran attempting to influence and finance anti-Israel protests in our country. This other article mentions that Russia is also trying to exploit divisions over the Israel-Hamas conflict. Rabbi——

Chair DURBIN. Without objection, they'll be entered in the record. Proceed, Senator.

[The information appears as a submission for the record.]

Senator GRASSLEY. Thank you, Mr. Chairman. Are some of the higher education institutions, either wittingly or unwittingly, shielding or even fostering antisemitism in the United States today, Rabbi?

Rabbi GOLDFEDER. Thank you, Senator, for that question. Yes. I'll point you to a study done by the Institute for the Study of Glob-

al Antisemitism and Policy which found that at least 100 American colleges and universities illegally withheld information on approximately $13 billion in undocumented contributions from foreign governments, many of which are authoritarian. The study found higher levels of antisemitic incidents reported on those campuses from 2015 to 2020. Institutions that accepted money from Middle Eastern donors had, on average, 300 percent more antisemitic incidents on campus than institutions that did not. And campus-level antisemitic incidents, by the way, forward predict county-level antisemitic incidents, including hate crimes.

Senator GRASSLEY. Further question, Rabbi. Have the Department of Justice and Department of Education in this administration done enough to address epidemics of hate speech and antisemitism on the college campuses? And if the answer is yes or no, what more should the administration do, from your opinion?

Rabbi GOLDFEDER. Unfortunately, they have done nowhere near enough. They should enforce the laws as written, including Title VI of the Civil Rights Act of 1964. If the words of Title VI mean anything, it talks about, you know, behavior that is severe and pervasive enough that it interferes with a person's education. They have to mean something. That has to include what's happening to Jewish students on campus right now. And we have seen zero universities lose their funding, even as these encampments literally force Jews out of parts of the school. So, no, they have not done more, and they should also enforce laws like the Nationality Act, which prohibit foreign students from providing material support to terrorism.

Senator GRASSLEY. Yes. You gave some evidence about the amount of money being spent by terrorist groups, but what have you discovered about Hamas's potential funding of college protests, and what evidence have you relied on to form your opinion?

Rabbi GOLDFEDER. Well, it actually goes beyond funding, Senator. Going back to the Supreme Court case in *Holder v. Humanitarian Law*, in 2010, it's not just money that counts. It's services, as well. And unfortunately, these student groups on campus are literally acting as the PR agents of Hamas. Some countries spend up to $200 million a year on PR firms. Hamas can't, because they're an FTO, but immediately after October 7, some of these groups, like the National Students for Justice in Palestine, came out and said, we are not just in solidarity with this movement; we are part of this movement. They chanted, we are Hamas. And when a group tells you that they are trying to provide material support to terrorists, you should believe them. And so, it's not just an exchange of money. It's a coordination with Hamas that is a terrible problem.

Senator GRASSLEY. In the same vein as my question just asked, there've been media reports citing Iran, Russia, and other International actors as taking advantage and stoking civil right unrest here. What do you think—Rabbi, what do you think can be done to counter this malignant influence?

Rabbi GOLDFEDER. I think in general, Senator, we need better tracking of the kind of donations that are coming from overseas, whether it's to 501(c)(3)'s that are, in theory, acting as charities but are actually, you know, as in the case of the Palestine Chronicle, for example, literally paying money to a terrorist that was holding

four hostages in his house—three hostages in his house. I think that it would behoove the U.S. Government to remove the tax status of any charity that provides material support to terrorists.

Senator GRASSLEY. Yes. And I think you've talked around this next question I have, but I'd like to ask it more directly, Rabbi. What has allowed for the recent rise of antisemitism and hate in our communities?

Rabbi GOLDFEDER. Senator, that's a very hard question to answer. It is really difficult to talk about why antisemitism persists. It's the kind of thing that is a mutating virus. Different parts of society hate Jews for being whatever they don't like. So, Jews are at the same time too strong and too weak; they're parasitic and overpowering; they are superhuman, like in the Protocols of the Elders of Zion, or they're subhuman, like in Nazi ideology. What has led to the problem and the infestation of antisemitism is the fact that we don't have clear definitions that authorities can use to rely on when they're trying to assess the intent behind antisemitic crime.

So, for example, everyone here knows that if you attack a Chinese person because you think they have unfair trade policies, that is ethnic or national origin discrimination. If you attack a Russian person because you think Russia should not have invaded Ukraine, that is national origin or ethnic discrimination. But if you attack a Jewish person because you hate Israel, for some reason there's some confusion. We need clear definitions, and that will do the job.

Senator GRASSLEY. Thank you.

Senator KLOBUCHAR. Okay. Thank you very much, Senator Grassley. Thank you to our witnesses and to the Chair and Ranking Member for holding this important hearing. I'm a former prosecutor; enforced some of our State hate crimes laws put in—Andy Luger, our U.S. Attorney, who has been—enforced those laws on the Federal level, as well. And I think that's a big piece of this.

Another piece of this—coming from a State that has a large Jewish population, the country's largest Somali population, second-largest Hmong population, and one of the largest Ethiopian populations, I believe that we also have to do everything that we can on the local level to stand above the hate that we're seeing on the internet and the hate that we're seeing across the world right now. And I always remember the story of when a threat was made, a serious threat, on our Jewish Community Center and all the kids had to run out, in their swimming suits in the middle of the winter, of the Center. When they got back to the Center, the first call, message for them, was from the neighboring Islamic center that offered them a place to go if they could not return to their own community center.

So, I think a lot of this is going to be on all of us to stand above this, and I appreciate it very much, the discussion today. I guess I'd start, Ms. Berry—we have, I know, in our State, just last year, as many as 25 Jewish schools and religious facilities receiving bomb threats. We had a serious case of white supremacists bombing an Islamic center in Bloomington, Minnesota that was investigated and, in fact, prosecuted on the Federal level. We have seen on the national level all this has been discussed—388 percent rise in antisemitic incidences since this time last year and 216 percent

increase in requests for help and reported bias against Muslims since October 7.

Your testimony goes into recent data on hate crimes. Can you talk more about the threats that we have seen since October 7 and also if there's an actual underreporting of this; that the numbers might even be worse than what we're hearing?

Ms. BERRY. Thank you, Senator. I would start on your—what you concluded with. Without a doubt, there's a massive and chronic underreporting problem with regards to all hate crimes in our country. On—the highest on record was last year, with 11,000-plus. Based on the Bureau of Justice Statistics at the Department of Justice, the estimate is that we capture about 1 percent of actual hate crimes that occur. So, even that we went through and pulled the data for the 27 States plus the District of Columbia and have already arrived at higher numbers than—the year is not complete—higher numbers than we saw the year prior, I would suggest that those are dramatically underreported.

And you represent, as you said, a state of—a wonderful, diverse State that—actually, one of the top ten States in the country in terms of Arab Americans who live in your State, there. There are also different barriers that show up for reporting that I think we have to address. Specific communities sometimes have concerns that are related to law enforcement, the relationship with it, that may be a barrier. The issue of training of law enforcement is also critical. My fellow witness gave an example of someone being targeted and the idea that Israeli is the reason they weren't charged with a hate crime—that, to me, strikes me as a deeply problematic training problem, if you—Israeli is national origin. If a person was targeted because of their national origin, that's a hate crime and should be treated as such.

In terms of the post-October 7 situation, as our data has sort of demonstrated—is that we are seeing, without a doubt, an increase for both communities. And it continues to be one where, frankly, the challenge has been that we're not having the conversation about the hate crimes. We're having conversations about speech and how you define this; how do you do that—when the reality is, we're already seeing a dramatic increase. And students are being targeted. The FBI released a report that looked at the increase in hate crimes on college campuses recently, and it's one we ought to pay attention to. It's just needing to keep the focus on the hate crime issue.

Senator KLOBUCHAR. I just—thank you. Appreciate it. I want to get some other answers, but I also would add, as I was specifically focused on some of the religious institutions and what we're seeing, we have this program, bipartisan basis, that we put forward for these security grants for religious institutions that I know, in my State, five million alone, especially after some of the threats that we've seen, that I think have been helpful, and I hope that we will continue to fund this in this budget coming at the end of the year.

One thing that we haven't talked about, Rabbi—and I appreciate your words on the laws and what we need to do; I truly do—is just online and what's been going on there. A number of us on this Committee have focused on these issues with putting some rules of the road in place on tech. Not going to go into that right now, but

examples of how people have become arguably radicalized by what they've seen on the internet: attacks against the Jewish community in Colleyville, Texas; Black community at Emmanuel AME Church in Charleston; Hispanic community in the Wal-Mart in El Paso; LGBTQ community in Colorado Springs. So, you could just go through all of it. And do you believe that's been part of this? And how would you fix it? Because you have 1 minute, you know. I'm kidding. Go ahead.

Rabbi GOLDFEDER. Thank you, Senator, for the question. Absolutely. It's an absolutely appalling and terrible problem. In the weeks after October 7, for instance, the phrase Hitler was right was trending on Twitter, which is an incredible, incredibly thing. Unfortunately, I think the best option here is education, and our kids aren't getting it. So, you know, for example, in the first month after October 7, I was dumbfounded, and I said, would these people online have actually supported Al Qaeda? And then a month later, it turns out, they would. And guess whose letter was trending? Bin Laden. We need better education about what they're posting, and it's not going to start online. It has to start way before that. It has to start in K through 12, at the university level, before they get online.

Senator KLOBUCHAR. Okay. Thank you very much. Do you want to add anything, Mr. Stern?

Mr. STERN. Yes. To that I would add that I think there's lack of focus on the flip side of it, so the dangers of social media—how to use it more effectively against hate is something that I think should concern this Committee and it should support. On campus, for example, there's an AI program that someone named Simon Cullen, who's a professor at Carnegie Mellon, developed, called Sway. And it encourages students and anybody who has different points of view, whether it's abortion, Israel-Palestine, to moderate it, and it basically flags ad hominem attacks; it flags things that are hateful and says, would you want to rephrase it this way? It takes away the eye rolling; it takes away the anger and the steam. And it's sort of like John Stuart Mill, you know, on AI. And I think things like that will help in this process, too.

Senator KLOBUCHAR. Okay. Thank you very much. Thank you, Mr. Chairman.

Chair DURBIN. Senator Cornyn.

Senator CORNYN. Rabbi, when we requested this hearing, we asked to focus on antisemitism, but I just want to ask you—if, in fact, antisemitic conduct and behavior is tolerated on college campuses or in our society in general, does that make it more likely that other religious or ethnic groups will also be treated in a similar abusive manner?

Rabbi GOLDFEDER. Thank you, Senator, for the question. Absolutely. Again, Jews are often called the canary in the coal mine of intolerance. What starts with the Jews never ends with the Jews, and it hasn't taken long already for the public cries for Death to the Jews to become Death to America and burning flags on our campuses, as well.

Senator CORNYN. So, if this sort of behavior is tolerated, it's a threat to all minority groups?

Rabbi GOLDFEDER. It's a threat to our entire democracy, Senator.

Senator CORNYN. Well, I want to talk specifically about the problems that some of the university presidents had in condemning antisemitism and enforcing their own rules against demonstrations on campus and the like. Harvard; University of California, Berkeley; Columbia; University of Pennsylvania; NYU; and Carnegie Mellon apparently all had difficulties drawing the line between permissible speech and impermissible conduct. But one university seems to stand out, and I'm proud of the fact the University of Texas, when this happened on campus—that a number of people not even affiliated with the university threatened to occupy the buildings at the campus and ignored officials' continued pleas for restraint, to immediately disperse—the university actually enforced its own rules. And is that the difference between what we saw in so many other places, that they simply tolerated this conduct, and the University of Texas did not, by enforcing its own rules?

Rabbi GOLDFEDER. In short, yes, Senator. There has been a complete abdication of authority when it comes to the First Amendment. And university presidents and law school deans that unabashedly explain that the First Amendment is hard to understand and they can't possibly enforce its limits don't belong running universities or law schools. The First Amendment is not a free pass to threaten, harass, intimidate, or otherwise violate the rights of others. There are limits to what constitutes speech, and there are rules for when it crosses over into actionable conduct. And if you can see those rules when it applies to racist, sexist, homophobic, and misogynistic speech but not when it comes to antisemitism speech, your problem is not with that line. Your problem is with antisemitism.

Senator CORNYN. So, normalizing this sort of antisemitism and the behavior that has been tolerated at so many of these universities is a threat to our society as a whole, specifically minorities, but if you see university leadership like that at the University of Texas actually enforcing its rules and taking action, that can help define what the community standards are and help protect all minorities. Correct?

Rabbi GOLDFEDER. Absolutely.

Senator CORNYN. So, I was intrigued by what you were discussing in terms of foreign countries contributing significant sums of money to colleges and universities and perhaps that having some influence on their policies. We have something called the Foreign Agents Registration Act, which Senator Grassley and others of us have been trying to reform, because we know that foreign countries actively hire lobbyists here in Washington, DC to lobby Members of Congress on legislation, without Members of Congress's knowledge that they are actually not—they're functioning on the part of foreign governments and not on behalf of their constituents, the American people.

Could you explain a little bit more about the nature of that challenge? And do you support legislation that would tighten the disclosure requirements, in particular, so that we could know that foreign governments are actually the prime actors and funders of this activity, as opposed to some American?

Rabbi GOLDFEDER. I absolutely support such legislation, and I will tell you that the problem actually goes further. You see, on

campuses across the country—I don't know if any Senators have spent time inside any of these encampments or protests. I have. And if you walk to the center, you'll notice something fascinating, which is that, charitably, 20 percent of the people there know what river and what sea. Most of them are there for the pizza or because they have been genuinely misled into thinking that they are on the right side of history. And that is important because not only do they not know what they're doing; they don't know that they're actually in bed with terrorists.

And that's why, again, our group, along with our partners at Greenberg Traurig, Holtzman Vogel, and others, brought the lawsuit against National Students for Justice in Palestine, to try and help draw the line, because maybe, maybe, if we could expose that, maybe the 80 percent would walk away from the 20 percent of extremists, and we'd save 80 percent of our citizens, of our future Congressmen, Senators, and Presidents. And so, it's a deeply problematic issue that sometimes even the unfortunate useful idiots are not aware of.

Senator CORNYN. Thank you.

Chair DURBIN. Thank you. Senator Blumenthal.

Senator BLUMENTHAL. Thanks very much, Mr. Chairman, and thank you for having this hearing, and thank you to our witnesses. I think we're all repulsed by the skyrocketing hate crimes that have occurred across the country. Connecticut is no different. There have been a number of very concerning hate crimes against both Muslim Americans and Jewish Americans in Connecticut over the past few years. In fact, we've seen 158 anti-Muslim hate crimes reported in 2022, up from 2021, and according to the Anti-Defamation League, there's been a huge increase in antisemitic incidents within Connecticut, specifically since 2020. At the University of Connecticut alone, this past year, 76 bias complaints were filed by both Jewish and Muslim students, detailing incidents of discrimination and hate speech since the conflict in Gaza began on October 7, 2023.

The numbers reflect only a small part of the problem, because there has also been a failure or a lapse in reporting hate crimes. And I know that our witnesses have called attention to that problem. There is a real need for more robust data in reporting hate crimes, and the reality is that the government's—it's really failed to give us a full picture. With your invaluable help, Ms. Berry, we've begun to make progress on this problem since 2021, and the Jabara-Heyer NO HATE Act—I led that effort in the Senate with Senator Moran.

Key provisions of that act provide for grant programs, as you know, to incentivize State and local law enforcement agencies to better adopt hate-crimes reporting measures that align with best practices. And yet, despite these efforts, we still see insufficient data related to hate crimes on campuses as well as in the community in general. So, my question to you, with my thanks for your cooperation and your help on these measures—what can we do to support law enforcement's effort on reporting and build on the work that we started with the NO HATE Act?

Ms. BERRY. Thank you, Senator Blumenthal, for the incredible work that you and your staff did on securing passage of the COVID–19 and Jabara-Heyer NO HATE Act.

Senator BLUMENTHAL. Thank you.

Ms. BERRY. As you said, it made a significant improvement. Three years later, we are seeing additional community-based grants being issued by the Department of Justice that are attempting to address the problem of underreporting. Grants that are going to law enforcement agencies—100,000 or more—have you reported hate crimes? Have you not? It's the issue of addressing affirmative zero. It's hard to believe the number of municipalities and States in our country where they report that not a single hate crime has occurred.

So, all of that, I think, has been tremendous progress, but you are correct in noting we're nowhere near where we need to be. And I think one of the most important things that we can do—and this is actually a change since we originally did the Jabara-Heyer NO HATE Act, to where we are now—is that there's an increase in supporting the measures of getting to mandatory reporting. How do we get to meaningful mandatory reporting? Can we tie it to funds that are already received by local law enforcement, so that we can make sure participation in this is possible?

The second part of this is we've also had a transition in the way that we report hate crime. And I—I can't stress enough the importance of NIBRS, our new National Incident-Based Reporting System. It really does allow a local agency to go in, having reported a hate crime and perhaps missed it, to then upload it and be able to include it in that. So, the importance of that is tremendous. The issue there is, are we getting all of the agencies to participate? And, regrettably, we continue to see not enough agencies having fully transitioned to that.

Senator BLUMENTHAL. Do any of the other witnesses have any thoughts or perspectives on reporting?

Rabbi GOLDFEDER. Thank you, Senator, for that question. Yes. I think one challenging aspect to reporting involves the lack of clear definitions. A recent study found, for example, that almost half of adult Americans don't know what the word antisemitism means, and those are the people willing to admit that in a survey. So, I think the importance of clear definitions would only help with reporting.

Senator BLUMENTHAL. Thank you.

Mr. STERN. Yes. And, Senator——

Senator BLUMENTHAL. My——

Mr. STERN. Oh, oh.

Senator BLUMENTHAL. Go ahead.

Mr. STERN. Yes. I just think also it needs to—online and other ways to make it so that people understand not necessarily the road of definitions but the tools, the support, the—you know, Meta is one of the people working with us on this Eradicate Hate potential project, the clearinghouse idea, that people can find information from social media if they say, oh, I've been a victim of a hate crime, to get the resources. And I think the easier we make it for people to get the resources they need, the more reporting we'll see.

Senator BLUMENTHAL. Thank you. My time has expired. This topic is hugely important and complex and challenging, and I want to thank all of you for being here. Again, my thanks to Ms. Berry in particular for your tremendous work on this issue. Thanks, Mr. Chairman.

Chair DURBIN. Thank you, Senator Blumenthal. Senator Lee.

Senator LEE. Thank you, Mr. Chairman. Thanks to all of you for being here and for participating in this hearing. It's significant that, at least until today, no Senate hearing has been held regarding the unprecedented rise of antisemitism on college campuses throughout America, especially since the October 7 Hamas attacks on Israel. It's also significant—I'm very glad that we're holding this hearing, and it's significant that the major overwhelming focus of it is antisemitism, but it's odd that the title of the hearing doesn't even reflect that focus.

And I think it's unfortunate that we're not having a hearing that is overtly, by name, focused on this specific topic, because we've got a problem here. We've got these once respected academic institutions of—you know, institutions of higher education that have suddenly found themselves transformed into these seething hotbeds—hotbeds of antisemitism. We see universities sitting sometimes idly by, or at least passively by, as Jewish students are threatened, are assaulted, are intimidated from attending class or just accessing facilities at the university, prevented from doing the very things that a college or university student is supposed to do while attending school.

Even cases of students being stalked or assaulted simply for wearing symbols associated with their faith have been astoundingly common. And then, just yesterday, I read a report of a student just outside the University of Michigan who was approached by a group of men and asked whether the student was Jewish. And when the student responded in the affirmative, they beat him up, and he ended up having to go to the hospital. This is really significant, and it's becoming stunningly common.

So, look, I understand the First Amendment protects the freedom of speech. It also protects the right of the people peaceably to assemble. It does not protect acts of violence. It does not protect people in their efforts to stop a Jewish student from attending class or approaching his or her dormitory or anything else on a university campus or elsewhere. That's not what the First Amendment is about.

Now, one of the things that's so troubling is that there are tools that are ready and available, both within universities and from the standpoint of the Federal Government, to step in and stop this nonsense. And yet we've seen little intervention to protect students. The executive branch of the Federal Government has the authority to enforce Title VI of the Civil Rights Act to protect Jewish students and ensure that universities do the same, to make sure that they have consequences when they don't do it. And yet little action has been taken by the executive branch to make sure that this happens.

One of the things that's so galling about this is that students and parents and those who are supporting these students are sending perfectly good money to these universities, specifically so that stu-

dents can get an education, so that they can attend class, live in the dormitories, go to the bookstore, the library, anywhere else that they need to go. And yet these same universities can't even be bothered to use the vast resources at their disposal on their university, whether it's through their university police or otherwise, to make sure that students aren't inhibited in their ability to walk from one side of the campus to the other, to do something as simple as go to class or go back to their dorm or go to their library.

Keep in mind, simply as a matter of contract law, before we even get to all of our civil rights protections that we have in law—protections that are not being enforced by this administration—before we even get to that, these people have a basic contractual right and a legitimate expectation that they will be able to access what they paid to be able to access. They didn't pay the university these ridiculously large sums of money simply so that they can wear a shirt with the logo of that university on their shirt. No. They paid for access to an education, an education that they're being denied, in many, countless cases, simply because they are Jewish.

Look, this is unacceptable. And it is stunning to me that many of the universities that have been most brazenly unwilling to protect Jewish students are some of the same universities who are charging the most money. We can do better. These universities can do better. And if they don't, they're going to face some very unpleasant consequences, and we will make sure of that. Thank you.

Chair DURBIN. Thank you, Senator Lee. Senator Hirono.

Senator HIRONO. Thank you, Mr. Chairman. Thank you all for coming to testify. I would ask that our testifiers speak directly into the mic. I'm having a little trouble hearing you.

As we sit here listening to your testimony and the questions being asked—perhaps this is for Mr. Stern and Ms. Berry—is the kind of hate that we're talking about today, whether it's anti-Jewish hate, sexual orientation hate crimes, anti-Hispanic, anti-Black, anti-Muslim, anti-Asian American, Native Hawaiian, Pacific Islander, anti-Haitians—is this kind of hate learned? Mr. Stern.

Mr. STERN. Yes. Yes, and—but it also is not just that people are being polluted. Part of the challenge is that, as human beings, we're sort of ordained—our brains function to see who's us and who's them. And sometimes the dehumanization and demonization of that becomes, you know, problematic in terms of particular groups. It can lead to genocide. It could lead to the types of hate crimes we're seeing. So, you know, I think that the more that we focus on that this is a normal human reaction, whether it's on politics, too—the better able we're going to be able to handle situations like this.

And to just, you know, piggyback on one thing that I agree and disagree with my friend there, the Rabbi—I don't think on the campus we're going to, you know, totally dispel this with discipline. There are certainly places where there—you need to have, you know, things—the police come in and so forth, but that should be at the last—the education should be the response to it. And one person I would suggest this Committee hear from at some point is Michael Roth—he's Jewish, at Wesleyan—who basically said, look, as long as you're not harassing, you're not intimidating, you know, you're going to be okay. You want a tent? Pitch a tent. And we're

going to bring people in there to have conversations. To me, that's a much better approach in the long term.

Senator HIRONO. I agree with you. And to the extent that this kind of attitude—and, yes, there's a human nature aspect to it, that maybe we're never going to be able to eliminate all forms of racism and those kinds of attitudes, but it seems to me that education plays a role, and one must start young at making—at teaching against the kind of hatred that we see around us. And as we sit here listening to anti-Jewish hate—it was not very long ago that we were actually watching videos of AAPI communities being attacked and even murdered, which led to the COVID–19 hate crimes legislation, which was a bill that I sponsored, and Senator Blumenthal's NO HATE Act was included, which led to much better reporting, albeit it still—the lack of adequate reporting of all manner of hate crimes is recognized, and we can do better. And I'd like to—do you agree, Mr. Stern, that we can do better in terms of educating at a much younger age about the impact of hateful rhetoric and to do something more at an early age, to address the learning of hate?

Mr. STERN. You know—yes, I think we could do lots of things at the early age. I think also—one of the things I put in my written testimony is the idea of bringing people, basically when they graduated from high school, from different backgrounds together and sending them out to do a project for somebody else. There's some social psychology that suggests that that may reduce bigotry. And on the campus itself, let me tell you, at Bard I had a colleague who saw people spitting out words in a very hostile manner about Zionism, genocide, ethnic cleansing, antisemitism—she said, you know, we're in a college. Why don't we teach about it? And she put together a course that helped students not only understand what these terms mean but why people hear them differently.

Senator HIRONO. So, are colleges creating such courses to enhance the dialog and discussion?

Mr. STERN. That's the thing that distressed me most over the summer. I saw a lot of reporting on what the new policies are going to be. And I get it; administrations don't want to get things out of control. But I would've loved to have seen, what are the 20 new courses we're offering? What are the new hate studies programs that we're putting together? So, why—when I do workshops with students and faculty and others, and they understand some of the brain science and social psychology about how we get into these, you know, heated us-versus-them buckets and you intellectually understand that, you're better able to then negotiate these issues.

Senator HIRONO. In the little bit of time that I have left—I agree with you, and I hope that college administrators and leaders are listening to you. And even as we speak, in Springfield, Ohio, the Haitian community there is being targeted, and the town has been targeted by hate-fueled attacks and bomb threats, et cetera. In your studies, have you seen minority communities being targeted like this, and can we expect that there will be further escalation of hatred against the Haitians in Springfield, Ohio and maybe will spread to other communities? Can you briefly respond?

Mr. STERN. Yes. I am deeply concerned about anybody targeting a whole community, let alone with rumors, but you pick one——

Senator HIRONO. Lies.

Mr. STERN. Yes, lies. Right. And, you know, what Mark was saying before, too—you go and you stigmatize one entire group because of somebody—you know, somebody that's perceived as part of that group, and bring hate. The problem, to me—and this I don't have a solution for—is that hate has always worked in politics. Otherwise, politicians wouldn't use it. And I think that the more that we stand up together and say we're going to call it out, especially when it's from people on our side, the less likely we'll be able to see this type of rhetoric expand.

Senator HIRONO. Thank you.

Ms. BERRY. If I may——

Senator HIRONO. Thank you, Mr. Chairman. I'm over my time. [Applause.]

Chair DURBIN. Senator Cruz.

Senator CRUZ. Antisemitism is a unique historic form of evil. And over millennia, it has manifested in violence, mass murder, and genocide. October 7 was one of the darkest days in human history, when terrorists murdered over 1,200 Israelis and took 251 hostages. Women and girls were raped. It was the single largest mass murder of Jews in a day since the Holocaust. In the wake of October 7, we have seen antisemitism explode across the United States and across the world, but especially on college campuses. As the ADL has illustrated, from 2022 to 2023, the number of antisemitic incidents more than doubled in the United States.

But college campuses, in particular, have become vile incubators of hatred of Jews. At Cornell University, in the aftermath of October 7, one student made vile threats, including statements such as, if I see a pig male Jew, I will stab you and slit your throat. If I see another pig female Jew, I will drag you away and rape you and throw you off a cliff. A student organization at California State University, Long Beach circulated a flyer calling for a, quote, "day of resistance in celebration of October 7." You will note, on the flyer is an image of a person parachuting with a fan attached, a direct reference to and a glorification of Hamas terrorists that used gliders to descend upon a music festival and murder 260 innocent people and take many more hostages.

At Columbia University, the situation got so bad that the Orthodox rabbi on campus, Rabbi Elie Buechler, had to make this public statement: "Columbia University's Public Safety cannot guarantee Jewish students' safety in the face of extreme antisemitism and anarchy. It deeply pains me to say that I would strongly recommend you return home"—this was directed to Jewish students—"as soon as possible and remain home . . ." The rabbi had every reason to be concerned. At Columbia's campus, individuals yelled, we love Hamas. We're all Hamas. Long live Hamas.

At the University of Washington, the granddaughter of Holocaust survivors was told that—she was called names. She was spit at. She was laughed at. She said she no longer felt safe on campus, and she was told to go back to the gas chambers. This is sick and horrific.

At Columbia, when Jewish students were engaged in displaying the American flag and the Israeli flag, another student wearing a mask—because these protesters are oh, so brave, they almost al-

ways cover their face—held up a handwritten sign saying, Al-Qassam's next target. Al-Qassam is the military arm of Hamas. According to social media, this particular student is a wealthy student from Georgia. She's not Palestinian. But she has been taught lies and hatred, and she feels perfectly comfortable advocating the murder of her fellow students at Columbia. At MIT, students have reported they feel unsafe to go to class, and the MIT president has said that she would not discipline the students making those threats, because if she did, they risk losing their visas and being deported.

Throughout all of this, the Biden-Harris administration has been utterly absent. Does anyone doubt if the Klan were on college campuses, terrorizing African-American students, threatening African-American students, that we would see the FBI there; that we would see prosecutors there; that we would see Federal funding cutoff to universities? Of course, we would, and we should. But when it comes to antisemitism, the Democrats have a problem. I would note, this is occurring in blue States with blue Governors, because the Democrat party is terrified of the pro-Hamas wing of their party.

In States like Texas and Florida, we don't allow this. At the University of Texas, when violent protesters threatened Jewish students, police officers arrived and arrested them. That's what happened when you enforced the law. Every Republican Member of this Committee asked the Chairman to hold a hearing on antisemitism in February, and yet we don't get a hearing on antisemitism. We get a hearing generically on hate——

[Audience disruption.]

Senator CRUZ [continuing]. Because this administration—and this is the kind of anger and hate that is encouraged. You're now seeing the hate, manifesting right here. Interestingly enough, what——

[Audience disruption.]

Chair DURBIN. Please. The Committee will come to order. The Senator is recognized to finish his remarks.

[Audience disruption.]

Senator CRUZ. So, we now have a demonstration of antisemitism. We have a demonstration of the hate. Rabbi Goldfeder, let me ask you, has the Biden administration cutoff the funding of any of the colleges that have allowed this hate? Have they indicted anyone for funding these violent protested—protests? Have they indicted the people paying for the matching tents? Or have they sat there silently, and have the universities sat there silently while their students are terrified to go to class?

Rabbi GOLDFEDER. They have not indicted anyone.

Senator CRUZ. They have not indicted anyone. Has any university had their funding cutoff for allowing this sort of violent intimidation?

Rabbi GOLDFEDER. Not a single university.

Senator CRUZ. I can tell you this. Next year, if there is a——

Chair DURBIN. Senator, your time is expired.

Senator CRUZ [continuing]. Republican majority on this Committee, you will see real leadership. And next year, if there's a Republican administration, you will see people prosecuted for this sort

of violence. This is being tolerated with the looking away, the blind eye being turned from this administration and this Department of Justice. And it is utterly disgraceful. And under Title VI, any university that allows this should have their funding cutoff.

Chair DURBIN. The Senator's time is expired. I would make a note for the record. This hearing is about hate. It includes antisemitism, as well as hatred toward other people. I would also point out that the previous Chair of the Committee from the other side of the table didn't hold a single hearing on antisemitism or hate crimes. I've held multiple hearings addressing this subject since becoming Chair, including a hearing shortly after the January 15, 2022 synagogue hostage crisis in Colleyville, Texas, which featured testimony from the synagogue's rabbi. Senator Welch.

Senator WELCH. Thank you. Thank you for holding this hearing. The Senator from Texas, I was with you in your indictment of all those horrendous antisemitic things that happened. You lost me when it seemed like you veered into a blame game. I think every single one of us here is horrified about hatred and violence toward a person because of what they believe or who they are.

Now, in Vermont, we're pretty proud of being a tolerant State, but we have suffered significantly with antisemitic activity. It's horrifying. One of the things that's really terrifying to me is that when folks want to go to their synagogue, they have to have police security. You know, when I grew up going to Holy Name grammar school, we didn't know what that was. We just went to church.

And in Vermont, we had three young Palestinian men who were home, visiting a grandmother, for Thanksgiving. They were out walking. They were speaking Arabic. They had on a keffiyeh. They got shot. They got shot. I'm horrified at what has happened to them. I am horrified at the antisemitism escalation toward wonderful Vermonters who are Jews and what they have to endure and the insecurity that they feel.

So, my view here is that let's acknowledge every single one of us is horrified about the expression of hatred toward the Jews, toward a Muslim, toward an Arab, and try to figure out how best we can act. And that does include enforcement, but I have observed that any issue out there that can become a partisan issue often does. My view—that's not a solution.

You know, I speak to some Vermonters from the Jewish community, so horrified, as we all are, about what happened, what Hamas did on October 7. We have a teacher who had a student and was killed on October 7, and she posted about it and suffered enormous online harassment. But when we had these three college boys who were just home for Thanksgiving, and they got shot, I mean, all of us are absolutely horrified by that. And people who commit crimes, particularly hate crimes—they should be punished, but that should be whether it's on campus, whether it's on the streets of Burlington, whether it's at a synagogue. We all have that obligation, because that hatred is so corrosive to all of us and to our society. And if we, as a society, can't accept the collective responsibility that we each have for the well-being of one another, then it's not going to work.

So, Mr. Chairman, I appreciate the hearing, and I want to thank the witnesses, because you're struggling with the day-by-day.

You're trying to help us find a way forward. But it's not going to be just a law that we pass. It's not just an indictment that we prosecute. And those things should be done, but it's going to be much more a collective responsibility that we have as citizens to one another. And let me just ask each of you what you think, what advice you have for us.

Ms. BERRY. Thank you so much for that, Senator, because I do think it's the collective responsibility piece, and it's something that Senator Hirono mentioned when she said, are people taught this? Part of it, we have to understand, is the process of dehumanization is central to people committing a hate crime. I may have a biased view, but moving me to the point of an actual crime, violence or the targeting of someone or their institution, is entirely different. And part of that requires that I don't see this person as human.

Senator WELCH. Right.

Ms. BERRY. So, when you talk about the cases of the students in Vermont or we talk about what's been happening on college campuses, part of what we have to understand is labeling them agents of Hamas is part of dehumanizing them. You can disagree or not agree with their speech. What I attempted to say with the Ranking Member was that he posited a complicated foreign policy question that I don't think belongs at a hate crime hearing. Hamas or Hezbollah or Iran—not only do they have views on Israel; they have views on the great State—which is the United States.

We can have that conversation in a foreign policy context. I just don't think that's the reason that people are marching, Nazis are marching, saying, Jews will not replace us, and they blame the American Jewish community for the Great Replacement theory; therefore, they target the Tree of Life. It's not why Nazis are marching in Disneyland. We have a very real problem, and the center of it is understanding why people hate and what we can do to respond.

So, the Office of Civil Rights has a budget to respond to the increase in college campus hate that we're seeing. Regrettably, that is not supported in a bipartisan way. So, if we intend to actually take this seriously, it's not a conversation about Israel and foreign policy; it's what are we doing to understand that we must improve this response? And that includes no longer dehumanizing Palestinians.

Senator WELCH. Thank you.

[Applause.]

Chair DURBIN. Senator Welch, you may conclude.

Senator WELCH. I have concluded. I was going to offer an opportunity but at the will of the Chairman—I am out of time.

Chair DURBIN. Thank you very much. Senator Hawley.

Senator HAWLEY. Thank you, Mr. Chairman. Ms. Berry, let me just start with you. You said in response to a question from, I think it was Senator Graham, you praise the protests going on on campuses—I just want to make sure I got this right, so you correct me now—as a National Organic Human Rights movement. What did you mean by that?

Ms. BERRY. The mass movement in support of Palestinian human rights is happening on college campuses across the country after students are learning more about the history of the Palestinian-

Israeli conflict and the specific targeting of Palestinian human rights. Yes.

Senator HAWLEY. Okay. I just want to be clear about what we're—what you're praising and not praising.

Ms. BERRY. Well, praising——

Senator HAWLEY. Let's have a look here. So——

Ms. BERRY. Yes.

Senator HAWLEY [continuing]. This—long live the intifada.

Ms. BERRY. Yes.

Senator HAWLEY. Is this an example of the—what did you say—National Organic Human Rights movement, that you mean? This is a human rights movement?

Ms. BERRY. I'm not sure that using the term intifada, which literally just means to, like, shake off or get rid of, is effective, as most Americans don't actually associate it with a human rights issue, so I don't think that's effective. No, Senator.

Senator HAWLEY. Wait a minute. You don't think it's effective, but you would agree that this is calling for the destruction of the State of Israel? This is after the——

Ms. BERRY. No, Senator.

Senator HAWLEY. Oh, it's not?

Ms. BERRY. I——

Senator HAWLEY. This isn't calling for the killing of Jews?

Ms. BERRY. I don't know that person, and I don't know that sign, so I don't——

Senator HAWLEY. Oh, you don't——

Ms. BERRY [continuing]. Know what that's calling for.

Senator HAWLEY [continuing]. Know what this means?

Ms. BERRY. I don't think——

Senator HAWLEY. You haven't seen this before? Did you see these protests on—Rabbi, do you know what this means?

Rabbi GOLDFEDER. Yes. It's a call for the destruction of the State of Israel and probably the killing of Jews everywhere.

[Audience disruption.]

Ms. BERRY. I do not agree with that, Senator.

Senator HAWLEY. You——

Ms. BERRY. I've——

Senator HAWLEY. You don't think that this—you don't think that's hate speech, right here?

Ms. BERRY. Long live the intifada can mean different—as I—see, the problem——

Senator HAWLEY. It can——

Ms. BERRY [continuing]. With this, Senator——

Senator HAWLEY [continuing]. Mean different things? Wait a minute. These are——

Ms. BERRY. Yes.

Senator HAWLEY [continuing]. Protests, violent protests on campuses that targeted Jewish students, attacked them personally, prevented them from going to camp—to class, put them in fear of their safety after the October 7 attacks on the State of Israel that murdered more Jews than at any time since the Holocaust, and you're saying you think that this is an ambiguous message?

Ms. BERRY. I'm saying that any student targeted on campus, Jewish student——

Senator HAWLEY. Will you condemn this, right here? Right here. Long——

Ms. BERRY. I——

Senator HAWLEY [continuing]. Live the intifada. Will——

Ms. BERRY. I'm condemning——

Senator HAWLEY [continuing]. You condemn that?

Ms. BERRY [continuing]. Jewish students on targeted—on campuses being targeted, and the Office of Civil Rights should successfully be given funding in order to——

Senator HAWLEY. Will you——

Ms. BERRY [continuing]. Support them.

Senator HAWLEY [continuing]. Condemn this as hate speech?

Ms. BERRY. I think that can be hate speech, but I don't think it's automatically hate speech. The problem is that there's nuance, I'm trying to introduce to this conversation.

Senator HAWLEY. What's the nuance, when these people are marching——

Ms. BERRY. Because long live——

Senator HAWLEY [continuing]. And calling for——

Ms. BERRY [continuing]. The intifada——

Senator HAWLEY [continuing]. Jews to be killed?

Ms. BERRY. Sir—sir, because intifada also means uprising, for Palestinians. The way to get rid of——

Senator HAWLEY. Oh, so it's ambiguous, so it's hard to say. Well, my gosh. Okay. Let's try another one. What about this?

[Audience disruption.]

Chair DURBIN. Please. Audience will please——

Senator HAWLEY. Oh, yes, I—I mean, I—that's fine. We know what you think. Right, exactly. I mean, I think you've made it clear, those who were cheering earlier, when Senator Cruz was asking about the attempts to destroy and kill Jews. Let's just be clear about what's going on here, because here's what's happening at this hearing. We can't talk about antisemitism without also talking about something else. The message that's being sent today at this hearing today is, antisemitism isn't enough. The attempts to kill Jews on campuses—that's not a conversation worthy of discussion. You've got to add something else to it. So, if you want to kill Jews, oh, well, we can't talk about that unless we also talk about 15 other things, and now we have a witness sitting here——

Ms. BERRY. Yes.

Senator HAWLEY [continuing]. Who will not condemn the attempts on these campuses that are blatantly antisemitic tropes, Nazi tropes, to try and kill Jews. What about this one? There's only one solution. Is that a National Organic Human Rights movement?

Ms. BERRY. No, sir. I trust that's in reference to the Holocaust, and that's——

Senator HAWLEY. I would think——

Ms. BERRY [continuing]. Utterly reprehensible.

Senator HAWLEY [continuing]. The final solution.

Ms. BERRY. Utterly reprehensible.

Senator HAWLEY. Okay, what about this? What about this?

Ms. BERRY. But——

Senator HAWLEY. Glory to our martyrs.

Ms. BERRY. Again, I don't understand the point of messaging like that. I don't know what that means. All my——

Senator HAWLEY. Would you condemn this as antisemitic? This was projected here in Washington, DC, on the campus, in front of Jewish students, following the October 7 massacre.

Ms. BERRY. I think that that is not appropriate speech at a time——

Senator HAWLEY. This is hate speech, in the context, don't you think?

Ms. BERRY. Sure, but I——

Senator HAWLEY. Okay.

Ms. BERRY. The point is, I would prefer to focus on the issue of hate crime. That's the reason I'm saying that——

Senator HAWLEY. This is a hate crime—when you threaten to kill Jews——

Ms. BERRY. That's a hate crime.

Senator HAWLEY [continuing]. And destroy the State of Israel——

Ms. BERRY. No——

Senator HAWLEY [continuing]. That's hate speech.

Ms. BERRY. No. Threatening to kill——

Senator HAWLEY. That's a hate crime.

Ms. BERRY. Threatening to kill anyone, including Jews, is a—is——

Senator HAWLEY. Yes, let's——

Ms. BERRY [continuing]. A hate crime that's prosecutable.

Senator HAWLEY. And let's not pretend that it's ambivalent or ambiguous or we're not sure. How about this one? Free Palestine——

Ms. BERRY. I——

Senator HAWLEY [continuing]. From the river to the sea.

Ms. BERRY. That's not hate speech, sir.

Senator HAWLEY. You don't think that this is a call for the destruction of the State of Israel?

Ms. BERRY. Again, I can speak to what I think, which is amazing, because I'd love to talk about what I think, but I really think the focus of our hearing——

Senator HAWLEY. You don't think that——

Ms. BERRY [continuing]. Should be the growing problem of hate crime.

Senator HAWLEY [continuing]. After the October 7 attacks, when this was projected in front of a group of Jewish students right here in the District of Columbia—you don't think that's an attempt to intimidate them and call for the destruction of the State of Israel?

Ms. BERRY. Focusing on hate crime, I would say if that were——

Senator HAWLEY. Just yes or no.

Ms. BERRY [continuing]. Displayed on a synagogue, then it's a hate crime. If it was displayed on a Hillel, then it's a hate crime. If it's displayed elsewhere, I trust it's——

Senator HAWLEY. Wow.

Ms. BERRY [continuing]. Speech.

Senator HAWLEY. Boy, and then we wonder why our students are confused. Rabbi, let me just ask you, are you confused about this message?

Rabbi GOLDFEDER. I'm not confused, and I'll add that even if it was ambiguous and could mean different things to different people—Senator, can you imagine if there was a phrase that also meant kill all the Black people—would we be okay with projecting it because it might also mean something else to someone else?

Senator HAWLEY. No. I mean, well said. Well said. I just have—I'm almost done, Mr. Chairman, but let me just ask, since the witness talked about a National Human Rights movement—let me just ask about a couple others. The University of North Carolina chapter of Students for Justice in Palestine claim, it is our moral obligation to be in solidarity with the dispossessed, no matter the pathway to liberation they choose to take. This includes violence. Would you condemn that?

Ms. BERRY. I'm sorry. Was that for me?

Senator HAWLEY. Yes. It is our moral obligation to be in solidarity with the dispossessed, no matter the pathway to liberation they choose to take. This includes violence. Would you condemn that?

Ms. BERRY. I certainly condemn violence.

Senator HAWLEY. Good. You condemn that statement?

Ms. BERRY. I condemn violence. I have no interest in engaging in this back-and-forth about individual statements of students. I'm saying——

Senator HAWLEY. Oh, I—you know what? I do have an interest in it, and here's why. The——

Chair DURBIN. Senator, your time——

Senator HAWLEY. What I just——

Chair DURBIN [continuing]. has expired.

Senator HAWLEY [continuing]. Read to you—the U.S. Senate unanimously condemned this rhetoric. And unless we take a stand now on this rhetoric, now, on this specific rhetoric out of the mouths of these students that you have called National Organic Human Rights movement protesters, we are going to send the message that trying to kill Jews on campus, trying to prevent Jews from going to class on campus, is just okay. It's just another viewpoint.

Chair DURBIN. Senator, your——

Senator HAWLEY. It's not just——

Ms. BERRY. It's never okay.

Chair DURBIN [continuing]. Time has expired.

Senator HAWLEY [continuing]. Another viewpoint.

Ms. BERRY. Never okay.

Senator HAWLEY. And, frankly, what you're trying to do here today——

Chair DURBIN. No, no, no. Your time——

Senator HAWLEY [continuing]. I think is wrong.

Chair DURBIN [continuing]. Has expired.

Ms. BERRY [continuing]. Deeply wrong, sir.

Chair DURBIN. Senator Kennedy.

Senator KENNEDY. Thank you, Mr. Chairman. Rabbi, do you believe there are substantial number of people at Harvard University who believe in diversity, equity, inclusion, and the right to harass Jews?

Mabbi GOLDFEDER. I do.

Senator KENNEDY. That's a yes?
Rabbi GOLDFEDER. Yes.
Senator KENNEDY. And do you believe those people have acted on their self-anointed right to harass Jews?
Rabbi GOLDFEDER. Yes.
Senator KENNEDY. And has the administration at Harvard University allowed that to happen?
Rabbi GOLDFEDER. Yes.
Senator KENNEDY. Is that true at University of California at Berkeley?
Rabbi GOLDFEDER. Yes.
Senator KENNEDY. How about UCLA?
Rabbi GOLDFEDER. Yes.
Senator KENNEDY. How about NYU?
Rabbi GOLDFEDER. Yes.
Senator KENNEDY. Lot of other universities, too. Isn't that the case?
Rabbi GOLDFEDER. That is correct.
Senator KENNEDY. Now, Title VI says that if you receive Federal money, you can't harass Jews. Isn't that true?
Rabbi GOLDFEDER. That is correct.
Senator KENNEDY. Has the Biden-Harris administration taken away the money of Harvard?
Rabbi GOLDFEDER. No.
Senator KENNEDY. How about Berkeley?
Rabbi GOLDFEDER. Nope.
Senator KENNEDY. How about UCLA?
Rabbi GOLDFEDER. No, sir.
Senator KENNEDY. How about NYU?
Rabbi GOLDFEDER. No.
Senator KENNEDY. They've just talked, haven't they?
Rabbi GOLDFEDER. That is correct.
Senator KENNEDY. Okay. Do you think this condoned behavior at these universities, this—these condoned belief at these universities—and let me state it again. They believe in diversity, equity, inclusion, and the right to harass Jews. It's what they believe. What you do is what you believe. Everything else is just cottage cheese. Do you think that is consistent with their mission as universities?
Rabbi GOLDFEDER. Absolutely not.
Senator KENNEDY. Okay. So, above and beyond the question of money, it is the morality, the purpose of higher education in America, is it not?
Rabbi GOLDFEDER. That is correct.
Senator KENNEDY. Ms. Berry, you are the executive director of the Arab American Institute. Is that correct?
Rabbi BERRY. Correct, sir.
Senator KENNEDY. Okay. And according to your website, you're also, I'm going to quote here, "a longtime Democratic party activist who served as a member of the 2016 Democratic National Convention's Platform Standing Committee," close quote. Is that correct?
Rabbi BERRY. That's correct.
Senator KENNEDY. Okay. You support Hamas, do you not?
[Audience disruption.]

Ms. BERRY. Senator, oddly enough, I'm going to say thank you for that question, because it demonstrates the purpose of our hearing today in a very——

Senator KENNEDY. Let's start——

Ms. BERRY [continuing]. Effective way.

Senator KENNEDY [continuing]. First with a yes or no.

Ms. BERRY. Hamas is a foreign terrorist organization that I do not support. But you asking the executive director of the Arab American Institute that question very much puts the focus on the issue of hate——

Senator KENNEDY. Okay.

Ms. BERRY [continuing]. In our country.

Senator KENNEDY. Well, I——

[Applause.]

Senator KENNEDY. I got your answer, and I appreciate it.

[Applause.]

Senator KENNEDY. What is the—you support Hezbollah, too, don't you?

[Audience disruption.]

Ms. BERRY. Again, I find this line of questioning extraordinarily disappointing, Senator.

Senator KENNEDY. Is that a no?

Ms. BERRY. That—you have——

Senator KENNEDY. Or a yes?

Ms. BERRY. You have Arab-American constituents that you represent——

Senator KENNEDY. But is that a——

Ms. BERRY [continuing]. In your great State.

Senator KENNEDY. Yes, ma'am, I understand that. But is—my time's limited, and I apologize, but is that a yes or a no?

Ms. BERRY. Yes-or-no question to—do I support Hezbollah? The answer is, I don't support violence, whether it's Hezbollah, Hamas, or any other entity that invokes it. So, no, sir.

Senator KENNEDY. You can't bring yourself to say no, can you?

Ms. BERRY. No, I can say no. I can yes. What I——

Senator KENNEDY. But you haven't.

Ms. BERRY [continuing]. Can say is——

Senator KENNEDY. You just can't——

Ms. BERRY [continuing]. Your line of questioning——

Senator KENNEDY [continuing]. Make yourself do it.

[Audience disruption.]

Senator KENNEDY. Do you——

Ms. BERRY. Senator——

Senator KENNEDY [continuing]. Support or oppose Iran and their hatred of Jews?

Ms. BERRY. Again, I'm going to emphasize, Iran, Hezbollah, Hamas—none of them is going to——

Senator KENNEDY. You can't bring——

Ms. BERRY. This discussion——

Senator KENNEDY [continuing]. Yourself to say no, can you?

Ms. BERRY. Sir, I don't support——

Senator KENNEDY. It's real simple.

Ms. BERRY. Excuse me. I'm going to——

Senator KENNEDY. And——

Ms. BERRY. If I may——
Senator KENNEDY. No, no——
Ms. BERRY. As a Muslim——
Senator KENNEDY [continuing]. No.
Ms. BERRY [continuing]. Woman—as a Muslim woman, sir, I'm going to tell you, I do not——
Senator KENNEDY. I——
Ms. BERRY [continuing]. Support Iran. But what I will tell you is that——
Senator KENNEDY. You——
Ms. BERRY [continuing]. This conversation——
Senator KENNEDY. I'm running out of time. I'm sorry.
Ms. BERRY. Okay.
Senator KENNEDY. You——
[Audience disruption.]
Senator KENNEDY. You called our decision——
[Audience disruption.]
Chair DURBIN. Please.
Senator KENNEDY [continuing]. To cut funding——
[Audience disruption.]
Senator KENNEDY. You called our decision to cut—well, first, what's the United Nations Relief and Works Agency?
Ms. BERRY. It's UNRWA, which is——
Senator KENNEDY. Yes.
Ms. BERRY [continuing]. The institution that exists to provide services and aid to the nearly six million Palestinian refugees.
Senator KENNEDY. And you called our decision to cut funding for them, quote, "an incredible moral failure," close quote.
Ms. BERRY. That is absolutely correct. But again, I would suggest that conversation is about——
Senator KENNEDY. And we did——
Ms. BERRY [continuing]. Foreign policy.
Senator KENNEDY. We did that because nine UNRWA staff members were fired for actually helping Hamas on October 7.
[Audience disruption.]
Senator KENNEDY. Isn't that the case?
[Audience disruption.]
Ms. BERRY. I don't believe that that's correct, in terms of——
Senator KENNEDY. Let me——
Chair DURBIN. The audience will please——
Senator KENNEDY [continuing]. Ask you one more time. You support Hamas, don't you?
[Audience disruption.]
Ms. BERRY. Sir——
Senator KENNEDY. You support UNWRA and Hamas, don't you?
Ms. BERRY. Sir——
[Audience disruption.]
Chair DURBIN. Please.
Ms. BERRY. I think it's exceptionally disappointing that you're looking at an Arab-American witness before you and saying, you support Hamas.
Senator KENNEDY. You know what's disappointing to me?
Ms. BERRY. I do not support——
Senator KENNEDY. You can't——

Ms. BERRY [continuing]. Hamas.

Senator KENNEDY [continuing]. Bring yourself to say——

Ms. BERRY. I do not support Hamas or any——

Senator KENNEDY [continuing]. You don't support UNWRA, you don't support Hamas, you don't support——

Ms. BERRY. I was very clear on my support for UNWRA.

Senator KENNEDY [continuing]. Hezbollah, and you don't——

Ms. BERRY. I oppose——

Senator KENNEDY [continuing]. Support Iran. You should hide your head in a bag.

[Audience disruption.]

Chair DURBIN. Your time is expired. Please——

[Audience disruption.]

Chair DURBIN. Please, please. Ms. Berry, I'm going to allow you to respond to any one or all of those questions, at this point.

Ms. BERRY. Senator Durbin, thank you very much for holding this hearing and for elevating the issue of hate crime. It's regrettable that I, as I sit here, have experienced the very issue that we're attempting to deal with today.

[Applause.]

The introduction of foreign policy is not how we keep Arab Americans or Jewish Americans or Muslim Americans or Black people or Asian Americans—anybody—safe. This has been, regrettably, a real disappointment but very much an indication of the danger to our democratic institutions that we're in now. And I deeply regret that, and I do hope that my testimony today has been helpful to understanding the need to respond to hate.

[Applause.]

Chair DURBIN. Over the weekend, I went to a synagogue in my hometown of Springfield. There was a bar mitzvah for a dear friend of mine. I couldn't help but notice the security guards that were posted for this bar mitzvah. In addition, I went to the meeting where a dear friend of mine, a Jewish friend of mine in Chicago—she's been my friend and worked for me for 40 years—was almost in tears over the antisemitism that she has witnessed. She was wearing a Star of David around her neck, and she said, I do that because I won't give up. I won't give up.

I thought about it for this hearing, but I also thought about Wadea, a 6-year-old boy. I have a 5-year-old granddaughter. I love her like life itself. I cannot imagine this poor little boy answering the door and losing his life because he's Palestinian. My God, we can't say this, things that I've just said in the same sentence, without some people saying, oh, you've just chosen sides. I'm not choosing sides here except for the side of, I hope, common decency and democracy. We've got to have this conversation, and we've got to do it in a civilized manner. I regret some of the things that were said today at this hearing, but we are a free Nation, and that's what happens in a democracy. As sad and as disquieting as it may be, that is part of it.

The title of today's hearing was inspired by Dr. King's—oh, I'm sorry. I didn't see Senator Blackburn. I was just concluding. Senator, you're recognized.

Senator BLACKBURN. Thank you, Mr. Chairman. I had a feeling you were trying to conclude and didn't realize that I was here. But thank you very much.

Rabbi, I want to come to you, if I may. You cited a Gallup poll that found that 60 percent of American Jews are afraid to share their religious affiliation. And thank you for getting that testimony in early. And that was just astounding to me. And having friends that have felt so impacted after October 7—and, Mr. Chairman, I wish we had had this hearing earlier. This is the first Senate hearing that we have had dealing with antisemitism——

Chair DURBIN. No, it is not.

Senator BLACKBURN [continuing]. Since the——

Chair DURBIN. No, it is not.

Senator BLACKBURN [continuing]. October 7——

Chair DURBIN. Senator——

Senator BLACKBURN [continuing]. Attack.

Chair DURBIN. Senator, I'm going to clarify the record once and for all. I gave the date of the hearing that I had on——

Senator BLACKBURN. Okay.

Chair DURBIN [continuing]. Antisemitism. You should've been there.

Senator BLACKBURN. I'm sure I was.

Chair DURBIN. Then you should——

Senator BLACKBURN. I make them all.

Chair DURBIN [continuing]. Remember.

Senator BLACKBURN. I make them all. But, Rabbi, I want to come to you. I want you to speak for just a moment about how the protests that have carried out on the college campuses and what we've been witnessing—how that not only is affecting the students but how it is also affecting the Jewish people in your—in your synagogue, in your community. If you'll just drill down on that for a moment, for me.

Rabbi GOLDFEDER. Sure. Thank you, Senator, for that question. The statistics are clear that on-campus incidents lead to countywide incidents and hate crimes. When you attack a community because of who they are, it sends a message to that entire community. In 2023, our synagogues became fortresses. In 2024, our children still go to school under armed guard, because what starts at the universities spills out into the streets, and when it's left unchecked, unfortunately a lot of these bad actors see kindness as weakness and as a message that they can do even worse and go even harder.

Senator BLACKBURN. You know, when you talk about the schools, there are a couple in Tennessee, Vanderbilt and University of Tennessee, that have really retained a policy of institutional neutrality. And I know people have appreciated that. So, talk a little bit about why it is important for university leadership to support every student, instead of catering to pro-Hamas activists.

Rabbi GOLDFEDER. Well, first of all, I think it's important to clarify the record. We're not calling them pro-Hamas activists. They're calling themselves pro-Hamas activists.

Senator BLACKBURN. That's right.

Rabbi GOLDFEDER. And they're handing out Hamas recruitment materials. I brought some that I've already introduced for the

record. Happy to share more later. So, when people tell you that they are working for Hamas, you should believe them.

Senator BLACKBURN. Right. Thank you for that. Ms. Berry, I do want to go back to the issue of UNWRA. And I know that you made a comment—pardon me—regarding Congress's decision to prohibit funding for UNWRA, and I supported—pardon me—us eliminating that funding for UNWRA, and I think Congress was right to do that, because we were fully aware that some of those UNWRA funds were ending up in the hands of terrorists and UNWRA teachers and educational materials that had called for the murder of the Jews. And yet you called that decision to defund UNWRA and I will use your quote, "an incredible moral failure." And do you really believe that cutting off taxpayer funds from UNWRA, when we knew that that money was—much of it was ending up in the hands of terrorists—do you still believe that's a moral failure?

Ms. BERRY. Yes, Senator, unequivocally. And I apologize in that, again, it's another foreign policy question, but I'll take the opportunity to explain our position. The United States, as well as the world, has obligations to the Palestinian people after the creation of the State of Israel in 1948. UNWRA is part of that effort, and we support UNWRA through our funding because it supports refugees in multiple camps, as well as different services.

The part about the particular moral failure is that we cutoff aid in the middle of Palestinians actually starving within Gaza, so you had a situation where the heightened need existed, and yet we made a move to cut the funding. And, additionally, all the other governments that did that have restored their funding, because it's been demonstrated that those charges, regrettably—well, apologies, not regret; those charges were false. So, yes, we need to be funding UNWRA.

[Applause.]

Senator BLACKBURN. Well, I will tell you that I think the real moral failure is that Jewish students are not safe to walk to and from class here in the United States. I think that that is a travesty. I think anything that we can do to protect them, we should be doing. Thank you, Mr. Chairman.

Chair DURBIN. Thank you, Senator. As I was saying, the title of today's hearing was inspired by Dr. King's famous letter from the Birmingham jail. Dr. King famously wrote, injustice anywhere is a threat to justice everywhere. We are caught in an inescapable network of mutuality tied in a single garment of destiny. The notion of separating out statements that are made about Palestinians, Arabs, Jews, immigrants, Haitians—doesn't succeed in dealing with the problem directly.

[Audience disruption.]

When we lose our sense of shared humanity, it becomes—please. When we lose our sense of shared humanity, it becomes easier to dehumanize our fellow Americans and others and commit horrible acts of violence. I agree with Mr. Stern that hate, at its core, is about dividing us into groups of us and them. We have to resist that ideology of hate. I hope this hearing has highlighted that to all Americans. Yes, it was boisterous; yes, it was emotional. Yes,

it was democracy. The hearing record will remain open for the week, for the submission of materials for the record.

Chair DURBIN. With that, the hearing stands adjourned.

[Whereupon, at 12:16 p.m., the hearing was adjourned.]

[Additional material submitted for the record follows.]

A P P E N D I X

Submitted by Chair Durbin:

Arab American Bar Association of Illinois 135
Asian Americans Advancing Justice (AAJC) 139
Assi, Lina, Written Statement 121
American Middle East Voters Alliance, Inc. (AMVOTE-PAC*) 145
Anti-Defamation League (ADL) 240
Anti-Palestinian Racism Survey Preliminary Report 2024 146
B'nai B'rith International 160
Bedrock Safety and Belonging For All 155
Bend the Arc, Jewish Action 158
Bennett, James L., Testimony 363
Council on American-Islamic Relations (CAIR) 162
Deol, Raghuvinder Singh, Letter 294
EMGAGE Action 348
Fatal, The Resurgence of Anti-Muslim Hate 308
Garcia, Sonny, Letter 338
GLAAD, Statement 231
Glckman, Audrey N., testimony 360
Hassan, Khalid, Statement 253
Hindu American Foundation (HAF) 233
Hindus for Human Rights (HfHR) 329
Institute for Social Policy and Understanding (ISPU) 318
Institute for the Understanding of Anti-Palestinian Racism 251
Interfaith America 247
Khalid Jabara Foundation (KJF) 254
Laird, Lucille, female Muslima 266
Levin, Emeritus Brian, Statement 172
Life After Hate 258
Masters, Michael, Statement 339
Muhammad, Abdul Akbar, Letter 137
Muslim Advocates 356
Muslim Public Affairs Council (MPAC) 279
Muslims for Just Futures (MJF) 268
NAPABA 334
National Council of Jewish Women (NCJW) 282
National Urban League 132
Parker, Channyn Lynne, Testimonial 170
Polarization & Extremism Research & Innovation Lab (PERIL) 287
Rahman, Amina, Testimony 144
Saba, Katrina, Letter 252
Saini, Harpreet Singh, Letter 238
Shoulder to Soulder 124
Sikh American Legal Defense and Education Fund (SALDEF) 126
SIKH Coalition 342

Singh, Lakhwant, Letter 264
Southern Poverty Law Center (SPLC) 213
Stand Against All Hate, Honoring Wadee Alfayoumi 300
Tazamal, Mobashra, Fannine the Flames 304
Union of Orthodox Jewish Congregations of America 296
Zayed, Watfae 365

Submitted by Ranking Member Graham:

Civil Rights of Jewish Students 370
Union of Orthodox Jewish Congregations of America 366

Submitted by Senator Grassley:

Codifying Antisemitism, Abstract, Mark Goldfeder 508
Codifying Antisemitism, Mark Goldfeder 379
Defining Antisemeitism, Mark Goldfeder 429
Russia is trying to exploit America's divisions over the war in Gaza, NBC News 375
The Hill 373

Written Testimony of Maya M. Berry
Executive Director
Arab American Institute

"A Threat to Justice Everywhere:
Stemming the Tide of Hate Crimes in America"

Hearing Before the U.S. Senate
Committee on the Judiciary

September 17, 2024

Chairman Durbin, Ranking Member Graham, and members of the Committee, thank you for the opportunity to testify today about hate crime in the United States, including since October 7, 2023, and the federal government's role in hate crime enforcement. My name is Maya Berry, and I am the Executive Director of the Arab American Institute (AAI), a national nonpartisan civil rights advocacy organization that represents the interests of approximately 3.7 million Arab Americans. I am also Co-Chair of the Hate Crime Task Force of the Leadership Conference on Civil and Human Rights, the nation's oldest, largest, and most diverse civil and human rights coalition.

This testimony proceeds in two parts. First, it provides an overview of recent hate crime statistics, including the available data on hate crimes against Arab Americans and Jewish Americans since the October 7 attacks and the war in Gaza. Second, it delineates the role of Congress and the federal government with respect to hate crime enforcement—especially when it comes to hate crime statistics—and explores avenues for reform.

To begin, I want to emphasize what this testimony does, and does not, seek to address. A hate crime is a criminal offense, such as murder, assault, or vandalism, that is committed because of a person's actual or perceived personal characteristics, such as their race, ethnicity, or religion. For the purposes of crime-data collection, the Federal Bureau of Investigation (FBI) defines hate crime as a "criminal offense against a person or property motivated in whole or in part by an offender's bias against a race, religion, disability, sexual orientation, ethnicity, gender, or gender identity."[1] The term "hate crime" may also refer to a violation of state or federal criminal statutes designed to punish these offenses, although it is worth noting that hate crime statutes vary in application. If someone assaults another person because of that person's sexual orientation, for instance, the perpetrator has not

[1] *Hate Crimes*, FED. BUREAU OF INVESTIGATION (last visited Sept. 6, 2024), https://www.fbi.gov/investigate/civil-rights/hate-crimes.

committed a hate crime under Oklahoma law.[2] But the act would be prosecutable as a hate crime in California and, depending on the circumstances, under federal law as well.[3]

My testimony attends to these differences in meaning as necessary. I want to emphasize, however, that even if the precise definition of "hate crime" varies according to the place and context in which the term is used, some aspects of that definition are fixed. A hate crime must involve a criminal offense, and one that was committed because of another person's actual or perceived personal characteristics. The subject of my testimony before this Committee is hate crime. While I understand questions or concerns about other topics related to the October 7 attacks and the war in Gaza may arise, I respectfully suggest we focus on the increase in hate crimes our country has experienced for nearly the last decade and the need for a whole-of-society approach that can effectively stem the tide of all hate targeting all communities. By focusing on hate crime statistics, the federal government's role in hate crime enforcement, and recommendations for policy remedies, I hope my testimony can help inform our collective response to combat all forms of hate.

I. Hate Crime Statistics

In accordance with the Hate Crime Statistics Act, the FBI publishes annual hate crime statistics based on data collected from law enforcement agencies across the United States.[4] The FBI has not yet released hate crime statistics for 2023. To assist this Committee in its understanding of hate crime in the wake of October 7, 2023, AAI pulled data not only from FBI statistics for 2015-2022 but also from 2023 and 2024 statistics that have already been published at the state or local level.

Part I.A of this testimony provides an overview of federal hate crime statistics for the period between 2015 and 2022.[5] Part I.B shifts the focus to hate crime statistics that have been published at the state or local level, and specifically the rate of reported anti-Arab and anti-Jewish hate crimes in the aftermath of October 7, 2023. As of earlier this month, at least twenty-seven states and the District of Columbia have published statistics on the number of incidents that were reported by area police as hate crimes in 2023; twelve of these states, the District of Columbia, and New York City have also released partial data for 2024.[6] The first half of this testimony concludes with Part I.C, which attempts to put the data in context.

---

[2] That is, assuming the offense was not also motivated by one of the biases enumerated in Oklahoma's hate crime statute. OKLA. STAT. tit. 21, § 850 (2023).

[3] CAL. PENAL CODE §§ 422.55, 422.7, 422.75 (West 2023); 18 U.S.C. § 249(a)(2). To establish jurisdiction under § 249(a)(2), which makes it a federal crime to willfully cause bodily injury to another person because of a person's actual or perceived religion, national origin, gender, sexual orientation, gender identity, or disability, prosecutors must prove the offense occurred within or affected interstate commerce in one of six enumerated circumstances. *See* 18 U.S.C. § 249(a)(2)(B).

[4] *See* Pub. L. No. 101-275, § 1, 104 Stat. 140, 140 (1990) (codified as amended at 34 U.S.C. § 41305); *Hate Crime Statistics*, FED. BUREAU OF INVESTIGATION (last visited Sept. 6, 2024), https://www.fbi.gov/how-we-can-help-you/more-fbi-services-and-information/ucr/hate-crime.

[5] *See Hate Crime in the United States Incident Analysis*, FED. BUREAU OF INVESTIGATION CRIME DATA EXPLORER (last visited Sept. 6, 2024), https://cde.ucr.cjis.gov/LATEST/webapp/#/pages/explorer/crime/hate-crime.

[6] The states with 2023 statistics are Arizona, California, Colorado, Connecticut, Idaho, Illinois, Indiana, Iowa, Kentucky, Massachusetts, Minnesota, Missouri, Nebraska, Nevada, New Hampshire, New Jersey, New York, North Dakota, Oregon, Pennsylvania, Rhode Island, South Dakota, Texas, Utah, Virginia, Washington, and Wyoming. The states with partial data for 2024 are underlined. New York City has also released partial data for 2024.

A. Overview of Federal Hate Crime Statistics

The FBI has published annual hate crime statistics since 1991.[7] In March 2022, before this same Committee, AAI testified about the national hate crime reporting system and provided an overview of federal hate crime statistics for 2020, which was then the most recent year for which FBI data were available.[8] This testimony provides an updated overview of the federal data through 2022.

In AAI's earlier testimony, we noted that 2020 marked the highest number of hate crimes reported in the United States since 2001, when there was a surge of hate crimes targeting Arab Americans, American Muslims, and those perceived to be Arab or Muslim, in the wake of the 9/11 terrorist attacks.[9] At that time, FBI statistics for 2020 included 8,263 reported hate crimes.[10] Since then, however, more than 1,500 hate crimes have been added to the data, for a total of 9,952 hate crimes.[11] This adjusted total exceeds the 2001 total of 9,730 hate crimes.[12] In the two reporting years since 2020, the numbers have only increased, with 10,891 hate crimes reported in 2021 and 11,643 hate crimes reported in 2022.[13]

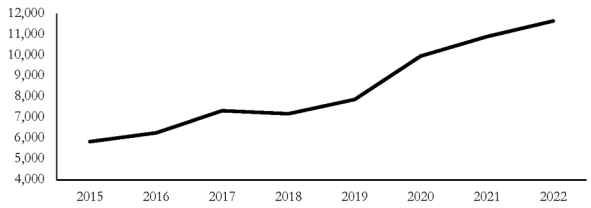
To be sure, these numbers could be the product in part of several developments to the national hate crime reporting system that are discussed in AAI's 2022 testimony.[14] These include the incorporation of data from federal law enforcement agencies, the FBI's introduction of an interactive crime-statistics dashboard that can be updated with new data, and the nationwide transition to a more sophisticated crime-reporting format known as the National Incident-Based Reporting System (NIBRS). Increased reporting could also stem from improved training and data collection practices among state and local law enforcement agencies, increased participation among agencies in the data collection effort, or even from greater public awareness within communities about the importance of reporting hate crimes to police.[15] But the data nevertheless shows three consecutive years of increased hate crime in the United States, not to mention a ninety-nine percent increase of reported hate crimes between 2015 and 2022.[16]

The following graph depicts the number of incidents that law enforcement agencies reported to the FBI as hate crimes in each of the last eight reporting years. According to FBI statistics, in 2022 that number was 11,643, up from 10,891 in 2021. As mentioned, this represents a ninety-nine percent increase over the 5,843 hate crimes reported in 2015 (which itself was an increase over the 2014 total).[17]

---

[7] *See Hate Crime in the United States Incident Analysis*, *supra* note 5.
[8] *Combating the Rise in Hate Crime: Hearing Before the S. Comm. on the Judiciary*, 117th Cong. (2022) (written testimony of Maya M. Berry, Exec. Dir., Arab Am. Inst.) [hereinafter AAI Written Testimony 2022], https://www.judiciary.senate.gov/imo/media/doc/Berry%20Testimony.pdf.
[9] *See id.* at 3; Nicole Sganga, *2020 Saw Highest Number of Reported Hate Crimes in Two Decades, Updated FBI Data Shows*, CBS NEWS (Oct. 25, 2021), https://www.cbsnews.com/news/hate-crimes-report-2020-fbi-highest.
[10] *2020 Hate Crime Statistics*, U.S. DEP'T OF JUST. (Apr. 4, 2023), https://www.justice.gov/crs/highlights/2020-hate-crimes-statistics.
[11] *See Hate Crime in the United States Incident Analysis*, *supra* note 5 (filter for 2020).
[12] *See id.* (filter for 2001).
[13] *See id.* (filter for 2021 and 2022).
[14] *See* AAI Written Testimony 2022, *supra* note 8, at 4-6.
[15] *See infra* text accompanying note 42 (discussing "reporting effect").
[16] *See Hate Crime in the United States Incident Analysis*, *supra* note 5 (filter for 2016 and 2022).
[17] *Id.* (filter for 2014 and 2015).

Hate Crimes Reported in the United States[18]



1. Anti-Black or African American Hate Crime. – A closer look at the data reveals trends with respect to the numbers of hate crimes reported across specific bias types. Anti-Black or African American hate crime consistently represents a plurality of hate crimes reported in the United States. According to FBI statistics, law enforcement agencies in the United States reported 3,424 anti-Black or African American hate crimes in 2022, representing over twenty-nine percent of all hate crimes reported that year. While the total number of anti-Black or African American hate crimes reported in 2022 represents the second highest total since 2015, the corresponding percentage of all hate crimes reported falls below the average for that time. The highest total since 2015—and the second highest on record—is the 3,499 anti-Black or African American hate crimes that were reported in 2020, representing thirty-five percent of all hate crimes reported that year.[19] This apparent spike of anti-Black or African American hate crimes coincided with the killings of Ahmaud Arbery, Breonna Taylor, and George Floyd, among other Black Americans, and a wave of related protests against racial injustice.[20]

2. Anti-Asian or Other Pacific Islander Hate Crime. – Hate Crimes targeting Asian American and Pacific Islander (AAPI) communities are reported under the separate bias types of anti-Asian and anti-Native Hawaiian or Other Pacific Islander. According to FBI statistics, law enforcement agencies reported 525 anti-AAPI hate crimes in 2022, down from 897 hate crimes reported in 2021. The data reveals a dramatic increase of reported anti-AAPI hate crimes in 2020 and 2021, coinciding with the most acute stages of the Covid-19 pandemic and its surrounding discourse by some public officials,[21] with 354 hate crimes reported in 2020 and 897 reported in 2021. (Between 2015 and 2019, the average annual number of anti-AAPI hate crimes reported was 151.) To lend additional perspective into the Covid-era surge, in 2021 anti-AAPI hate crimes accounted for more than eight percent of all hate crimes reported, while between 2015 and 2019, the average was just over two percent.

---

[18] Source: Federal Bureau of Investigation, Uniform Crime Reporting Program. Totals: 2015: 5,843; 2016: 6,270; 2017: 7,239; 2018: 7,180; 2019: 7,875; 2020: 9,952; 2021: 10,891; 2022: 11,643.

[19] The highest total belongs to 1996, with 3,676 anti-Black or African American hate crimes reported that year. *See Hate Crime in the United States Incident Analysis*, *supra* note 5 (filter for 1996).

[20] *See* AAI Written Testimony 2022, *supra* note 8, at 3; Richard Fausset, *What We Know About the Shooting Death of Ahmaud Arbery*, N.Y. TIMES (Aug. 8, 2022), https://www.nytimes.com/article/ahmaud-arbery-shooting-georgia.html; Richard A. Oppel Jr. et al., *What to Know About Breonna Taylor's Death*, N.Y. TIMES (Aug. 23, 2024), https://www.nytimes.com/article/breonna-taylor-police.html; *How George Floyd Died, and What Happened Next*, N.Y. TIMES (July 29, 2022), https://www.nytimes.com/article/george-floyd.html.

[21] *See* Kimmy Yan, *Anti-Asian Hate Crimes Increased by Nearly 150% in 2020, Mostly in N.Y. and L.A., New Report Says*, NBC NEWS (Mar. 9, 2021, 3:37 PM), https://www.nbcnews.com/news/asian-america/anti-asian-hate-crimes-increased-nearly-150-2020-mostly-n-n1260264. The surge of Covid-related hate crimes against AAPI communities informed the passage of the Covid-19 Hate Crimes Act in 2021. *See* Pub. L. No. 117-13, 135 Stat. 265 (2021).

3. Anti-Muslim Hate Crime. – According to FBI statistics, law enforcement agencies in the United States reported 158 anti-Muslim hate crimes in 2022, up slightly from 153 reported in 2021. The highest number of anti-Muslim hate crimes reported in a single year is the 499 incidents reported in 2001 during the post-9/11 backlash.[22] The second highest total is the 310 anti-Muslim hate crimes that were reported in 2016, coinciding with the 2016 presidential election.[23] Anti-Muslim hate crimes accounted for nearly five percent of all hate crimes reported in 2016. In 2022 the comparative share was a little more than one percent. Based on state- and municipal-level data featured in the following subsections, however, we should expect to see an increase of reported anti-Muslim hate crimes in FBI statistics, including an overrepresentation of anti-Muslim hate crimes reported last year in the aftermath of the October 7 attacks and the war in Gaza.[24]

4. Anti-Hispanic or Latino Hate Crime. – FBI statistics have shown a persistent increase of reported anti-Hispanic or Latino hate crimes in recent years. Law enforcement agencies reported a record-breaking 738 anti-Hispanic or Latino hate crimes in 2022, up from 694 reported in 2021.[25] In fact, the annual number of reported anti-Hispanic or Latino hate crimes has increased in each of the last seven years on record; in a manner, we should add, that outpaces the overall increase of hate crimes reported in that time.[26] Notably, this period has seen a marked rise of anti-immigrant rhetoric in political discourse,[27] and this same rhetoric has appeared in the manifestos of perpetrators of recent major hate crimes, such as the August 2019 shooting at an El Paso Walmart that killed twenty-three people and wounded twenty-two more.[28]

5. Hate Crimes Based on Sexual Orientation or Gender Identity. – The FBI collects hate crime statistics across a range of anti-LGBTQ bias types. Hate crimes based on sexual orientation include the bias types of anti-Lesbian, anti-Gay, and anti-Bisexual (and anti-Heterosexual as well); hate crimes based on gender identity include the bias types of anti-Transgender and anti-Gender Non-Conforming; finally, there is a composite anti-Lesbian, Gay, Bisexual, or Transgender bias type. According to FBI statistics, law enforcement agencies in the United States reported 1,925 hate crimes based on sexual orientation in 2022, excluding the 22 incidents reported as Anti-Heterosexual hate crimes, up from 1,698 reported in 2021. Although the annual number of hate crimes based on sexual orientation almost doubled from 2015 to 2022, these hate crimes now represent a smaller share of all hate

---

[22] *See supra* text accompanying note 9.
[23] For analysis on this issue, see Clare Foran, *Donald Trump and the Rise of Anti-Muslim Violence*, ATLANTIC (Sept. 22, 2016), https://www.theatlantic.com/politics/archive/2016/09/trump-muslims-islamophobia-hate-crime/500840.
[24] *See* Part I.B for discussion of hate crimes targeting Arab Americans and Jewish Americans after October 7, 2023. According to data from twenty-seven states and the District of Columbia, there were 281 anti-Muslim hate crimes reported in those jurisdictions last year, more than thirty-four percent of which were reported in the months of October, November, and December.
[25] Russell Contreras, *Anti-Immigrant Rhetoric Sparks Fears of More Hate Crimes Against Latinos*, AXIOS (Mar. 7, 2024), https://www.axios.com/2024/03/07/latinos-immigration-rhetoric-fears-hate-crimes; *see also* Albinson Linares, *Rise in Hate Crimes Includes a 'Significant Increase' Against Latinos*, NBC NEWS (Nov. 3, 2023, 10:30 AM), https://www.nbcnews.com/news/latino/hate-crimes-latinos-see-significant-increase-rcna123211.
[26] Anti-Hispanic or Latino hate crimes accounted for just over five percent of all hate crimes reported in 2015 and well more than six percent of all hate crimes reported in 2022.
[27] *See* over, *supra* note 25.
[28] *See* Associated Press, *'Invasion' Language Continues After El Paso Walmart Shooting*, NBC NEWS (Feb. 8, 2023, 10:38 AM), https://www.nbcnews.com/news/latino/invasion-language-continues-el-paso-walmart-shooting-rcna69698; Press Release, Dep't of Just., Texas Man Sentenced to 90 Consecutive Life Sentences for 2019 Mass Shooting at Walmart in El Paso, Texas, Killing 23 People and Injuring 22 Others (July 7, 2023), https://www.justice.gov/opa/pr/texas-man-sentenced-90-consecutive-life-sentences-2019-mass-shooting-walmart-el-paso-texas.

crimes reported each year. The same cannot be said for hate crimes based on gender identity, 469 of which were reported in 2022. Whereas the 114 gender-identity-motivated hate crimes reported in 2015 accounted for just shy of two percent of the hate crimes reported that year, the 2022 total accounts for more than four percent.[29] Although it is based on a different federal dataset, according to a study by the Williams Institute at the UCLA School of Law, "LGBT people are nine times more likely than non-LGBT people to be victims of violent hate crimes."[30]

6. Disability-Motivated Hate Crimes. – Applying the definition of hate crime provided in the opening paragraphs of this testimony, a disability-based hate crime is any criminal offense that someone commits because another person is or is perceived to be disabled. Another formulation is that, but for a person's disability, the person would not have been the victim of a crime.[31] This understanding of disability-based hate crime would have one expect that far more of such crimes are occurring each year than are reported in hate crime statistics.[32] According to FBI statistics, law enforcement agencies reported 171 disability-based hate crimes in 2022, up from 159 reported in 2021. The average annual total reported between 2015 and 2022 was just over 139 hate crimes.

B. Examining the Available State-Level Data

State-level data is not a perfect substitute for FBI statistics. Both state and federal hate crime statistics are based on law enforcement data that agencies submit through the national Uniform Crime Reporting (UCR) program.[33] At least in theory, we should not expect to see significant discrepancies between these datasets. However, some incidents that are reported as hate crimes at the state level do not make it into the federal data. Sometimes the reason is simple. A few states collect data on crimes motivated by characteristics that are not included in FBI statistics, such as age, political affiliation, or marital status.[34] Other states might update their statistics with additional data that was not submitted in time for inclusion in federal statistics.[35] And still others might publish statistics that include data that, for whatever reason, did not pass the FBI's internal data-quality

---

[29] *See* Laura Meckler et al., *In States with Laws Targeting LGBTQ Issues, School Hate Crimes Quadrupled*, WASH. POST (Mar. 12, 2024, 10:32 PM), https://www.washingtonpost.com/education/2024/03/12/school-lgbtq-hate-crimes-incidents; Christopher Wiggins, *Hate Crimes Against LGBTQ+ People Surge, FBI Reports*, ADVOCATE (Oct. 17, 2023, 10:36 AM), https://www.advocate.com/news/fbi-increase-lgbtq-hate-crimes.

[30] Press Release, Williams Inst., LGBT People Nine Times More Likely than Non-LGBT People to Be Victims of Violent Hate Crimes (Dec. 21, 2022), https://williamsinstitute.law.ucla.edu/press/lgbt-hate-crimes-press-release.

[31] For a discussion of but-for causation as applied to hate crime prosecutions, see PETER G. BARRIS, CONG. RSCH. SERV., OVERVIEW OF FEDERAL HATE CRIME LAWS 4-7 (2022), https://crsreports.congress.gov/product/pdf/R/R47060

[32] *See* Cameron Morgan, *The Unacknowledged Crisis of Violence Against Disabled People*, CTR. FOR DISABILITY RTS. (last visited Sept. 6, 2024), https://cdrnys.org/blog/advocacy/the-unacknowledged-crisis-of-violence-against-disabled-people; Debra McKinney, *The Invisible Hate Crime*, S. POVERTY L. CTR. (Aug. 5, 2018), https://www.splcenter.org/fighting-hate/intelligence-report/2018/invisible-hate-crime.

[33] *See Crime/Law Enforcement Stats (Uniform Crime Reporting Program)*, FED. BUREAU OF INVESTIGATION (last visited Sept. 6, 2024), https://www.fbi.gov/how-we-can-help-you/more-fbi-services-and-information/ucr.

[34] Iowa and Oregon are two examples. *See Hate Crime Incidents Report*, IOWA DEP'T OF PUB. SAFETY (last visited Sept. 6, 2024), https://icrime.dps.state.ia.us/CrimeInIowa/Report/HateCrimeByORIReport; *Oregon Uniform Crime Reporting Data*, OR. STATE POLICE (last visited Sept. 6, 2024), https://www.oregon.gov/osp/pages/uniform-crime-reporting-data.aspx.

[35] The FBI has started publishing crime statistics on an interactive website, which might help address the publication-deadline issue. *See* Kai Wiggins, *Growing Pains for Hate Crime Statistics*, N.Y.U. J. LEGIS. & PUB. POL'Y (Oct. 19, 2021), https://nyujlpp.org/quorum/wiggins-growing-pains-for-hate-crime-statistics (discussing transition to interactive statistics).

reviews.[36] Other times the reason is more complicated. For decades the FBI accepted crime data from law enforcement agencies in one of two reporting formats: the older, less sophisticated Summary Reporting System (SRS); and the newer, more sophisticated National Incident-Based Reporting System (NIBRS). In 2021, however, the FBI stopped accepting SRS data, and many law enforcement agencies have yet to complete the switch to NIBRS.[37] This means that some state-level statistics might include data from SRS agencies that does not appear in FBI statistics.

Discrepancies between state-level and FBI statistics might result from a combination of these and other factors. And the discrepancies can be significant. According to the FBI, for example, in 2022 there were 1,098 hate crimes reported in New Jersey, with 233 agencies submitting at least one incident.[38] But according to statistics kept by the New Jersey State Police, there were 2,178 hate crimes reported in the state that year, with 365 agencies reporting at least one incident.[39] Such dramatic discrepancies between state and federal data are rare, but the Committee should keep this in mind when reviewing the state- and municipal-level hate crime data that AAI has gathered for this testimony.

While there is limited use in comparing state and federal data, however, there is some value in comparing the available state data for 2023 to that of previous years. At the very least, comparing these data could reveal trends that might also appear in the forthcoming 2023 federal data when it is published.

AAI has gathered police-reported hate crime statistics from twenty-seven states and the District of Columbia. The data for all but six of these states can be filtered according to the date or month of occurrence, which allows for a better sense of whether an uptick of reported anti-Arab or anti-Jewish hate crimes occurred in the weeks after October 7, 2023. Furthermore, among the twelve states—along with the District of Columbia and New York City—that have published partial data for 2024, we can assess whether any post-10/7 increase of reported hate crimes has continued or abated. What follows are three different presentations of the combined state- or municipal-level data and a series of state- or city-specific inquiries into the 2024 numbers. Notwithstanding the above caveat about comparing state and federal data, the testimony refers to federal statistics when helpful, if at least to contextualize the state- or municipal-level data.

1. Annual Average Number of Hate Crimes Reported

In the above twenty-seven states and the District of Columbia, law enforcement agencies reported a combined 10,881 hate crimes in 2023, up from 10,171 in 2022 and 9,304 in 2021. This total includes

---

[36] *See Methodologies Explain Potential Differences in UCR Data*, FED. BUREAU OF INVESTIGATION CRIME DATA EXPLORER (last visited Sept. 6, 2024), https://cde.ucr.cjis.gov/LATEST/webapp/#/pages/about.

[37] According to the Department of Justice, as of January 17, 2023, about two thirds of law enforcement agencies in the United States (12,742 of 19,203) were submitting NIBRS data, representing nearly three quarters of the U.S. population. U.S. DEP'T OF JUST., DEPARTMENT OF JUSTICE REVIEW OF THE TRANSITION OF LAW ENFORCEMENT AGENCIES TO THE NATIONAL INCIDENT-BASED REPORTING SYSTEM (NIBRS) 7 (2023).

[38] *See Documents & Downloads*, FED. BUREAU OF INVESTIGATION CRIME DATA EXPLORER (last visited Sept. 6, 2024), https://cde.ucr.cjis.gov/LATEST/webapp/#/pages/downloads (scroll down to Hate Crime Statistics Annual Reports, download the 2022 report, and open the .xslx file for Table 12).

[39] *See Bias Incident Reports*, N.J. STATE POLICE (last visited Sept. 6, 2024), https://www.nj.gov/oag/njsp/ucr/bias-incident-reports.shtml.

180 anti-Arab hate crimes, up from 104 in 2022 and 98 in 2021; and 2,073 anti-Jewish hate crimes, up from 1,311 in 2022 and 1,029 in 2021.

Reported Hate Crimes in 27 States and D.C.

	2023	2022	2021
All Bias Types	10,881	10,171	9,304
Anti-Arab	180	104	98
Anti-Jewish	2,073	1,311	1,029

Not all states reported an increase of hate crimes in 2023. Law enforcement agencies in California, for example, reported 1,970 hate crimes last year, down from 2,120 the year before. (One reason for the decrease could be that, according to the California Department of Justice, twenty-eight agencies "were unable to report the full year of data," including the police department for San Jose, the state's third-largest city.[40]) Even among states that did not see an overall increase, however, most reported an increase of anti-Arab or anti-Jewish hate crimes. Despite an overall decrease, for instance, California agencies reported a fifty-three percent increase of anti-Jewish hate crimes (from 189 to 289). And in Nebraska, Pennsylvania, and Texas, three other states that reported an overall decrease of hate crimes last year, there was a reported increase of both anti-Arab and anti-Jewish hate crimes.

As discussed earlier, it is possible, even likely, that not all the hate crimes reflected in the table above will appear in the FBI's 2023 statistics. And we can look to previous years for reference. According to FBI statistics, law enforcement agencies in the United States reported a record-breaking 11,643 hate crimes in 2022, up from the previous record of 10,840 hate crimes, which was set in 2021.[41] In order to compare state and federal data for those years, we can remove from the federal data all hate crimes that were reported in the twenty-three states that are not included in the state-data table above, such that the federal total for each year is limited to the same twenty-seven states (and D.C.) for which AAI has compiled state-level data. That leaves us with 8,628 hate crimes reported in FBI statistics for 2022, compared to 10,171 hate crimes reported in state-level statistics for that same year. As for 2021, the difference is that between 7,729 hate crimes (federal) and 9,304 hate crimes (state). In short, we should not be surprised if, for 2023, there are similar discrepancies between the state and federal data.

Nevertheless, at least according to state-level statistics among the jurisdictions reflected in the table above, there was an increase of reported hate crimes—including anti-Arab and anti-Jewish hate crimes—from 2021 to 2022, and then again from 2022 to 2023. One possible explanation for this consecutive annual increase, of course, is that more hate crimes are occurring in these states than in previous years. But the numbers could also reflect improved data collection or a so-called "reporting

[40] CALIF. DEP'T OF JUST., HATE CRIME IN CALIFORNIA 2023, 5 (2024), https://data-https://oag.ca.gov/news/press-releases/attorney-general-bonta-releases-2023-hate-crime-report-highlights-continued.
[41] *2022 Hate Crime Statistics*, U.S. DEP'T OF JUST. (Oct. 30, 2023), https://www.justice.gov/crs/highlights/2022-hate-crime-statistics; *see also* Tori Mirales Pinales, *How Reports of Hate Crimes in the US Were Already at Record Highs, in 4 Charts*, CNN (Dec. 11, 2023), https://www.cnn.com/2023/10/29/us/hate-crimes-antisemitism-anti-muslim-dg/index.html. Interactive FBI statistics now show the 2021 total as 10,891 hate crimes. *See Hate Crime in the United States Incident Analysis*, *supra* note 5.

effect," in which increased awareness or public concern about hate crime leads more victims to notify law enforcement when they occur.[42] The next table attempts to address some of those concerns.

2. Specific Bias Types as a Percentage of All Hate Crimes

If the consistent increase of hate crimes reported each year is more the result of improved data collection than the actual nature and extent of hate crime within a given set of communities, then we might expect to see that increase reflected evenly across all bias types. The purpose of this table is to get a sense of whether anti-Arab or anti-Jewish hate crimes have come to make up a greater share of all reported hate crimes. In other words, this table attempts to control for the effect that improved data collection might have on the total number of anti-Arab and anti-Jewish hate crimes reported in recent years.

Bias Types as a Percentage of All Hate Crimes in 10 States, D.C., and N.Y.C.

	Anti-Arab	**Anti-Jewish**
2024	1.75	31.2
2023	2.01	24.6
2022	1.21	18.7
2021	1.44	16.1
2020	1.42	14.7
2019	1.44	23.3

This table suggests that each bias type—anti-Arab and anti-Jewish—accounted for a greater share of reported hate crimes in 2023 than in previous years. Furthermore, that increase appears to be sustained, if not worsening, in the present year. But at least one caveat is in order. While this table might control, to an extent, for the effects of improved data collection on reported hate crime totals, it is possible that the increase of anti-Arab and anti-Jewish hate crimes as a percentage of all hate crimes reported could be the result of reporting effect as to those specific bias types in the wake of October 7, 2023.

Additionally, the Committee should note that Table 2 features data from ten states, the District of Columbia, and New York City, all of which have published data for the entire period of 2019-2024. (Though, with respect to the 2024 data, some jurisdictions are more current than others.) In contrast, Table 1 features data from a larger number of states over a more concentrated period.

[42] For a brief discussion of reporting effect, see Haley Smith, *Anti-Asian Hate Crimes Have Spiked in Cities Around the U.S., Study Finds*, L.A. TIMES (May 4, 2021, 10:56 AM), https://www.latimes.com/california/story/2021-05-04/anti-asian-hate-crimes-spike-us-cities-study-finds.

3. Attempting to Measure Post-October 7 Hate Crimes

The third table features data from the twenty-one states (and D.C.) that allow for their public hate crime statistics to be filtered according to the date or month of occurrence. AAI has narrowed the data to the period of October 7 – December 31, 2023, for seven states and the District of Columbia. For the remaining fourteen states, the data has been filtered for October – December 2023. It is possible that some of the hate crimes that were reported in those states, and which are featured in this table, occurred between October 1 and 6, 2023.

2023 Hate Crimes After October in 21 States and D.C.

	2023	**Post-Oct.**	**Percentage**
All Bias Types	6,128	1,765	28.8
Anti-Arab	84	45	53.6
Anti-Jewish	811	396	48.8

One should not assume that the monthly hate crime rate is consistent throughout the year. But patterns can and do emerge. According to FBI statistics, for example, either the second or third quarter of the year—corresponding to the periods of April – June and July – September, respectively—has accounted for a plurality of hate crimes reported in all but one year on record.[43] That year is 2016, when twenty-nine percent of reported hate crimes occurred in the fourth quarter, between the months of October and December during the presidential election.[44]

Furthermore, even if patterns emerge with respect to the total number of hate crimes reported, nationwide, during certain times of the year, there might be different patterns when it comes to certain states or specific bias types. Those caveats aside, the table above seems to indicate an overrepresentation of anti-Arab and anti-Jewish hate crimes reported in the final three months of 2023. For both anti-Arab and anti-Jewish hate crimes in particular, about half of all incidents reported last year occurred in October, November, or December.[45] Therefore, at least according to the available state-level data, there is reason to conclude that hate crimes targeting Arab Americans and Jewish Americans increased in the wake of October 7, 2023.

4. State-Specific Data for 2024

The following subsection considers data from four of the fourteen jurisdictions that have published partial 2024 hate crime statistics: Illinois, New Jersey, New York City, and Pennsylvania. One caveat

---

[43] *See Hate Crime in the United States Incident Analysis*, *supra* note 5.
[44] *See* Sam Petulla et al., *The Number of Hate Crimes Rose in 2016*, CNN (Nov. 13, 2017, 5:38 PM), https://www.cnn.com/2017/11/13/politics/hate-crimes-fbi-2016-rise/index.html; Alexis Okeowo, *Hate on the Rise After Trump's Election*, NEW YORKER (Nov. 17, 2016), https://www.newyorker.com/news/news-desk/hate-on-the-rise-after-trumps-election; Aaron Williams, *Hate Crimes Rose the Day After Trump Was Elected, FBI Data Shows*, WASH. POST (Mar. 23, 2018, 6:00 AM), https://www.washingtonpost.com/news/post-nation/wp/2018/03/23/hate-crimes-rose-the-day-after-trump-was-elected-fbi-data-show.
[45] The analysis would be aided by looking at the representation of reported anti-Arab and anti-Jewish hate crimes during the fourth quarter of previous years.

is that, while these jurisdictions have chosen to publish statistics based on data collected from law enforcement so far this year, it could be that not all agencies within those jurisdictions have submitted their data. In other words, the numbers below should not be taken as final.

a. Illinois. – According to state-level data, law enforcement agencies in Illinois reported 407 hate crimes in 2023, up from 391 in 2022 (the 2022 FBI total is 319). The 2023 data includes 4 anti-Arab hate crimes and 67 anti-Jewish hate crimes. Turning to the 2024 data, as of earlier this month, Illinois law enforcement agencies have reported 226 hate crimes so far this year, including 7 anti-Arab hate crimes and 39 anti-Jewish hate crimes. Assuming that the hate crime rate is consistent throughout the year for these bias types, although the number of anti-Arab hate crimes reported this year will be greater than that reported in 2023, it is not clear whether that will also be the case for reported anti-Jewish hate crimes.

b. New Jersey. – According to state-level data, law enforcement agencies in New Jersey reported 2,699 hate crimes in 2023 (up from 2,178 in 2022), including 78 anti-Arab hate crimes and 708 anti-Jewish hate crimes. The New Jersey State Police has published hate crime statistics up to July 31 of this year. Assuming these data are complete, during the first seven months of 2024, there were 1,626 hate crimes reported, including 43 anti-Arab hate crimes and 446 anti-Jewish hate crimes. If the hate crime rate is consistent throughout the year for these bias types, then the numbers of anti-Arab and anti-Jewish hate crimes reported in 2024 will be roughly equal to or greater than those reported in 2023.

c. New York City. – According to state-level data, law enforcement agencies in New York reported 1,089 hate crimes in 2023, including 2 anti-Arab hate crimes and 478 anti-Jewish hate crimes. Although the state has not released 2024 statistics, the New York Police City Department has published data up to June 25, 2024. Based on this dataset, there were 998 hate crimes reported in New York City alone during the first half of the year, including 43 anti-Arab hate crimes and 446 anti-Jewish hate crimes. This data suggests that 2024 statewide totals across both bias types will significantly exceed those reported in 2023.

d. Pennsylvania. – According to state-level data, law enforcement agencies in Pennsylvania reported 303 hate crimes in 2023 (down from 315 in 2022), including 3 anti-Arab hate crimes and 46 anti-Jewish hate crimes. The state has published statistics for this year through the end of August. Assuming this data is complete, Pennsylvania law enforcement agencies reported 143 hate crimes, including 5 anti-Arab hate crimes and 28 anti-Jewish hate crimes, during the first eight months of 2024.

C. Putting the Data in Context

When it comes to the data presented in the subsections above, the Committee should keep at least four things in mind. The first is that, despite the reported increase of hate crimes nationwide, government statistics do not capture the true nature and extent of the hate crimes that affect our communities. Second, there are different standards for reporting something as a hate crime and prosecuting it as one. Third, while data collection is critical, it is difficult to reduce hate crime, in all its complexities and effects, to a discrete and reportable bias type. Finally, we should not lose sight of the fact that each datapoint represents an actual or suspected hate crime, not just a number on the page.

1. Hate Crimes Are Underreported

Members of the Committee will be familiar with claims that, although law enforcement data is a critical source of information about the nature and extent of hate crime in our communities, hate crime statistics based on that data account for only a sliver of the actual problem.[46] According to FBI statistics, law enforcement agencies in the United States reported a little less than 7,000 hate crimes per year between 2004 and 2015.[47] But estimates from the Bureau of Justice Statistics (BJS), a component of the Department of Justice, suggest that about 250,000 hate crimes occurred each year during the same period.[48] Once you adjust for discrepancies between the FBI and BJS datasets, and assuming that the BJS estimates are relatively accurate, statistics based on data collected from law enforcement might therefore account for only around one percent of the hate crimes that occur in the United States each year.[49]

Furthermore, even the most obvious hate crimes have been left out of the federal data. This includes the 2016 murder of Khalid Jabara in Tulsa, Oklahoma, and the 2017 murder of Heather Heyer in Charlottesville, Virginia.[50] Both cases were treated as hate crimes in either state or federal court, but neither was reported as a hate crime in official statistics.[51] If even the most clearcut hate crimes sometimes go unreported, one has reason to ask what else might be missing from the data. Despite the shortcomings of government hate crime statistics, it is imperative that Congress remain committed to improving the collection of law enforcement data.[52] As discussed in Part II, the passage of the Khalid Jabara and Heather Heyer NO HATE Act was an important first step in this effort.[53]

Additionally, and perhaps most importantly, not all communities report hate crimes to law enforcement equally. As such, the significant disparities found in the examination of the data between anti-Arab and anti-Jewish, as well as anti-Muslim for that matter, are a product of numerous factors and should not be construed as indicative of the full scope of the problem for any

---

[46] *See* Sergio Olmos, *Researchers Say the FBI's Statistics on Hate Crimes Across the Country Are Flawed*, NPR (Jan. 1, 2023, 5:00 AM), https://www.npr.org/2023/01/01/1145973412/researchers-say-the-fbis-statistics-on-hate-crimes-across-the-country-are-flawed; Maya Berry & Kai Wiggins, *FBI Stats on Hate Crimes Are Scary. So Is What's Missing*, CNN (Nov. 14, 2018, 5:03 PM), https://www.cnn.com/2018/11/14/opinions/fbi-hate-crimes-data-whats-missing-berry-wiggins/index.html.

[47] *See* Kai Wiggins, *What Congress Should Do About Hate Crime Statistics*, LAWFARE (Mar. 15, 2024, 3:54 PM), https://www.lawfaremedia.org/article/what-congress-should-do-about-hate-crime-statistics; *see also Hate Crime*, FED. BUREAU OF INVESTIGATION (last visited Sept. 6, 2024), https://ucr.fbi.gov/hate-crime.

[48] Wiggins, *supra* note 47; LYNN LANGTON & MADELINE MASUCCI, U.S. DEP'T OF JUST., BUREAU OF JUST. STATS., HATE CRIME VICTIMIZATION, 2004-2015, 2 (June 2017), https://bjs.ojp.gov/content/pub/pdf/hcv0415.pdf.

[49] Wiggins, *supra* note 47; *see also* Kai Wiggins, Note, *Next Steps for Congress on Hate Crime Reporting*, 33 STAN. L. & POL'Y REV. 393, 394 n.6 (2022).

[50] *See* Maya Berry, *Charlottesville Won't Show Up in Federal Hate Crime Stats*, WASH. POST (Sept. 21, 2018, 5:31 PM), https://www.washingtonpost.com/outlook/2018/09/24/charlottesville-wont-show-up-federal-hate-crime-stats; *see also* Susan Bro & Haifa Jabara, *Hate Crimes Are Slipping Through the Cracks*, N.Y. TIMES (Aug. 12, 2019), https://www.nytimes.com/2019/08/12/opinion/hate-crime-statistics-heather-heyer.html.

[51] The Charlottesville Police Department reported the car attack that killed Heather Heyer and wounded many others only after its omission from official statistics was covered in the news media. *See* Wiggins, *supra* note 47.

[52] For commentary on the importance of law-enforcement hate crime statistics as compared to data from other sources, see Kai Wiggins, *How to Read Two Data Sets on Domestic Antisemitism*, LAWFARE (June 4, 2024, 10:08 AM), https://www.lawfaremedia.org/article/how-to-read-two-data-sets-on-domestic-antisemitism.

[53] *See* LEADERSHIP CONF. EDUC. FUND, CAUSE FOR CONCERN 2024: THE STATE OF HATE 10, 13 (May 2024), https://civilrights.org/edfund/wp-content/uploads/sites/2/2024/05/CauseforConcern-TheStateofHate-2024.pdf.

of the communities. First, each individual community's relationship with law enforcement plays a significant factor in their willingness to report hate crimes. For example, victim underreporting among Arab Americans is a decades-long problem rooted in mistrust or fear of law enforcement.[54] Second, although concerns about hate crimes against Arab Americans motivated the passage of the Hate Crime Statistics Act (HCSA) of 1990,[55] the FBI's hate crime reporting system did not officially include a category for anti-Arab hate crime until 2015.[56] In addition to victim concerns being a barrier, law enforcement training also impacts reporting and the lack of an anti-Arab bias motivation category for decades has assuredly impacted underreporting for Arab Americans. Finally, in the case of all communities, wide discrepancies often exist between official government hate crime data and that of non-governmental organizations. While there can be value gathered from the reports of community-based organizations, they cannot substitute for official government data and should not be represented as such.

2. Hate Crime Reporting vs. Hate Crime Prosecutions

Inevitably, there will be incidents that are reportable as hate crimes but never prosecuted as such. For one, most crimes that are reported to police never result in arrest, criminal charges (of any kind), and the referral of a suspect for prosecution.[57] And for bias-motivated crimes in particular, sometimes there will be sufficient evidence to report an incident as a hate crime in government statistics but not enough for prosecutors to bring an actual hate crime charge. According to guidance documents from the FBI on hate crime data collection, "bias is to be reported only if investigation reveals sufficient objective facts to lead a reasonable and prudent person to conclude that the offender's actions were motivated, in whole or in part, by bias."[58] This investigation occurs before, if not separate and apart from, the actual adjudication of a hate crime. Furthermore, the "reasonable and prudent person" standard reflected in the guidance documents above falls well short of the relevant standard in all criminal prosecutions: beyond a reasonable doubt.[59] In short, even if an incident is reported as a hate crime and moreover referred for criminal prosecution, that is no guarantee of a hate crime charge. Similarly, just because an incident is not prosecuted as a hate crime, that does not mean it is unreportable as one.

---

[54] *See* U.S. DEP'T OF JUST., OFF. OF JUST. PROGRAMS, POLICING IN ARAB-AMERICAN COMMUNITIES AFTER SEPTEMBER 11 (2008), https://www.ojp.gov/ncjrs/virtual-library/abstracts/policing-arab-american-communities-after-september-11.

[55] *See* ARAB AM. INST. FOUND., UNDERREPORTED, UNDER THREAT: HATE CRIME IN THE UNITED STATES AND THE TARGETING OF ARAB AMERICANS, 1991-2016, at 72-82 (2018), https://www.aaiusa.org/library/under-reported-under-threat.

[56] Although AAI's research found a prototypes for the reporting system developed shortly after the passage of the HCSA included a specific anti-Arab hate crime category (code 31), the FBI did not reference this history when the category was officially added in 2015. *See* Press Release, Fed. Bureau of Investigation, Latest Hate Crime Statistics Released (Nov. 14, 2016), https://www.fbi.gov/news/stories/2015-hate-crime-statistics-released.

[57] For a discussion of so-called "clearance rates," see John Gramlich, *What the Data Says About Crime in the U.S.*, PEW RSCH. CTR. (Apr. 24, 2024), https://www.pewresearch.org/short-reads/2024/04/24/what-the-data-says-about-crime-in-the-us ("In 2022, police nationwide cleared 36.7% of violent crimes that were reported to them and 12.1% of the property crimes that came to their attention.").

[58] U.S. DEP'T OF JUST., UNIF. CRIME REPORTING PROGRAM, HATE CRIME DATA COLLECTION GUIDELINES AND TRAINING MANUAL 4 (Mar. 1, 2022) (emphasis omitted), https://le.fbi.gov/file-repository/hate-crime-data-collection-guidelines-and-training-manual.pdf/view.

[59] *See* Apprendi v. New Jersey, 530 U.S. 466, 490 (2000) (holding that "any fact that increases the penalty for a crime beyond the prescribed statutory maximum," such as bias motivation in the context of a hate crime prosecution, "must be submitted to a jury, and proved beyond a reasonable doubt").

On November 25, 2023, three Arab American college students, all of whom are of Palestinian descent, were shot by a man while walking in Burlington, Vermont.[60] Their names are Hisham Awartani, Kinnan Abdalhamid, and Tahseen Aliahmad.[61] According to news reports, the three friends were speaking in a mix of English and Arabic, and two of them were wearing black-and-white keffiyehs—traditional Arab scarves[62]—when the shooting occurred.[63] The shooter, who has been charged in state court with three counts of attempted murder, did not say a word before opening fire on Hisham, Kinnan, and Tahseen.[64] According to a joint statement, however, the students' families "have no doubt that [their] sons were targeted simply for being Palestinian."[65]

"I know that it is a hate crime," said Hisham earlier this year.[66] But in the months since, neither the state of Vermont nor the Department of Justice has brought hate crime charges against the shooter. Although the circumstances would arguably lead a reasonable person to conclude that the shooter targeted the three students because of the language they spoke and the Palestinian keffiyehs that two of them wore, that he did not express his motivations outright in speech seemingly makes his intent unclear. Though they wore visible cultural attire and were speaking Arabic, absent additional evidence, the shooting may not be prosecuted as a hate crime, whether in state or federal court. But that does not mean a hate crime did not occur, nor does it mean the shooting should be excluded from hate crime statistics. Nor should we diminish or ignore the impact and widespread fear the shooting had on Arab Americans and others expressing solidarity with Palestinians. We should keep that in mind as we await the release of 2023 data.

3. What Reportable Bias Types Do Not Capture

Law enforcement data is a critical source of information about the nature and extent of hate crime in our communities. But it does not account for all the inherent complexities of bias-motivated criminal conduct; nor can it possibly communicate the full scope of the harms that such conduct inflicts on victims and their communities. For one, a hate crime is judged from the perceptions of the offender, regardless of whether those perceptions match the actual personal characteristics of the victim. A Sikh American gas station owner named Balbir Singh Sodhi, who died on September 15,

---

[60] Tom Llamas & Mirna Alsharif, *Palestinian Students Shot in Vermont Say the Suspect Waited for and Targeted Them*, NBC NEWS (Jan. 17, 2024, 8:25 AM), https://www.nbcnews.com/news/us-news/palestinian-students-shot-burlington-vermont-interview-hospital-recove-rcna133822; Rozina Ali, *Raised in the West Bank, Shot in Vermont*, N.Y. TIMES (Feb. 28, 2024), https://www.nytimes.com/2024/02/28/magazine/vermont-shooting-palestinian.html.

[61] Hisham Awartani's injuries from the shooting left him paralyzed from the chest down. Juliana Kim, *Palestinian Student Shot in Vermont Is Paralyzed from Chest Down, His Family Says*, NPR (Dec. 3, 2023, 1:03 PM), https://www.npr.org/2023/12/03/1216852611/palestinian-student-shot-in-vermont-is-paralyzed-from-chest-down-his-family-says.

[62] Joseph Donica, *Head Coverings, Arab Identity, and New Materialism*, *in* ALL THINGS ARABIA 163 (Ileana Baird & Hülya Yağcioğlu eds., 2021).

[63] Kim, *supra* note 61; Lisa Rathke, *Suspect in Shooting of 3 Men of Palestinian Descent Near the University of Vermont Pleads Not Guilty*, ASSOCIATED PRESS (Nov. 27, 2023, 10:30 PM), https://apnews.com/article/shooting-burlington-vermont-palestinian-american-students-ab836d1941e4237b3649353eaceb4092.

[64] Cam Smith, *Judge Denies Request for New Lawyers from Vt. Man Accused of Shooting Palestinian Students*, WCAX (Aug. 2, 2024, 5:08 PM), https://www.wcax.com/2024/08/02/vt-man-accused-shooting-3-palestinian-students-due-back-court.

[65] Nadine Yousif & Mike Wendling, *Burlington, Vermont, Shootings Leave One Troubling Question: Why?*, BBC NEWS (Nov. 28, 2023), https://www.bbc.com/news/world-us-canada-67561375.

[66] Gloria Oladipo, *Palestinian Students Shot in Vermont Speak Out: 'I Know that It Is a Hate Crime,'* GUARDIAN (Jan. 18, 2024, 1:17 PM), https://www.theguardian.com/us-news/2024/jan/18/interview-palestinian-students-shot-vermont-hate-crime.

2001, was the first victim of a fatal hate crime during the post-9/11 backlash.[67] As mentioned above, that is when hate crimes targeting Arab Americans and American Muslims—and, critically, those perceived to be Arab or Muslim—surged across the United States.[68] According to FBI statistics, law enforcement agencies reported 181 anti-Sikh hate crimes in 2022. What the data cannot tell us, however, is the number of hate crimes against Sikh Americans that, because of the offender's misperception, were reported under a different bias type.

Furthermore, someone can be the victim of a hate crime even when the offender knows that the victim does not possess the characteristic at which the offender's bias motivation is directed. As part of the Civil Rights Act of 1968, Congress made it a federal crime to commit violence against "any person because of his race, color, religion or national origin and because he is or has been" exercising one of six federally protected rights.[69] Not only that, Congress took the further step of making it a federal crime to commit violence against someone for "affording another person or class of persons opportunity or protection" to participate in those and other rights without fear of discrimination.[70] This provision was designed to protect civil rights workers of all races and ethnicities from the scourge of organized white supremacist violence in the southern United States at that time. A likely catalyst for this provision was the 1966 case, *United States v. Price*, 383 U.S. 787 (1966), which involved the Ku Klux Klan's 1964 killing of three civil rights workers, one of whom (James Earl Chaney) was Black and two of whom (Andrew Goodman and Michael Schwerner) were Jewish, in Philadelphia, Mississippi.[71]

Few would disagree that *Price*, if it happened today, should be reported as a hate crime. But under what bias type? Anti-Black animus was at the heart of these killings, but two of the victims were not Black (though antisemitism might also have played a role). To cite another example, consider the 2017 car attack that killed Heather Heyer and wounded several others in Charlottesville, Virginia. The perpetrator of that attack admitted to driving his car into a crowd, of which Heyer, a white woman, was a part, "because of the actual and perceived race, color, national origin, and religion of its members."[72] Although Heather was the only person killed in the attack, that does not mean it should have been reported as an anti-white hate crime. To reiterate, a hate crime is judged not by the actual characteristics of the victim, but rather by the perceptions of the offender. For the purposes of hate crime reporting, those perceptions—however tortuous, complex, or mistaken—must be reduced to discrete, reportable bias types. To be sure, FBI statistics allow for reporting multiple bias types or even composite "group" characteristics, but the short of it is that law enforcement data is not fit to capture the complexities of bias-motivated conduct. The Committee should keep this in mind as it considers the nature and extent of hate crime in the United States since October 7, 2023, and the war in Gaza.

---

[67] Shawna Chen, *Remembering Balbir Singh Sodhi 20 Years After Post-9/11 Hate Crime*, AXIOS (Sept. 15, 2021), https://www.axios.com/2021/09/16/911-balbir-singh-sodhis-hate-crime.
[68] *See supra* text accompanying note 9.
[69] *See* Pub. L. No. 90-284, § 101, 82 Stat. 73, 73-77 (1968) (codified at 18 U.S.C. § 245(b)(2)).
[70] 18 U.S.C. § 245(b)(4)(B).
[71] *See* Kent Germany & David Carter, *Mississippi Burning*, MILLER CTR. (last visited Sept. 6, 2024), https://millercenter.org/the-presidency/educational-resources/mississippi-burning; Mississippi *Burning*, FED. BUREAU OF INVESTIGATION (last visited Sept. 6, 2024), https://www.fbi.gov/history/famous-cases/mississippi-burning.
[72] Press Release, U.S. Dep't of Just., Ohio Man Sentenced to Life in Prison for Federal Hate Crimes Related to August 2017 Car Attack at Rally in Charlottesville, Virginia (June 28, 2019), https://www.justice.gov/opa/pr/ohio-man-sentenced-life-prison-federal-hate-crimes-related-august-2017-car-attack-rally.

4. More than Numbers on a Page

The final reminder about reading hate crime statistics is perhaps the most obvious, and certainly the most important. It is easy to get lost in all the charts, figures, and data presented in the preceding subsections. But the Committee should not lose sight of the fact that each datapoint represents a person and a community harmed by hate, not just a number on the page. In Part I.B, AAI shared that law enforcement agencies in Illinois reported 407 hate crimes in 2023.[73] Among them is the fatal stabbing of six-year-old Wadea Al-Fayoume—an Arab American Muslim child of Palestinian descent—and the severe wounding of his mother, Hanaan Shahin, in Will County on October 14, 2023.[74] The alleged perpetrator blamed them for "what was going on in the Middle East," saying he had to kill "Arabs and Palestinians" before he murdered Wadea and attacked the innocent child's mother.[75] Attorney General Merrick Garland noted the brutal attack "cannot help but further the fears of Muslim, Arab, and Palestinian communities in our country with regard to hate-fueled violence."[76] That same violence forever changed the lives of Hisham Awartani, Kinnan Abdalhamid, and Tahseen Aliahmad on that day in Vermont, with Hisham paralyzed from the chest down after the attack.

AAI also shared that, at least among the twenty-seven states (and D.C.) that have published 2023 hate crime statistics, there was a fifty-eight percent increase of reported anti-Jewish hate crimes.[77] Part of that increase likely includes one of the eight hate crimes reported in 2023 by police at Cornell University, where in October of last year a student used the internet to threaten the lives of his Jewish classmates.[78] Furthermore, AAI noted that, at least according to the available data, the surge of anti-Arab and anti-Jewish hate crimes reported in 2023 has not abated in 2024.[79] According to municipal-level statistics, there were more anti-Jewish hate crimes reported in New York City during the first six months of the year than were reported statewide in 2023. Among the victims of these hate crime is an unnamed Brooklyn man who, on February 12 in Staten Island, was called a "Dirty Jew" before getting attacked with a baseball bat.[80]

---

[73] *See supra* Part I.B(4)(a).
[74] *Man Charged with Hate Crime in Fatal Stabbing of Muslim Boy, Attack on Mom*, NPR (Oct. 31, 2023, 3:01 AM), https://www.npr.org/2023/10/31/1209633437/illinois-man-charged-with-hate-crime-in-fatal-stabbing-of-muslim-boy-attack-on-m; Press Release, U.S. Dep't of Just., Attorney General Statement on the Killing of Six-Year-Old Child Wadea Al-Fayoume and Severe Wounding of His Mother Hanaan Shahin in Illinois (Oct. 15, 2023), https://www.justice.gov/opa/pr/attorney-general-statement-killing-six-year-old-child-wadea-al-fayoume-and-severe-wounding. To review and filter state-level data for Illinois, see *Hate Crime Incidents Report*, ILL. STATE POLICE (last visited Sept. 9, 2024), https://ilucr.nibrs.com/Report/HateCrimeByORIReport.
[75] Nouran Salahieh & Andy Rose, *'I Am Not a Threat': Hundreds Gather for Vigil Mourning 6-Year-Old Palestinian-American Boy Who Was Stabbed to Death Near Chicago*, CNN (Oct. 18, 2023, 4:32 AM), https://www.cnn.com/2023/10/18/us/wadea-al-fayoume-death-wednesday/index.html.
[76] U.S. Dep't of Just., *supra* note 74.
[77] *See supra* Part I.B(1).
[78] *See* Press Release, U.S. Dep't of Just., Former Cornell Student Pleads Guilty to Posting Online Threats Against Jewish Students on Campus (Apr. 10, 2024), https://www.justice.gov/opa/pr/former-cornell-student-pleads-guilty-posting-online-threats-against-jewish-students-campus; *Criminal Justice Statistics*, N.Y. DIV. OF CRIM. JUST. SERVS. (last visited Sept. 6, 2024), https://www.criminaljustice.ny.gov/crimnet/ojsa/stats.htm.
[79] *See supra* Part I.B(2).
[80] Jesse Zanger & Natalie Duddridge, *Recent Antisemitic Violence Has Staten Island's Jewish Community on Edge*, CBS NEWS (Feb. 16, 2024, 8:26 PM), https://www.cbsnews.com/newyork/news/recent-antisemitic-violence-has-staten-islands-jewish-community-on-edge; *see also Hate Crimes Reports*, N.Y. POLICE DEP'T (last visited Sept. 6, 2024), https://home.nyc.gov/site/nypd/stats/reports-analysis/hate-crimes.page.

These victims, along with so many more, have all suffered from the apparent surge of hate crimes that has transpired. In sum, it is important that we have accurate hate crime data for many reasons, not least because we should recognize the dignity—and pain—of each and every hate crime victim.

Before proceeding to possible remedies, it is important to provide some context on a topic that has not received the attention it warrants. To better understand anti-Arab bias-motivated hate crime, one must have a better understanding of anti-Arab racism, a problem present in the United States since Arabs first began immigrating in large numbers in the late nineteenth century. On a most basic level, anti-Arab racism is a form of bias that includes opposition to, dislike, fear, or hatred of Arab people. Stereotypical portrayals of Arabs have flooded American entertainment and media for decades, spurring anti-Arab animus and a deep mistrust of Arab Americans. What emerges as a result of these stereotypes is an Arab exception to the customary threshold of bigotry deemed appropriate for mainstream outlets, partly because the dehumanizing language sometimes emanates from elected officials, candidates, and mainstream news outlets. During this current presidential campaign, one candidate has gone as far as to use "Palestinian" as a slur.[81]

Organizations working to defend the civil rights and civic engagement of Arab Americans have been threatened, including the killing of civil rights leader Alex Odeh in a horrific hate crime in 1985.[82] Alex's murder, and the climate that enabled it, were the focus of a historic congressional hearing in 1986 entitled, "Ethnically Motivated Violence Against Arab-Americans."[83]

In the post-9/11 environment, government policies that further "othered" Arab Americans, as well as American Muslims, have contributed to making the communities a source of fear and a target for hate. The Jabara-Heyer Act discussed is itself named after Khalid Jabara, an Arab American shot to death on his front porch by his neighbor in a violent hate crime in 2016.[84] In the case of the very organization on whose behalf I am testifying today, the Arab American Institute, a man was sentenced to five years in prison for a hate crime targeting our staff in 2019.[85] The perpetrator was fond of signing his messages with the same phrase: "The only good Arab is a dead Arab."

These examples, some that predate the recent surge in hate, share a common thread—the dehumanization of Arabs, including Palestinians. The result is Arab Americans are harassed,[86]

---

[81] Kanishka Singh, *Trump Criticized for 'Palestinian' Insult in Debate with Biden*, REUTERS (June 28, 2024, 5:51 PM), https://www.reuters.com/world/us/trump-criticized-palestinian-insult-debate-with-biden-2024-06-28.
[82] Alex Odeh was the west coast regional director for the American-Arab Anti-Discrimination Committee (ADC). He was murdered at his ADC office in Santa Ana, California, on October 11, 1985, when a bomb was triggered when he opened the door to his office, tragically killing him and injuring seven others on the same floor. *See* Gabriel San Román, *Senator Calls for FBI Update on Unsolved Assassination of O.C. Activist Alex Odeh*, L.A. TIMES (Dec. 20, 2021, 6:19 PM), https://www.latimes.com/california/story/2021-12-20/senator-durbin-calls-for-fbi-update-in-alex-odeh-assassination-cold-case.
[83] *Ethnically Motivated Violence Against Arab Americans, Hearing Before the Subcomm. on Crim. Just. of the H. Comm. of the Judiciary*, 99th Cong. (1988).
[84] 34 U.S.C. § 30507.
[85] Press Release, U.S. Dept. of Justice, Virginia Man Sentenced to 60 Months in Prison for Committing Hate Crime by Threatening Employees of the Arab American Institute (Aug. 15, 2019), https://www.justice.gov/opa/pr/virginia-man-sentenced-60-months-prison-committing-hate-crime-threatening-employees-arab.
[86] Michael Abeyta, *Cherry Creek Schools Students Concerned with Bullying Following the War in Israel*, CBS COLORADO (Oct. 15, 2023, 3:18 PM), https://www.cbsnews.com/colorado/news/colorado-cherry-creek-students-concerned-bullying-following-war-israel.

threatened,[87] doxxed,[88] subjected to violence,[89] denied public accommodations,[90] and discriminated against in the workplace,[91] to name but a few consequences of the current climate.

Hate against any one group is inseparable from hate against all and hate prevention should be done collectively—in coalition and partnership with all communities affected by hate. The 2022 FBI data is illustrative of the need for such a response. Anti-Black hate crimes were the second highest ever recorded and they account for a plurality of *all* hate crimes reported. Anti-Latino and anti-LGBTQ+ incidents also reached an all-time high. Anti-Jewish incidents saw a thirty-seven percent increase and anti-AAPI hate represented the second-highest number ever recorded, dropping from the staggering increase we saw in 2021.[92] Further, hate against our collective communities is increasing in light of divisive political rhetoric leading up to the general election, international events, emboldened white supremacists, foreign actors seeking to sow community division in our nation, and the unmitigated proliferation of disinformation against our communities in traditional and new media platforms. Our collective response must meet the moment with the urgency it warrants.

II. The Federal Government's Role in Hate Crime Enforcement

Part I offers an extensive discussion of hate crime statistics across a range of bias types, with particular attention toward the reported increase of anti-Arab and anti-Jewish hate crimes in the last quarter of 2023. What follows is a brief discussion of the federal response to hate crime—especially when it comes to hate crime statistics—and what Congress can do to improve that response.

In addition to publishing hate crime statistics based on data collected from law enforcement agencies across the United States, the Department of Justice enforces four criminal statutes designed to combat bias-motivated violence.[93] Although two of these statutes predate the emergence of "hate crime" as a legal term of art,[94] the Department of Justice now refers to all four as federal hate crime

---

[87] *See* Max Zahn, *Palestinian-American Business Owners Face Death Threats, Negative Reviews*, ABC NEWS (Oct. 17, 2023, 5:37 PM), https://abcnews.go.com/Business/death-threats-expletives-palestinian-business-owners-us-canada/story?id=104006583.

[88] Catherine Thorbecke, *Names and Faces of Harvard Students Linked to an Anti-Israel Statement were Plastered on Mobile Billboards and Online Sites*, CNN (Oct. 14, 2023, 7:40 PM), https://www.cnn.com/2023/10/12/business/harvard-doxxing-truck-israel-hamas-statement/index.html.

[89] Rebecca Cohen, *Stanford Student Hit by SUV in Suspected Hate Crime Calls on Others to Denounce Bigotry*, NBC NEWS (Nov. 5, 2023, 7:57 PM), https://www.nbcnews.com/news/us-news/stanford-university-hit-run-victim-shares-message-hospital-rcna123738.

[90] Phil Landeros, *Arab-American Convention Claims Event Was Canceled by Hotel Over Security Concerns*, CLICK ORLANDO (Nov. 3, 2023, 10:32 PM), https://www.clickorlando.com/news/local/2023/11/04/arab-american-convention-claims-event-was-canceled-by-hotel-over-security-concerns.

[91] Angelina Chapman, *When Posting About the Israel-Hamas War Costs You Your Job*, THE CUT (Oct. 30, 2023), https://www.thecut.com/2023/10/israel-hamas-war-job-loss-social-media.html.

[92] Press Release, Arab Am. Inst., AAI Statement on the FBI's 2022 Hate Crime Data Release: Second Consecutive Year of the Highest Number of Hate Crimes Since Reporting of Data Began in 1992 (Oct. 16, 2023), https://www.aaiusa.org/library/hatecrime2023.

[93] A fifth statute, a Reconstruction-era provision codified at 18 U.S.C. § 241, was passed in part to extend federal criminal jurisdiction over acts of anti-Black violence in the former Confederate states. *See* Jason D'Andrea & Kai Wiggins, *Three Questions About Section 241, the Conspiracy Against Rights Statute*, LAWFARE (Aug. 16, 2023), https://www.lawfaremedia.org/article/three-questions-about-section-241-the-conspiracy-against-rights-statute. But the statute is broad in application, *see id.*, and, in contrast to subsequent provisions, does not treat bias motivation as a discrete offense element. *Compare* 18 U.S.C. § 241, *with* 18 U.S.C. § 245(b)(2), § 247(c), § 249(a), *and* 42 U.S.C. § 3631(a).

[94] Shirin Sinnar, *Hate Crimes, Terrorism, and the Framing of White Supremacist Violence*, 110 CALIF. L. REV. 489, 509 (2022).

statutes.[95] The most recent of these statutes, 18 U.S.C. § 249, is also the most expansive in application. Before the enactment of § 249, no federal hate crime statute covered acts of violence based on sexual orientation or gender identity; furthermore, existing statutes covered only certain acts of violence based on race, color, religion, national origin, gender, or disability.[96] Congress enacted the § 249 in 2009 as part of the Matthew Shepard and James Byrd, Jr. Hate Crimes Prevention Act, which is named for two victims of shocking hate crimes that occurred in 1998.[97]

On the reporting and data collection front, in 2021 Congress passed another law named for two hate crime victims: the Khalid Jabara and Heather Heyer NO HATE Act.[98] The purpose of the Jabara-Heyer Act is to address an issue that has been discussed throughout this testimony: that of chronic underreporting in hate crime statistics. But while the Jabara-Heyer Act is a promising first step toward improving the collection of hate crime data in the United States, more can be done. At the heart of the Jabara-Heyer Act is a grant program designed to incentivize a subset of state and local law enforcement agencies to adopt a series of best practices. These include the adoption of specific hate crime reporting and investigative policies, the development of standardized reporting methods, the creation of special hate crime units, the piloting of various forms of community engagement, and the provision of hate crime training for law enforcement personnel.[99] As a condition of receiving these grants, recipients must exchange information with the Department of Justice related to their hate crime prevention and reporting practices. The objective here is to create a separate stream of information from state or local law enforcement agencies that the federal government can use to check against, or at least help contextualize, the hate crime data that it receives from those same agencies.[100]

While this approach is promising, the potential reach of the Jabara-Heyer Act is limited. For one, only a small number of state and local law agencies are eligible for the grant program.[101] And furthermore, just because Congress has created a new grant program does not mean that eligible state or local law enforcement agencies opt into that program. If anything, agencies that need the funding incentives least, i.e., those that already prioritize hate crime reporting, will be more likely to opt into the grant program than the agencies that need it most. Fortunately, the path to reform is simple. The Jabara-Heyer Act established a new grant program with conditions attached. But what if those same conditions were attached to an existing grant program, better yet, a grant program in which a significant percentage of state and local law enforcement agencies already participate? An obvious choice would be the Edward Byrne Memorial Justice Assistance Grant (JAG) Program,

---

[95] *See, e.g.*, *Statutes Enforced by the Criminal Section*, U.S. DEP'T OF JUST., C.R. DIV. (last updated Aug. 15, 2023), https://www.justice.gov/crt/statutes-enforced-criminal-section.
[96] *See* 18 U.S.C. § 245(b)(2) and 42 U.S.C. § 3631.
[97] Matthew Shepard & James Byrd, Jr. Hate Crimes Prevention Act, Pub. L. No. 111-84, div. E, 123 Stat. 2190, (2009); *see also* Elliot C. McLaughlin, *There Are Two Names on the Federal Hate Crimes Law. One Is Matthew Shepard. The Other Is James Byrd Jr.*, CNN (Apr. 25, 2019, 8:15 AM), https://www.cnn.com/2019/04/24/us/james-byrd-hate-crime-legislation-john-king-execution/index.html.
[98] Pub. L. No. 117-13, § 5, 135 Stat. 265, 266-72 (2021).
[99] Wiggins, *supra* note 49, at 403.
[100] For extensive analysis on the Jabara-Heyer Act and how to improve it, see Wiggins, *supra* note 47, and Wiggins, *supra* note 49.
[101] Eligible agencies include state agencies and two categories of local agencies: those representing more than 100,000 people; and those representing 50,000-99,999 people that has reported no hate crimes to the FBI in each of the three most recent calendar years for which data are available. *See* 34 U.S.C. § 30507(c)(2), (f)(1)(A).

which is "the leading source of federal justice funding to state and local jurisdictions."[102] Such an approach can lead to meaningful mandatory hate crime reporting.

Additional recommendations include the following as identified by some Hate Crime Task Force members at the Leadership Conference for Civil and Human Rights.

- **Increase Interagency Coordination Against Hate.** Congress should enact legislation to institutionalize President Biden's United We Stand Summit commitment to establish an interagency initiative on hate crimes, authorize $10 million to fund its continued implementation, and require periodic reports from the White House that outline the work of the initiative, including: how each agency has addressed hate crime issues, prevention and training initiatives, as well as research and programmatic plans for the next fiscal year.

- **Pass the Improving Reporting to Prevent Hate Act.** Congress should pass the Improving Reporting to Prevent Hate Act (H.R. 7648), which would condition federal funding under the Safe Streets Act on credible hate crime reporting to the FBI for law enforcement agencies serving populations of more than 100,000.

- **Address White Supremacy in Federal Law Enforcement.** Congress should enact legislation to require the Department of Homeland Security, the Department of Justice, and the FBI—and all other federal agencies with law enforcement responsibility— to promptly "avoid the hiring and retention of law enforcement officers who promote unlawful violence, white supremacy, or other bias against persons based on race, ethnicity, national origin, religion, sex (including sexual orientation and gender identity), or disability" as mandated in President Biden's May 2022 police reform executive order.[103]

- **Increase Funding for the Department of Education's Office for Civil Rights (OCR).** Congress should enact legislation—the Showing Up for Students Act (S. 3883; H.R. 8271)—to double OCR's funding. The Leadership Conference and more than 90 civil rights and education groups are on record in support of doubling the funding for OCR.[104]

- **Increase Funding for Community-based Hate Crime Prevention Initiatives.** Congress should increase funding for Department of Justice community-based programs authorized by the COVID-19 Hate Crimes Act, which includes the Jabara-Heyer NO HATE Act,[105] by an additional $30 million, including increased funds for state hate crime hotlines to promote expanded victim reporting and assistance and support services and restorative justice initiatives for those targeted and impacted by bias-motivated harms.

- **Increase support to the Department of Justice's Civil Rights Division and the Community Relations Service (CRS).** Both play a critical role in combatting and

---

[102] *Edward Byrne Memorial Justice Assistance Grant (JAG) Program*, U.S. DEP'T OF JUST., BUREAU OF JUST. STATS. (last updated Sept. 4, 2024), https://bja.ojp.gov/program/jag/overview.
[103] Exec. Order No. 14,074, 87 Fed. Reg. 32945 (May 25, 2022).
[104] Letter to Sen. Subcomm. on Lab., Health & Hum. Servs., Educ., and Related Agencies from the Leadership Conf. on Civ. & Hum. Rts. et al. (Feb. 14, 2024), https://civilrights.org/wp-content/uploads/2024/02/Congress-Double-the-Funding-for-ED-OCR.pdf; Letter to Pres. Joseph R. Biden, Jr. from the Leadership Conf. on Civ. & Hum. Rts. et al. (Feb. 14, 2024), https://civilrights.org/wp-content/uploads/2024/02/Double-the-Funding-for-ED-OCR.pdf.
[105] Pub. L. No. 117-13, 135 Stat. 265 (2021).

responding to hate crime incidents, including providing training and community outreach programs for directly impacted communities.

Thank you again for the opportunity to testify on this critical topic and I look forward to your questions.

HEARING BEFORE THE UNITED STATES SENATE

COMMITTEE ON THE JUDICIARY

A THREAT TO JUSTICE EVERYWHERE: STEMMING THE TIDE OF HATE CRIMES IN AMERICA

TESTIMONY OF RABBI DR. MARK GOLDFEDER, ESQ.

DIRECTOR, NATIONAL JEWISH ADVOCACY CENTER

SEPTEMBER 17, 2024

Chairman Durbin, Ranking Member Graham, and Members of the Committee,

Good morning. My name is Mark Goldfeder, and I am the Director of the National Jewish Advocacy Center, a nonprofit legal organization that combats antisemitism in all of its forms.[1] I am co-author of the Westlaw treatise 'Religious Organizations and the Law.'[2] I served as the Founding Editor of the Cambridge University Press Series on Law and Judaism,[3] and I teach Antisemitism and the Law at Touro University's Touro Law Center.[4] It is an honor to appear before you to discuss this important topic.

It is no secret that antisemitism has skyrocketed since Hamas' brutal Oct. 7th massacre,[5] but it is also no surprise. Sadly, there is a remarkably predictable uptick in incidents of anti-Jewish hate almost every time there is a conflict in the Middle East.[6]

What was surprising this time was how quickly the veneer of "anti-Zionism" was shattered by open expressions of enraged antisemitism directed toward innocent American Jews and their property, toward Jewish community institutions, and even religious facilities.

On college campuses across the country, between hiding from mobs in the library,[7] avoiding dining halls because of death threats,[8] and removing Nazi symbols from Chabad houses,[9] Jewish students have been subjected to campaigns that employ classic antisemitic tropes (ranging from claims of dual loyalty to outright blood libels) and calls for them to be removed from campus if they dare to identify as Zionists[10] — which the vast majority of Jewish people do.[11]

And while it is true that antisemitic incidents have spiked by over 300 percent across the board, it is worth breaking down that number even further to see just how bad the problem has gotten.

According to statistics from the ADL's Center for Extremism, in 2023, antisemitic assault incidents increased by 45%, antisemitic vandalism by 69%, and antisemitic harassment increased by 184%.[12] Those aren't speech incidents, those are hate crimes. Most of the incidents took place between October 7th and the end of the year, but even before October 7th, there were monthly

---

[1] https://jewishadvocacycenter.org/

[2] https://store.legal.thomsonreuters.com/law-products/Treatises/Religious-Organizations-and-the-Law-2023-2024-ed/p/106987952

[3] https://cslr.law.emory.edu/news/releases/2017/11/first-title-in-jewish-law-series.html

[4] https://www.tourolaw.edu/abouttourolaw/bio/456

[5] https://www.axios.com/2024/01/10/antisemitic-incidents-hamas-israel-attack-2023-adl

[6] https://www.adl.org/resources/fact-sheet/antisemitic-incidents-anti-israel-events-and-actions-around-world

[7] https://www.cbsnews.com/newyork/news/cooper-union-pro-palestinian-rally-lawsuit-jewish-students-library/

[8] https://www.campusreform.org/article/updated-kill-jews-cornells-kosher-dining-hall-shuts-death-threats-emerge/24291

[9] https://wwmt.com/news/local/kalamazoo-nazi-swastika-vandalism-suspect-identified-racist-antisemitism-graffiti-spray-painted-jewish-hate-crime-valley-community-college-hate-speech

[10] https://www.adl.org/resources/blog/what-do-anti-israel-student-organizers-really-want-examining-extreme-demands-behind

[11] https://www.jpost.com/diaspora/article-808658

[12] https://www.adl.org/resources/report/audit-antisemitic-incidents-2023

increases in February, March, April, May, and September. Each of these months broke the prior record for most antisemitic incidents recorded in a single month.[13]

Antisemitic incidents also increased year-over-year in all major location categories. Incidents at K-12 schools increased by 135%. Incidents at Jewish institutions jumped by 237%. And of course, incidents on college and university campuses spiked by a staggering 321%.[14]

Let us be clear. Hate speech, no matter how offensive, is protected by the First Amendment. But assault and battery, arson, trespassing, vandalism, breaking and entering, destruction of property, harassment and true threats are all examples of unlawful antisemitic behaviors and hate crimes that have happened in the last few months and that can and should be regulated.

Over 90 percent of American Jews say that antisemitism is a serious concern.[15] A recent Gallup poll found that a majority of American Jews, 60%, said that they are afraid to share their religious affiliation, far more than the 25% of Americans overall who said the same.[16] And they are not uncomfortable for no reason. In 2023 our synagogues were forced to become fortresses.[17] In 2024, our children still go to school under armed guard.[18] I am incredibly grateful to observe a degree of bipartisan consensus here in Congress that more needs to be done to protect this vulnerable minority, not just because antisemitism is wrong but because it is a danger and a threat to our democracy.[19]

Which brings me to the next point. In a hearing about hate crimes, why am I focusing specifically on anti-Jewish hate crimes. Three reasons.

First, because there is an acute problem taking place right now, before our very eyes. The majority of religiously motivated hate crimes are committed against Jewish people,[20] and the numbers are getting worse. We need to deal with that reality now, before more people get hurt.

Second, this is not about Jewish exceptionalism, it is only about equality. There is an equal protection problem here, and as I will explain, some of it is definitional, and can be fixed. Throughout the generations no other hatred has been this amorphous and shifting, and defying of definition; for example, modern antisemitism is such that people can and do commit horrible acts of antisemitic discrimination and then claim that they were merely being "anti-Israel". Notwithstanding the above, the importance of clarity in such definitions is not entirely unique to antisemitism, and to the extent that any other group feels it is being routinely and systemically discriminated against, and that there is a need for a definition to clarify what is and is not problematic, that group's concerns should likewise be addressed. In a somewhat similar vein, the

---

[13] Id.
[14] Id.
[15] https://www.npr.org/2024/02/13/1230928104/large-majorities-americans-antisemitism-serious-problem-ajc
[16] https://news.gallup.com/poll/646469/americans-show-heightened-concern-antisemitism.aspx
[17] https://www.npr.org/2023/10/17/1206591813/how-u-s-synagogues-have-been-thinking-about-their-safety-since-the-hamas-attacks
[18] https://www.curbed.com/2023/11/uja-program-armed-guards-at-jewish-schools.html
[19] https://www.state.gov/no-sanction-for-antisemtism/; see also https://documents.un.org/doc/undoc/gen/n19/289/00/pdf/n1928900.pdf
[20] https://www.statista.com/statistics/737660/number-of-religious-hate-crimes-in-the-us-by-religion/

Black Lives Matter movement has argued that many states and universities do not in fact understand structural racism, and students at dozens of schools have published their lists of demands for change. These requests are along those lines.

Finally, it is important to address antisemitism in the context of the broader hate crimes conversation because history has repeatedly shown that antisemitism is often the proverbial "canary in the coal mine of intolerance."[21] This time, it didn't even take very long for the chants to morph[22] from death to Israel to death to America,[23] and from spray painting Hillel Houses[24] and desecrating menorahs[25] to disrupting Pride marches,[26] defacing George Washington's statute,[27] and vandalizing the Freedom Bell. Stopping antisemitic hate crimes is a matter of self-preservation for all Americans because even if you aren't Jewish, they are coming for you next. Just ask them, they aren't shy.

And so, I would like to talk about solutions. Here are three practical steps that the government can take to immediately help stem the tide of unlawful hate directed against Jewish Americans, to the benefit of all Americans.

The first step is to use your oversight powers to ensure that the various agencies are enforcing the laws we already have as written. This includes of course, Title VI of the Civil Rights Act of 1964.[28] A hostile environment under Title VI is a situation where someone's ability to participate in or benefit from a program or activity funded by the federal government is limited or denied due to conduct based on race, color, or national origin. If those words mean anything, they must include what is happening to Jewish students on campus based on their real or perceived race or national origin.

It also includes the laws that provide for punishment when foreign students provide support for terrorism. The Immigration and Nationality Act[29] mandates that those engaging in terrorist activity are barred from entering the United States, and eligibility also applies to those who have "persuaded others to endorse or support one of these named terrorist groups,"[30] such as Hamas, which has been designated as a foreign terrorist organization by the State Department since 1997.[31] Student groups are openly working as agents of Hamas and handing out recruitment flyers on our campuses.[32] My organization, NJAC, has brought five federal anti-terrorist act lawsuits since October 7 to go after some of these bad actors.[33] But we should not have to do that.

---

[21] https://www.theguardian.com/commentisfree/2018/mar/30/antisemitism-jews-canary-coalmine-fake-news
[22] https://www.youtube.com/shorts/cGb-YdCbBZ0
[23] https://www.foxnews.com/politics/death-to-america-rapidly-emerging-key-slogan-anti-israel-agitators-us
[24] https://www.bu.edu/articles/2023/graffiti-at-bu-hillel-being-investigated/
[25] https://news.yale.edu/2023/12/10/yale-statement-desecration-menorah
[26] https://www.nbcnews.com/nbc-out/out-news/lgbtq-pride-march-israel-hamas-war-protests-rcna156595
[27] https://www.fox5dc.com/news/george-washington-statue-in-dc-defaced-with-free-gaza-graffiti
[28] https://www2.ed.gov/about/offices/list/ocr/docs/hq43e4.html
[29] https://www.uscis.gov/laws-and-policy/legislation/immigration-and-nationality-act
[30] https://fam.state.gov/FAM/09FAM/09FAM030206.html
[31] https://www.state.gov/foreign-terrorist-organizations/
[32] https://x.com/jessicaschwalb7/status/1830799076733948111?s=46&t=JgqIRir0Ga3myGCeXj5xJg
[33] https://www.gtlaw.com/en/news/2024/05/press-releases/greenberg-traurig-national-jewish-advocacy-center-schoen-law-firm-and-holtzman-vogel-represent-american-and-israeli-victims-of-hamas

Our laws also include requirements for schools to disclose the foreign funding they are receiving. One recent study cited by the Institute for the Study of Global Antisemitism and Policy have found that the receipt of undocumented money is associated with the erosion of free speech norms, and a rise in antisemitism, while another study found a positive directional association between campus antisemitic incidents and antisemitic incidents on the county level including hate crimes.[34] From 2015-2020, institutions that accepted money from authoritarian Middle Eastern donors, had, on average, 300% more antisemitic incidents than those institutions that did not.[35] The Defending Education Transparency and Ending Rogue Regimes Engaging in Nefarious Transactions (DETERRENT) Act, which passed the House with wide bipartisan support, might be helpful.

To the extent that these laws and others are not being enforced, Congress could also add teeth in the form of penalties for failure to follow the requirements, including fines for not enforcing the law, or the withholding of additional grants.

Second, there has been an abdication of authority when it comes to the First Amendment. University Presidents and law school deans unabashedly explain that the First amendment is hard to understand and claim that they cannot possibly comprehend its limits.[36] That is a terrible answer, and yet for their benefit and for everyone's benefit, Congress should clarify or ask the DOJ to clarify, what they already know deep down.

The First Amendment is not a free pass to threaten, harass, intimidate or otherwise violate the rights of others. There are limits to what constitutes speech, and there are rules for when it crosses over into actionable unlawful conduct. For example: The First Amendment does not protect arson, trespassing, vandalism, harassment, assault or the destruction of property. It does not protect against threats or intimidation, or incitement. To quote one of your former colleagues, and former University of Florida President Ben Sasse: "Just as we have an obligation to protect speech, we have an obligation to keep our students safe. Throwing fits, storming buildings, vandalizing property, spitting on cops and hijacking a university aren't speech."[37]

Schools do not have to wait for more people to get hurt: The Supreme Court in *Healy v. James* (1972)[38] cited *Tinker v. Des Moines* (1969)[39] to hold that university officials do not have to tolerate student activities that breach reasonable campus rules, interrupt the educational process or interfere with other students' rights to receive an education. This is especially true when the student speech is happening in school-sponsored forums or is reasonably perceived as bearing the imprimatur of the institution. Under *Bethel v. Fraser* (1986)[40] and *Hazelwood v. Kuhlmeier* (1988)[41] schools have even greater latitude to limit student expression if they can establish a legitimate pedagogical

---

[34] "The Corruption of the American Mind," ISGAP (2024), https://isgap.org/wp-content/uploads/2024/01/TheCorruption-of-the-American-Mind_V2-2.pdf

[35] Id.

[36] https://www.wsj.com/us-news/education/columbia-university-president-what-i-plan-to-tell-congress-tomorrow-5f157620

[37] https://www.wsj.com/articles/the-adults-are-still-in-charge-at-the-university-of-florida-israel-protests-tents-sasse-eca6389b

[38] *Healy v. James*, 408 U.S. 169 (1972)

[39] *Tinker v. Des Moines Independent Community School District*, 393 U.S. 503 (1969)

[40] *Bethel School District v. Fraser*, 478 U.S. 675

[41] *Hazelwood School District v. Kuhlmeier*, 484 U.S. 260 (1988)

concern. Ensuring that all students have a safe and harassment-free environment in which to learn is an overwhelmingly legitimate pedagogical concern.

Finally, Congress should clarify that when you attack a Jewish person or unlawfully discriminate against them based on any aspect of their Jewish identity, that is antisemitism and will be treated as such under federal law.

Because Jewish identity is so multifaceted, without a standard definition for authorities to reference when analyzing the intent behind illegal, discriminatory actions, including hate crimes, it is easy for antisemites to hide behind this ambiguity and commit unlawful acts against Jews with impunity. There is a bill before the Senate now, the Antisemitism Awareness Act,[42] which solves that problem by requiring the relevant authorities to consider, as contextual rebuttable evidence, the gold-standard International Holocaust Remembrance Alliance, or IHRA, definition of antisemitism[43] when assessing the motivation behind already unlawful behavior if there is an allegation that the target was chosen because of an aspect of their Jewish identity. This bill has passed the House and is waiting further consideration here in the United States Senate.

There can be no clearer demonstration than the events of the last year as to why the IHRA definition includes examples of antisemitic anti-Zionism, such as holding Jews "collectively responsible for actions of the state of Israel," among modern manifestations of anti-Jewish hate.

Just like it is racial or ethnic bias to attack a Chinese person over China's trade policies and national origin discrimination to fire a Russian because Russia attacked Ukraine, it is antisemitic to target Jewish people with discriminatory actions because of a real or perceived connection they might have to the Jewish state.

This idea should not be controversial, and it is certainly not partisan; as the White House's National Strategy to Counter Antisemitism recently stated, "Jewish students and educators are targeted for derision and exclusion on college campuses, often because of their real or perceived views about the State of Israel. When Jews are targeted because of their beliefs or their identity, when Israel is singled out because of anti-Jewish hatred, that is antisemitism. And that is unacceptable."

This should be obvious but it isn't. I am the general counsel for 24 Hillels in Georgia. Last year, pro-Hamas students surrounded an innocent Jewish student and threw him to the ground. They threatened to kill him, his family, and all 'Israelis." For the record, the student was not Israeli, he was just Jewish. The police said this was not a hate crime because he didn't say Jew, he said Israel. The perpetrator was back on campus a few hours later and the Jewish community understood that they were not safe.

---

[42] https://www.congress.gov/bill/118th-congress/house-bill/6090

[43] https://holocaustremembrance.com/resources/working-definition-antisemitism

There are very few things that the Bush,[44] Obama,[45] Trump,[46] and Biden[47] administrations have agreed on, but the IHRA definition is one of them. Not to mention a supermajority of US states that have embraced it, as well as the vast majority of Jews across every ideological spectrum.[48] It is also the only definition with an actual track record of demonstrable effectiveness in curbing anti-Jewish hate and bigotry.[49] The IHRA definition of antisemitism also contains the appropriate caveats and carefully balanced safeguards that take into account the importance of nuance and context in situations that involve allegations of discriminatory intent.

For example, the definition makes clear that criticism of Israel similar to that leveled against any other country cannot be regarded as antisemitic and that all of the examples are not meant to be dispositive but rather are the types of things that could, taking into account the overall context, be evidence of antisemitism.

Of course, Jews are not monolithic, and there is a small minority within the Jewish community, including my distinguished friend Dr. Stern, that do not support this bill because they are afraid it might be misapplied in some way to restrict speech. First, it is important to reiterate that this minority does not represent the Jewish community, which has spoken in a clear and loud voice. Every major Jewish organization in the country, by membership estimates over 90 percent of American Jews, support this bill wholeheartedly.[50] That is more than a consensus, it is a mandate. Second, the argument that the bill, which by definition only applies to unlawful conduct, not speech, could be used the wrong way is not an argument against the bill, rather it is an argument to make sure the bill is carefully crafted, which it is. To the extent that the concerns is that such a bill might somehow "chill" protected speech, a unanimous Supreme Court ruling in *Wisconsin vs. Mitchell* (1993)[51] held that when it comes to evaluating discriminatory actions "The First Amendment does not prohibit the evidentiary use of speech to prove motive or intent."[52] That is just how antidiscrimination laws always work.

The truth is that the Antisemitism Awareness Act does not go far enough. It only requires the Department of Education to make use of the IHRA definition when assessing unlawful discriminatory behavior under Title VI. It is an excellent bill that was written well before October 7th, yet since that time, it has unfortunately only become clearer that the Jewish community needs their protections clarified in other contexts as well, including for example in the Title VII employment context, or, as is the subject of this hearing, hate crimes. There is a sister bill in the House called the Define to Defeat Act,[53] which expands on the Antisemitism Awareness Act, and applies the same definition in these contexts. Again, there has been wide bipartisan support for the

---

[44] https://2001-2009.state.gov/g/drl/rls/56589.htm
[45] https://www.state.gov/defining-antisemitism/
[46] https://trumpwhitehouse.archives.gov/presidential-actions/executive-order-combating-anti-semitism/
[47] https://www.state.gov/the-international-holocaust-remembrance-alliance-working-definition-of-antisemitism/
[48] https://www.adl.org/resources/letter/letter-urging-inclusion-ihra-working-definition-antisemitism-un-action-plan
[49] https://op.europa.eu/en/publication-detail/-/publication/d3006107-519b-11eb-b59f-01aa75ed71a1/language-en
[50] https://www.jpost.com/diaspora/article-788346
[51] *Wisconsin v. Mitchell*, 508 U.S. 476 (1993)
[52] Id.
[53] https://www.congress.gov/bill/118th-congress/house-bill/7945/text

Antisemitism Awareness Act, and hopefully, that bipartisan support will continue and even allow for its expansion in the Senate; it is hard to imagine someone being supportive of Jewish people being properly protected under Title VI of the Civil Rights Act but not, for example, under Title VII of that same law, or for protection against hate crimes.

I would venture to state that on this point there is no disagreement, in fact, when Dr. Stern was working on the original IHRA definition, he wrote and I quote "the purpose of this definition is twofold: 1) to provide a common standard and guidance for organizations… wishing to identify and catalog antisemitic incidents, and 2) law enforcement officials asked with determining whether a crime is antisemitic."[54] Now I would say that if a definition is good in those contexts it is also good in helping determine whether action is unlawful even if not criminal. But on hate crimes at least, I think we agree.

To the extent that for some reason the bill isn't called for a vote, I would urge you to pass an even simpler bill, a clarification act, reiterating one salient point: For the *vast* majority of Jewish people across time and space, Zionism is and always has been an integral part of their Jewish identities. Congress can and should immediately clarify, in no uncertain terms, that unlawfully targeting a Jewish person for any aspect of their Jewish identity, including a belief in Zionism, is antisemitism, and will be treated as such.

I will conclude by pointing out the obvious: protecting Jews does not come at the expense of any other group. You can be vigorously pro-Palestinian without being antisemitic, and you can even be virulently antisemitic without committing unlawful actions. But that is not what is happening. According to the FBI, the majority of religiously motivated hate crimes in the United States are committed against Jewish people. That number is on the rise despite the fact that Jews make up only between 2 and 2 and a half percent of the population. This trend is terrifying, and there is much work to be done to defeat it. I stand ready to work with the Committee and any Member on this important matter and welcome any questions.

[54] https://kennethsstern.com/wp-content/uploads/2021/01/102904-email-re-definition-of-antisemitism.pdf

WRITTEN TESTIMONY OF KENNETH S. STERN
Director,
Bard Center for the Study of Hate

Before the

UNITES STATES SENATE
JUDICIARY COMMITTEE

A Threat to Justice Everywhere: Stemming the Tide of Hate Crimes in America

September 17, 2024

Dear Chairman Durbin, Ranking Member Graham, and the other honorable members of the Committee:

My name is Kenneth Stern. I am the director of the Bard Center for the Study of Hate[1], which works to increase the serious study of human hatred, and ways to combat it.[2] Before that I directed the Justus and Karin Rosenberg Foundation, a philanthropy focused on hate,[3] and before that I was the director of the American Jewish Committee's division on antisemitism and extremism, where I worked for 25 years. While at AJC I was the lead drafter of the text of what is now known as the IHRA working definition of antisemitism.[4]

Before my narrative, which is detailed, I want to share this summary:

- *Antisemitism, at its most dangerous, has two elements: 1) A claim that Jews conspire to harm humanity, and 2) that that conspiracy explains what goes wrong in the world.*
- *Antisemitism is more than just about Jews, it's a threat to democracy, it's a miner's canary for the health of societies. But the flip side, frequently ignored, is also true – that*

[1] https://bcsh.bard.edu/
[2] Hate Studies is defined as "Inquiries into the human capacity to define, and then dehumanize or demonize, an 'other,' and the processes which inform and give expression to, or can curtail, control, or combat, that capacity."
[3] The Justus and Karin Rosenberg Foundation was founded by the last surviving member of the Emergency Rescue Committee – an operation during World War II lead by American Varian Fry to rescue artists and intellectuals, among them Marc Chagall and Max Ernst, from Vichy France.
[4] During my AJC tenure I was part of the defense effort of Dr. Deborah Lipstadt (today Ambassador Lipstadt, the Department of State's Special Envoy to Monitor and Combat Antisemitism) in her 2000 London defense of a libel charge brought by a Holocaust denier; I was an invited presenter at the 1997 White House Conference on Hate Crimes, and also an official member of the United States delegation to the Stockholm International Forum on Combating Intolerance in 2001; in 1995 I authored a report on the growing danger of the militia movement, released less than two weeks before the Oklahoma City bombing, with a covering memo warning that there might be some sort of attack on government on April 19, the anniversary of the siege of the Branch Davidian compound in Waco, Texas, a date of great importance to the militias.

hatred of non-Jews can be the engine for antisemitism, something that becomes invisible when we focus only on parsing what is said about Jews, let alone Israel.

- *The Tree of Life mass murder was clearly antisemitic, but was animated by a drumbeat of dehumanizing anti-immigrant rhetoric by political leaders. No one would say the killing of Mexican-Americans and Mexicans at the Wal-Mart in El Paso a few months later should be classified as an act of antisemitism. But the two shooters had virtually identical ideologies; they just chose different targets. We need to look at antisemitism with a wide lens, not reduce it to who says what, particularly about Israel.*
- *When people hate they crave simplicity and certainty, and binary good/bad thinking. This is a human characteristic rooted in how we divide the world into who is "us" and who is "them." People who combat hate are also human and seek the seductive illusion of simple answers to complicated problems. Now the seductively simple, and illogical, tool is to employ IHRA.*
- *Legally endorsing a binary – whether as the UN did when it adopted the Zionism=racism resolution in 1975, or the current attempt to use IHRA to legislate its mirror image (that anti-Zionism is antisemitism) – harms democracy and Jews and others, and is inappropriate for legislation.*
- *One rule for fighting hate is to change the scenario and see if the same rules apply. Would Congress adopt a legislatively-endorsed definition of racism that included political examples? There is a correlation (as opposed to causation) between some expressions about Israel and antisemitism. One might argue that to take a temperature of racism, a definition might include opposition to affirmative action or opposition to Black Lives Matter or opposition to the removal of Confederate statues as data points. The official labeling of those who hold these views as "racist" would be wrong. Likewise, the tarring of people who have different views about Israel and Zionism.*
- *When the House passed the Antisemitism Awareness Act, some members voted against it, pointing to the IHRA example of Jews killing Jesus as an exemplar of antisemitism. Deicide is indeed an example of how antisemitism has been expressed, but the opponents noted that many Americans have deeply religious beliefs about the death of Jesus that would be classified by the government as antisemitic. Senator Marshall said that he would vote for the legislation in the Senate, but propose an amendment to strike that one example. It is hard to imagine a clearer admission that the legislation targets expression and belief.*
- *Using IHRA in this way also encourages the ubiquitous use of the terms "antisemite" and "antisemitism," when they are words that should be sparingly used, so they don't lose their sting. More often, and particularly about Israel, the problem is binary thinking, not antisemitism.*
- *There is a difficult internal Jewish communal debate about whether one has to be a Zionist to be within the Jewish "tent." I am a Zionist. But I know many young Jews whose Judaism leads them to anti-Zionism. I disagree with them, but it is wrong to call them "unJews," let alone antisemites. This debate, of who is inside or outside the tent, is an internal one for the Jewish community to resolve, if it can, but the IHRA proponents are essentially asking Congress to weigh in, raising Church-State implications.*

- *It would be helpful if instead of classifying expressions as hateful, Congress underscored the distinction that too many universities are missing. Views seen as hateful should indeed be countered, but not suppressed by law. No student, whether they are in a protected class or not, should be bullied, harassed, intimidated, targeted with true threats, or discriminated against. But students, in order to become critical thinkers, should not be protected from hearing things with which they disagree, whether it be conservative speakers or ones from the far left.*
- *There are many things that a campus can and should do about antisemitism, including training, students surveys, and improved and expanded teaching (and research about) antisemitism, hate, binary thinking, and how to have difficult discussions. There are also intriguing and promising ideas about using AI in this effort.*
- *Congress should support efforts that will actually help in the battle against antisemitism. Removing the IHRA definition from the Countering Antisemitism Act, and funding the action-oriented National Strategy would help. Likewise Congress should support new initiatives to counter hate and hate crime, including those designed to help victims, and also efforts to bring Americans – on and off campus – together despite difficult disagreements. I discuss a couple of these in my full testimony.*

When I started working at AJC in 1989, three issues were of particular concern. One was antisemitism on campus. One was hate crimes, and the need for better data and reporting. And one was the antisemitic impact of the United Nation's 1975 General Assembly Resolution 3379 equating Zionism with racism.

In 1990, with the help of a group of college presidents and deans and faculty, I wrote a manual for handling "bigotry on campus,"[5] and trained about 200 other college presidents on how to do it. The main takeaways were: 1) it won't work to make separate and special rules for Jews. For the campus to tackle antisemitism well, the focus should be on what the campus must be: a place that cherishes academic freedom and protects expression of ideas, but rejects intimidation, bullying, harassment, true threats and discrimination. 2) Speech codes are not only constitutionally suspect, but bad policy; they provide the blinding illusion that hate is being countered, and give the university an excuse not to do things that could actually make a difference, including surveys, new curriculum, and training of staff.[6]

Regarding hate crimes, I was one of AJC's lawyers on an amicus brief submitted with the NAACP Legal Defense and Education Fund to the U.S. Supreme Court in the landmark Wisconsin v. Mitchell case.[7] I also was the lead drafter[8] of what was then known as the EUMC Working

[5] https://kennethsstern.com/wp-content/uploads/2018/09/BigotryOnCampus.pdf
[6] Hate speech codes – like some of the focus these days on "trigger warnings," "safe spaces" and "microaggressions" – tell students that there are things that must not be said, suggesting that group think is a value, and thus undercutting one of the reasons for a college education – creating critical thinkers, people able to examine and re-examine their views, in an environment where mistakes, even vile ones, are answered but not hunted for discipline or worse.
[7] https://kennethsstern.com/wp-content/uploads/2018/09/Wisconsin-V.-Mitchell.CV01.pdf
[8] https://blogs.timesofisrael.com/we-disagree-about-the-working-definition-thats-ok-heres-whats-not/

Definition of Antisemitism, and while its main purpose was to create a guide for data collection on the temperature of antisemitism in Europe,[9] I hoped that the clear language about antisemitic crimes – drawn from the wisdom of the Wisconsin v. Mitchell – would help European officials understand that selecting someone to be a victim of a crime because of who they were (thus intent) was key, rather than parsing if the perpetrator actually hated the victim, thus avoiding debates about things such as whether someone who kidnaps a Jew for ransom is antisemitic because he believed that Jews are wealthy, an arguably positive stereotype.[10]

On the Zionism = Racism matter, I was honored to be the AJC staff person helping organize an event at the US Mission to the United Nations in November of 1990, hosted by Ambassador Thomas Pickering, and featuring Senator Daniel Patrick Moynihan. It was a beginning of the successful effort to repeal that pernicious resolution which led to outrages such as a Jewish student group not being allowed in a UK university because of the simple equation that as a Jew you were a Zionist and as a Zionist a racist, and there were rules against racist groups.[11]

One of the lessons learned from that fight was that external politics can influence how we think about hate. UN General Assembly Resolution 3379 was passed in 1975 for political reasons having to do with the Cold War, and its demise was directly tied to the collapse of the Iron Curtain.

Another lesson was the danger of enshrining binary definitions of complex matters into simple legal equations. That's why I wrote to the Secretary General of the United Nations last year, noting the damage of 3379, and warning that adoption of the IHRA definition, which is being used to promote the mirror-image binary, that anti-Zionism is antisemitism, would also be disastrous. Antizionism is sometimes clearly antisemitic, it is sometimes clearly not antisemitic, and it is sometimes simply unclear.[12]

---

[9] The reason the definition is primarily a list of examples is that its main purpose was to guide data collectors. I also advocated using it for US diplomatic purposes, so that when the leader of Iran, for example, talked about wiping Israel off the map, a text about antisemitism could be pointed to.

[10] I continue to work on hate crimes as director of the Bard Center for the Study of Hate, and although it's too early to tell, I hope that work we're doing with the Boston University Questrom School of Business and the Eradicate Hate Global Summit comes to fruition. We're trying to create an AI-aided online clearinghouse on hate to help victims get the support they need – from information about how to report a hate crime to emotional and other resources. We've also co-published, with the Montana Human Rights Network and Western States Center, a Community Guide for Opposing Hate, with detailed information for community groups, including various scenarios communities face, and how to oppose hate without sacrificing free speech. We published a landmark study on the economic costs of hate crimes, written by economist Michael Martell. We also believe in the need for better hate crime reporting and data.

[11] See Dave Rich, Zionists and Anti-Zionists: Political Protest and Student Activism in Britain 1968-1986, PhD Thesis, Birkbeck College, University of London, 2015 (in particular chapter 5) and Dave Rich, The Left's Jewish Problem: Jeremy Corbyn, Israel and Antisemitism, London, Biteback Publishing, 2018 (in particular chapter 4).

[12] See https://www.inss.org.il/publication/anti-zionism-antisemitism-and-the-fallacy-of-bright-lines/

HATE STUDIES, AND ANTISEMITISM AS A FORM OF HATE

What we saw on campuses from the day of the brutal Hamas attack on Israel last October through the end of the spring 2024 semester was more intense, but not different in origin, from the dysfunctional dynamics I chronicled four years ago in my book *The Conflict over The Conflict: The Israel/Palestine Campus Debate.*[13] We're seeing some of these dynamics playing out beyond the campus today too, and frankly on other issues.

The first chapter in my book is called "Thinking about Thinking." It summarizes what the growing field of hate studies – and its component disciplines, including brain science and social psychology – tells us about what happens to human beings when we get into our "us" versus "them" buckets, especially when the matter at hand is one linked to identity and relates to questions of social justice or injustice, and even more so when the "them" is perceived as a threat. In these moments we crave simplicity and certainty, and are allergic to complexity. We default to tribal spaces and binary ways of thinking (good vs bad). As social psychologist Jonathan Haidt has written, when we see things in such moral terms, morality both "blinds" and "binds." Symbols – things such as flags, slogans, or even ideas (like IHRA) – also become of outsized importance.

Those who hate – whether they hate people of different races, religion, countries, gender identities or politics – tend to see the world this way, frequently justifying the dehumanization or demonization of the "other" as noble self-defense. But because it's a human characteristic, people who believe they are fighting hate are not immune from the seduction of simplistic, certain, moralistic, symbol-seeking and binary thinking. IHRA adoption is such a symbol, a shortcut to say who is fighting antisemitism, and who isn't. It's an attractive and simple binary, and people are passionate about it. But in this craving for simplicity we inevitably ignore how antisemitism actually works in our world.

At its most dangerous antisemitism is two things – concepts that all the definitions (IHRA,[14] The Jerusalem Declaration on Antisemitism [JDA][15] and Nexus[16]) have in common, although stated with different words: 1) a belief that Jews are conspiring to harm humanity and, 2) this conspiracy explains what goes wrong with the world.

I agree with those who say antisemitism is more than just about Jews, that it's a threat to democracy, that it's a miner's canary for the health of societies. But the flip side, frequently ignored, is also true – that hatred of non-Jews can be the engine for antisemitism, something that becomes invisible when we focus only on parsing what is said about Jews, let alone Israel.

---

[13] https://utorontopress.com/9781487507367/the-conflict-over-the-conflict/
[14] https://holocaustremembrance.com/resources/working-definition-antisemitism
[15] https://jerusalemdeclaration.org/
[16] https://nexusproject.us/the-nexus-document/. The Bard Center for the Study of Hate provides an academic home for Nexus, although BCSH does not endorse any definition of antisemitism.

Think about the murder of Jews at the Tree of Life synagogue in Pittsburgh in 2018. The shooter picked the synagogue supposedly because it had participated in a national HIAS program supporting immigrants. The backdrop to that shooting was the fevered frenzy that some politicians created over an "invasion" across our southern border.

The Tree of Life massacre was clearly an incident of antisemitism, regardless of definitions.

A few months later another shooter decided to go after these "invaders" directly at a Walmart in El Paso, murdering Mexicans and Mexican-Americans. No one would classify that hate crime as antisemitic. Yet the two shooters had almost identical ideologies; they just picked different targets on different days.[17]

Antisemitism, as I said, is best understood as conspiracy theory about Jews. When we think about antisemitism as a matter of expressions and focus on which side of a bright line (inculpate or exonerate) we put a sentiment on, we miss what actually drives people into the simple and self-satisfying world of antisemitic conspiratorial thinking.

Think back to Charlottesville. The rally was ostensibly about stopping the removal of a Confederate statue. Why the chant "Jews will not replace us?" If you're a white supremacist and fear that those whom you define as inferior are poised to become a majority of the population this century, how do you understand why you are losing to people who you see as inferior? Someone must be putting their finger on the scales to make this happen. Antisemitism is the tried and untrue, go-to explanation for those seeking conspiratorial and simple explanations for what goes wrong in the world.[18]

And that's one of my deepest concerns about the use of IHRA today as the answer for antisemitism. Beyond the legal and the free speech concerns, and the inevitable backfiring of creating free speech martyrs, using IHRA as the way to approach antisemitism actually restricts our ability to be effective in confronting antisemitism. We need a wider lens, not a narrow one. When I speak to synagogues and people ask me what my main concern about antisemitism is today, I tell them it's leaders vilifying anyone among us as a dangerous "them," encouraging people to feel self-righteous as they dehumanize or demonize this "other." We see this tendency in our politics too – defining the other side as not only wrong, but evil. But at its most dangerous the vilification of people because of who they are, whether they be Muslim or immigrants or transgender, is not only bigoted toward those human beings, it's also a potential conveyer belt to antisemitism.

---

[17] The mass murderer who targeted Black people at the Topps store in Buffalo also had essentially the same ideology – see https://www.nbcnews.com/think/opinion/buffalo-suspects-hateful-propaganda-connects-black-americans-jews-rcna29390

[18] Eric Ward has written thoughtfully about how antisemitism animates white supremacy: https://politicalresearch.org/2017/06/29/skin-in-the-game-how-antisemitism-animates-white-nationalism

THE INTERNATIONAL HOLOCAUST REMEMBRANCE ALLIANCE WORKING DEFINITION OF ANTISEMITISM (IHRA)

Like we've seen since October 7, back in the early 2000s, after the collapse of the peace process and the beginning of the Second Intifada, there was an uptick in hate crimes against Jews, particularly in Europe. The European Monitoring Centre on Racism and Xenophobia issued a report in 2004 on antisemitism, but noted it didn't have a common definition for data collectors in various European states to know what to include and exclude. It used a temporary template about stereotypes about Jews, which seemed, oddly, to exclude some attacks on Jews when the attacker was upset about Israel. The EUMC's leader, Beate Winkler, was invited to speak at the AJC's annual meeting in May 2004. A few weeks beforehand Israel assassinated a Hamas leader, and a Montreal Jewish Day school was firebombed in response. I took the opportunity to press Winkler about this publicly at the meeting – that the firebombing would strangely not be considered an act of antisemitism under their approach. She agreed to work with us to create a definition that would be crafted around examples, to guide data collectors. My then AJC colleague Rabbi Andrew Baker led the political negotiating. I was the lead drafter, working with others including Professor Yehuda Bauer, to create the language.[19]

The working definition had examples related to Israel because there was a correlation between such expressions and the level of antisemitism. But it was never intended to target or chill speech on a college campus.[20] Indeed, as I noted above, the idea of speech codes on campus was strongly rejected as part of the AJC project about how to deal with bigotry on campus. But that's the first abuse I saw of the definition.

In 2010 the Department of Education sent a "dear colleague" letter, making it clear that Jews and Sikhs and Muslims, as ethnicities, were entitled to protection from a pervasively hostile campus environment under Title VI of the Civil Rights Act of 1964. I supported that clarification, and was the complainant for Jewish high school students in upstate New York who had been victimized by antisemitic bullying, including with a "Kick a Jew Day."[21]

In 2010 I spoke out at a conference, and again in 2011 in an opinion piece that I co-authored on the AAUP blog, about how the definition was being abused to target academic freedom and political speech, how it was being weaponized. Groups were filing Title VI cases that not only

---

[19] The American Jewish Committee touted my role as lead drafter at the time. But many years later, as I continued to speak out against the application of the definition on campus, an effort was begun to say that I wasn't lead drafter. I'd have the same analysis about the dangers of applying IHRA in any event, but I debunked the revisionist efforts about my role here: https://blogs.timesofisrael.com/we-disagree-about-the-working-definition-thats-ok-heres-whats-not/. (Also the New Yorker has a vigorous fact-checking department, interviewed AJC staff, and described me accurately as the "lead drafter" of the definition – https://www.newyorker.com/news/persons-of-interest/the-problem-with-defining-antisemitism.)

[20] I am incorporating my 2017 testimony before the House Committee on the Judiciary by reference https://docs.house.gov/meetings/JU/JU00/20171107/106610/HHRG-115-JU00-Wstate-SternK-20171107.pdf.

[21] https://www2.ed.gov/about/offices/list/ocr/docs/investigations/more/02111270-a.pdf. See also June 1, 2012 AJC press release "AJC Praises U.S. Education Department Decision on Anti-Semitic Bullying," https://ajcarchives.org/Portal/Default/en-US/RecordView/Index/6591

pointed to acts, like spitting and such, which were appropriate for inclusion, but also pure speech about Israel – speech I might not agree with, but still pure speech.

As I testified in 2017:

> These cases complained, among other things, about educational programs about the occupation of the West Bank, films that promoted the Boycott/Divestment and Sanctions movement against Israel, classroom materials challenged as one-sided and anti-Israel, and a program entitled "Arabs and the Holocaust," which asserted that Israel's creation was a "tragedy" for Palestinian Arabs.[22]

If you look back at the material used to support the Antisemitism Awareness Act (AAA) when it was passed by the Senate in 2016, proponents cited examples about how antisemitism was being treated differently than other forms of perceived campus bigotry. One case cited was the suspension of a Marquette professor for an alleged anti-gay blog post, the other the stopping of the showing of the film American Sniper, because it was alleged to be anti-Muslim.[23] Obviously, both instances were ones where free speech and/or academic freedom were violated. The AAA proponents effectively said violate those principles for us too, a message I found and still find deeply troubling. If one is going to have a principle about speech, it has to apply to speech one doesn't like too. That doesn't mean ignore the speech (which can be countered, exposed and/or organized against), but rather it means not to use laws or interventions like a heckler's veto to chill or stop it.

Sadly, the working definition (as of 2016 called the IHRA definition) has been used for precisely this anti-speech purpose in Title VI complaints. And even when the Title VI cases lost, Kenneth Marcus of the Brandeis Center was honest in his 2013 appraisal. He argued that the cases, even when unsuccessful, were making it harder for those whom he called "Israel haters" to organize, and that the cases also put administrators on notice, fearing bad publicity from suits.[24]

The agenda to suppress political speech is hard to miss. In the United Kingdom the definition was adopted and applied to universities. In 2017 an "Israel Apartheid Week" event was banned as violative of the definition. The US-based Simon Wiesenthal Center issued a statement that not only praised the cancellation, but said:

> The University of Central Lancashire's decision, which is based on the recently adopted Working Definition of Antisemitism of the International Holocaust Remembrance Alliance's (IHRA), offers firm evidence that this internationally accepted definition can play a vital role in the fight against antisemitism. . . . We strongly urge other countries to

[22] For an illustration of the central place complaints about political speech and academic programs deemed "unbalanced" played in these early cases, see June 25, 2009 letter of Tammi Rossman-Benjamin to U.S. Department of Education at http://www.citywatchla.com/images/stories/misc/cw9-100benjamin-complaint.pdf

[23] http://kennethsstern.com/wp-content/uploads/2024/07/Anti-Semitism-Act-Nov-2016-w-supporting-material.pdf

[24] https://www.jpost.com/opinion/op-ed-contributors/standing-up-for-jewish-students-325648

> follow the lead shown by the United Kingdom in adopting the IHRA definition and applying this valuable tool in the struggle against anti-Semitism.[25]

And it has been used this way in our country too.

Proponents of AAA argue that you have to define antisemitism in order to tackle it.[26] This is nonsense. Organizations like ADL and AJC have worked since the early 1900s without an official definition of antisemitism. I don't recall seeing it cited when Kanye West talked about going "Def Con 3" against Jews, or at Charlottesville or other contexts. It's, however, energetically used to target speech regarding Israel. It has been deployed as a weapon to try and cancel events, both before and after the 2019 Trump Executive Order adopting the definition, including at the University of Massachusetts at Amherst,[27] Indiana University,[28] Barnard,[29] University of California at Berkeley,[30] and elsewhere.

Just a few weeks ago, in early August, the Chancellor of the Board of Governors of the State University System of Florida sent an email requiring review of courses for "Antisemitism or Anti-Israel bias." The universities were instructed to "conduct a keyword search on course descriptions and course syllabi. Any course that contains the following keywords: Israel, Israeli, Palestine, Palestinian, Middle East, Zionism, Zionist, Judaism, Jewish, or Jews will be flagged for review."[31] The IHRA definition was adopted by law in Florida this past June.[32] As the Foundation for Individual Rights and Expression (FIRE)'s Lead Counsel Tyler Coward said, "Singling out certain key words and phrases for targeted review will certainly chill speech on these important issues, and, if institutions take action against professors for including certain materials, that violates long-standing academic freedom guarantees."[33]

---

[25] https://www.wiesenthal.com/about/news/wiesenthal-center-other.html

[26] They also argue that antisemitism changes over time. The core of antisemitism doesn't change much; the manifestations might. This is actually an argument AGAINST codifying a definition into law; it can soon be out of date, exculpate new examples that might otherwise apply, and invite continued debate over what should be included or removed.

[27] https://static1.squarespace.com/static/548748b1e4b083fc03ebf70e/t/5cf186b590a5d40001fdccb7/1559332557153/Complaint+against+UMass+Amherst.pdf and https://twitter.com/Rick_Sobey/status/1124024039079579650

[28] https://static1.squarespace.com/static/548748b1e4b083fc03ebf70e/t/5c17d4e3c2241bba3e8c794f/1545065700188/Email+from+IIPAC.png

[29] https://www.columbiaspectator.com/news/2024/02/07/jewish-students-and-faculty-hold-israelism-screening-event-following-initial-cancellation/ Allegedly the professor was initially told not to show the film Israelism (profiling a Jewish co-founder of IfNotNow) because the film was mentioned in a Title VI complaint against Harvard.
https://www.kasowitz.com/media/unxcnvpo/harvard-complaint.pdf.

[30] https://jewishjournal.com/news/united-states/241882/pro-israel-students-file-complaint-department-education-sjp-vigil-berkeley/

[31] https://www.chronicle.com/article/floridas-public-universities-are-told-to-review-courses-for-antisemitism-or-anti-israeli-bias?emci=76aeb39f-b755-ef11-991a-6045bddbfc4b&emdi=2ae91e13-c755-ef11-991a-6045bddbfc4b&ceid=1659071

[32] https://floridapolitics.com/archives/681211-gov-desantis-oks-adding-definition-of-antisemitism-to-florida-law/

[33] https://www.tallahassee.com/story/news/politics/2024/08/07/florida-orders-review-for-antisemitism-anti-israeli-bias-at-colleges/74701697007/

Around 2020 I became alarmed when I saw IHRA being used to suppress speech beyond the campus too. In the late days of the Trump administration, Secretary of State Pompeo floated the idea of using the definition to declare groups like Amnesty International and Human Rights Watch antisemitic, thus threatening their funding.[34] More recently an EU Handbook for the use of the definition appeared on the IHRA website as a resource.[35] The intent again was crystal clear. Beyond affecting the campus,[36] the goal is that IHRA will be used to "support control and supervision mechanisms and to ensure that funding does not go to entities and projects that promote antisemitism."[37] Likewise a recent letter House Ways and Means Committee Chair Jason Smith (and colleagues) wrote to the director of the Internal Revenue Service asked, inter alia, "Does the IRS have a definition of antisemitism in place within the agency that it considers when evaluating the claimed exempt purpose of a tax-exempt organization?"[38] And in New Jersey, legislation was introduced to adopt IHRA – including of course the examples – and to use it as a filter for funding DEI programs as well.[39]

I agree with the proponents of these efforts that I too don't like some of the speech they are targeting. But it is speech, matters of opinion, and I'm much more concerned about the antidemocratic use of law to chill or suppress disliked speech, as opposed to using speech to answer speech. As Justice Louis Brandeis (the first Jewish justice and a Zionist) wisely wrote almost 100 years ago, "If there be time to expose through discussion the falsehood and fallacies, to avert the evil by the processes of education, the remedy to be applied is more speech, not enforced silence."[40]

I think back to the McCarthy period. People opposed communism for understandable reasons. But look at the harm of loyalty oaths, threats to funding and livelihood and political organizing, that resulted from the use of law to suppress unfavored speech.[41] Again, there's a fundamental

---

[34] https://www.timesofisrael.com/pompeo-plan-to-declare-rights-groups-anti-semitic-over-israel-stance-shelved/
[35] https://holocaustremembrance.com/news/eu-handbook-ihra-definition-antisemitism
[36] https://holocaustremembrance.com/news/eu-handbook-ihra-definition-antisemitism p. 27
[37]: https://holocaustremembrance.com/news/eu-handbook-ihra-definition-antisemitism p. 30
[38] https://gop-waysandmeans.house.gov/wp-content/uploads/2024/04/4-24-2024-Werfel-CCP-Singham-Letter.pdf
[39] https://pub.njleg.state.nj.us/Bills/2024/S3000/2937_S1.PDF.
[40] https://www.thefire.org/supreme-court/whitney-v-california?gad_source=1&gclid=CjwKCAjwp4m0BhBAEiwAsdc4aCmOay6NOpAwAzkHRUm_n8qNkfzMNOGQvIfnNdYNAsV6tfmY80fnRhoC2f8QAvD_BwE. And there is evidence that counterspeech can be effective: https://dangerousspeech.org/counterspeech-a-literature-review/
[41] How different is the key word search ordered for courses in Florida from this questioning of Paul Sweezy in Sweezy vs. New Hampshire (https://supreme.justia.com/cases/federal/us/354/234/)?:

"What was the subject of your lecture?"

"Didn't you tell the class at the University of New Hampshire on Monday, March 22, 1954, that Socialism was inevitable in this country?"

"Did you advocate Marxism at that time?"

difference between targeting conspiracies to commit violence, espionage, or other crimes, on the one hand, and mere belief, teaching and association, on the other.

Yes, we're in a difficult moment (and of course these difficult moments are the ones where free speech notions are both more challenging and more important to apply). I'm aware of the binary of some pro-Palestinian organizing that says you HAVE to have a pro-Palestinian position, or you should be vilified. In this "us" vs "them" morally righteous world, they may insist that an organization like a museum, which may have nothing to do with this conflict, take a pro-Palestinian position. In San Francisco, such dogmatism helped force the director of a museum to leave.[42] There have been threats against (and vandalism of the homes of) some directors of the Brooklyn Museum.[43] Dogmatic insistence on a pro-Palestinian line has also seemingly undercut the important work of Pen America.[44] I'm reasonably certain that many of the proponents of the view that there is only one morally justifiable way to look at the conflict (that being pro-Palestinian) are sincere in their beliefs. But I also find their demand that everyone else agree with them, or be excluded, a form of McCarthyism too, defining people with different points of view as not only being wrong, but essentially evil and justifiably outside the social contract.

But when I speak to people in the art world in Germany, including Jews, they see suppression – McCarthyism – coming in the other direction. And this is what worries me about the push to enshrine IHRA in law, either as the centerpiece of legislation, such as AAA, or as a component of other legislation, like the Combating Antisemitism Act.

"Did you express the opinion, or did you make the statement at that time that Socialism was inevitable in America?"

"Did you in this last lecture on March 22 or in any of the former lectures espouse the theory of dialectical materialism?"

As Justice Felix Frankfurter (who was also Jewish and a Zionist) wrote in his concurring opinion:

Insights into the mysteries of nature are born of hypothesis and speculation. The more so is this true in the pursuit of understanding in the groping endeavors of what are called the social sciences, the concern of which is man and society. The problems that are the respective preoccupations of anthropology, economics, law, psychology, sociology and related areas of scholarship are merely departmentalized dealing, by way of manageable division of analysis, with interpenetrating aspects of holistic perplexities.

For society's good – if understanding be an essential need of society – inquiries into these problems, speculations about them, stimulation in others of reflection upon them, must be left as unfettered as possible. Political power must abstain from intrusion into this activity of freedom, pursued in the interest of wise government and the people's wellbeing, except for reasons that are exigent and obviously compelling.

[42] https://www.jta.org/2024/03/07/culture/jewish-head-of-major-san-francisco-arts-center-resigns-over-anti-israel-artist-protests

[43] https://forward.com/forward-newsletters/antisemitism-notebook/624541/brooklyn-museum-antisemitic-vandalism-israel-gaza/

[44] https://www.nytimes.com/2024/05/15/arts/pen-free-expression-gaza.html In full disclosure, I am a member of PEN America.

Once the door is opened to using a tool like IHRA via law to suppress speech, partisans stretch and bend and use it in any way they can to achieve their political goals, knowing even if they don't win a particular case, the threat is enough to chill speech through law. Germany is an object lesson. Yes, Germany has different free speech standards than the United States. But as some proponents advocate here, the definition has been used to cancel programs and threaten funding, shaking the arts world in much the same way it has been shaken here, but instead of Pro-Palestinian advocates insisting on a political line, it is the state insisting on a pro-Israel line.[45]

This mirror image suppression is further evidence that what we're talking about with IHRA is quashing and chilling political speech through law. It reminds me of laws about expressions relating to the Armenian genocide. If you're in Turkey, you are in trouble if you say there was a genocide, and in Armenia you're in trouble if you question it.

Do we really want to go down the road where Congress essentially says you have to have a particular view about Zionism?

One of the lessons I learned from decades working on issues of hatred is that it's a useful exercise to change a scenario and see if the same rules apply. Imagine we created a definition of racism, primarily for use in taking the temperature of racism over time and place. One could argue that opposition to affirmative action, or opposition to Black Lives Matter, or opposition to the removal of Confederate statues might be a good data point to consider. But would you consider codifying those examples into law as defining characteristics of racism, endorsed by the US government, knowing that people would take that tool and hunt speech to declare it racist, even though these are political examples about which reasonable people, despite deep feelings, may disagree?

If you wouldn't do this about race, you shouldn't do it about antisemitism.

To further underscore this point, consider this thought experiment by noted legal scholar Eugene Volokh: a new administration adopts a parallel definition of anti-Palestinian bigotry, and among the examples:

> Denying the Palestinian people their right to self-determination, e.g., by claiming that any Palestinian state would lead to terrorist attacks on Israel.
>
> Applying double standards by requiring of Palestinians a behavior not expected or demanded of any other group that is waging an insurrection against an oppressive government.

[45] https://www.nytimes.com/2024/04/06/arts/design/berlin-israel-gaza-art-scene.html

> Drawing comparisons of contemporary Palestinian policy and attitudes towards Jews to those of the Nazis.[46]

He then writes:

> Say that you are a professor who rejected a student's application to a graduate program. The student claims that the rejection stemmed from his or his parents' having been born in Gaza. . . . You argue that, no, you rejected him because you thought his past scholarly work wasn't strong enough. He responds that, "Denying the Palestinian people their right to self-determination" is an example that "the Department of Education shall take into consideration … as part of the Department's assessment … " You had publicly argued against a separate Palestinian state. Therefore, your speech is evidence that you were biased against him based on his national origin.
>
> I think such an argument would be quite wrong, and dangerous to academic freedom. If the argument were accepted, it would sharply chill advocacy of various views on the Israeli-Palestinian conflict, and the government has no business doing that. And of course the same is true of HR6090. . . .
>
> Even in the absence of HR6090, if a professor publicly says "All Jews are scum and I hate working with them" or "all Palestinians are scum and I hate working with them," that could be evidence that a particular action by a professor with respect to a student was deliberate discrimination based on ethnicity. The same would be true if a student is being accused of punching a classmate or vandalizing the classmate's property based on the classmate's being Jewish or Palestinian.[47]

ANTISEMITISM – POLITICS ON THE LEFT AND RIGHT

Another problem is that people, on both the right and the left, tend to downplay antisemitism when it comes from their side of the argument about Israel, and rush to condemn even ambiguous statements from people on the other side of the debate. We shouldn't let politics filter our concerns about antisemitism. Yet we've seen people who have promoted antisemitism in their political campaigns, like Hungary's leader Victor Orban, be praised (including by Israeli Prime Minister Benjamin Netanyahu), and their antisemitism overlooked, because they are perceived to be friends of Israel; and we've seen antisemitic tropes from some on the left excused by people on the left too.

---

[46] In my 2017 testimony I warned of a "Pandora's box" opening, including definitions of anti-Palestinian racism (see p. 9). This "equal and opposite reaction" has been recently noted, and lamented: https://jewishjournal.com/commentary/opinion/373575/the-causative-relationship-between-ihra-and-anti-palestinian-racism/

[47] https://reason.com/volokh/2024/05/03/antisemitism-awareness-act-of-2023-which-just-passed-the-house-could-suppress-first-amendment-protected-criticism-of-israel/

Antisemitism should be called out regardless of the view on Israel, or the politics involved. And it should only be a term used in the clearest cases. The incentive to use IHRA as the key antisemitism tool leads to overusing that word. "Antisemitism," let alone "antisemite," should be an accusation that stings. When so much becomes "antisemitic," the word loses its meaning. In my years at AJC I jealously guarded it, employing it only in the clearest cases, such as against neo-Nazi and former KKK leader David Duke and Nation of Islam leader Louis Farrakan.

Another example of how the term has become politicized is the December 5 House hearing into campus antisemitism. Clearly antisemitism on campus is an appropriate issue for Congress to consider. And there were valid reasons to criticize how some campuses responded after October 7.

But I was deeply troubled by the exchange between Representative Elise Stefanik and the three college presidents. Certainly the presidents were tone deaf to the moment, and the need to underscore that calls for the genocide against anyone were to be deplored and condemned. But that wasn't what they were asked.

Stefanik asked about the chant "From the River to the Sea," insisting it was a call for genocide against Jews, and isn't the call for genocide against the various universities codes of conduct?

First, this was a bait and switch. I find the chant "from the river to the sea" to be discomforting, especially since I know how groups like Hamas mean it – precisely as Stefanik alleged. But does this mean that 18 year-olds, who may not know even which river and which sea,[48] mean it this way? There was a later survey that showed 66 percent of Jewish college students heard it this way, but only 14 percent of Muslim students meant it this way.[49]

To complicate things further, the Likud party platform in 1977 said "between the Sea and the Jordan there will only be Israeli sovereignty."[50] I suspect if a Palestinian had been part of that House hearing, they would have pointed out that while one can choose to discuss a chant, their focus would be on the fact of Jewish control over the land between the river and the sea.

Representative Stefanik's assertion that calls for genocide – pure calls, as opposed to threats, bullying, harassment, intimidation; in other words just expression of an ugly opinion – should get you in trouble with the disciplinary process of a college, made me think back to the antisemite David Duke. When he was an elected state representative in Louisiana and running for statewide office, I prepared a backgrounder about him for AJC. I wrote this about his university days:

[48] https://www.youtube.com/shorts/iEQB1GdwWkg
[49] https://d3qi0qp55mx5f5.cloudfront.net/cpost/i/docs/CPOST_Understanding_Campus_Fears_-_Report.pdf?mtime=1709832445
[50] https://www.jewishvirtuallibrary.org/original-party-platform-of-the-likud-party

> After enrolling at Louisiana State University (LSU) in 1968, Duke was well known as a Nazi on campus. . . . In the fall of 1969, he advocated, on a local radio show, that blacks should be returned to Africa and Jews exterminated. According to the LSU newspaper, *Reveille*, Duke handed out Nazi papers on campus, and said, "I am a National Socialist. You can call me a Nazi if you want." . . . On July 23, 1970, Duke paraded around the Tulane campus in a Nazi uniform with a swastika armband to protest a speech by William Kunstler.[51]

Duke was vilified for his views. I'm not aware of any evidence that he was disciplined, nor should he have been. I suspect he may well have wanted to be disciplined, as this would have allowed him to claim the status of martyr, and changed the subject to his right to speech as opposed to the content of his hate.[52]

To answer Stephanik's question, advocating for genocide against anyone of course should be robustly condemned; but the mere expression of such ideas (whether intended as such or heard as such) should be countered, not a matter for discipline. If we start defining what opinions – as opposed to instances of actual harassment and intimidation – are appropriate for discipline, not only is the First Amendment violated, we'll open the door for other opinions to be circumscribed too, undermining the academic enterprise and sacrificing academic freedom in the process.

CHURCH STATE AND RELIGIOUS FREEDOM CONCERNS

When the Antisemitism Awareness Act passed the House of Representatives, disagreement came from members seen as aligned with pro-Palestinian views as well as some pro-Israel democrats, like Congressman Jerrold Nadler, who were worried about the constitutional and policy implications of enshrining this definition into law. But also opposed was Representative Marjorie Taylor Greene, on religious freedom grounds.[53]

Proponents and opponents of using the definition agree that the examples are the core of and the reason for the definition. One of the "examples of the ways in which antisemitism manifests itself with regard to the State of Israel taking into account the overall context could include:" lists

> …. Using the symbols and images associated with classic antisemitism (e.g. claims of Jews killing Jesus or blood libel) to characterize Israel or Israelis.[54]

---

[51] https://kennethsstern.com/wp-content/uploads/2018/12/david-duke.pdf

[52] Former ACLU president Nadine Strossen and I made a similar argument about the banning of Students for Justice in Palestine post October 7 – see https://sapirjournal.org/war-in-israel/2023/11/sjp-still-deserves-freedom-of-speech/

[53] https://www.timesofisrael.com/taylor-greene-antisemitism-bill-rejects-gospel-that-jews-handed-jesus-to-executioners/

[54] https://holocaustremembrance.com/resources/working-definition-antisemitism

Greene posted on X (formerly Twitter)

> Antisemitism is wrong, but I will not be voting for the Antisemitism Awareness Act of 2023 (H.R. 6090) today that could convict Christians of antisemitism for believing the Gospel that says Jesus was handed over to Herod to be crucified by the Jews. . . Read the bill text and contemporary examples of antisemitism like #9.[55]

The bill, of course, would not convict Christians of anything, but would enshrine the idea that those who believe the Gospel are in effect declared by Congress to be antisemitic.

Senator Roger Marshall, who also had concerns about this aspect of the definition, indicated that he'd support the legislation but would offer an amendment to strike this one reference.[56]

I can't imagine a clearer admission that the legislation is about speech that one doesn't like.

The legislation doesn't only impact religious beliefs of some Christians, but also those of some Jews. Congress is being asked in effect to weigh in on one side of a religious debate inside the Jewish community.

When President Trump signed the Executive Order saying IHRA should be used in Title VI cases, special advisor Jared Kushner wrote an op-ed in the New York Times, noting that the "definition makes clear what our administration has stated publicly and on the record: Anti-Zionism is anti-Semitism."[57]

As I noted above, not all antizionism is antisemitism, but this isn't only a matter of political disagreement, it's also a religious one, about whether Zionism is an essential part of Jewish identity.

Before modern Israel was born in 1948, there was a significant debate inside the Jewish community about Zionism, with many Jews opposed. Of course, we're now three-quarters of a century into the existence of the state, and many of the reasons why some Jews were anti-Zionist have become, if not moot, literally of another age.

But Satmar Jews are anti-Zionist,[58] believing there should be no Jewish state until the Messiah comes. Most Jews would see the Satmars as having a theological reason, as opposed to an antisemitic one, for being anti-Zionist. They are "inside the tent."

---

[55] https://www.timesofisrael.com/taylor-greene-antisemitism-bill-rejects-gospel-that-jews-handed-jesus-to-executioners/
[56] https://www.yahoo.com/news/ks-sen-roger-marshall-says-213130164.html?fr=sycsrp_catchall
[57] https://www.nytimes.com/2019/12/11/opinion/jared-kushner-trump-anti-semitism.html
[58] https://www.timesofisrael.com/head-of-satmar-hasidic-sect-castigates-followers-for-admiring-israel-idf/

But what about Jews, many of them younger, whose religious beliefs also lead them to anti-Zionism? Many of the Jews involved in groups like Students for Justice in Palestine, IfNotNow and Jewish Voice for Peace are not, as some have referred to them, "unJews."[59]

I've spoken to many such Jews. They are frequently children or grandchildren of people who were active (as laypeople or staff) in mainstream Jewish organizations. Many had strong Jewish educations, some going to Jewish day school. And a story I heard, repeatedly over the last years, goes something like this: *I get to college, and I hear there's something called The Occupation. I was never told about this growing up; all I learned was the need to love Israel. I feel betrayed. I feel lied to. And the existence of a state that prioritizes Jews over non-Jews can't be reconciled with what Judaism teaches me about how to repair the world, and how to treat the stranger.*

There's a huge debate inside the Jewish community to define what it means to be a Jew today. For most Jews, including me, a connection to Israel and to Zionism is an important aspect of our identity. But there's an increasing number of Jews whose Judaism leads them to anti-Zionism.[60]

Just as it would be inappropriate, as Senator Marshall's concern reflects, to label deeply held Christian religious beliefs Congressionally-defined antisemitism, so too would it be to declare deeply held Jewish religious ones antisemitic.[61]

THE CHALLENGE OF FOCUSING ONLY ON ANTISEMITISM

Over the decades I have called out instances, here and abroad, when condemnations of antisemitism become homogenized, by efforts to hide it behind a generalized racism, or to insist on coupling it with condemnations of anti-Muslim hatred, when that form of bigotry wasn't relevant to the immediate incident.

But post-October 7, I'm concerned about the focus on antisemitism on campus alone, when we're also seeing the rise in anti-Muslim, anti-Arab and anti-Palestinian hatred there too.

I don't believe in hierarchies of hate, but I do believe one should look at multiple hates that are impacting an institution, and the fact that the House has had multiple hearings on antisemitism,

---

[59] https://www.columbiaspectator.com/opinion/2024/04/16/on-the-un-jews-of-columbia/

[60] Anti-Zionist Jewish students have also been targets of bullying and harassment – see for example p. 16 of the recently released Columbia Task Force on Antisemitism Report #2 - https://president.columbia.edu/sites/default/files/content/Announcements/Report-2-Task-Force-on-Antisemitism.pdf

[61] As mentioned above, the use of the definition in Germany has been problematic in the art world, but also for some Jews there, who are being labeled antisemitic. https://www.dw.com/en/when-germany-targets-jewish-artists-as-antisemitic/a-70180570. One person quoted in this story said "Once again, Germany defines who is a Jew, right? . . . The irony that the German state would actually classify who is a Jew, what's a legitimate Jewish position, and how Jews should react is just beneath contempt."

but not one on (or even including) anti-Muslim, anti-Arab and anti-Palestinian hatred, only makes the problem of dysfunctional campuses (and increased antisemitism) worse.[62]

Post October 7 we've seen doxing trucks on some campuses; the banning of some groups, like SJP at Brandeis, not for acts but for disapproved speech[63]; and the postponement or cancellation of events.[64] And where some Jews have been called supporters of genocide, some Muslims and Palestinians have been called terrorists.

When I speak to students, some who are identifiably Jewish because they wear religious items such as a kippah or a Jewish star are worried for their physical safety. But when I speak to Muslim and Palestinian students, especially women wearing an hijab, they share the same fear.

Many universities after October 7 set up tasks forces on antisemitism and on Islamophobia.[65] If you read the reports, such as those from the two Stanford task forces,[66] you'll see that in many ways they are mirror images of each other, speaking of perceptions of double standards and disregard. They both document students being afraid to say what they think, or even revealing their identity, for fear of a grade or a job.

This mirrors what I have heard on campuses. Some pro-Israel Jewish students feel there's a double standard – for instance they say they follow campus rules about public events, whereas they allege many times pro-Palestinian groups don't (such as setting up encampments or in some instances booking spaces). Pro-Palestinian students tell me they fear joining political groups for fear of doxing or losing job prospects, as some have.[67] They also tell me they see a mismatch between the pressure asserted on universities from pro-Israel donors and pro-Palestinian ones.[68]

---

[62] BCSH will be publishing a book tentatively entitled Simply Human: How to Understand and Combat Hate: A Guide for NGOs and Everyone Else, written by hate studies experts. A philosophy professor ponders whether NGOs in this space should entertain some sort of Hippocratic Oath – first do no harm. Any Congressional action should also be able to articulate reasons why the proposed action will do no harm, for sometimes what feels good does damage.

[63] https://sapirjournal.org/war-in-israel/2023/11/sjp-still-deserves-freedom-of-speech/

[64] https://www.columbiaspectator.com/opinion/2024/02/02/banned-then-backtracked/ and https://www.statepress.com/article/2023/11/asu-cancels-rashida-tlaib-event.

[65] It is important to note that not all Palestinians are Muslims, and it may be more accurate to think of the animus as anti-Arab and anti-Palestinian, which of course is linked to Islamophobia just as anti-Zionism is, in various ways, sometimes linked to antisemitism.

[66] https://news.stanford.edu/__data/assets/pdf_file/0033/156588/ASAIB-final-report.pdf and https://news.stanford.edu/__data/assets/pdf_file/0031/156586/MAP-final-report-2024.pdf

[67] https://www.reuters.com/legal/litigation/pro-palestine-lawyer-sues-law-firm-foley-over-rescinded-job-offer-2024-05-30/

[68] See, for example, https://www.nytimes.com/2023/10/26/us/university-of-pennsylvania-donors-israel-hamas.html

There is no doubt that there has been bullying, even violence, over Israel on campus.[69] But if we're concerned about how the campus should be handling this difficult situation, the Congressional focus only on Jewish students, and not on Arab, Muslim and Palestinian students, underscores a perceived double standard that is only exacerbating the situation. And this situation is complicated even further when the remedy Congress is considering is not focusing on helping campuses ensure that no one is being bullied and how to use the unique attributes of the campus to understand and counteract the human capacity for hate, but rather on what speech – and speech specifically about Israel used by some pro-Palestinian advocates – is going to be stamped as hateful by the U.S. government.[70]

WHAT TO DO INSTEAD

Instead of passing the AAA, here's what I suggest Congress can do, first regarding the campus, then antisemitism generally.

Congress can help underscore the distinction that has been obscured since October 7, and also before. Universities and colleges have an obligation to do their utmost to make sure students and faculty and staff aren't bullied, harassed, intimidated, threatened, or discriminated against. This should be an obligation that goes beyond Title VI as a matter of good policy; even if a student isn't a member of a protected group, no one should be bullied or harassed or threatened.[71] Bullying or harassing another member of the campus community absolutely should be against the code of conduct, and a proper matter for discipline.

But the challenge is in part that some, both within the campus and outside, encourage students to believe they have to a right to intellectual safety – to avoid hearing things that disturb them. And this comes both from the left and the right. Some on the left encourage the idea of "trigger warnings" and "safe spaces" and what has turned into a hunt for "microaggressions." Each of these ideas has some merit – you don't, after all, want to gratuitously or maliciously hurt others with words. But each of these concepts has become a filter, a binary, to simplify complicated things and in some cases to declare one's moral virtue and another's immorality. On a college, these mechanisms of creating intellectual "safe spaces" invite group think, exactly NOT the way to turn out critical thinkers who are capable of reevaluating their opinions.

---

[69] See, for example https://www.cbsnews.com/newyork/news/yale-protests-jewish-student-assaulted-pro-palestinian-rally/. But also see https://www.cnn.com/2024/05/16/us/ucla-student-protests-counterprotesters-invs/index.html.

[70] I suspect that the angst of many Arab, Muslim and Palestinians on campus is exacerbated by the off-campus political environment. They recall the national discussion about a ban on Muslims and the floating of the idea that Muslims in our country should be forced to register. It is difficult to imagine the higher level of concerns Jews would have about contemporary antisemitism if there had been recent calls by politicians for a ban on Jews, let alone the suggestion that Jews should be forced to register.

[71] The Department of Education has underscored the protections for students in protected classes, including through this video released for the new school year: https://www.youtube.com/watch?v=8lAGTzE3kMM. The Leadership Conference on Civil and Human Rights has called for increased funding for OCR.

But on the right there's also a push to limit what can be said or taught. Legislation in some states restrict what can be taught about race or gender. I also don't like some of what is being taught, but it concerns me more when politicians decide – frequently with the argument that people are going to be offended by what they hear – that certain broad topics are beyond the pale.

I agree with conservatives who complain that on some campuses conservative speakers are not welcome, and that this is a free speech issue (violating the opportunity for the audience to hear these views). But the same principle must apply for speakers conservatives don't like, such as those who express their view that Palestine should be free from the river to the sea. And that's the challenge of relying on IHRA, in either the AAA or the CAA version. IHRA codification is designed to restrict speech.

On a campus, any "remedy" should be one that ideally is aligned with the purpose of the academy, to increase knowledge. Remedies that ideally promote, or at least don't sacrifice academic freedom, are the ones likely to be most effective (and get support from faculty).[72]

So rather than codifying IHRA as the official definition of antisemitism, do the following:

1) Increase the capacity of higher educational institutions to ensure that students, whether they are in a protected class or not, are not bullied, harassed, intimidated, or threatened.
2) Help higher education institutions stress to students that, rather than being shielded from ideas, they should expect to be deeply disturbed by opinions, and that the university will help students think through why that otherwise friendly student has views you detest – in other words, stress the importance of intellectual curiosity and emotional empathy.
3) Encourage units and classes on free speech and academic freedom.
4) Encourage the establishment of more hate studies programs (and classes and research) that will help students understand the human capacity to see "us" and "them," with the idea that having an intellectual understanding of what happens to their own thinking and emotions in these moments will make them less likely to go down these dogmatic self-righteous rabbit holes.[73]

---

[72] The wiser approaches to campus protests and encampments have been ones that are grounded in this notion. See for example PEN's analysis of protests -- https://pen.org/in-preparing-for-protests-are-campuses-going-too-far/?utm_source=Communications&utm_campaign=f2f85c1953-EMAIL_PENNews_2024_09_04&utm_medium=email&utm_term=0_-e98639ab83-%5BLIST_EMAIL_ID%5D&mc_cid=f2f85c1953&mc_eid=5e1eb669b1 as well as Wesleyan president Michael Roth's recent New York Times column: https://www.nytimes.com/2024/09/02/opinion/college-president-campus-political.html. See also https://greglukianoff.substack.com/p/five-quick-takeaways-from-fires-2025?r=2gh8e&fbclid=IwY2xjawFMhIdleHRuA2FlbQIxMQABHeX2S4i43Px3obVMHb9mvgli1zcmM5q0Z3q2jVItfk0ecZW7KnVdKLbTkQ_aem_-PKQhZsTNDChWnU4K2ECkw&triedRedirect=true.

[73] Two of my Bard colleagues, recognizing that students were flinging around words like "antisemitism," "settler colonialism" and "genocide" as rhetorical weapons, designed a class to take a deep dive into what these words

5) Encourage classes on how to discuss divisive topics,[74] and encourage more debate groups (so that students have to argue positions with which they fundamentally disagree). There are also some interesting projects using AI in this effort, ones that depersonalize, interrupt ad hominem attacks, and encourage students to focus on concrete examples to prove their point.[75]

Additionally, it worries me that on some campuses the Israel/Palestine debate has divided faculty to the point that some are blocking colleagues on social media and otherwise not communicating. Faculty ought to be modeling how to have difficult discussions, and should prioritize supporting students rather than their own politics. Projects that bring faculty together to study text, and messages from administrators that job one is helping students, might be important ideas to underscore.

Beyond the campus, if Congress passes the Countering Antisemitism Act, it must first strip out any mention of IHRA (either directly or indirectly). The legislation would help implement the U.S. National Strategy to Counter Antisemitism[76] with needed staffing and resources. As I wrote to the UN Secretary General,

> The White House underscored that fighting antisemitism required actual hard work, not a hate speech code. . . .
>
> Despite the insistence on IHRA as a veritable Swiss Army Knife for tackling antisemitism, it was mentioned just once in the strategy. It wasn't even the only definition mentioned.
>
> This part of the White House strategy plan is telling:
>
> > Antisemitism is a stereotypical and negative perception of Jews, which may be expressed as hatred of Jews. It is prejudice, bias, hostility, discrimination, or violence against Jews for being Jews or Jewish institutions or property for being Jewish or perceived as Jewish. Antisemitism can manifest as a form of racial, religious, national origin, and/or ethnic discrimination, bias, or hatred; or, a combination thereof. However, antisemitism is not simply a form of prejudice or hate. It is also a pernicious conspiracy theory that often features myths about

---

mean, and why people understood them differently. https://www.bard.edu/news/inside-higher-ed-bard-israeli-palestinian-conflict-in-the-classroom-2024-01-08.

[74] See, for example, https://bcsh.bard.edu/files/2019/07/THE-CHALLENGE-OF-DISCUSSING-ISSUES-WRAPPED-IN-IDENTITY-MORALITY-AND-OR-JUSTICE-070519.pdf

[75] https://www.insidehighered.com/news/faculty-issues/academic-freedom/2024/07/16/bridging-campus-divide-dangerous-ideas-ai?utm_source=Inside+Higher+Ed&utm_campaign=174772aa77-DNU_2021_COPY_02&utm_medium=email&utm_term=0_1fcbc04421-174772aa77-226859421&mc_cid=174772aa77&mc_eid=3f73e10b67
See this demonstration: https://www.swaybeta.ai/demo.

[76] https://www.whitehouse.gov/wp-content/uploads/2023/05/U.S.-National-Strategy-to-Counter-Antisemitism.pdf

> Jewish power and control. There are several definitions of antisemitism, which serve as valuable tools to raise awareness and increase understanding of antisemitism. The most prominent is the non-legally binding "working definition" of antisemitism adopted in 2016 by the 31-member states of the International Holocaust Remembrance Alliance (IHRA), which the United States has embraced. In addition, the Administration welcomes and appreciates the Nexus Document and notes other such efforts.

> The focus of this national strategy is on actions [emphasis in original] to counter antisemitism. The White House described antisemitism in words different from IHRA, didn't mention the examples which are the heart of IHRA, interestingly used the past tense "has embraced," when it could have said, explicitly, that it was using it to define the strategy going forward, and mentioned not only the NEXUS definition but "other such efforts," with the active verbs "welcomes and appreciates."

So I encourage you to focus, as the National Strategy does, on actual work of a whole of government and whole of society approach, one that doesn't get derailed by IHRA. Regardless of what people think about Israel/Palestine they should agree on opposing antisemitism. But as we've seen, the issue of IHRA is a great divider.

When a section of the ABA was considering adopting IHRA, I spoke to them and said this:

> So the question I ask you is which is more important – to build consensus about the need to address antisemitism with a statement that people can support regardless of their views on the Israel/Palestine conflict or the complicated matter of where Israel fits in Jewish identity, or a statement that endorses IHRA, thus picking a side in a contentious political battle, and inevitably undercutting what you are trying to achieve?

Funding the National Strategy – which is focused on actions rather than the definitional wars – would help in the fight. It should be pro-Israel proponents, rather than Congress, that argue for their position on Israel and Zionism.

Finally, there's one more thing that Congress can do.

When I testified before the House Homeland Security Committee in 2022, I had a suggestion from Hate Studies that I want to repeat. Not only does it rest on scholarship, it also is an approach that focuses on hate as interrelated – and if it proves viable, it's something all groups that are victimized by hate, together, might support.

> There's an old study in social psychology study called the Robbers Cave experiment,[77] a study that involved sending two groups of boys from very similar backgrounds to a

[77] Sherif, M. (1954). *Experimental study of positive and negative intergroup attitudes between experimentally produced groups: robbers cave study*. Norman, OK: University of Oklahoma.

summer camp in Oklahoma. Each group didn't know the other existed, but once each bonded separately as a unit, and then were given evidence of the other group's existence in a competitive environment, they not only had animosity toward each other, but acted on it. At the end, they however, had to cooperate to fix the camp's drinking water supply. That superordinate goal – or perhaps the creation of a larger group identity – helped reduce the hate.

That suggestion – an additional layer of connected identity – is one I observed from colleagues during my years at AJC involved with intergroup relations. The groups that seemed to have the most staying power – say a project bringing together Blacks and Jews – were the ones that had an additional layer of identity (Black and Jewish lawyers or accountants, for example).

Years ago I was inspired by Colin Powell and others who suggested the potential societal and personal benefits of a program of national service for young people. I've long wondered, what if we had a national program that would offer to take teenagers from different backgrounds, say as they were finishing high school, and sent them on a common public service mission? How about a Latinx person from Texas and a Jewish person from New York and a Black person from Los Angeles, and sent them, together, to work for an organization that builds homes for American Indian people in South Dakota, for example? There are lots of ways to mix and match such groups, but the idea of bringing people together from different groups that they might not have met before, have them interact with each other and form a new group identity, have them <u>together</u> help someone else, and create new and negotiated collective memories drawn from their own communal memories might, and I stress might, make them less likely to be drawn into the "us" vs "them" thinking that threatens our democracy, and thus reduce the potential for antisemitic and other types of hate crimes. A pilot project and, if later evaluation documents a reduction of hate over time results, there might be consideration of building such a national service program. It might even pay for itself, if it reduces the cost of hate.[78]

In conclusion, I hope Congress focuses on how we can improve the campus for all students, and combat antisemitism throughout our country not by defining disfavored ideas about Israel, but rather by concrete actions that bring Americans together across divides. IHRA is about choosing a side in a binary political debate, when we should be rebelling against the orthodoxy of binaries. Rather than seek refuge from thinking behind the comfort of simple formulas, we should be working harder to understand the complexities of hate, and further identify the methods that can help people reject it.

I was 15 when the Rev. Martin Luther King, Jr. was assassinated. What impressed me most was that he wasn't talking about special rules or definitions or rights for Black people, he was talking

[78] https://bcsh.bard.edu/files/2023/01/Written-Testimony-House-Homeland-Security-100322.pdf. Regarding the cost of hate crimes see https://bcsh.bard.edu/files/2023/03/BCSH-Economic-Cost-of-Hate_3-13-23_Online-.pdf.

about what America should be, and what it owed to every American. I assign his "Letter from a Birmingham Jail"[79] when I teach. I hope, among other things, that students note this line: "the goal of America is freedom." Essential to our freedom is the right to free speech. King fought for that right, including from jail. Yes, we should, we must, oppose antisemitism and all forms of hate. But we must not sacrifice free speech, especially by a Congressionally-endorsed definition of what political speech is defined as hateful. Once we open that Pandora's box, tomorrow it might be your political speech that is targeted through law.

[79] https://www.africa.upenn.edu/Articles_Gen/Letter_Birmingham.html

Arab American Institute

October 11, 2024

Ms. Maddie Lubeck
Hearing Clerk
Senate Committee on the Judiciary

Dear Ms. Lubeck,

Please find below my response to questions for the record from Senator Lindsey O. Graham for the September 17, 2024, hearing entitled "A Threat to Justice Everywhere: Stemming the Tide of Hate Crimes in America."

Best regards,

Maya Berry
Executive Director

Question #1: ***In 2023, there was a reported 140% year-over-year increase in antisemitic incidents across the United States, the most in at least 45 years. Most of this dramatic increase took place following the October 7th Hamas attack on Israel. What steps should the Department of Justice take to ensure that antisemitic hate crimes are thoroughly reported and prosecuted?***

Answer: According to the FBI's hate crime data, there were 1,832 anti-Jewish hate crimes in 2023. This is a dramatic 63% increase from the previous year, making 2023 the highest year on record for anti-Jewish hate crimes since the FBI began publishing such data in 1991.[1] Many of these incidents occurred in the last quarter of 2023, following October 7th.

Though not asked, but certainly related in that it is a community also impacted by the October 7th backlash effect, 2023 saw the highest-ever number of anti-Arab incidents since the FBI began collecting data on the category in 2015 and a 34% increase since 2022.[2]

While the question relates to actions that should be taken to respond to the increase in hate crimes targeting the Jewish American community, it is worth noting the FBI's 2023 statistics also reveal a disturbing rise in bias-motivated incidents across the United States, affecting various racial, ethnic, religious, and LGBTQ+ communities. Overall, hate crimes increased significantly, and represented

[1] FED. BUREAU OF INVESTIGATION. 2023. Hate Crime Statistics Annual Report, 2023. Retrieved October 9, 2024 (https://cde.ucr.cjis.gov/LATEST/webapp/#/pages/downloads).
[2] *Id.*

the third consecutive year that incidents have increased to an all-time high, underscoring a broader trend of intolerance and violence.[3] Anti-Black hate crimes continue to account for the highest number of reported incidents,[4] while anti-Latino hate crimes saw a sharp rise,[5] contributing to the overall surge in racially motivated violence. Anti-Muslim hate crimes saw a 49% increase between 2022 and 2023.[6] Incidents targeting communities also reached a record high, reflecting the growing hostility towards LGBTQ+ individuals in many areas of public life.[7]

A 2021 threat assessment found "racially or ethnically motivated violent extremists who advocate for the superiority of the white race" to be one of the most lethal threats facing our country.[8] The year with the highest number of violent anti-Jewish hate crime offenses was 2018, the same year an armed white supremacist fueled with hatred for Jews and immigrants murdered eleven worshippers at the Tree of Life synagogue in Pittsburgh, Pennsylvania. The stark numbers from the official FBI hate crime statistics, both the data related to the staggering increase in anti-Jewish hate crimes in 2023 and those demonstrating the continues increase against other targeted communities, highlight the urgent need for a comprehensive, collective approach. Indeed, civil rights organizations have advocated for a multi-faceted approach to hate crime prevention that not only ensures accurate reporting and prosecution of hate crimes, but also addresses the broader escalation of bias-motivated violence affecting *all* communities.[9]

Regarding actions the Department of Justice can take to improve the response to hate crime, the following would be helpful:

- **Continue Prioritizing the Response to Hate Crimes**
  After a DOJ review of the department's response to the increase in hate crime, Attorney General Merrick Garland issued internal guidance in May 2021outlining steps DOJ should take to "enhance our current efforts to combat unlawful acts of hate by improving incident reporting, increasing law enforcement training and coordination at all levels of government, prioritizing community outreach, and making better use of civil enforcement mechanisms."[10] These significant steps were followed by the FBI elevating hate crimes to a Level 1 national threat in October 2021, increasing resources for hate crime responses and prioritizing hate crimes for all 56 FBI field offices. DOJ should remain focused on these efforts.

---

[3] FED. BUREAU OF INVESTIGATION. 2023. Hate Crime Statistics Annual Report, 2023. Retrieved October 9, 2024 (https://cde.ucr.cjis.gov/LATEST/webapp/#/pages/downloads); Statement on the FBI's 2023 Hate Crime Data Release: Highest Year on Record for Total Hate Incidents for Third Consecutive Year, ARAB AM. INST. (Sept. 23, 2024), https://www.aaiusa.org/library/2023hatecrime.

[4] ARAB AM. INST. *Id. ("Anti-Black or African American" incidents (3,027) accounted for the most single-bias hate crimes based on race, ethnicity, or ancestry.").*

[5] FED. BUREAU OF INVESTIGATION, *supra* note 1.

[6] *Id.*

[7] *Id.*

[8] *Fact Sheet: National Strategy for Countering Domestic Terrorism*, WHITE HOUSE (June 15, 2021), https://www.whitehouse.gov/briefing-room/statements-releases/2021/06/15/fact-sheet-national-strategy-for-countering-domestic-terrorism/.

[9] *Letter from Civil Rights Organizations on Countering All Forms of Hate*, THE LEADERSHIP CONF. ON CIV. AND HUMAN RIGHTS (Jul 25, 2024) https://civilrights.org/wp-content/uploads/2024/07/Leadership-Conference-Letter-to-Congressional-Leadership-on-Countering-Hate.pdf.

[10] *Memorandum for Department of Justice Employees*, DEPT. OF JUSTICE (May 27, 2021), https://www.justice.gov/ag/file/1557621/dl?inline=.

- **Enhance and Standardize Federal Hate Crime Reporting**
  Inconsistent reporting practices remain a major barrier to accurately tracking hate crimes, as many law enforcement agencies either underreport or fail to report hate crimes at all. Nearly 20% of cities with populations over 100,000 did not report to the national hate crime statistic system in 2022, leaving millions out of the new reporting system. In 2023, 60 agencies with populations over 100,000 and 80% of all reporting jurisdictions turned in "zero" data.[11] The DOJ should continue its focus on training for law enforcement to ensure consistent reporting of incidents across the country.

- **Support Mandatory Hate Crime Reporting**
  The expansion of the Hate Crime Statistics Act and full participation in the National Incident-Based Reporting System (NIBRS) must remain a priority. Federal and local law enforcement agencies should be held accountable for their reporting practices, including conditioning federal funding on compliance with robust reporting requirements. Congress can contribute to the bettering of our hate crime prevention and reporting systems by supporting legislation that conditions federal funding for law enforcement agencies on credible reporting of hate crimes, such as the proposed Improving Reporting to Prevent Hate Act (IRPHA).[12] Incentivizing agencies to prioritize accurate hate crime reporting must be a priority for DOJ and lawmakers.

- **Focus on Strengthening Protections Across All Communities**
  The DOJ must take a holistic approach to combating hate crimes, ensuring that all communities impacted by hate are supported and protected. For example, the rise in anti-Jewish and anti-Arab hate crimes after October 7th may warrant the development of targeted outreach that address the specific needs of each community. However, an effective approach must also recognize the interconnectedness of hate-based violence and respond accordingly, bringing communities out of isolation and into partnership with each other. Community-based approaches to hate prevention, such as the grants made available under the Jabara-Heyer NO HATE Act, can help communities heal and foster improved relations with law enforcement to increase reporting.[13]

- **Continue Community Engagement and Education**
  Collaboration with community groups must continue, including outreach to civil rights organizations, religious communities, and local advocacy groups. Strengthening relationships with diverse communities will enable law enforcement to better understand and respond to the specific forms of hate crime affecting each group. Congress and the DOJ should continue to support the full funding of grant initiatives through Matthew Shepard and James Byrd, Jr. Hate Crimes Program, which supports state, local, and tribal law enforcement in outreach and education about hate crime to affected communities.[14] Additionally, expansion of the Jabara-Heyer State Run Hate Crimes Hotline Program, allowing for more states to

---

[11] ARAB AM. INST. *Id.* (Table 14 Hate Crime Zero Data Reported).
[12] Improving Reporting to Prevent Hate Act, H.R.7648, 118th Cong. (2023-2024).
[13] *Community-based Approaches to Prevent and Address Hate Crimes Program*, DEPT. OF JUSTICE (Aug. 20, 2024), https://bja.ojp.gov/program/prevent-address-hate-crimes/overview.
[14] *Matthew Shepard and James Byrd, Jr. Hate Crimes Program*, DEPT. OF JUSTICE (Aug. 20, 2024), https://bja.ojp.gov/program/shepard-byrd-hate-crimes-program/overview.

create a statewide reporting hub would allow reporting to be more accessible to more victims and help streamline reporting efforts across the state.[15]

A Note Regarding the Data Cited in Questions #1:
Accurate hate crime data collection is fundamental to the fight against hate. While flawed, state and federal hate crime reporting data remain the only source of credible information on hate crimes targeting communities, including the raise of anti-Jewish hate crimes. The 140% increase cited in the question is not from the FBI's hate crime statistics, but rather a data set from a report produced by the Anti-Defamation League (ADL).[16] The issues associated with the data collection methods of non-governmental organizations such as the ADL exemplify the need to rely on federal data.

The ADL has adopted a definition of antisemitism that includes criticism of the state of Israel or the political ideology of Zionism, significantly harming the utility of its statistics.[17] This broader categorization can lead to inaccuracies in understanding the nature and scope of antisemitism. In examining the organization's 2023 report on hate incidents, since the Oct. 7th attack, the ADL made a midyear-change to its collection methodology to include "certain expressions of opposition to Zionism, as well as support for resistance against Israel or Zionists that could be perceived as supporting terrorism or attacks on Jews, Israelis or Zionists."[18] The report itself notes that 15% of the increase from 2022-23 was due to the updated methodology, which picked up many of the nonviolent protests led by groups such as Jewish Voice for Peace for political chants during protected First Amendment activity.[19] Additionally, ADL's methodology previously only included incidents if there was a "clear victim" and incidents that involved anti-Israel rhetoric had to target Jewish institutions or feed into anti-Jewish tropes. However, the "clear victim" standard shifted, leading to the publishing of data that include non-violent protests and political statements as antisemitic incidents.[20] As a result, the ADL's 2023 data is not only incomparable month-to-month, but also unable to give a picture of incidents year-to-year.

Further, the inclusion of First Amendment protected activities into its data collection have severely damaged the credibility of ADL's reporting, undermining the ability to accurately track true antisemitic hate crimes. The potential for distorted data can harm efforts to protect Jewish American communities by diverting resources and attention from genuine anti-Jewish hate crimes. This must be a central consideration at any time, but it is particularly important as our country is experiencing an increase in antisemitic hate crimes. Policymakers must be mindful of these nuances when

---

[15] *Jabara-Heyer Hate Crime Reporting Hotline Program Overview*, OFFICE FOR VICTIMS OF CRIME, OFFICE OF JUSTICE PROGRAMS, DEPT. OF JUSTICE, https://ovc.ojp.gov/topics/hate-crimes/jabara-heyer-state-run-hate-crimes-hotline-program-overview.pdf (last visited Oct. 10, 2024).
[16] Audit of Antisemitic Incidents in 2023, ANTI-DEFAMATION LEAGUE (Apr. 16, 2024), https://www.adl.org/resources/report/audit-antisemitic-incidents-2023.
[17] *FAQ: Countering Antisemitism Act*, ARAB AM. INST. 9-10 (2023), https://static1.squarespace.com/static/5faecb8fb23a85370058aed8/t/6646676818fcc1452330b1a7/1715890024848/CAA.FAQ.24.pdf.
[18] Audit of Antisemitic Incidents in 2023, ANTI-DEFAMATION LEAGUE (Apr. 16, 2024), https://www.adl.org/resources/report/audit-antisemitic-incidents-2023.
[19] *Id.*
[20] *Id.* ("Of the 8,873 incidents tabulated in 2023, 3,162 (36% of the total) contained elements referencing Israel or Zionism . . . The majority (2,526) of Israel-related incidents took the form of harassment, including 1,352 incidents that took place at anti-Israel protests.").

analyzing data on hate incidents, including antisemitic hate incidents.[21] The FBI hate crime statistics are required to adhere to rigorous, transparent, and consistent standards, guaranteeing accountability and ensuring that decisions about hate crime prevention are informed by unbiased and reliable information.

Question #2: ***In 2023, 1 in every 10 antisemitic incidents took place at a school or on a college campus. What steps should the Department of Education take to make campuses safe for Jewish students and faculty?***

Answer: According to the FBI's 2023 hate crime statistics, 6.8% of antisemitic incidents took place on college or university campuses.[22] This marks a nearly 2% increase from 2022, when 4.4% of antisemitic incidents occurred on campuses.[23] It should go without saying that all students deserve to pursue their education without being subjected to a hostile environment.

While the Department of Education (ED) is not a law enforcement agency and does not have the authority to prosecute hate crimes, it plays a crucial role in creating educational environments for all students, free from discrimination. It is crucial to remember that robust mechanisms and safeguards already exist within the Department of Education to address instances of antisemitism, anti-Arab racism, and all forms of hate on college campuses.[24] Presently, there are ongoing Title VI cases at numerous universities demonstrating the Department's commitment to upholding the civil rights of all students, including Jewish American students.[25] By approaching incidents of discrimination seriously via the rigorous and established procedures set in place, allegations of discrimination can be thoroughly investigated and addressed, not politicized.

The Department of Education provides various mechanisms for students and faculty to report incidents of discrimination, ensuring their voices are heard and their concerns addressed. Students can report incidents through the following channels:

1. **Office for Civil Rights (OCR)**: The OCR investigates complaints of discrimination based on race, color, national origin, including shared ancestry or ethnic characteristics, sex, disability, and age in educational programs and activities that receive federal funding. Students can file complaints with OCR when they believe they have experienced discrimination, harassment, or a hostile environment based on their identity. OCR then has the ability to investigate the school's handling of the incidents and existing policies,

---

[21] Kai Wiggins, *How to Read Two Data Sets on Domestic Antisemitism*, LAWFARE (June 4, 2024), https://www.lawfaremedia.org/article/how-to-read-two-data-sets-on-domestic-antisemitism.
[22] FED. BUREAU OF INVESTIGATION, *supra* note 1.
[23] *Reported Hate Crime at Schools: 2018-2022*, FED. BUREAU OF INVESTIGATION, DEPT. OF JUST. 9 (2024), *https://www.justice.gov/hatecrimes/reported-hate-crimes-schools/dl*.
[24] 42 U.S.C. 2000d, *et seq.*
[25] *Pending Cases Currently Under Investigation at Elementary-Secondary and Post-Secondary Schools*, U.S. DEPT. OF ED., https://ocrcas.ed.gov/open-investigations?field_ois_state=All&field_ois_discrimination_statute=All&field_ois_type_of_discrimination=711&items_per_page=20&field_ois_institution=&field_ois_institution_type=All&field_open_investigation_date_1=&field_open_investigation_date_2=&field_open_investigation_date=&field_open_investigation_date_3=&page=2 (last visited Oct.10, 2024).

employing consent decrees where needed to compel school compliance with actions and policies that eliminate discrimination on their campus.

2. **Campus Title IX Coordinators**: Most colleges and universities have Title IX coordinators responsible for overseeing the institution's compliance with Title IX, which prohibits sex-based discrimination. These coordinators can also address cases of harassment that create a hostile educational environment.

3. **Campus Safety and Reporting Systems**: Many institutions have established their own reporting systems, including anonymous reporting options, where students can disclose incidents of discrimination. The Department of Education encourages institutions to create transparent and accessible processes for reporting and responding to such incidents.

The Department of Education's future efforts can focus on ensuring students have knowledge of and access to the existent channels to report incidents. Additional steps can include:

- **Increase Funding for the Office for Civil Rights (OCR)**: Congress should increase funding for EDs Office of Civil Rights.[26] Enhancing OCR's funding is essential to enable it to effectively investigate complaints, conduct outreach, and implement educational initiatives aimed at preventing discrimination and hate incidents on campuses. Increased resources will allow OCR to support institutions in developing policies and training programs that promote understanding and tolerance. It will also offer the Department the ability to ensure each complaint is handled in a timely and complete manner.

- **Develop Comprehensive Training Programs**: The Department of Education should work with colleges and universities to ensure these institutions have the training and technical assistance to comply with guidance and regulations addressing discrimination.

- **Promote a Culture of Inclusivity**: The Department of Education should encourage colleges and universities to adopt policies that actively promote inclusivity and respect for all.[27] This can be achieved by funding initiatives that foster dialogue among diverse student groups and provide resources for cultural competency training.

- **Enforce Anti-Discrimination Policies**: The Department should issue clear guidelines that reinforce the responsibility of educational institutions to create nondiscriminatory environments for all students. Examples include the continued guidance on Title VI complaints related to shared ancestry,[28] and timely reminders to educational institutions on their duties to protect students.

---

[26] *Letter Urging Congress to Double the Funding for the Department of Education's Office for Civil Rights*, THE LEADERSHIP CONF. ON CIV. AND HUMAN RIGHTS (Feb. 14, 2024) https://civilrights.org/resource/letter-urging-congress-to-double-funding-for-the-department-of-educations-office-for-civil-rights/.

[27] *Strengthening Diversity, Equity, and Inclusion in Higher Education*, AM. COUNCIL ON ED., https://www.acenet.edu/Documents/ace_dei_cop_strengthening_dei.pdf (last visited Oct. 10, 2024).

[28] *Dear Colleague Letter: Discrimination, including Harassment, Based on Shared Ancestry or Ethnic Characteristics*, DEPT. OF ED. (NOV. 7, 2023) https://www.ed.gov/sites/ed/files/about/offices/list/ocr/letters/colleague-202311-discrimination-harassment-shared-ancestry.pdf.

- **Improve and Expand Collection and Accessibility of Disaggregated Data from the Civil Rights Data Collection (CRDC)**: The Civil Rights Data Collection (CRDC) is essential to this work, equipping schools with the insights needed to address disparities and ensure fair treatment for all students.[29] Adequate funding is crucial for OCR to maintain consistent, reliable data collection; without it, the scope and accessibility of the CRDC are compromised, making it harder to meet legal obligations and advance educational equity.

While the Department of Education does not have prosecutorial authority for instances of hate crime as covered by the hearing, it holds a vital role in ensuring that all students can pursue their education in an environment free of discrimination.

Question #3: ***In August, a United Nations spokesperson announced that the U.N. had found sufficient evidence to conclude that 9 individuals employed by the United Nations Relief and Works Agency for Palestinian Refugees were involved in the October 7th Hamas attack on Israel. Given this finding, do you believe Congress erred in its decision to not appropriate any funding for UNRWA in fiscal year 2024?***

Answer: As I expressed during my testimony, it is profoundly confusing as to why matters related to foreign policy were introduced into a hearing focused on hate crimes entitled, "A Threat to Justice Everywhere: Stemming the Tide of Hate Crimes in America." While I do not believe a question related to the United Nations Relief and Works Agency for Palestine Refugees in the Near East (UNRWA) is relevant to formulating a better policy response to hate crime, I am happy to answer it.

I do believe Congress erred by not appropriate funding to UNRWA in fiscal year 2024.

First, the United Nation's Office of Internal Oversight Services (OIOS) conducted an internal investigation into the misconduct allegations against UNRWA staff. Contrary to the assertion in the question, the OIOS investigation did not conclude that nine individuals employed by UNRWA "were involved" in the attacks of October 7th. Rather, the OIOS stated, "the evidence – if authenticated and corroborated – could indicate that the UNRWA staff members may have been involved in the attacks of 7 October."[30] Why wasn't the evidence corroborated? As UN Deputy Spokesperson Farhan Haq noted on the day of the report's release, "OIOS was not able to independently authenticate most of the information provided to it that was in the hands of the Israeli authorities — that is, information that remains in the custody of Israel."[31] Despite that, all nine individuals associated with these allegations were fired from UNRWA's nearly 30,000 workforce.

Also, UNRWA provides critical programs to millions of Palestinian refugees in the Occupied Palestinian Territory *and* Lebanon, Jordan, and Syria. In addition to food aid, UNRWA's programs include education and health services to nearly 6 million Palestinian refugees. During the unfolding

---

[29] *Civil Rights in Education: About the Civil Rights Data Collection*, DEPT. OF ED., https://civilrightsdata.ed.gov/about/crdc (last visited Oc. 10, 2024).
[30] *Investigation Completed: Allegations on UNRWA Staff Participation in the 7 October Attacks*, UNITED NATIONS OFF. OF THE UNRWA COMMISSIONER GEN., (Aug. 5, 2024) (https://www.unrwa.org/newsroom/official-statements/investigation-completed-allegations-unrwa-staff-participation-7-october)
[31] *Daily Press Briefing by the Office of the Spokesperson for the Secretary-General*, UNITED NATIONS, (Aug. 5, 2024) https://press.un.org/en/2024/db240805.doc.htm.

genocide in Gaza, UNRWA is the single most effective relief agency, providing vital life-saving assistance. In this context, congressional action suspending UNRWA's funding was also a moral failure.

Further, perhaps the more central question is why hasn't the United States joined the 15 other member states in resuming support for UNRWA following the swift and decisive actions taken by UNRWA and the UN in response to allegations about staff?[32] It is illogical to think these nations, including Australia, Austria, Canada, Germany, Italy, and the United Kingdom, have less of a commitment to the appropriate use of their taxpayer funds than the United States. Rather, their resumption of support reflects a recognition of the facts, not the global disinformation campaign to which UNRWA is being subjected.[33]

The independent outside review of UNRWA neutrality processes, ordered by Secretary-General Guterres and led by former French Foreign Minister Catherine Colonna, confirmed that UNRWA had "established a significant number of mechanisms and procedures to ensure compliance with the humanitarian principles, with emphasis on the principle of neutrality and that it possesses a more developed approach to neutrality than other similar UN or NGO entities."[34]

Among Colonna's observations was the fact that UNRWA shares its staff lists with host countries and that it is the host's responsibility to alert UNRWA to any information that may deem a staff member unsuitable for employment.[35] Colonna went on to say, "Of note, the Israeli Government has not informed UNRWA of any concerns relating to any UNRWA staff based on these staff lists since 2011."[36] The donor states that have resumed support to UNRWA understand that humanitarian agencies are not intelligence services and require the help of host countries to effectively address potential staffing issues.

The Colonna report also went on to make fifty recommendations to strengthen UNRWA's neutrality processes.[37] These 15 nations saw UNRWA management immediately endorse those recommendations and their implementation being overseen by an American, UNRWA Deputy Commissioner-General (Operations) Antonia De Meo.[38] Of course, some of these recommendations will require funding, something made more problematic by Congress' ill-advised actions.

---

[32] *UK to Resume Funding to UN Gaza Aid Agency*, BBC (Jul. 19, 2024), https://www.bbc.com/news/articles/cjm9r0w71g8o (" The announcement brings the UK into line with other countries that have resumed funding since then, leaving the United States, UNRWA's single biggest donor, as the only country not to have restarted donations.").

[33] Paresh Dave, *Israel is Buying Google Ads to Discredit the UN's Top Gaza Aid Agency*, WIRED (Aug. 26, 2024), https://www.wired.com/story/israel-unrwa-usa-hamas-google-search-ads/.

[34] Final Report for the United Nations Secretary General: Independent Review of Mechanisms and Procedures to Ensure Adherence by UNRWA to the Humanitarian Principle of Neutrality, 4-5 (April 20, 2024), https://www.un.org/unispal/wp-content/uploads/2024/04/unrwa_independent_review_on_neutrality.pdf.

[35] *Id.* at 21-22.

[36] *Id.* at 22.

[37] *Id.* at 36-43.

[38] *UNRWA Preliminary Response – Final Report of the Independent Review of Mechanisms and Procedures to Ensure Adherence By UNRWA to the Humanitarian Principle of Neutrality,* UNRWA (Apr. 20, 2024) https://www.unrwa.org/resources/reports/unrwa-preliminary-response-final-report-independent-review-mechanisms-and.

Providing an alternative and constructive path, some members of Congress have introduced H.R. 9649, the UNRWA Restoration Act. It takes a balanced approach to the issue, including requiring quarterly reports to Congress on the steps UNRWA is taking to implement the Colonna report recommendations.[39]

Finally, justice cannot be limited to the nine individuals that are the focus of the question submitted for the record. 226 UNRWA employees have been in killed in Gaza.[40] Policymakers should join UN Secretary General Guterres and UNRWA Commissioner General Lazzarini in their call for an investigation and accountability for the UN aid workers deaths.

[39] UNRWA Funding Emergency Restoration Act of 2024, H.R. 9649, 118th Congress (2023-2024) https://www.congress.gov/bill/118th-congress/house-bill/9649.
[40] Statement of Philippe Lazzarini, Commissioner-General of UNRWA, at the United Nations Security Council, UNRWA (Oct. 9, 2024), https://www.unrwa.org/newsroom/official-statements/statement-philippe-lazzarini-commissioner-general-unrwa-united-nations-security-council.

Senator Lindsey O. Graham
Questions for the Record
"A Threat to Justice Everywhere: Stemming the Tide of Hate Crimes in America"
September 17th, 2024

Questions for Rabbi Mark Goldfeder

1. In 2023, there was a reported 140% year-over-year increase in antisemitic incidents across the United States, the most in at least 45 years. Most of this dramatic increase took place following the October 7th Hamas attack on Israel. What steps should the Department of Justice take to ensure that antisemitic hate crimes are thoroughly reported and prosecuted?

   A: First, we need to better understand the scope of the problem. The FBI has acknowledged that hate crime reporting is problematic at best; for example, the "2022 Hate Crimes Statistics report included data from just 14,660 law enforcement agencies out of 18,800 agencies nationwide, making it the fifth straight year of a decline in agency participation and the lowest number of participating agencies since 2012. Of the jurisdictions that did participate, 79 percent reported zero hate crimes."[1] So the DOJ should develop a system to ensure that localities are accurately reporting all of their bias-driven incidents, and Congress can and should enforce that system by requiring that cooperation in order for those entities to qualify for federal funding. Second, the DOJ should vigorously enforce the laws we already have as written. This includes, of course, Title VI of the Civil Rights Act of 1964,[2] the Immigration and Nationality Act,[3] laws requiring schools to disclose the foreign funding they are receiving,[4] and all federal hate crime laws, which are meant to include antisemitism. To the extent that prosecutors are not sure about how to identify antisemitism, the DOJ should make use of the International Holocaust Remembrance Alliance (IHRA) definition to help them recognize antisemitic motives behind unlawful acts.

2. In 2023, 1 in every 10 antisemitic incident took place at a school or on a college campus. What steps should the Department of Education take to make campuses safe for Jewish students and faculty?

   A: First, the Department should withhold federal funding from the institutions that have violated their obligations under Title VI of the Civil Rights Act of 1964. To date no university, not even the most egregious of actors, has actually lost their funding. Second, it should enforce Title VI of the Higher Education Act of 1965, as further elaborated in the Higher Education Opportunity Act ("HEOA") of 2008, which require programs to provide "diverse perspectives" and a "wide range of views to generate debate on world regions and international affairs" in

[1] https://beyer.house.gov/news/documentsingle.aspx?DocumentID=6091
[2] https://www.justice.gov/crt/fcs/TitleVI-Overview
[3] https://www.uscis.gov/laws-and-policy/legislation/immigration-and-nationality-act
[4] https://www.govinfo.gov/content/pkg/USCODE-2021-title20/html/USCODE-2021-title20-chap28-subchapI-partB-sec1011f.htm

order to receive federal funding. Third, it should enforce Section 117 of the Higher Education Act of 1965 (HEA), which requires institutions to disclose certain foreign gifts. Fourth, the Department of Education should work with the Department of Justice to perform joint investigations and compliance reviews. Fifth the Department of Education should develop clear guidelines for dealing with retaliatory complaints: All too often, when Jewish people complain of antisemitism, they are accused of trying to silence others. This perverse victim-blaming tactic does not usually occur in instances involving other forms of discrimination, where the general inclination is typically to believe the accuser — or at the very least, to investigate on the assumption that a complaint was made in good faith. The phenomenon happens so often when people call out antisemitism, however, that it even has its own academic name: the Livingstone Formulation.[5] Jewish students are now afraid to even report antisemitism, lest they be hit with a retaliatory complaint of Islamophobia or anti-Palestinian racism for having dared to speak up against hate. Finally, the Department should issue its long-delayed regulations codifying the International Holocaust Remembrance Alliance (IHRA) definition of antisemitism for civil rights investigations, and provide appropriate accompanying guidance and training.

3. In August, a United Nations spokesperson announced that the U.N. had found sufficient evidence to conclude that 9 individuals employed by the United Nations Relief and Works Agency for Palestinian Refugees were involved in the October 7th Hamas attack on Israel. Given this finding, do you believe Congress erred in its decision to not appropriate any funding for UNRWA in fiscal year 2024?

   A: UNRWA is Hamas.[6] The United States was 100% correct to stop funding UNRWA, and we should never resume funding UNRWA.

4. Can you explain how Zionism relates to Jewish identity? How can the federal government ensure that antisemitic incidents are not dismissed as merely political anti-Zionist incidents?

---

[5] https://research.gold.ac.uk/id/eprint/7144/1/hirsh_transversal_2010.pdf

> The Livingstone Formulation says that that when people raise the issue of antisemitism, they are probably doing so in bad faith in a dishonest effort to silence legitimate criticism of Israel. It warns us to be suspicious of Jewish claims to have experienced antisemitism. It warns us to begin with the skeptical assumption that such claims are often sneaky tricks to gain the upper hand for Israel in debates with supporters of the Palestinians. And this is the substantial position of the 'call to reject' the IHRA definition of antisemitism. The Livingstone Formulation does not allege that Jews often misjudge what has happened to them, it alleges that they lie about what has happened to them. It is not an allegation of error, or over-zealousness, perhaps explicable by reference to the antisemitism of the past. It is an allegation of conspiracy.

Id.

[6] See here for some of the underlying evidence: https://unwatch.org/legal-actions-worldwide-against-unrwa-for-complicity-with-terrorism/

A: Zionism is the movement for the re-establishment and now development and protection of a Jewish nation in its ancestral homeland.[7] Discriminating against a Jewish person or group just because they are Zionist is illegal because Zionism is demonstrably *not* just a political movement. For the vast majority of Jewish people across time and space, Zionism is and always has been an integral part of their Jewish, often their religious, identities. For thousands of years, Jews across the world have prayed to God at least three times a day (and often more)[8] for a safe return to Zion. The Bible itself references this ancient Jewish hope[9] while the Prophets and Writings of the Hebrew Bible repeatedly record this aspiration.[10] From a Jewish law perspective, over half of the Biblical commandments that religious Jewish people are bound to obey are specifically tied to the Jewish homeland.[11] From a doctrinal point of view, belief in and hope for the return to Zion is literally part of the 13 Principles of Jewish Faith.[12]

For *many* if not *most* Jewish people, Zionism is a fundamental *Jewish* belief, and discriminating against someone for their religious belief (or ethnoreligious identity) is wrong. "Denying the Jewish people the right to self- determination and a national homeland is antisemitic because it denies the religious and historic ties of Jews to the land of Israel."[13] As Alyza Lewin eloquently put it:

> Zionism is as integral to Judaism as observing the Jewish Sabbath or maintaining a kosher diet. Not all Jews observe Shabbat or kashrut, but those who do, do so as an expression of their Jewish identity. Similarly, not all Jews are Zionists. But for many Jews identifying with and expressing support for the Jewish homeland is also an expression of their Jewish religious and ethnic identity. Harassing, marginalizing, demonizing and excluding these Jews on the basis of the Zionist part of their identity is just as unlawful and discriminatory as attacking a person for observing Shabbat or keeping kosher... comparable to demanding that a Catholic student disavow the Vatican or that a Muslim student shed his/her connection to Mecca. Excluding an individual in this manner on the basis of his/her identity is

---

[7] *Frequently Asked Questions About Israel*, ISRAEL MINISTRY OF FOREIGN AFFAIRS (Nov. 1, 2001), https://mfa.gov.il/MFA/MFA-Archive/2001/Pages/Frequently%20Asked%20Questions%20About%20Israel.aspx#zionism.

[8] Briana Simon, *Zion in the Sources: Yearning for Zion,* WORLD ZIONIST ORGANIZATION, https://www.wzo.org.il/index.php?dir=site&page=articles&op=item&cs=3318&langpage=heb (last visited Aug. 4, 2020).

[9] *See e.g.*, *Deuteronomy* 30:1-5

[10] *See e.g.*, *Isaiah* 11:11-12; *Jeremiah* 29:14; 20:41-42; *Psalm* 126; *Psalm* 137.

[11] *About Us,* TORAH VEHA'ARETZ INSTITUTE, https://en.toraland.org.il/about/.

[12] *Maimonides Introduction to Perek Helek,* MAIMONIDES HERITAGE CENTER, https://www.mhcny.org/qt/1005.pdf. (explaining the 12th Fundamental Principle).

[13] Handbook (EU) 2021/DS-03-21-002-EN-N Handbook for the practical use of the IHRA working definition of antisemitism, https://op.europa.eu/en/publication-detail/-/publication/d3006107-519b-11eb-b59f-01aa75ed71a1/language-en (emphasis added).

> discrimination. It demands that Jews shed a key component of their identity as Jews—namely, the historic Jewish yearning and determination to return to Zion.[14]

It is also clear that anti-Zionist discrimination functions as anti-Jewish discrimination from an objective legal perspective, under a disparate impact analysis. That measure ignores motivation and looks rather at the discriminatory effect of a given action or policy.[15] A recent Gallup poll found that 95% of Americans Jews support Israel[16]– which, is the definition of Zionism that tends to get Jewish students and Jewish groups excluded around the country[17]– even as they may disapprove of some or all Israeli policies. The research also shows that religion plays an important part in those beliefs,[18] but even if that part was not so clear,[19] if in practice a policy has the effect of excluding or demonizing 95% of a group based on their shared ethnic beliefs,[20] then it should be obvious that you are discriminating against that group and their beliefs.

Today, support for Zionism can take multiple forms, and mere political Zionism, to the extent that such a thing exists, may not be protected, like any other political belief. To be clear: Not all Zionists are Jews, and not all Jews are Zionists, and all Jews get to define their own Judaism and relationship to Zionism. **However**, **for the *vast* majority of Jews across time and space for whom Zionism *is* a part of their Jewish ethnic heritage and national origin identity, it is a protected part of their identity, and they cannot be excluded on the basis of holding that belief.** Any form of anti-Zionism that allows for discrimination against Jewish people because of their affiliation with, affinity for, belief in, or support of the biblical/prophetic/historical/ethnic/cultural/Jewish ideal of Zionism is a prohibited form of antisemitism.

---

[14] Alyza Lewin, *Fighting back against Jew-hatred on campus,* JEWISH STAR (July 9, 2020), https://www.thejewishstar.com/stories/fighting-back-against-jew-hatred-on-campus,19410.

[15] *See e.g.*, Griggs v. Duke Power Co., 401 U.S. 424, 424–31, 436 (1970).

[16] Frank Newport, *American Jews, Politics and Israel,* GALLUP (Aug. 27, 2019), https://news.gallup.com/opinion/polling-matters/265898/american-jews-politics-israel.aspx.

[17] Marcy Oster, *USC student gov't head quit because she was harassed for being pro-Israel*, JERUSALEM POST (Aug. 7, 2020), https://www.jpost.com/diaspora/antisemitism/usc-student-govt-head-quit-because-she-was-harassed-for-being-pro-israel-637802.

[18] Frank Newport, *Religion Plays Large Role in Americans' Support for Israelis,* GALLUP (Aug. 1, 2014), https://news.gallup.com/poll/174266/religion-plays-large-role-americans-support-israelis.aspx.

[19] And even with some of the modern pushback on disparate impact theory generally; *see e.g.*, Susan D. Carle, A Social Movement History of Title VII Disparate Impact Analysis, 63 FLA. L. REV. 251 (2011), *available at* http://scholarship.law.ufl.edu/flr/vol63/iss1/7.

[20] The most common measure of adverse impact - and the measure used by the Uniform Guidelines on Employee Selection Procedures - is the Four-Fifths Rule, or 80 Percent Rule (see Nathan Mondragon, *What is Adverse Impact? And Why Measuring It Matters*, HIREVUE (Mar. 26, 2018), https://www.hirevue.com/blog/hiring/what-is-adverse-impact-and-why-measuring-it-matters) which was "codified in the 1978 Uniform Guidelines on Employee Selection Procedures, a document used by the U.S. Equal Employment Opportunity Commission (EEOC), Department of Labor, and Department of Justice in Title VII enforcement." *Disparate Impact*, WIKIPEDIA https://en.wikipedia.org/wiki/Disparate_impact .

To summarize, Zionism by definition is the belief that there should be a sovereign Jewish nation in its ancestral homeland. In terms of what the federal government should do, in reviewing, investigating, or deciding whether there has been a violation of Title I of the Civil Rights Act (52 U.S.C. §§ 10101 et seq.); Title II of the Civil Rights Act of 1964 (42 U.S.C. §2000a); Title III of the Civil Rights Act of 1964 (42 U.S.C. §§ 2000b et seq.); Title IV of the Civil Rights Act of 1964 (42 U.S.C. § 2000d, et seq.); Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d et seq.) Title VII of the Civil Rights Act of 1964 (42 U.S.C. §2000e et seq.); Section 1981 of the Civil Rights Act of 1866 (42 U.S. Code § 1981); The Equal Educational Opportunities Act of 1974 (20 USC §1701-1758); or The Matthew Shepard and James Byrd Jr. Hate Crimes Prevention Act of 2009 (18 USC § 249) on the basis of race, religion, color, ethnicity, or national origin, based on an individual's actual or perceived connection to an aspect of Jewish identity, all executive departments and agencies charged with enforcing the relevant anti-discrimination statutes should take into consideration the definition of Zionism as part of the assessment of whether the alleged unlawful conduct or practice was motivated by antisemitic intent. Discrimination against Jewish people because of their affiliation with, an affinity for, or support of Zionism is a prohibited form of antisemitism that can include elements of race, religion, ethnicity or national original discrimination.[21]

5. Can you explain the merits of adopting the International Holocaust Remembrance Alliance's working definition of antisemitism? What are some examples of instances when using the working definition would have yielded a better outcome?

Data shows that although Jews make up a little more than 2% of the American population, they are among the most likely of all minority groups to be victimized by incidents of hate. Incidents of antisemitic crime and discrimination risk being unaddressed and underreported unless Jews are protected both as a religion and as a national origin group bearing shared ancestral and ethnic characteristics. The lack of such recognition thus far has led to an equal protection deficit for Jewish persons. The government has a responsibility to protect citizens from hate and bigotry, and authorities must be given the definitional tools needed to stem criminal conduct and discriminatory behavior (not speech) that is motivated by antisemitism. Valid monitoring and enforcement, informed analysis and investigating, and effective policy-making start with uniform definitions because you cannot fight what you cannot define. A frequent tactic of modern antisemitism is to exploit the absence of a proper definitional standard to escape

[21] Of course, it is true that a small percentage of Jews are themselves anti-Zionistic. Jews, like any other group, are not homogenous and so, as Professor Andrew Pessin has noted, it is dire that the question of antisemitism be framed correctly: "For if Jews come in many types… it is perfectly conceivable that someone legitimately characterizable as an antisemite might not hate all or even most Jews…The crucial question should not be whether he hates all or most Jews…It is whether the people he hates, he hates for their Jewishness." Or for some aspect of their Jewishness, including, for example, their Zionism. Unfortunately, as the dozens of examples given above should make clear, it is all too often true that, as Martin Luther King, Jr. once said: "When people criticize Zionists, they mean Jews. You're talking antisemitism." To claim that Zionism and Judaism are completely separate phenomena is just to be ignorant. Or, as Dennis Prager would say, to pretend that "Italy has nothing to do with being Italian."

culpability. Perpetrators of unlawful acts of antisemitic crime and discrimination often later claim that they were merely expressing "anti-Israel" sentiment by attacking Jewish institutions, individuals, or points of Jewish collective identity. The recent increase in anti-Jewish discriminatory incidents has made the need for such definitional clarity across all forms of unlawful discriminatory behavior, from housing, hiring and firing discrimination to hate crimes, abundantly clear. The IHRA definition was developed by a team of cross-disciplinary experts working over a period of years and it provides an objective baseline standard for what is and is not antisemitic. It is the only definition of antisemitism that has ever been internationally accepted, and the only one with a demonstrated track record of success. As attested to in the European Union's Handbook for the practical use of the IHRA working definition of antisemitism[22] the definition has proven to be an essential tool for identifying and curbing contemporary manifestations of anti-Jewish bigotry or hate.

The practical problem with defining antisemitism is that it is a mutating virus; Jews are criticized for being whatever a society, or a particular part of a society, hates at that particular moment. The right will call them radicals, while the left will label them fundamentalists. They are simultaneously too liberal or too conservative, both too rich and a drain on the society. They are variously too strong or too weak, at once too influential and too parasitical. It does not matter if the reasons are contradictory; in the span of one generation the main theory of antisemitism went from Jews being an inferior race worth of destruction (by the Nazis in the Holocaust) to Jews being a powerful race that tries to destroy others (like the Nazis, in Holocaust inversion). A definition of antisemitism that can encompass all of these possibilities and more must be able to cut through the various timely rationales given for a hatred of and hostility towards Jews, and focus rather on the actions taken by those expressing or harboring the hate; a praxeological definition if you will. For our purposes, i.e., for the limited purpose of finding the right definition for authorities to adopt in order to better understand antisemitic intent in the context of discriminatory conduct claims, and to better educate people about what antisemitism is, the definition that serves this goal best is the IHRA definition. The examples it gives focus on the manifestations of antisemitism, i.e. what antisemites do, as opposed to why they do it. The definition was adopted as a guide by the U.S. Commission on Civil Rights in 2006 and by the U.S. State Department as early as 2007. It later served as the bases for the State Department's official working definition, published in 2010. The State Department formally adopted the definition in 2016, after it was officially accepted by a plenary meeting of the then 31 countries in the IHRA. Since 2016, over 1,100 separate governments and other institutions, including 36 states and several of the departments of the federal government, have embraced the IHRA definition. There are not many things that the Bush, Obama, Trump, and Biden administrations have all agreed on, but the IHRA definition is one of them. The definition is also the Jewish community's consensus international standard because it reflects their shared lived experience, and as such, can effectively be utilized to objectively assess the most common contemporary forms of antisemitism.

---

[22] https://op.europa.eu/en/publication-detail/-/publication/d3006107-519b-11eb-b59f-01aa75ed71a1/language-en

Critics have challenged IHRA's use in policy-making on two grounds. First, they say that the very act of defining antisemitism somehow stifles free expression — but that is patently false. The IHRA definition does not do anything to silence any speech — even outright antisemitic speech. A definition (by definition) just allows people to *label* things correctly. Anyone can say whatever they want, however abhorrent, about Jews and/or the Jewish state. But while hate speech is constitutionally protected, that does not mean we cannot call it hateful. And even though it makes them uncomfortable, antisemites do not get to decide the parameters of antisemitism. Second, critics have claimed that IHRA conflates political speech against Israel with antisemitism. That is also not true; there is a safe harbor provision in IHRA itself that specifies that "criticism for Israel similar to that leveled against any other country" is *not* antisemitism, as well as an express caveat that all of the examples given, including the ones about Israel, "*could, taking into account the overall context*," be antisemitic. Context is crucial here, as it is in all instances of alleged discrimination, and IHRA is the one definition that actually well accounts for it. In fact, a good definition, like IHRA, would be the best defense against a false claim of antisemitism. I am attaching two recent law review articles that I have written which explain in even great detail why the IHRA definition is both necessary and appropriate to adopt, and I ask that they be incorporated by reference here.

In terms of the practical effect that the federal government adopting IHRA would have, the answer is both simple and profound. Over the last year, both on and off campuses and all around the country, Jewish people and institutions have been repeatedly unlawfully attacked. In many of these cases, the perpetrators have claimed that these are not acts of antisemitism, only 'anti-Zionism.' Well, as the IHRA definition makes clear, "holding Jews collectively responsible for actions of the state of Israel" *is* antisemitic If the government were to adopt IHRA that would resolve any ambiguity and allow for all of these unlawful acts motivated by antisemitic intent to be treated as the discriminatory acts or hate crimes that they obviously are.

6. What in your opinion makes antisemitism a uniquely pressing issue right now, as compared to other kinds of hate, in the post-October 7th landscape?

   There are two reasons why antisemitism is a uniquely pressing issue right now, as compared to other kinds of hate. Neither of the reasons have anything to do with Jewish exceptionalism, and both have everything to do with practicality.

   The first reason is simply because, as both the statistics and our very eyes show us, it is in fact the Jewish people that are being targeted right now, both on and off campus, in increasingly hostile and dangerous ways. This is a matter of triage, and we need to first stop the most serious bleeding.

   The second reason that dealing with antisemitism is a matter of pressing urgency and concern right now is because of what always and inevitably follows in its wake. As Chief Rabbi Lord Jonathan Sacks of blessed memory once explained, one of the underlying root causes of

antisemitism is a society's unhealthy inability to tolerate difference, "And because we are all different, the hate that begins with Jews never ends with Jews. Antisemitism is the world's most reliable early warning sign of a major threat to freedom... It matters to all of us. Which is why we must fight it together."[23] As Ahmed Shaheed, the United Nations Special Rapporteur on freedom of religion or belief noted in his recent Human Rights Council report on antisemitism, "antisemitism, if left unchecked by governments, poses risks not only to Jews, but also to members of other minority communities. Antisemitism is toxic to democracy and mutual respect of citizens and threatens all societies in which it goes unchallenged."[24] One need look no further than our own college campuses, where already the chants have morphed from Death to Israel to Death to America, to see the truth; that antisemitism is a problem for all of us because the proponents of antisemitism are not aiming at just the Jews, they are ultimately aiming at destabilizing and destroying *all* of us in the West. We must stop antisemitism to save America.

[23] Videos and Audio, *The Mutation of Antisemitism*, THE OFFICE OF RABBI SACKS (Apr. 19, 2017), https://rabbisacks.org/the-mutation-of-antisemitism/.

[24] Ahmed Shaheed (Special Rapporteur on Freedom of Religion or Belief), *The Elimination of all forms of Religious Intolerance*, U.N. DOC. A/74/358 (Sept. 23, 2019). Shaheed also suggested that governments utilize the IHRA definition.

Senator Lindsey O. Graham
Questions for the Record
"A Threat to Justice Everywhere: Stemming the Tide of Hate Crimes in America"
September 17th, 2024

Questions for Kenneth Stern

Dear Senator Graham:

Thank you for these questions.

1. In 2023, there was a reported 140% year-over-year increase in antisemitic incidents across the United States, the most in at least 45 years. Most of this dramatic increase took place following the October 7th Hamas attack on Israel. What steps should the Department of Justice take to ensure that antisemitic hate crimes are thoroughly reported and prosecuted?

There is no question that antisemitic incidents and hate crimes increased after October 7, 2023. Incidents, of course, are distinct from hate crimes. And since October 7 there have also been increased incidents and crimes targeting Arabs, Palestinians and Muslims. There have been attacks on Jews who are anti-Zionist as well.

Fighting hate crimes against Jews (or anyone else) is a job that of course includes, but requires much more than, the Department of Justice's prosecutions. NGOs and others have an important role here too, and DOJ (and Congress) can help.

I suspect almost everyone would like to see hate crime reporting improved. The data is still woefully incomplete. The DOJ must continue to support transition from the Summary Reporting System (SRS) to the National Incident Based Reporting System (NIBRS) to provide law enforcement and community members with the most accurate and useful data about hate crimes, including funds to support the transition and training and technical assistance from the FBI. As they have in recent years, U.S. Attorneys across the country should use their positions as the lead federal law enforcement officers in their jurisdictions to meet with state and local law enforcement agencies to emphasize the importance of the identification and effective response to acts of hate. In 2023, 80% of the 16,009 agencies that reported data to the FBI reported zero hate crimes – including about 60 agencies serving populations over 100,000.[1] U.S. Attorneys must particularly focus on working with these "zero reporting" agencies to highlight why an effective response to hate is central to effective policing.

---

[1] [1]U.S. DOJ, FBI Hate Crimes Statistics Annual Report, Number of Participating Agencies Table and Table 14 Hate Crime Zero Data Reported, available at CDE (cjis.gov); see also FBI's hate crime statistics can be improved | Southern Poverty Law Center (splcenter.org)

Part of the challenge is of course structural with law enforcement, given the demands of extra paperwork and the voluntary nature of reporting. But I also am deeply concerned about the reasons victims of hate crime may not report.

The Bard Center for the Study of Hate (in partnership with Western States Center and the Montana Human Rights Network) wrote a manual for community groups opposing hate: https://bcsh.bard.edu/files/2022/05/OpposingHateGuide-single-pages-8M-5-3.pdf. When we were drafting the report, we reached out to community groups wanting to know what would be useful for them. I was surprised to hear how many would not want to report a hate crime. Some just don't trust police, given their experiences with law enforcement. This included, but was not limited to, Black citizens who could point to their own experience as well as incidents in the news, Muslim communities who saw police as more interested in what information they could share about other Muslims (especially post 9/11), and immigrants who worried that reporting hate crimes would lead to deportation.

The Community Relations Service people at DOJ have a hard job, but I'd like to see more effort put into supporting them addressing and de-escalating tensions that arise from allegations of discrimination and acts of hate in communities, so that trust is built and the cost-benefit people weigh about reporting changes. CRS has the ability to work in communities in the aftermath of acts of hate that do not rise to the level of a crime, helping ensure law enforcement earns the trust necessary to encourage accurate reporting and to support effective investigations and prosecutions. And as law enforcement continues to be asked to do more with less resources, CRS can reduce the burden on police departments by serving as a resource for communities targeted for acts of hate that are not crimes but still cause reverberate and instill fear.

I was encouraged to see the recent awards from DOJ[2] that are designed, in part, to help communities effected by hate crimes. This includes community-focused grants under the Jabara Heyer NO HATE Act, a part of the COVID-19 Hate Crimes Act, as well as grants under the Matthew Shepard and James Byrd, Jr. grant programs. These are important because they help ensure that individuals and communities targeted for hate not only get an effective law enforcement response, but also receive social services and resources they need. But so much more is needed.

In 2021, the FBI's Criminal Investigative Division elevated civil rights violations to its highest-level national threat priority. Hate crime responses must continue to be prioritized with funding and resources. While of course not the only type of hate crime, recent high profile prosecutions of white nationalist organizations targeting immigrants, Jews, LGBTQ individuals, and others demonstrates the importance of consulting and considering the available data about who is committing hate crimes and ensuring we are addressing white nationalist threats.[3] Federal and state law enforcement authorities have increasingly recognized white supremacist groups as one

[2] See https://www.ojp.gov/news/news-release/doj-awards-nearly-30m-combat-rise-hate-and-bias-crimes?utm_campaign=fundingnewsandresources&utm_medium=email&utm_source=govdelivery.
[3] https://www.justice.gov/opa/pr/leaders-transnational-terrorist-group-charged-soliciting-hate-crimes-soliciting-murder - :~:text=The Justice Department announced today that Dallas Humber, 34, of

of the top threats to national security. Indeed, in 2021, DHS identified white supremacists as posing the greatest domestic terror threat.[4]

As I mentioned in my testimony, hate crimes have an economic impact. There's a model for how to calculate those costs, created by a Bard college economics professor.[5] Congress might require the calculation by the GAO or other appropriate federal agency, but the DOJ might support efforts of local groups to quantify the cost of hate crimes in their community. Putting a dollar figure on this scourge might bring more understanding and impetus to tackle the problem.

As I also mentioned last month, there's a huge need to have victims of hate crime get the support they need, even if they don't know what they might need. The Eradicate Hate Global Summit is working on a project to connect people who want to leave hate groups, and family members of people in hate groups, with psychologists and other resources. We're discussing possible expansion of that project to create a clearinghouse so that if someone is victimized by a hate crime, social media will help direct them to a resource that is interactive and will help them file police reports, and get emotional and other support.

One possible additional component would be connecting victims with real human beings who can help them. A promising model is CA vs. Hate – https://www.cavshate.org/. It's a program that has received state and federal funding, and through which people who are targeted for hate can learn about their options, including how to connect with law enforcement and/or local community organizations and service providers. A care coordinator supports the person targeted for hate until they get the resources they need. Expansion of these type of resources with DOJ funding would be extremely helpful. And if they are built, training for police will also be an important component to be funded.

Sometimes when people report what they believe is a hate crime they are told that the facts don't support bringing such a charge. That person, likely hurt and discouraged and feeling dismissed, may well be less likely to report a hate crime in the future, while others in their community will learn the lesson that it's futile to go to the police. BUT if there were an easily accessible clearinghouse of resources the police officer could direct the victim to in order to get support, the interaction would likely be seen by them (and others in their community) as helpful, thus encouraging future reporting. (CA vs. Hate has helped to fill this role; in a recent California Commission on Police Officer Standards and Training (POST) training, law enforcement leaders encouraged their colleagues to connect community members with CA vs Hate to get support when an act of hate does not rise to the level of a crime.)

[4] https://www.nytimes.com/2021/05/12/us/politics/domestic-terror-white-supremacists.html.
[5] https://bcsh.bard.edu/files/2023/03/BCSH-Economic-Cost-of-Hate_3-13-23_Online-.pdf.

2. In 2023, 1 in every 10 antisemitic incident took place at a school or on a college campus. What steps should the Department of Education take to make campuses safe for Jewish students and faculty?

One of the most effective Hillel directors I've known over the decades, someone deeply concerned about Jewish life on campus, once quipped "If you make it about Jews, you lose." He didn't mean ignore antisemitism; far from it. He meant that to help Jewish students and faculty the focus should be on what the campus must be. If the campus is working well, Jewish students and faculty will be protected.

When I speak to administrators and faculty at universities, I stress one principle above all others: whatever you choose to do, think about whether it will advance or harm academic freedom. The same rule should apply for the Department of Education. If it does something that is seen as promoting academic freedom, it will more likely have the desired effect (partly because faculty will not see the action as a threat to their ability to teach and research).

One thing the Department of Education can do is to encourage universities to underscore, through both teaching and training, the following principle: EVERY STUDENT (REGARDLESS OF WHETHER THEY ARE IN A PROTECTED CLASS) HAS THE RIGHT TO EXPECT THEY WON'T BE HARASSED, INTIMIDATED, BULLIED, DISCRIMINATED AGAINST, OR VICTIMIZED BY TRUE THREATS; NO STUDENT SHOULD BE PROTECTED FROM HEARING IDEAS (EVEN ONES THEY MIGHT PERCEIVE AS HATEFUL).

Since October 7, there has been much talk (and hearings in the US House of Representatives) suggesting that students have a right not to hear hateful expressions. And so we've seen attempts, some successful, to punish speech, such as by banning certain pro-Palestinian groups not based on what they have done, but on disfavored expression.

I've been deeply concerned when speakers perceived to be conservative, including Ann Coulter, Charles Murray, Steve Bannon and Milo Yiannopoulos, have been stopped from campus presentations by heckler's vetoes. While I disagree with most of what these speakers have to say, people have a right to hear an invited speaker's views. I learned in college the importance of primary sources. These people are primary sources for their points of view, views that significant parts of our society agree with. Students who have stopped their talks sometimes say these speakers are engaged in "verbal violence," and thus shouldn't be heard. They say they feel "unsafe" by mere expressions.

Stopping speech some don't like on campus harms the bedrock principles of the academy and is destructive to its mission. Campuses should be places that LOOK AT IDEAS, and encourage students to wrestle with them (including why others might have the point of view one detests). And there are things to do to counter (and teach about) speech one doesn't like. Censorship or suppression not only is bad policy, it is counter-productive.

Part of the challenge for pro-Israel students and faculty is that their views are seen as conservative. I sometimes wonder which would be more difficult – being a pro-Israel student on campus or a Trump supporter?

Ideally, the Department of Education should encourage ways to break this false and dangerous notion of "safety." What won't work, indeed will backfire, is to do what some are suggesting: using law to chill or suppress speech about Israel and Palestine.

I've been perplexed by why some conservatives have been taking this approach. Rather than feed the binary of what pure speech is permitted, and what isn't, our universities will only work well if students know that opinions, even ugly ones, will be opposed (and the subject of intellectual dissection), not disciplined or suppressed through law. One thing the Department of Education can do is find ways (through statements and ideally programs and funding) to help universities underscore the distinction between actual safety and intellectual safety.

While I understand the reason some universities have spent the summer revising and announcing policies on time/place/manner restrictions on speech (some of which have been criticized as overbroad or otherwise ill-advised), I wish they would have proudly shared a list of the 20 new courses they were going to offer students that would help them understand the relevant challenges. Courses on hate from brain science to most other fields exploring how humans are seduced by the comfort and simplicity and righteousness of "us" and "them" buckets. Courses on the principles of academic freedom and free speech. Courses about protest movements. Courses on antisemitism. Courses on other hatreds, and how they interconnect. Creative courses that mine the Israel/Palestine conflict.[6]

I've seen some campuses post-October 7 promote programs for helping students learn how to have difficult conversations across differences, and that's a step in the right direction. But I worry that many of these efforts are being put under the banner of DEI. DEI is not the same in every place. In some places it tries to fit everything in a binary around concepts like power and privilege and whiteness. In others it is less dogmatic, and I've been invited to many campuses by DEI staff to train them about antisemitism. But the campus will be better served by encouraging and incentivizing faculty to engage students intellectually, with the goal of having students better poised to look at different points of view as a matter of intellectual curiosity, and reject the idea that they should righteously hunt for speech they don't like and try to suppress it.

As I said, I was invited to many campuses this year. Some are handling the moment better than others, and these seem to be ones where faculty, despite strong differences of opinion over the war, model how to discuss these differences, and where they prioritize their duty to students over their own politics. I've also seen some things that worry me. At one campus the divide between the faculty was so deep that people were even blocking colleagues they disagreed with on social

[6] I describe one such creative course in my 2020 book where students have to re-enact the 1930s Peel Commission, getting roles against type as either a Brit, a Jew, or an Arab, thus engaging the complexities of the guts of the conflict in almost a first-hand way. Students entering the class sometimes said they were eager to learn how the Israeli-Palestinian conflict might have been settled. They come out of the class knowing why, more than 80 years later, it still hasn't. Also, after October 7 my Bard colleagues put together a course on "key words," taking deep dives into words being thrown around (genocide, Zionism, settle colonialism, etc.) what they mean and how people hear them differently. The potential for teaching is seemingly inexhaustible.

media. On another the only thing that pro-Israel and pro-Palestinian faculty could agree on is a deep distrust for the administration, each feeling it was harming their academic freedom in favor of the other side.

The Department of Education could make a significant contribution that would benefit Jewish students and faculty (and in fact all students and faculty) if it found ways to incentivize new teaching, and ways to bring faculty together.

It might hold a summit with leaders in education, highlighting best practices that some campuses have used to bridge divides across difference, and use the best tools of the university – its ability to teach critical thinking and deeply examine ideas.[7]

It might also, as I suggested in my written submission, use ideas from the disciplines that inform Hate Studies to promote not only new educational models for universities, but to help high school students be ready for a college experience where they will engage students from different political, religious, ethnic and racial background. The potential pilot project I mentioned based on the Robbers Cave study and inspired by the late Secretary of State Colin Powell's efforts to promote national service, would be worthy of attention and support.

3. In August, a United Nations spokesperson announced that the U.N. had found sufficient evidence to conclude that 9 individuals employed by the United Nations Relief and Works Agency for Palestinian Refugees were involved in the October 7th Hamas attack on Israel. Given this finding, do you believe Congress erred in its decision to not appropriate any funding for UNRWA in fiscal year 2024?

I know there have been allegations of serious problems with UNRWA in the past as well. Despite this history, my understanding is that the agency provides needed relief for Gazans, and of course since October 7 that need is acute. That a few employees may have participated in the atrocities means they should be held accountable, and if the others in the agency facilitated the employees' actions, they should have to answer too, and other changes made. But you ask, should the acts of 9 people be a sufficient reason to cut funding? An important question would be, what would be the consequences of ending funding? Innocent civilians in Gaza (including children), are already suffering the death of family members, displacement, lack of food and education and other essentials. I would presume these human beings would suffer more because of such a cut. I don't think cutting aid would be in their interest, in Israel's interest, or the United States'.

[7] Congress can help by authorizing additional funding to the Department of Education for such initiatives, as well as providing further funding for OCR.

PALESTINE LEGAL

WRITTEN STATEMENT OF
Lina Assi, Advocacy Manager
Palestine Legal
A Threat to Justice Everywhere: Stemming the Tide of Hate Crimes in America
UNITED STATES SENATE COMMITTEE ON THE JUDICIARY
September 24, 2024

Palestine Legal offers the following resources for the Senate Judiciary Committee's hearing titled *A Threat to Justice Everywhere: Stemming The Tide of Hate Crimes.* Founded in 2012, Palestine Legal is an independent legal advocacy organization dedicated to protecting the civil and constitutional rights of people in the U.S. who speak out for Palestinian freedom. Palestine Legal is the only legal organization in the U.S. exclusively dedicated to supporting the movement for Palestinian rights. As such, Palestine Legal has a unique birds-eye view of the surge of anti-Palestinian racism and efforts to criminalize speech and advocacy in support of Palestinian rights in the past year.

We write to call attention to the efforts to criminalize support for Palestinian rights and the anti-Palestinian and Islamophobic racism that are driving the increased threats and violence experienced by Palestinian, Arab, and Muslim communities across the U.S. We urge the Senate Judiciary Committee to take urgent special measures to ensure the protection of constitutional, civil, and human rights of Palestinians and allies calling for an end to the genocide in Gaza.

As documented in our recently published report, *Reverberations of October 7: Mobilization Against Genocide Undeterred By Peak Anti-Palestinian Repression*, the repression targeting Palestinians and their supporters in the U.S. is at an all-time high. As Israel continues its ongoing genocide in Gaza, there has been a surge of anti-Palestinian and Islamophobic racism, violence, and censorship directed at Palestinians and their allies. Between October 7 and December 31, 2023, Palestine Legal received over 1,037 requests for legal support from individuals being targeted for their support for Palestinian rights. This is over five times the number of reports we responded to in all of 2022, with the high volume of requests for legal support continuing into 2024. The report breaks down the trends in repression across all arenas, including severe campus crackdowns; upticks in law enforcement visits; criminalization efforts, including via repressive legislation; and increased threats of physical violence.

Palestine Legal, along with various civil rights organizations, have written to multiple federal agencies, university and college leadership, elected officials, and institutional leaders documenting these concerns and demanding that they safeguard and uphold the constitutional rights of those advocating for Palestinian freedom.

Please see below for links to these and other resources documenting the repression and criminalization of advocacy for Palestinian rights in the United States and the rise of anti-Palestinian racism. These resources include data cited above as well as examples of specific incidents of targeted repression.

We would be happy to engage more with you about the incidents and trends we have documented.

Thank you for your consideration.

Sincerely,

Lina Assi
Advocacy Manager

Resources documenting anti-Palestinian racism and the suppression of advocacy for Palestinian rights in the US:

- Palestine Legal, Reverberations of October 7: Mobilization Against Genocide Undeterred By Peak Anti-Palestinian Repression, https://static1.squarespace.com/static/548748b1e4b083fc03ebf70e/t/664fbc07860df7037ba81300/1716501546613/Pal+Legal+Report+Reverberations+of+Oct+7th.
- Palestine Legal et al., (2024), Re: Reiterating call to reject IHRA and its underlying conflation of anti-Zionism and antisemitism that is causing severe anti-Palestinian racism, https://static1.squarespace.com/static/548748b1e4b083fc03ebf70e/t/65aaa8b70566f016b04683fc/1705683174095/01.16.2024_OCR+IHRA+Letter_final.
- Council on American-Islamic Relations, Fatal: The Resurgence of Anti-Muslim Hate (2024), https://pa.cair.com/pressrelease/2024-civil-rights-report/.
- Palestine Legal, The Arab American Anti-Discrimination Committee, the Center for Constitutional Rights (2023), OCR Must Act to Address the Rise of Anti-Palestinian and Islamophobic Racism, https://static1.squarespace.com/static/548748b1e4b083fc03ebf70e/t/65416bd823a85315b4d85402/1698786265201/2023.10.31+OCR+Letter.pdf.
- American Civil Liberties Union, (2023), Open Letter to Colleges and University Leaders: Reject Efforts to Restrict Constitutional Protected Speech on Campuses, https://www.aclu.org/documents/open-letter-to-colleges-and-university-leaders-reject-efforts-to-restrict-constitutionally-protected-speech-on-campuses.
- Muslim Advocates, (2023) Coalition Letter to Schools: Protect Students Speaking Out on Palestine, https://muslimadvocates.org/wp-content/uploads/2023/11/2023-11-03-Letter-from-Legal-Orgs-to-University-and-College-Leadership-Nationwide-FINAL.pdf.
- Palestine Legal, (2023), Hundreds of Legal Community Members Demand Action To Stop Racist Targeting of Palestine Advocates and Safeguard Fundamental Rights, https://palestinelegal.org/legal-community-letter.
- Palestine Legal et al., (2022), Re: The IHRA Definition censors free speech and disrupts the education of Palestinian students and their allies, https://static1.squarespace.com/static/548748b1e4b083fc03ebf70e/t/63b6de30db689e6788acceb6/1672928817287/C.
- Palestine Legal and the Center for Constitutional Rights, The Palestine Exception to Free Speech (2015), available at https://palestinelegal.org/the-palestine-exception.
- Arab Canadian Lawyers Association, (2022), Anti-Palestinian Racism: Naming, Framing and Manifestations, https://static1.squarespace.com/static/61db30d12e169a5c45950345/t/627dcf83fa17ad41ff217964/1652412292220/Anti-Palestinian+Racism-+Naming%2C+Framing+and+Manifestations.pdf.
- Legislation, Palestine Legal, https://legislation.palestinelegal.org/.

SHOULDER TO SHOULDER

Standing with American Muslims. Advancing American Ideals.

September 17, 2024

On behalf of the Shoulder to Shoulder Campaign, we sincerely thank Senator Dick Durbin of Illinois, Chair of the Senate Committee on the Judiciary for working to convene this historic Congressional Hearing, *A Threat to Justice Everywhere: Stemming the Tide of Hate Crimes in America*, highlighting the hate impacting our fellow Americans who are Muslim, Arab, Palestinian, Jewish, Sikh, among other racialized communities.

The Shoulder to Shoulder Campaign is a national, multifaith coalition that envisions an inclusive and pluralistic United States where all people, regardless of their faith or background, are treated with dignity. Founded in 2010, through top leadership of nearly 40 religious denominations and faith organizations, including the U.S. Catholic Conference of Bishops, the Union for Reform Judaism, The Episcopal Church, the Islamic Society of North America, among communities at the local level, coming together with a shared conviction that what impacts one, impacts all.

With our mission is to connect, equip, and mobilize people of faith to counter and prevent anti-Muslim discrimination in the U.S., we know that other forms of hate and discrimination - including anti-Jewish, anti-Arab, and anti-Palestinian hate, though different and distinct, - are also intertwined. *No one should fear for their lives and safety because of their religious, ethnic, or cultural identity.*

As you who serve on the committee know well already, we cannot allow hate crimes such as the murder of six-year-old Palestinian, Wadee AlFayoumi to become commonplace in America. Recognizing this hate, through measures such as the Resolution Honoring Wadee Alfayoumi (H.R. 942 /S.R. 589) is a vital step. As the committee explores further concrete measures to stem the tide of hate crimes in

America that have harmed Muslim, Arab, Palestinian, Jewish, Sikh, among other racialized communities, we ask that the committee consider how hate-fueled ideologies have impacted our American institutions and policies and work with directly impacted communities to develop multi-pronged strategies to address them. Please know, we, at the Shoulder to Shoulder Campaign, are working hard to address these problems in American faith and interfaith communities; we are here to assist, support, and connect as we each do our part in building a more inclusive and pluralistic United States of America.

Regards,

Rabbi Esther Lederman, Shoulder to Shoulder Campaign Co-Chair
Religious Action Center for Reform Judaism, Director of Congregational Innovation & Leadership

Rev. Margaret Rose, Shoulder to Shoulder Campaign Co-Chair
The Episcopal Church, Ecumenical and Interreligious Deputy to the Presiding Bishop

Nina M. Fernando, Shoulder to Shoulder Campaign Executive Director

SALDEF
Sikh American Legal Defense and Education Fund

Statement of the
Sikh American Legal Defense and Education Fund

Before the United States Senate
Committee on the Judiciary

Hearing On
"A Threat To Justice Everywhere: Stemming The Tide Of Hate Crimes In America"
September 24, 2024

Chairman Durbin, Ranking Member Graham, and members of the Senate Judiciary Committee:

On behalf of the Sikh American Legal Defense and Education Fund (SALDEF) and the Sikh American community, thank you for the opportunity to submit this written statement to the Committee on this important issue. We are deeply concerned about the increase in harassment, assaults, and acts of hate targeting members of all minority communities, particularly given the current charged climate.

SALDEF is a national Sikh American civil rights and leadership organization based in Washington, DC. Founded in 1996, SALDEF's mission is to empower Sikh Americans by building dialogue, deepening understanding, promoting civic and political participation, and upholding social justice and religious freedom for all Americans.

The experiences of different communities with hate and discrimination may vary based on the moment. But the pain we feel is the same. In the current environment, where xenophobia runs rampant, all attacks and assaults are immediately suspect in the eyes of the victim and their community. That is the pernicious reality of acts of hate and discrimination; they terrorize the individual and their community. They can make one question their sense of belonging and identity.

It is our hope that our written testimony will shed light specifically on the Sikh American community and its long and tragic experience of dealing with hate crimes carried out against both our members and our houses of worship and will lead to greater understanding of actions that can be taken at the federal level to address hate.

However, before we do that, we would be remiss if we did not address the racist remarks and bigoted questions at the hearing directed at Maya Berry, executive director of the Arab American Institute, and co-chair of The Leadership Conference's Hate Crimes Task Force, of which

SALDEF is a member. Some senators sought to take away from the importance of the hearing by utilizing hate-filled rhetoric and stereotypes in their "questions." In remarks directed to Ms. Berry, some committee members raised unfounded claims that serve to elevate and legitimize dangerous stereotypes of Arab Americans and Muslims, which was an attempt to dehumanize her. All of this was done while Ms. Berry was trying to keep the hearing focused on the rising hate facing so many of our communities. This blatant attempt to weaponize racial and religious identity was not only offensive but also undermines efforts to combat the increasing tide of hate.

Sikh American Experience with Acts of Discrimination, Hate, and Violence

The Sikh American community is no stranger to acts of hate, bias, and discrimination in it's over 120-year history in the United States. From the riots in Bellingham, Washington in 1907 to the murder of Balbir Singh Sodhi on September 15, 2001; from the massacre of worshippers at the Gurdwara in Oak Creek, Wisconsin on August 5, 2012 to the countless attacks of and bullying against Sikh Americans of all backgrounds on and offline, our businesses, our gurdwaras, and our people have suffered tremendously.

We have seen and lived the harms when the government and media stigmatize entire communities. We live with the trauma of bullying, name-calling, and harassment. We have navigated discriminatory laws and views. We have mourned the loss of our own grandparents, neighbors, and friends due to acts of despicable violence. Through it all, we have drawn on history and the values of our faith to seek inspiration that allows us to move forward and solutions that benefit all marginalized communities.

While the wave of violence for which this committee is convening is cresting during the pandemic, it is not a new phenomenon in America by any means. From the retaliatory murder of Balbir Singh Sodhi[1], a Sikh Arizonan misidentified as Muslim and killed in broad daylight in the immediate aftermath of 9/11, to the Oak Creek mass shooting in 2012 to the Indianapolis mass shooting in 2021 and countless smaller-scale acts of bias and hate, **Sikh Americans continue to be one of the most commonly targeted religious groups in proportion to their population according to FBI hate crimes data.**

The Federal Bureau of Investigation (FBI) released the annual report on hate crimes showing that 13,377 incidents occurred in 2022.[2] Nearly 17.3% of victims were targeted because of the offenders' bias against the perceived religion of the victims. **Anti-Sikh hate crimes also hit a record high of 198 documented incidents.** Importantly, our experience

---

[1] https://www.azcentral.com/story/news/local/mesa/2021/09/16/memorial-honors-balbir-singh-sodhi-mesa-man-killed-9-11-hate-crime/8334849002/

[2] https://www.justice.gov/hatecrimes/hate-crime-statistics-2022

and research shows that this number is likely a significant underestimate of the actual number of acts of bias and hate.

SALDEF continues to urge all federal agencies and reporting to fully disaggregate data about our communities. To better understand the Sikh American community's experiences, we have conducted surveys to paint a picture of our nationwide community. One survey, the National Sikh American Survey, involved reaching out to over 2000 Sikh individuals around the country during 2020. The survey built on understanding from our pioneering work on attitudes towards Sikh Americans, Turban Myths.

The Sikh American Survey revealed some disheartening figures: 15% of respondents said they only sometimes felt safe practicing Sikhism, with respondents living in the South feeling the least safe. 58% of respondents reported being bullied or harassed because of their Sikh identity, with 60% of respondents living in the Midwest reporting such mistreatment. 63% of turbaned respondents reported being discriminated against for wearing a turban. When sorted regionally, 70% of turbaned respondents living in the South experienced turban-related discrimination.

While there are many cases of bias and hate reported against our community, and countless more unreported cases, few are as burned into our collective memory as the tragedy at the Sikh Temple of Wisconsin in Oak Creek and the later mass shooting at the FedEx facility in Indianapolis.

In 2012, an avowed white supremacist opened fire with a semi-automatic weapon on volunteers preparing a communal meal at the *gurdwara* (Sikh house of worship) in Wisconsin. The six fatalities and three hospitalizations made the attack the deadliest on any house of worship on American soil since the 1964 Birmingham church bombing, until the 2015 mass shooting at the Emanuel African Methodist Episcopal Church in Charleston and then the 2018 mass shooting at the Tree of Life synagogue in Pittsburgh.

The April 2021 shooting at a FedEx ground facility in Indianapolis, Indiana highlighted numerous problems that remained with our ability to address acts of hate.[3] The facility was widely known for employing a high concentration of Sikh workers. In the shooting, eight innocent people were killed, four of whom were Sikhs in the Indianapolis Sikh community. Unfortunately, the Indianapolis Metropolitan Police Department and the FBI declined to pursue the incident as a hate crime.

In our work in Indianapolis, we encountered many of the same structural issues that continue to hamstring the government's work to address hate crimes. The nine gurdwaras in the area,

---

[3] https://www.npr.org/2021/04/16/987929888/9-killed-others-injured-in-shooting-at-fedex-warehouse-in-indianapolis

which primarily serve immigrant and limited English speaking populations, were largely not connected to local and state governments investigating and responding to the incident. Thus, government attempts to share information went largely through the English language media. There was no centralized point of contact or central source of information to distribute information to the community to answer questions or explain what was happening. This largely fell on national organizations, with limited local government contacts and primarily federal relationships, to act as intermediaries. All of these gaps and silos must be addressed through targeted policy solutions.

Unfortunately, these mass acts of violence present only two examples of the devastating effects of hate and bias motivated crimes. Numerous individuals and houses of worship have been the targets of violence and vandalism on the basis of their actual or perceived religion, race, or ethnicity.

<u>On the basis of our collective community experience, we offer the following recommendations:</u>

Pass the Domestic Terrorism Prevention Act
The Domestic Terrorism Prevention Act which will give the federal government essential tools and funding to track and combat hate crimes and bias incidents at a scale proportionate to their perpetration.

Pass the Justice for Victims of Hate Crimes Act
The Justice for Victims of Hate Crimes Act must be passed, to close a loophole in how hate crimes are prosecuted at the federal level.

Pass the Improving Reporting to Prevent Hate Act
The bipartisan Improving Reporting to Prevent Hate Act (IRPHA) is legislation designed to address chronic underreporting of hate crime data by conditioning funding to large city police departments on their credible hate crime reporting to the FBI.

Improve the Nonprofit Security Grant Program
We encourage Congress to take action to ensure adoption of the recommendations made by the Department of Homeland Security's Faith Based Security Advisory Committee to improve the Nonprofit Security Grant Program (administered by the DHS and FEMA).[4] Specifically, we highlight the need for additional outreach and resources to improve the accessibility of the program to underserved communities, including standardizing program application dates,

---

[4] https://www.dhs.gov/sites/default/files/2023-06/FBSAC%20Grants%20%26%20Resources%20Report%20-%20FINAL%2006.06.23.pdf

increasing resources for state administrative agencies to support applicants, and transitioning away from a reimbursement-based model.

Increase Interagency Coordination and Improve Intra-Agency Coordination
Congress should build on the United We Stand Summit goals and establish a permanent, funded, interagency working group to address hate crimes. Further the Department of Justice, Department of Homeland Security, and their component agencies should establish stronger coordination within their respective components to facilitate internal and external efforts to combat hate crimes and coordinate with local law enforcement and impacted communities.

Congress Must Provide Oversight of the National Incident-Based Reporting System (NIBRS) Implementation
The FBI's Uniform Crime Reporting system intended to transition to NIBRS-only data collection as of January 1, 2021. However, given the low number of agencies that submitted data via NIBRS, the FBI has been publishing supplementary reports that include data from the Summary Reporting System (SRS). Accurate and reliable hate crime data is critical to addressing the scourge of hate crimes effectively and responding to the needs of communities. Full implementation of NIBRS must include sufficient compliance for the data to be meaningful and actionable for communities and law enforcement agencies. Full implementation would provide a more accurate and comprehensive picture of what communities across the country are experiencing, as well as allow for victim advocates to better identify resources and respond to the needs of those targeted for hate. Congress must conduct robust oversight of the NIBRS implementation to ensure that hate crime data is accurate and trustworthy.

Recognize the Connection Between Acts of Hate and Gun Violence
The federal government must recognize the connection between gun violence, white supremacy, and acts of hate and bias. We support increased research into gun violence and taking a public health approach to this epidemic. We encourage passage of common-sense actions such as background checks, licensing, and other efforts, such as the Disarm Hate Act.

Increase Funding for the Department of Justice's Community Relations Service and Cultural Competency Training
Another important tool for the federal government to utilize in combating hate crimes is the Community Relations Service (CRS). CRS was created within the Department of Justice by the Civil Rights Act of 1964 and provides services that improve communities' abilities to problem solve and respond to conflict. CRS has been an important partner in efforts to educate law enforcement and other institutions about the Sikh American community, including how to identify and respond to acts of hate targeting the community.

We are happy the Committee is paying closer attention to the plague of violence that continues to afflict our and other minority communities. We look forward to continuing our work striving together with the members of the Committee and all of your colleagues to build an America where acts of hate from the members of one community against the members of another are an artifact of the past, and where all Americans can help build a better future in which all colors, orientations, and faiths are truly equal.

National Urban League | *Empowering Communities. Changing Lives.*

September 24, 2024

The Honorable Richard J. Durbin
Chair
Senate Committee on the Judiciary
224 Dirksen Senate Office Building
Washington, DC 20510

The Honorable Lindsay Graham
Ranking Member
Senate Committee on the Judiciary
224 Dirksen Senate Office Building
Washington, DC 20510

Dear Chairman Durbin and Ranking Member Graham:

As Executive Director of the National Urban League's Washington Bureau, which serves as the policy and advocacy arm of the 114-year old civil rights organization, I write to thank you for organizing a full Senate Judiciary Committee hearing, *A Threat to Justice Everywhere: Stemming the Tide of Hate Crimes in America*, to discuss the lasting effects of hate crimes on our communities. I had hoped that the hearing, which was held almost two years to the day that the White House hosted its first-ever 'United We Stand' Summit against hate-fueled violence, would be part of a continued and much-needed conversation at the federal level on how we can combat bias and hate. Instead, in a hearing whose title invoked the words of Reverend Dr. Martin Luther King, Jr.[1], rather than foster a discussion on how we can come together as a nation, we heard members of the Senate Judiciary Committee fan the flames of hatred with their questions and commentary. What we witnessed at your hearing is an affront to King's legacy as a peacemaker.

The National Urban League is the oldest and largest community-based civil rights organization dedicated to the social and economic empowerment of underrepresented communities. Since 1910, we have led the fight against white supremacists and ethno-nationalists by organizing and uplifting communities of color. In 2022, we partnered with the Anti-Defamation League to found the Community Safety and Solidarity Coalition[2] and to create Project CODE[3], a multi-organizational effort to address issues of political violence and develop community-centered responses to political extremism. We also continue to be a proud member of The Leadership Conference Hate Crimes Task Force, co-chaired by the Arab American Institute.

---

[1] Letter from Dr. Martin Luther King, Jr., "A Letter from Birmingham Jail," (April 16, 1963) https://www.csuchico.edu/iege/_assets/documents/susi-letter-from-birmingham-jail.pdf.

[2] Press Release, Anti-Defamation League, ADL and National Urban League Launch Community Solidarity & Safety Coalition in Advance of the "United We Stand" Summit at the White House (September 14, 2022), https://www.adl.org/resources/press-release/adl-and-national-urban-league-launch-community-solidarity-safety-coalition.

[3] National Urban League, Project CODE: An Equitable Justice Initiative, https://nul.org/basic-page/project-code#:~:text=Collaborative%20Organizations%20to%20End%20Domestic,and%20the%20Anti%2DDefamation%20League.

According to the most recent FBI Hate Crime Statistics report, attacks based on racial, ethnic, or ancestry bias continue to rise across the country.[4] These attacks stem from white supremacy ideology, a belief system that has been used to justify acts of violence against Black people from slavery through Jim Crow to present day violence. In just the last two weeks, we have seen racist attacks levied against the Haitian community in Springfield, Ohio. Vicious and false rumors driven by hateful online chatter and political leaders have resulted in at least 33 bomb threats, causing evacuations and shuttering public buildings across Springfield.[5]

These dangerous accusations and the following threats are just the most recent attacks on the Black community. On May 14, 2022, a self-described white supremacist walked into a Tops supermarket and murdered ten Black Americans and injured three more.[6] During the attack and in his writings, the killer used dehumanizing rhetoric and referenced the "great replacement theory," a conspiracy theory that political elites are promoting widespread immigration to decrease the number of white Americans and "replace" them with Black and Latino immigrants from other countries.[7] This same conspiracy theory was used to justify the massacres at the Tree of Life Synagogue in Pittsburgh, Pennsylvania that left eleven congregants dead and six more injured[8], and in El Paso, Texas, where 23 people were killed and 22 more were injured in a Walmart because of their Hispanic identity.[9]

Each of these horrific attacks began with politicians and media figures using their platforms to parrot and promote racist conspiracy theories and incite violence against our communities. It is deeply troubling that we saw this very same rhetoric being promoted in your hearing room. Rather than allowing this divisive rhetoric to persist, we must unite in condemning racist attacks against any minority group. We urge the committee to move forward with a positive agenda to meaningfully address the epidemic of hate crimes and hate-fueled violence that is plaguing our country.

Now, more than ever, is the time for collective action to protect vulnerable communities. Organizations like the National Urban League and our partners will remain steadfast in the fight against hate, but we need you – as our national leaders – to do more. This requires not stoking people's fears but instead leaning into the values and principles that unite us and bring us together as a nation.

---

[4] Department of Justice, Hate Crimes 2023 Facts and Statistics (Last visited September 24, 2024), https://www.justice.gov/hatecrimes/hate-crime-statistics.

[5] Kevin Breguninger and Josephine Rozzelle, *Ohio GOP Gov. DeWine says 'at least 33' bomb threats prompt Springfield to begin daily school sweeps*, CNBC (September 16, 2024), https://www.cnbc.com/2024/09/16/springfield-bomb-threats-ohio-republican.html.

[6] Bill Hutchinson and Mark Nichols, *2 years after racially motivated Buffalo mass shooting, hate crimes targeting Black people persist,* ABC NEWS, (May 13, 2024), HTTPS://ABCNEWS.GO.COM/US/2-YEARS-AFTER-RACIALLY-MOTIVATED-BUFFALO-MASS-SHOOTING/STORY?ID=109800747.

[7] Dustin Jones, *What is the 'great replacement' and how is it tied to the Buffalo shooting suspect?* NPR, (May 16, 2022), https://www.npr.org/2022/05/16/1099034094/what-is-the-great-replacement-theory.

[8] Department of Justice Office of Public Affairs, Jury Recommends Sentence of Death for Pennsylvania Man Convicted for Tree of Life Synagogue Shooting (September 24, 2024), https://www.justice.gov/opa/pr/jury-recommends-sentence-death-pennsylvania-man-convicted-tree-life-synagogue-shooting.

[9] Department of Justice Office of Public Affairs, Texas Man Sentenced to 90 Consecutive Life Sentences for 2019 Mass Shooting at Walmart in El Paso, Texas, Killing 23 People and Injuring 22 Others (Last visited September 24, 2024), https://www.justice.gov/opa/pr/texas-man-sentenced-90-consecutive-life-sentences-2019-mass-shooting-walmart-el-paso-texas.

Thank you for your time and consideration, the National Urban League stands ready to lend our expertise to the committee should there be future opportunities to meaningfully address hate crimes.

Respectfully,



Tara Murray
Executive Director, Washington Bureau
Senior Vice President, Policy and Advocacy
National Urban League

Arab American Bar Association of Illinois
332 South Michigan Ave.
Suite 1032 #A55
Chicago, IL 60604

September 16, 2024

The Honorable Richard J. Durbin
Chairman
Committee on the Judiciary
United States Senate
Washington, D.C. 20510

Dear Chairman Durbin:

We write to you to provide testimony for the Senate Judiciary Committee Hearing on Hate Crimes scheduled for tomorrow, Tuesday, September 17, 2024. We thank you for this opportunity to share the impact that hate crimes have had on our Middle-eastern community and the steps that the Arab American Bar Association of Illinois (AABAR) has taken to combat hate crimes and discrimination.

For close to four decades, AABAR has served the Illinois legal community and beyond. AABAR is a professional association of attorneys dedicated to the rule of law, equal justice, fellowship, legal education, and community service. We are firmly committed to the principle of quality legal representation for all, regardless of background. Our membership is open to any licensed attorney or law student sharing our goals, regardless of ancestry, race, color or creed. We are proud to report that our membership includes those from many faiths, including, but not limited to, Christians, Muslims, and Jews, as well as Arabs and non-Arabs. AABAR is dedicated to the Arab-American community in Illinois, as well as nationally. Several members of our Board of Directors sit on the Board of the National Arab American Bar Association (NAABA).

Unfortunately, more recently, and in levels not seen since post-9/11, we have found that a great deal of our focus is spent on responding to hate crimes and copious occurrences of discrimination. Repeatedly, members of the Arab-American and Muslim community are targets of racism, dehumanization, and hate crimes, leading them to feel unsafe and intimidated. Some recent examples include:

- October 14, 2023, an innocent 6-year-old Palestinian-American child, Wadea Al-Fayoume, was brutally murdered in Plainfield, Illinois as a result of bigotry, ignorance, and vitriolic and misguided public statements made by political leaders, the media, and members of the public; statements that have systematically dehumanized Arabs and Muslims.
- October 17, 2023: An individual in Lombard, Illinois, verbally assaulted and threatened two Muslim men, telling them that he would harm them and demanding that they leave America.
- More recently, in early September 2024, Nabala Café, a Palestinian owned café in the Uptown neighborhood of Chicago, which was displaying a Palestinian flag, was targeted by vandals who damaged its front window.

These are but three examples of the 196% increase in hate crimes committed against Arabs and Muslims in the Chicagoland area since October 7, 2023.

When hate crimes against Arabs and Muslims spike in such a manner, our organization has come together to shine a light on it and to call for action to stop such hatred and vitriol against our community. In the months and years after 9/11, Judge Bill Haddad (ret.) and Judge Rouhy Shalabi delivered over 200 speeches to community organizations, mosques, churches, law enforcement, government rights agencies, bar groups, law schools, and ethnic associations.

Most recently, on October 17, 2023, AABAR issued a press release condemning the murder of 6-year-old Palestinian American Wadea Al-Fayoume. Six days later, in response to Wadea's death and the sharp increase in anti-Arab and anti-Muslim rhetoric, AABAR – joined by Illinois Governor J.B. Pritzker, Illinois Attorney General Kwame Raoul, the Executive Director of the Illinois Commission Discrimination and Hate Crimes Elana Kahn, and various other bar organizations – held an emergency press conference at the Chicago Bar Association. AABAR condemned Wadea's death as well as the assaults and threats made to Arab American men, women, and children. (https://www.youtube.com/watch?feature=shared&fbclid=IwY2xjawFVXxdleHRuA2FlbQIxMAABHQ7jwPXaz6viAZkn_4buggtKnK76uinYyFIJcFLcN8nII-Y_tZBtTjrdOg_aem_0zm0xYyQeH-PJtx_vMOeTg&v=pg7D-aGVEN0).

No one should have to live in fear of being attacked simply because of their heritage, nationality, ethnic background, or the color of their skin. Therefore, we call upon the Senate Judiciary Committee on Hate Crimes to take the necessary actions to ensure that all individuals in this country can live their lives without fear of being attacked simply because of who they are. We also request that you maintain an open line of communication with AABAR, an active group of attorneys and judges, who are ready and willing to engage in dialogue for a safer and more just country.

Sincerely,

Arab American Bar Association of Illinois

Name: Abdul Akbar Muhammad

I am writing to bring to your attention a recent incident that occurred at "Let's Eat to Live Restaurant", owned by Carmella Coqmard Muhammad, located at 621 E 67th Street. We have become victims of a hate crime, which has not only affected our business but has also instilled fear within our community.

On April 27, 2024, we received multiple threatening phone calls from an unknown individual who stated intentions to harm our establishment including threats that they were going to blow the place up and kill everyone. Eat To Live is a Muslim owned and operated restaurant. These threats included repeated assertions of violence, which forced us to evacuate our premises and seek immediate assistance from the Chicago Police Department and local Muslim organizations for psychological support. The business is in a Muslim Salaam business corridor: 613 E 67th - 621 E 67th Chicago Illinois. We found video surveillance of the suspect who is a Caucasian man who came into establishment earlier that day.

This experience has highlighted a pressing need for enhanced safety measures and community support systems. To address these issues effectively, I would like to propose the following recommendations:

1. Increased Community Outreach Programs**: Establish initiatives that promote understanding and tolerance among diverse communities to reduce the prevalence of hate crimes.

2. Enhanced Support for Victims**: Create a dedicated support system for victims of hate crimes that includes psychological counseling and legal assistance.

3. Strengthened Law Enforcement Training**: Ensure that law enforcement agencies receive specialized training on handling hate crimes sensitively and effectively, fostering trust within the community.

4. Public Awareness Campaigns**: Launch campaigns to educate the public about the impact of hate crimes and encourage reporting of such incidents.

5. **Community Safety Initiatives**: Implement neighborhood watch programs and increase police presence in areas with high reports of hate incidents to deter potential threats.

We, as members of the Islamic community believe that with your support, we can create a safer and more inclusive community for everyone. Thank you for your attention to this critical issue. We look forward to your response and hope to work together to foster a safer environment for all.

Sincerely,

Carmella Coqmard Muhammad and Abdul Akbar Muhammad
Let's Eat to Live Resturant

ASIAN AMERICANS ADVANCING JUSTICE AAJC

Testimony of Asian Americans Advancing Justice | AAJC
for United States Senate Judiciary Committee Hearing
"Combating the Rise in Hate Crimes"

Asian Americans Advancing Justice | AAJC (Advancing Justice | AAJC) submits this testimony to the U.S. Senate Judiciary Committee for its hearing entitled "A Threat to Justice Everywhere: Stemming the Tide of Hate Crimes in America," held on September 17, 2024. We appreciate the focus of the hearing on the threats facing marginalized communities and how the federal government can better protect the civil rights and safety of Americans, including Jewish, Arab, and Muslim Americans who have been suffering as a result of rising antisemitism, Islamophobia, anti-Arab hate, and other forms of bigotry.

Two years ago, Advancing Justice | AAJC submitted testimony to this Committee for its hearing on March 8, 2022, "Combating the Rise in Hate Crimes." In that testimony, we shared some of what Asian Americans in this country had been facing as a result of increased hostility and hatred directed at our communities in connection with the COVID-19 pandemic. The warnings we offered then, that the increased discrimination directed at Asian Americans would not abate with the end of the pandemic have, unfortunately, been proven correct. Asian Americans continue to experience heightened levels of hate and harassment. Two years ago, Asian American communities were not alone in being subjected to increased attacks and we recognized then, as we do now, the importance of solidarity and the need to work together to safeguard all communities from harm.

Organizational Background

Asian Americans Advancing Justice | AAJC (Advancing Justice | AAJC) is a national non-profit, non-partisan organization that works through policy advocacy, community education, and litigation to advance the civil and human rights of Asian Americans and to build and promote a fair and equitable society for all. Founded in 1991, Advancing Justice | AAJC is one of the nation's leading experts on civil rights issues of importance to the Asian American community.

Asian Americans Advancing Justice | AAJC is a member of Asian Americans Advancing Justice (Advancing Justice), a national affiliation of four civil rights nonprofit organizations that joined together in 2013 to promote a fair and equitable society for all by working for civil and human rights and empowering Asian Americans and Pacific Islanders and other underserved communities. The Advancing Justice affiliation is comprised of our nation's largest Asian American advocacy service organization located in Los Angeles (Advancing Justice | Southern California), the largest national Asian American policy advocacy organization located in Washington D.C. (Advancing Justice | AAJC), the leading Midwest Asian American advocacy organization (Advancing Justice | Chicago), and the Atlanta-based Asian American advocacy organization that serves one of the largest and most rapidly growing Asian American communities in the South (Advancing Justice | Atlanta).

1620 L Street, N.W., Ste. 1050, Washington, DC 20036 T 202-296-2300 F 202-296-2318 www.advancingjustice-aajc.org

Through our work protecting our communities in the wake of COVID-19, Advancing Justice | AAJC strives to ensure that the civil rights and human rights of Asian Americans are protected. Advancing Justice | AAJC works to advance laws and policies that address anti-Asian hate, including advocating for improvements to hate crimes laws and government data collection, and for increased resources to respond to hate crimes and hate incidents. Advancing Justice | AAJC works with policy makers on the Hill, in the White House, and in executive agencies; with civil rights advocates, including the Leadership Conference on Civil and Human Rights Hate Crimes Task Force and the National Council of Asian Pacific Americans Civil Rights Committee; with community leaders, including our Community Partners Network of more than 250 Asian American and Pacific Islander (AAPI)-serving community-based organizations; and with the media to address anti-Asian racism and xenophobia.

Hate Crimes Are at Troubling All-Time Highs and Anti-Asian Hate is a Continuing Problem

While progress has been made, many of the needs of our diverse communities that we raised in the testimony we submitted two years ago persist.

In its 2023 hate crimes data released yesterday, the FBI reported a record high of 11,862 hate crimes.[1] According to analysis from our colleagues with the Arab American Institute, these statistics show significant increases in anti-Jewish incidents, a 63% increase between 2022 and 2023, marking the highest year on record; anti-Muslim incidents, a 49% increase; and anti-Arab incidents, a 34% increase, marking the highest level since the FBI started collecting data in this category in 2015.[2]

Hate crime incidents based on sexual orientation also reached an all-time high, with a 7% increase, including the highest annual total for hate crime incidents based on gender identity since this category was added in 2013.[3]

While the 407 hate crime incidents based on anti-Asian bias is a lower total than reported in 2022 and the high of 746 reported in 2021, this total remains significantly higher than pre-pandemic levels.[4] The number of reported hate crime incidents motivated by anti-Native Hawaiian and Pacific Islander bias, 15 in 2023, also has declined from 2022 and from the high of 196 reported in 2021.[5]

While these data are important, hate crimes statistics do not tell the full story of what our communities have experienced and continue to face. The Advancing Justice affiliation continues to hear from members of the Asian American community via our Stand Against Hatred website (www.StandAgainstHatred.org) about the hate and harassment they experience.

---

[1] Federal Bureau of Investigation, Criminal Justice Information Services Division, FBI Releases 2023 Crime in the Nation Statistics, September 23, 2024.

[2] Arab American Institute, AAI's Statement on the FBI's 2023 Hate Crime Data Release: Data Shows the Highest Number of Hate Crimes Ever Recorded, September 23, 2024.

[3] Id.

[4] Id.

[5] Id.

Stop AAPI Hate, which established its community reporting website in March 2020 to capture reports from the Asian American community of hate and harassment connected to the COVID-19 pandemic, received nearly 11,500 individual reports by the end of 2022.[6] Most of these reports involve hate incidents, the term commonly used to describe bias incidents that may not meet the definition of a hate crime, and further illuminate community experiences of hate, harassment, and discrimination. Details on these reports are accessible via Stop AAPI Hate's Reporting Center: https://stopaapihate.org/explore-our-data/

Furthermore, Stop AAPI Hate will release a national survey later this week that reveals that racism and discrimination against Asian Americans and Pacific Islanders in the United States "continue to be ongoing and widespread, with serious impacts on our everyday lives."[7] According to their survey with NORC at the University of Chicago, Stop AAPI Hate reports that half (49%) of Asian Americans and Pacific Islanders experienced some form of hate in 2023 due to their race, ethnicity, or nationality.

In addition, in its 2024 STAATUS Index, The Asian American Foundation found that nearly 1 in 3 Asian Americans have been called a racial or ethnic slur in the past year, and nearly 3 in 10 Asian Americans were verbally harassed or abused in the last 12 months because of their race, ethnicity, or religion.[8] Our communities continue to fear that they will be attacked or face discrimination because of our identities. As detailed in the STAATUS Index, 41% of Asian Americans believe they are likely to be the victim of a physical attack and 59% of Asians Americans think it is likely that they will be a victim of discrimination in the next 5 years because of their race, ethnicity, or religion.[9] These concerns impact us in other ways too. As reported in the STAATUS Index, only 38% of Asian Americans completely feel that they belong and even fewer feel that they are fully accepted.[10]

Recommendations

The recommendations offered by Asian Americans Advancing Justice | AAJC in our testimony two years ago continue to be applicable now:

- Improve Hate Crimes Reporting and Data Collection
- Reach Out To and Invest In Impacted Communities
- Improve Enforcement of Non-Discrimination Laws
- End Profiling and Continue to Address Harms Associated with the "China Initiative"
- Support Anti-Harassment Training and Education in Asian American History

We offer updated information on several of these recommendations:

---

[6] Stop AAPI Hate, Reporting Center Data, accessed September 24, 2024.

[7] Stop AAPI Hate, "The State of Anti-AA/PI Hate: Findings from a March 2024 Stop AAPI Hate/NORC National Survey," forthcoming data one-pager, on file with Asian Americans Advancing Justice | AAJC.

[8] The Asian American Foundation, STAATUS Index 2024, May 1, 2024.

[9] Id.

[10] Id.

Improve Hate Crimes Reporting and Data Collection

Advancing Justice | AAJC supported passage of the COVID-19 Hate Crimes Act in 2021, including the incorporation of the Jabara Heyer NO HATE Act into the bill. We urge continued effort to complete the transition of hate crime reporting by law enforcement agencies to the National Incident-Based Reporting System (NIBRS). In addition, Advancing Justice | AAJC joined with many civil rights organizations this spring to support passage of the Improving Reporting to Prevent Hate Act.[11] We urge Congress to take action on this bill, which would require local governments to report credible hate crime data to the FBI's Uniform Crime Reporting program in order to be eligible for federal funding under the Omnibus Crime Control and Safe Streets Act of 1968, as a means to taking the next steps to improving hate crimes reporting and data collection.

Reach Out To and Invest In Impacted Communities

There is no single solution to address hate crimes, harassment, and discrimination. Advancing Justice | AAJC continues to advocate for a holistic approach that incorporates improving access to government programs and services, including funding programs and services that will support community safety and the conditions we need to thrive, and proactive and ongoing outreach and education to vulnerable communities in the languages that they speak, and working with and through organizations that communities know and trust to understand their needs and advocate for the solutions they feel are needed.

End Profiling and Continue to Address Harms Associated with the "China Initiative"

Congress recently concluded a series of activities dubbed as "China Week," which Advancing Justice | AAJC and other advocates criticized as xenophobic and likely to inflame greater discrimination against people of Chinese descent. Advancing Justice | AAJC has spoken out against the China Initiative and its reinstatement, and we will continue to vehemently oppose anti-Asian scapegoating and efforts to leverage fear and suspicion in the name of national security.[12] While the House of Representatives has voted to pass H.R. 1398, The Protect America's Innovation and Economic Security from CCP Act of 2024, Advancing Justice | AAJC continues to oppose this legislation and related measures. We also urge elected officials and those aspiring to public office to refrain from inflammatory anti-China rhetoric and encourage our leaders to hold accountable colleagues who persist in racist attacks and fear-mongering.

Conclusion

Finally, we cannot close without addressing what took place during the hearing on September 17, 2024. As Asian Americans Advancing Justice | AAJC has asserted many times in the past, it is vital that we address anti-Asian hate, including calling out and putting an end to xenophobic and racist rhetoric and scapegoating of our communities. We recognize that this work cannot happen

---

[11] Leadership Conference on Civil and Human Rights, Coalition Letter in Support of Improving Reporting to Prevent Hate Act, May 8, 2024.

[12] Stop AAPI Hate, Asian Americans Advancing Justice | AAJC, Asian American Scholar Forum Condemn U.S.-China Legislation Rooted in Xenophobia, September 12, 2024.

in isolation and that we cannot act only when our own communities are directly impacted. Acts of hate and violence against any community demand a response from all of us.

The Senate Judiciary Committee hearing on hate crimes should have served as an opportunity to advance discussion of the role that Congress and all Americans can play in protecting one another from harm arising from hate and discrimination. Instead, hate was on display during the hearing as our colleague Maya Berry of the Arab American Institute was subjected to a racist attack. We join with many of our civil rights colleagues[13] in condemning the vitriol directed at Ms. Berry and urging the Committee to refocus its efforts on understanding hate and building more effective solutions to safeguard all communities – Arab American, Asian American, Black, disabled, Jewish, LGBTQ+, Latino, Muslim or Palestinian Americans – against attack because of their identity.

[13] Leadership Conference on Civil and Human Rights, Senate Judiciary Hearing Derailed with Racist Attacks on Civil Rights Leader Maya Berry, Undermining Efforts to Address White Supremacy, September 17, 2024.

Dear Senator Durbin,

I want to express how important it is to my family and I that this hearing on hate crimes takes place. My family and I live near Springfield, IL and until a few years ago, we lived in Chicago and would often visit family and friends in the suburbs where Wadea Al Fayoumi and his family lived. While we occasionally have experienced some racist micro-agressions and effects of ignorance, I would say overall we have had a positive experience living and existing in our communities. A few years ago, when a visibly Muslim family in Ontario, Canada was intentionally run down my a driver in a racist attack, it struck an undercurrent of fear in myself and my family, We don't feel fully safe knowing that the North American public is subject to so much misrepresentation and bias media that they can be influenced to such a violent extent, While some may think this is an overreaction and that i am focusing too much on exceptions, the case of Wadea , who was stabbed to death by his landlord who played with him and gave him birthday gifts says otherwise. Another case and point is the attack on Hesham and his friends in Vermont while they simply were walking and talking while wearing Keffiyes and speaking Arabic. There must be some recognition, understanding and action of the misinformation and bias in our society that is having deadly impact, My own son experienced a less violent but ugly situation in his social studies class. While he worked on his group project about various countries, with his close friends, one of his own friends made a comment that "We should nuke Palestine". My son is not Palestnian, but we are Muslim and we do participate in advocacy against the genocide in Gaza. We have Palestinian friends who have lost hundreds of family members, We were all very disturbed by this event and when i called the boy's mother and the principal, they were both shocked as well and recognized that it seemed he had been exposed to some hateful speech through media and was not getting the balancing perspective about who Palestinians really are. These conversations, hearings and efforts are essential to stopping further injustices and tragedies. Thank you and I look forward to seeing the findings of this hearing implemented.

Amina Rahman

[redacted]

[redacted]

AMVOTE-PAC* - **American Middle East Voters Alliance, Inc.**

"POLITICAL ACTION COMMITTEE"

"First Arab-American PAC in Illinois History"

Judge William J. Haddad, Retired, Chairman | 53 W. Jackson, Suite 1142, Chicago, Illinois 60604
312-263-5282 / 312-909-1127 | info@amvotepac.org / judgehaddadret@gmail.com

Executive Committee
Hon. William J. Haddad (Chair)
Marvet Sweis Drnovsek, Esq. (Vice-Chair)
Robert G. Abboud
Salman Aftab
Jamil Bou-Saab, P.E.
Rush Darwish
Abder R. Ghouleh, P.E.
Vivian Khalaf, Esq.
Sana'a Hussien, Esq.
Zubair Khan, Esq.
Talat Othman
Atour Sargon

Advisory Board
A. Robert Abboud
Thomas G. Abraham
Hon. Anan Abu-Taleb
Khaled Akkawi
Ramsin Benjamin
Khaled J. Elkhatib, Esq.
Ahmad Elkhatib
Dr. Anton J. Fakhouri.
Emil D. Haddad
Neil Haleem
Roaa Hussein
Michael Maali
Mervate Mohammad, Esq.
Michael Mufarreh
Anthony Nasharr, Esq.
Mohamad Nasir
Samuel Nubani
Camille Odeh
Mary Oshana
Dr. Hareth Raddawi
GM "Jim" Sadat
Anthony Shaker, Esq.
Joseph G. Shaker
Jawad Shalabi, Esq.
Edward Shishem, Esq.
Dr. Talal Sunbulli
Hon. Ihsan Sweiss
Rima Sweiss
Dr. Pierre Wakim
Dr. James Zogby (AAI-DC)

Political Consultants
Rima Sweiss
M.K. Dawson
Emil D. Haddad

September 16, 2024

To: Hon. Richard J. Durbin, Chairman, Committee on the Judiciary, United States Senate
Fr: Hon. William J. Haddad (ret.), Chair, American Middle East Voters Alliance
Re: Senate Judiciary Committee Hearing on Hate Crimes

The post-9/11 backlash of hate crimes and hate speech against Arab Americans and Muslims in the Middle Eastern community necessitated the founding of AMVOTE, the American Middle East Voters Alliance, the first Arab American PAC in Illinois.

AMVOTE requests that the Committee consider ways and means of encouraging greater local voter empowerment in the Middle Eastern (MENA) Community in order to ensure a safer and more just America.

AMVOTE'S voter empowerment and education role was increased in 2016 when primary candidates demonized the Middle Eastern community in the United States, resulting in thousands of attacks upon our community. And we know that when hate crimes hit any single minority group, they hit all of us, as was evidenced by an increase in antisemitism.

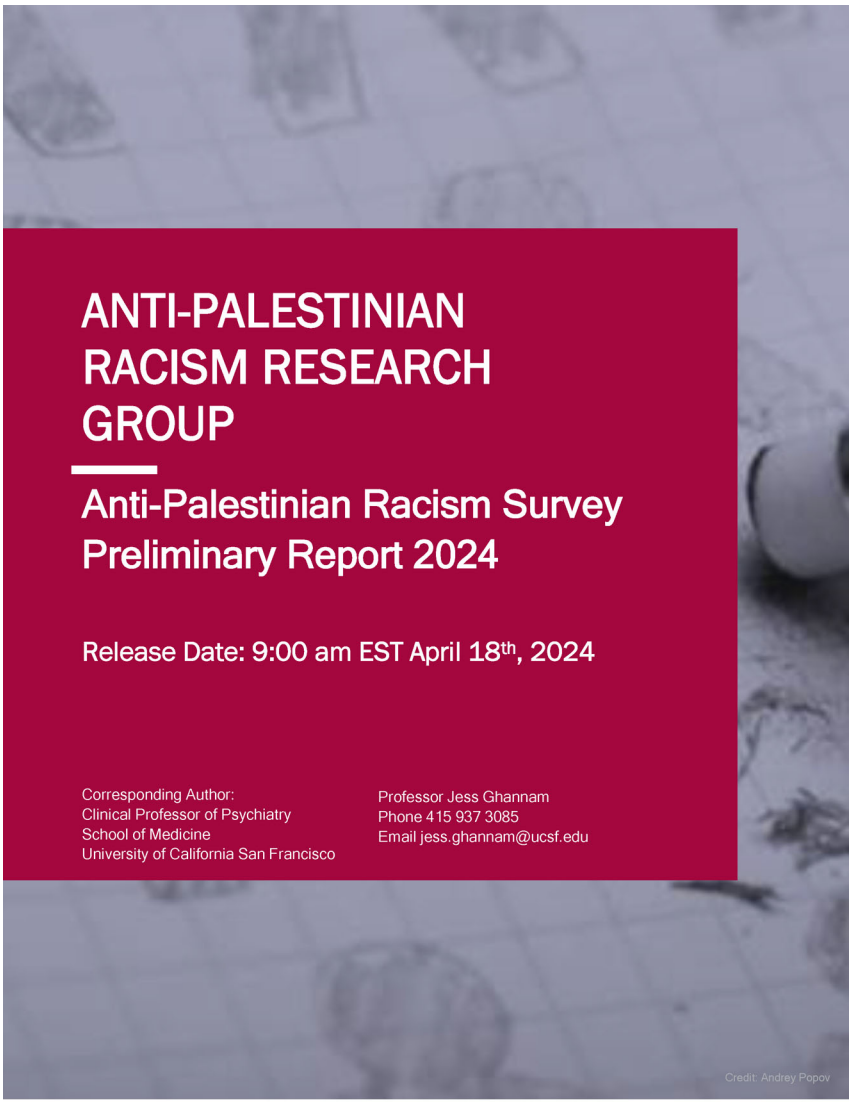
After October 6, 2023, the upswing of hate rhetoric and crimes against Middle Eastern communities reached insurmountable levels. In response, AMVOTE increased its proprietary Illinois database of registered Middle Eastern voters to 357,588, which represents 4.04% of Illinois voters, 5.59% of Cook County/Chicago voters, and 6.69% of DuPage County voters. Furthermore, AMVOTE greatly increased its deployment of candidate endorsements for this November when we shall publish endorsements to our 357,588 registered voters with over 600,000 emails, text messages, and social media posting. Accordingly, the number of candidates seeking our endorsements has greatly increased. Today, nearly every candidate for local office---from judicial vacancies to the Illinois General Assembly to the Governor---seek an AMVOTE endorsement.

Although AMVOTE has been instrumental in increasing grassroots support in the Middle Eastern community through voter education and empowerment here in Illinois, more needs to be done. AMVOTE encourages the federal government to help us broaden an open line of communication between our elected officials and our Middle Eastern (MENA) community to ensure a safer and more just America. Today's unprecedented crises of hate rhetoric and hate crimes require that our locally elected officials be cognizant of our Middle Eastern community's voter power.

Grassroots outreach of voter information and education is AMVOTE's mantra here in Illinois because we know that --- "all politics is local".

AMVOTE-PAC is not authorized by any candidate or candidate's committee. A copy of our report filed with the State Board of Elections is or will be available on the Board's official website www.elections.il.gov or for purchase from the State Board of Elections, Springfield, IL

Mission Statement: AMVOTE-PAC is the first MENA/Arab American Political Action Committee (PAC) in the history of Illinois. It was established in October of 2015 as a State PAC in order to promote new opportunities for our MENA American community in (1) government, (2) business, (3) employment, (4) education, and (5) equal rights.


ANTI-PALESTINIAN RACISM RESEARCH GROUP
Anti-Palestinian Racism Survey Preliminary Report 2024
Release Date: 9:00 am EST April 18th, 2024
Corresponding Author:
Clinical Professor of Psychiatry
School of Medicine
University of California San Francisco
Professor Jess Ghannam
Phone 415 937 3085
Email jess.ghannam@ucsf.edu
Credit: Andrey Popov

Preliminary Report: Anti-Palestinian Racism Survey

RELEASE DATE: APRIL 18, 2024

PREPARED BY
The Anti-Palestinian Racism Research Group (APRRG) in consultation with the Arab Canadian Lawyers Association

AUTHORS
Lama Rimawi, MD; Toni Biskup, MD, MPH; Ellen L. McMahon, MD, MPH; Jess Ghannam, PhD

CORRESPONDING AUTHOR
Feedback and comments can be sent to Professor Jess Ghannam
jess.ghannam@ucsf.edu
University of California San Francisco
Tel: 415-937-3085

ACKNOWLEDGEMENTS
The authors would like to thank the many organizations and individuals that provided input on the study design, protocols, and report. The authors would like to thank Pediatricians for Palestine, the Anti-Palestinian Racism Subcommittee, the anti-racist experts including Dr. Purnima Valdez, and the communication experts including Brand Therapy 360 for their input, assistance with data collection, and feedback. The authors also thank Kevin Sun for his help with statistical analysis and technical assistance.

DISCLOSURES
The opinions expressed in this report are those of the authors and do not reflect the views of the University of California San Francisco (UCSF), the authors' employers, or other institutions with which they are affiliated. There are no financial conflicts of interest.

ABOUT THE ANTI-PALESTINIAN RACISM RESEARCH GROUP (APRRG)
The Anti-Palestinian Racism Research Group consists of researchers, physicians, and psychologists who are committed to empirically studying the impact of anti-Palestinian racism on individuals and communities across all sectors of civil society.

Our mission is to end racism against Palestinians, and against non-Palestinian allies and advocates for Palestinian rights and freedom.

Anti-Palestinian Racism Survey Preliminary Report April 2024

OVERVIEW:

This report summarizes the preliminary results from a national survey investigating anti-Palestinian racism conducted in the United States (U.S.) from March 1st through April 3rd, 2024. The survey was conducted with approval of the UCSF Institutional Review Board (IRB).

Anti-Palestinian racism is a form of racism that "silences, excludes, erases, stereotypes, defames, or dehumanizes Palestinians or their narratives." This survey was designed in consultation with the Arab Canadian Lawyers Association and based on the description of anti-Palestinian racism in their seminal report: "Anti-Palestinian Racism: Naming, Framing and Manifestations." [1]

The survey was developed to assess the prevalence and impacts of anti-Palestinian racism on both Palestinians and non-Palestinians.

> *"Anti-Palestinian Racism is experienced by: Palestinians; those perceived to be Palestinians or inherently pro-Palestinian; and non-Palestinians who express support for Palestinian rights. APR usually targets those who publicly speak in support of Palestinian rights or share Palestinian narratives or openly criticize the state of Israel for their treatment of Palestinians."* [2]

The primary research questions included: 1. What is the prevalence of anti-Palestinian racism in a general population of people in the United States? 2. What is the prevalence of anti-Palestinian racism experienced by both Palestinians and non-Palestinians? 3. What is the prevalence of fear, feelings of isolation, and/or other negative health effects potentially due to anti-Palestinian racism?

An important part of this study is the contextualization of anti-Palestinian racism in its expansion beyond the core target population. Through our work as pediatricians and psychologists, we realized that anti-Palestinian racism was impacting both Palestinians and non-Palestinians. However, since anti-Palestinian racism is under-recognized and under-studied, many people were unaware of what they were experiencing and felt isolated. We hypothesized that anti-Palestinian racism is affecting much larger numbers of people than previously understood with potentially significant negative health effects. This is the first study we are aware of designed to investigate this concept.

A 5-minute, voluntary national survey was based on information from the "Anti-Palestinian Racism: Naming, Framing and Manifestations" report, consultation with the Arab Canadian Lawyers Association, and consultation with pediatricians and other physicians, anti-racist and communication experts, educators, students, and community members. The survey was approved by the UCSF IRB prior to implementation. Surveys were conducted online, distributed via email to multiple social media lists, physician groups, and other online lists.

---

[1] Dania Majid, Anti-Palestinian Racism: Naming, Framing and Manifestations, Arab Canadian Lawyers Association, 2022 CanLIIDocs 4618, <https://canlii.ca/t/7n8cn>, retrieved on 2024-04-17

[2] Ibid, p. 15.

KEY FINDINGS:

Over 1200 respondents completed the survey. The majority of respondents identified as non-Palestinian (72.5%). The survey sample was racially and ethnically diverse, with self-reported race/ethnicity as follows: 35.8% Arab or Arab American, 32.0% White or European American, 22.7% Asian or Asian American, 7.3% Hispanic or Latinx, 6.9% multiracial or multiethnic, 3.7% Indigenous (including Indigenous American, Australasian, Alaskan, Arctic Indigenous, Native Hawaiian, Pacific Islander, and other Indigenous), and 3.6% Black or African American. Most respondents identified as women (61.0%) and non-Muslim (57.9%). The sample was comprised of a diverse age range: 18-24 years (9.4%), 25-34 (28.6%), 35-44 (29.6%), 45-54 (17.8%), 55-64 (8.0%), 65-74 (5.2%), and 75+ (1.5%). In addition, 31.7% of respondents identified as LGBTQ+.

The major finding of the survey is that 64.6% of respondents experienced anti-Palestinian racism either directly or online (Figure 1). This was confirmed in a separate survey item in which 63.4% of respondents reported experiencing silencing, exclusion, harassment, physical threat or harm, or defamation while advocating for Gaza and/or Palestinian human rights (Figure 2). Other dramatic findings were that 73.5% of respondents felt alone or isolated in their concern about Palestinian human rights (Figure 3) and 87.9% of respondents had witnessed others experiencing anti-Palestinian racism either directly or online (Figure 4). Anti-Palestinian racism negatively impacts the people experiencing it and the data suggests that the racist behavior is widespread. In addition, 55.3% of respondents were afraid to speak out about what is happening to Palestinians in Gaza or for Palestinian human rights in general (Figure 5).

Regarding the impact of anti-Palestinian racism in the workplace, 47.5% of respondents experienced or witnessed anti-Palestinian racism from colleagues at work, and 31.6% experienced or witnessed anti-Palestinian racism from someone in a supervisory role at work who can hire or fire them. Additionally, 37.2% experienced or witnessed anti-Palestinian racism in school or another academic setting from teachers, faculty, or administrators, and 30.5% experienced or witnessed anti-Palestinian racism in school or another academic setting from students. The high prevalence of anti-Palestinian racism in workplaces and schools suggests that it is pervasive across multiple settings (Table 1).

As health professionals, we were especially concerned about the impact of anti-Palestinian racism on respondents' physical and emotional health. The vast majority (82.4%) reported experiencing mental or physical health harms at least once or twice due to experiencing or witnessing anti-Palestinian racism, with 71.2% reporting health impacts at least some of the time and 38.3% reporting health impacts “most or all of the time” (Figure 6).

Taken together, our findings suggest that anti-Palestinian racism affects many more people than previously expected, is highly prevalent in many sectors of society, is having a deleterious impact on people’s health and wellness, and is resulting in increased levels of isolation, fear, and intimidation. We believe these findings suggest that anti-Palestinian racism is a pervasive phenomenon, affects Americans of diverse racial, ethnic, and religious backgrounds, and deserves special attention to combat the negative impacts on society, our communities, and individual health and wellbeing.

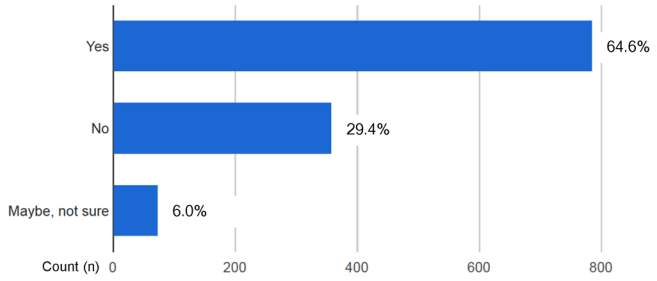
We are releasing this preliminary report in advance of a complete and final report, currently in preparation, because we believe these findings are novel and profound. Anti-Palestinian racism must be addressed immediately by elected officials, governmental and non-governmental institutions, corporations, anti-racism and anti-hate initiatives, diversity, equity, and inclusion (DEI) offices, human resources (HR) offices, universities, schools, hospitals, and any other institution in which people may be affected throughout the country.

More research is needed to further understand anti-Palestinian racism and its impact on individuals in various settings. In addition, dedicated funding is needed to raise awareness of this under-recognized form of racism, educate schools and workplaces on anti-Palestinian racism, and provide training on how to identify and effectively combat this phenomenon and the accompanying harms.

To learn more about anti-Palestinian racism, please visit antipalestinianracism.org.

FIGURES AND TABLES:

Figure 1. Have you experienced anti-Palestinian racism, either directly or online?



6

Figure 2. Have you experienced silencing, exclusion, harassment, physical threat or harm, or defamation while advocating for Gaza and/or Palestinian human rights?

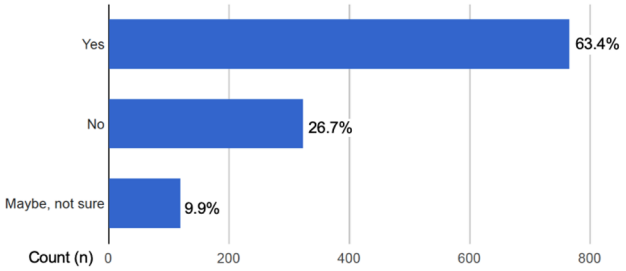
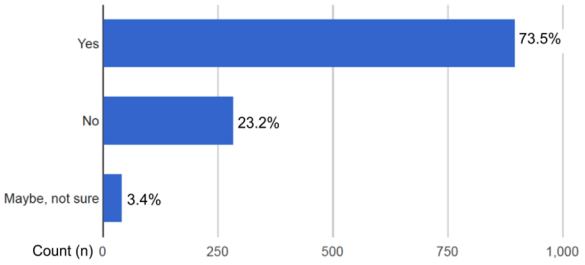


Figure 3. Have you felt alone or isolated in your concern about Palestinian human rights?



7

Figure 4. Have you witnessed others experiencing anti-Palestinian racism, either directly or online?

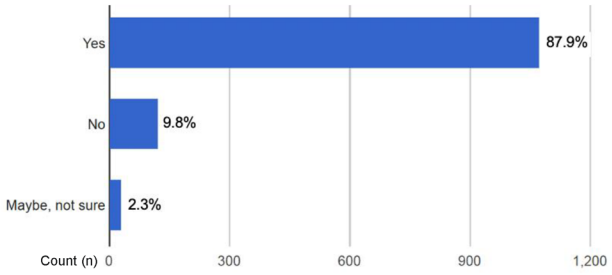
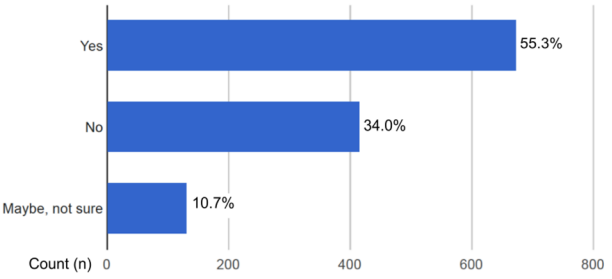


Figure 5. Are you afraid to speak out about what is happening to Palestinians in Gaza or for Palestinian human rights in general?



8

Figure 6. Have you felt that your mental or physical health has been harmed by personally experiencing or witnessing anti-Palestinian racism? Examples of harmful impacts of racial trauma on mental and physical health can include: feelings of fear, anxiety, self-doubt, low self-esteem, depression, hypervigilance, insecurity, isolation, alienation, difficulty concentrating, feeling more irritable, and other negative emotions. Harmful impacts can also include symptoms such as insomnia, headaches, body pain, back pain, loss of appetite, fatigue, nausea, and other physical concerns. (Select the option that best fits how often you have experienced any of the above).

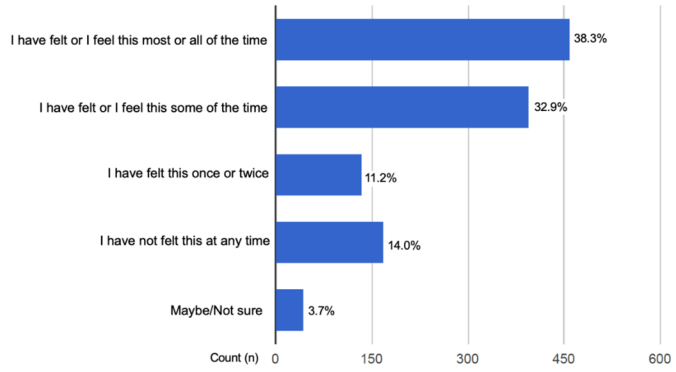


Table 1. In which settings have you experienced or witnessed anti-Palestinian racism? (Select all that apply). Reported as the percentage of responses that selected each option, in order of decreasing frequency.

Setting	Frequency
On social media or e-mail	84.3%
In the news	70.9%
In a public space	63.0%
From colleagues at work	47.7%
From friends	39.0%
In school or other academic setting from teachers, faculty, or administrators	37.2%
From someone in a supervisory role at work who has the ability to hire or fire you	31.6%
In school or other academic setting from students	30.5%
From family members	19.1%
As a healthcare provider in a healthcare setting from other healthcare staff	12.6%
As a healthcare provider in a healthcare setting from patients or their families	7.4%
As a patient in a healthcare setting from doctors, nurses, other staff	7.0%
Other	5.5%

BEDROCK
SAFETY AND BELONGING FOR ALL

Statement for the Record

Submitted for the record, on behalf of the Co-Chairs of the Board of Bedrock, in connection with the hearing:

A Threat to Justice Everywhere:
Stemming the Tide of Hate Crimes in America

Senate Judiciary Committee

Washington, DC

September 17th, 2024
10:00am

Introduction

Bedrock is a nonpartisan Hate-Fueled Violence (HFV) prevention organization.[1] We work to support the safety and belonging of all Americans by serving as a "field-supporting hub," working with our 59 organizational partners to advance shared goals and activities to prevent HFV. Founded in advance[2] of the United We Stand Summit,[3] Bedrock's bipartisan vision is to unite a diverse coalition of Americans to advance HFV prevention initiatives nationwide to combat the normalization of HFV. Our Board includes equal representation from Republican and Democratic officials; our National Leadership Council includes alumni from the Biden, Trump, Obama and Bush Administrations, as well as representatives of the Jewish, Arab American, Christian, Black, Latino, Asian American & Pacific Islander, Sikh, and other diverse communities; and we partner with Presidential Centers representing both political parties.

This statement is submitted on behalf of Bedrock's Board leadership in response to the Committee's hearing, "A Threat to Justice Everywhere: Stemming the Tide of Hate Crimes in America." Two of the hearing's three witnesses – the Arab American Institute and the Bard Center for the Study of Hate – are organizational partners of Bedrock, and Maya Berry, Executive Director of the Arab American Institute serves on our National Leadership Council.

Statement

The United States is mired in a period of high HFV. Reported hate crimes are historically high: according to the Leadership Conference on Civil and Human Rights, "hate crimes have increased by more than 80 percent since 2015."[4] Beyond acts of violence that have taken place, Americans feel scared about the *next* violence, concerned that *they* may be next. According to our research, approximately 70 percent of Americans feel personally affected by HFV, and two-thirds worry about their personal safety due to HFV.[5] This fear is exacerbated by the escalating rates of political violence, mass shootings, and threats against public officials. In this election cycle, we have already witnessed two assassination attempts against a presidential candidate, one of which by a suspect who allegedly believed antisemitic and anti-immigrant conspiracy theories,[6] as well as violent threats against community members of Springfield, Ohio after national leaders advanced racist conspiracy theories.[7] Given these trends, Bedrock applauds the Senate Judiciary Committee for taking on the issue of hate crimes – an urgent threat to the safety and belonging of Americans.

The Committee has the potential to make great strides in stemming the tide of hate crimes in the United States, and could consider legislative options related to strengthening hate crimes reporting, increasing federal grants related to HFV prevention, addressing accountability for online platforms, advancing federal research into the causes of and impactful interventions to address HFV, and supporting and amplifying community-driven efforts to address the challenge – among other options. We urge you to review the policy recommendations submitted both by witnesses

---

[1] See bedrock.us for more information.
[2] See launch of "Dignity.us," later called Bedrock.us here: https://www.usatoday.com/story/opinion/2022/09/15/hate-crimes-surge-threat-american-democracy/10376225002
[3] See unitedwestand.gov for more information.
[4] Leadership Conference on Civil and Human Rights. "Cause for Concern 2024: The State of Hate." April 2023. https://civilrights.org/edfund/resource/2024-state-of-hate/
[5] Based on a November 2022 survey of 1,575 registered voters. Conducted by Hart Research on behalf of Dignity.us (later renamed Bedrock)
[6] Deirdre Walsh, Ryan Lucas, Linnea E. Anderson. "Social media account with extremist comments could be tied to Trump gunman, FBI says." NPR. 30 July 2024. https://www.npr.org/2024/07/30/nx-s1-5057323/fbi-trump-shooter
[7] April Rubin. "Ohio town at center of GOP pet-eating conspiracy has multiple school evacuations." Axios. 13 September 2024. https://www.axios.com/2024/09/13/springfield-ohio-threats-closures-trump

and written statements by Bedrock partners, among others, to craft an appropriate agenda for legitimate legislative business.

September 17, 2024 Senate Judiciary Committee Hearing on Hate Crimes

Despite the urgency of this moment, and despite the considerable legislative options for deliberation, part of the Senate Judiciary Committee on hate crimes resulted in questioning and statements to a witness that undercut the purpose of the hearing.

To tell a witness at a hearing to "hide [her] head in a bag" would be unbecoming of a United States Senator, regardless of the context. In this case, the witness was a Muslim, Arab American woman. We caution against such language, given that the Senator's rhetoric mirrored the types of hateful conspiracies that motivated the attempted drowning of a three-year-old child, the stabbing of a six year old child, and the shooting of three college students in recent months.[8]

This rhetoric from a United States Senator is unacceptable, and advances the normalization of hate that motivates far too much violence in the United States. Ms. Berry, who was the subject of such harassment, is not only on Bedrock's National Leadership Council, but she is a leader in many other important ways, including serving as the Hate Crimes Task Force Co-Chair for the Leadership Conference on Civil and Human Rights. She is not a terrorist, nor does she support terrorism. She is a patriotic American. As patriotic Americans ourselves, if we were to disagree with Ms. Berry, we would discuss that disagreement with tact, empathy, and trust of her loyalty and good faith. Our Senators owe her the same respect and courtesy.

In another context, after 9/11, when there were threats to Arab and Muslim Americans, President George W. Bush visited a mosque, took off his shoes, read from the Quran, and stated, "America counts millions of Muslims amongst our citizens, and Muslims make an incredibly valuable contribution to our country. Muslims are doctors, lawyers, law professors, members of the military, entrepreneurs, shopkeepers, moms and dads. And they need to be treated with respect. In our anger and emotion, our fellow Americans must treat each other with respect." We urge public officials to follow President Bush's example in cultivating an environment of respect and dignity for all Americans, particularly at times when hate-fueled violence is at risk.

To use a hearing focused on hate crimes to advance hateful, false and dangerous narratives is irresponsible. The Senator, and the Committee as a whole, owe Ms. Berry an apology. After that, the Committee must uphold its oath to the U.S. Constitution and begin the work to represent Americans who are in need of further protection, and to consider what more the U.S. Senate can do to advance the safety and belonging of all Americans.

Submitted on behalf of:

John Bridgeland
Co-Chair of the Board, Bedrock
Fmr. Director, White House Domestic Policy Council, President George W. Bush

Cecilia Muñoz
Co-Chair of the Board, Bedrock
Fmr. Director, White House Domestic Policy Council, President Barack Obama

---

[8] Kanishka Singh. "Texas woman accused of attempting to drown 3-year-old Palestinian-American." Reuters. 24 June 2024. https://www.reuters.com/world/us/texas-woman-accused-attempting-drown-3-year-old-palestinian-american-2024-06-24/

BEND THE ARC
jewish action

September 12, 2024

The Honorable Richard J. Durbin
Chair, Senate Committee on the Judiciary
224 Dirksen Senate Office Building
Washington, DC 20510

The Honorable Lindsay Graham
Ranking Member, Senate Committee on the Judiciary
224 Dirksen Senate Office Building
Washington, DC 20510

Re: Statement for the Record of the Committee's Hearing, "A Threat to Justice Everywhere: Stemming the Tide of Hate Crimes in America"

Dear Senators Durbin and Graham, and Members of the Committee,

As the Washington Director of Bend the Arc: Jewish Action, I write to thank you for holding this hearing on hate crimes in America, and to share our organization's perspective on this critical issue. As the largest national Jewish organization focused on domestic policy with supporters across the country, Bend the Arc is deeply concerned about antisemitism, anti-Muslim, anti-Arab bigotry, anti-Black racism, anti-Asian hate, anti-LGBTQ hate, and anti-immigrant xenophobia in our country today. We work to fight antisemitism and other oppressions for the safety of our multiracial, multiethnic American Jewish community, and also for the health of our democracy more broadly. Following the deadly attacks on October 7th, American Jewish, Arab, and Muslim communities have all experienced violence in our country, including the murder of a six-year-old Palestinian boy, the shooting of three Palestinian college students, as well as the targeting of Jewish students at Cornell University. We firmly believe Jewish safety is bound up in our collective safety, and we urge the committee to take several measures to support the safety of all American communities threatened by hate crimes.

White supremacy has a long and shameful place in the history of the United States. Its current manifestation in the White Nationalist movement, and its enablers, pose a grave threat to the safety of individuals, communities, and the fabric of democracy itself. Antisemitism is part of the machinery of division and fear that white supremacist movements rely on for power. This is the same machinery these movements and their enablers use to endanger Black, Indigenous, and people of color, people who are immigrants, people who are Muslim, and so many more communities.

A core part of this movement's dangerous rhetoric is the "great replacement" conspiracy theory which has become mainstreamed by politicians on the national stage, emboldening white supremacists and leading to violence against several communities. In the weeks before the massacre at Tree of Life Synagogue in Pittsburgh, political leaders, as well as press outlets, stoked fear through their warnings about a so-called "invasion" of refugees seeking asylum at our borders. Many added conspiracy theories about powerful Jewish financiers funding this supposed invasion. The murderer in Pittsburgh pointed to those very news reports and conspiracy theories as his motivation. With our colleagues at Political Research Associates (PRA), we detailed this dangerous process in our report, Taking Aim at Multiracial Democracy. The mainstreaming of the great replacement conspiracy theory was also horrifically at play in the shooting that killed 10 members of the Black community in Buffalo, as detailed by America's Voice in their report, Two Years After the Deadly Terror Attack in Buffalo, the

Replacement Theory has Only Gone More Mainstream. It is critical that our elected officials denounce, and cease using the great replacement conspiracy theory and other bigoted rhetoric.

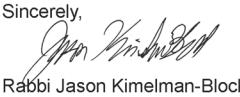
Additionally, to adequately combat hate crimes and direct resources where they are most needed, we must have better data on hate crimes. As the Southern Poverty Law Center has tracked, there is a chronic problem of "consistently inconsistent" reporting of hate crimes by local law enforcement agencies to the Federal Bureau of Investigation, with thousands of jurisdictions underreporting or not reporting data at all. The transition to the new National Incident-Based Reporting System (NIBRS) can hopefully improve data collection, but additional measures are needed, including the implementation of mandatory reporting by all law enforcement agencies. It is also critical to prevent hate crimes before they happen, and so we urge Congress to robustly fund prevention initiatives. Sadly, we also know that prevention is not always possible and that communities need support in the aftermath of hate-based violence, so we urge Congress to see that the Community Relations Service of the Department of Justice has the funding it needs. Additionally, federal resources must be adequately directed at tracking white supremacist-motivated violent extremism, so we urge the Committee to support the passage of the Domestic Terrorism Prevention Act (S.1591), which would establish offices and procedures for this purpose.

Finally, we urge the Committee to refrain from supporting the codification of the International Holocaust Remembrance Association (IHRA) definition of antisemitism. Rather than a codified definition, we need a multi-pronged approach to fighting antisemitism and all forms of bigotry that uses and invests in the existing tools of government as well as structural reforms that ensure a thriving and inclusive democracy where every single one of us is safe, no matter our race, class, or faith. Indeed, we know from decades of work with government entities that not having a codified definition does not prevent necessary and important work to fight antisemitism and other forms of hate crimes. Indeed, no other form of bias has a legally codified definition, and that fact does not hinder governments from enforcing statutes preventing discrimination, prosecuting hate crimes, and doing other important work to prevent hate crimes. One important recent example is the Biden Administration's national strategy to combat antisemitism that was developed last year, without such a codified definition. We also urge the Committee to support the full implementation of the White House's national strategy to combat antisemitism.

The path toward a safer future for all people exists in a multiracial democracy where everyone has what they need to thrive. We know that Jewish safety is deeply connected to the safety of all people targeted by white supremacy, and the safety of every single one of us will not exist in isolation.

Again, we thank the Committee for holding this hearing and we urge you to implement policies that combat hate crimes against all targets of white supremacy and that can prevent hate crimes from happening in the first place.

Sincerely,



Rabbi Jason Kimelman-Block
Washington Director
Bend the Arc: Jewish Action

Statement of B'nai B'rith International
Eric Fusfield, Director of Legislative Affairs

A Threat to Justice Everywhere: Stemming the Tide of Hate Crimes in America
Senate Committee on the Judiciary
September 17, 2024

B'nai B'rith International is the oldest Jewish advocacy and social service organization. Founded in 1843 and with more than 100,000 members and supporters, we have long been engaged in the fight against anti-Semitism and threats to the safety of Jewish communities.

The October 7 Hamas terrorist attack on Israel has triggered a surge in anti-Semitism in the United States and worldwide. According to the FBI's new 2023 Hate Crimes Report, anti-Semitic hate crimes accounted for two thirds of all religiously motivated hate crimes recorded last year, up by 11 percent from the previous year. The FBI recorded 1,832 anti-Semitic hate crimes in 2023. This includes 539 reports of property destruction, damage, and vandalism and 437 reports of intimidation.

Anti-Semitism derives from multiple sources, including the far right, the far left, and radical Islamists. This hatred must be actively confronted wherever it occurs, regardless of the ideological, religious, or political orientation of its purveyors.

B'nai B'rith recommends:

- Effective implementation of the Jabara-Heyer NO HATE Act, which B'nai B'rith actively supported. This legislation, adopted by large majorities of both houses in 2021, provides resources to improve hate crime reporting and enable authorities to develop tools to combat hatred.

- Increased funding of the Nonprofit Security Grant Program. These funds have supported physical enhancements and training that have saved lives of vulnerable minorities.

- Creating a high-level position in the Justice Department to coordinate inter-agency efforts to combat domestic anti-Semitism.

- Implementation of the U.S. National Strategy to Counter Anti-Semitism and the Global Guidelines for Countering Anti-Semitism.

- Passage of the Anti-Semitism Awareness Act, the Countering Anti-Semitism Act, and the Stop Anti-Semitism on College Campuses Act.

- Supporting the International Holocaust Remembrance Alliance's crucial working definition of anti-Semitism. The non-legally binding IHRA

definition is by far the most widely accepted standard and is an important tool for guidance and education about anti-Semitism. As anti-Semitic incidents have proliferated worldwide, the IHRA definition can ensure awareness of contemporary manifestations of anti-Semitism and their impact on vulnerable communities and individuals.

In the name of God, the Most Compassionate, the Most Merciful.
All praise and thanks belong to God, the Lord of the Worlds.
May peace and prayers be upon Prophet Muhammad and his family.



Council on American-Islamic Relations
453 New Jersey Ave. S.E.
Washington, D.C. 20003
Tele 202-488-8787 Fax 202-488-0833
E-mail: info@cair.com URL www.cair.com

September 17, 2024

The Honorable Richard Durbin
Chairman
U.S. Senate Judiciary Committee
224 Dirksen Senate Office Building
Washington, DC 20510

The Honorable Lindsey Graham
Ranking Member
U.S. Senate Judiciary Committee
224 Dirksen Senate Office Building
Washington, DC 20510

Re: Written Statement for the Record by the Council on American-Islamic Relations to U.S. Senate Judiciary Committee Hearing on "A Threat to Justice Everywhere: Stemming the Tide of Hate Crimes in America"

Dear Chairman Durbin, Ranking Member Graham, and Members of the Senate Judiciary Committee,

On behalf of the Council on American-Islamic Relations (CAIR), the nation's largest Muslim civil rights and advocacy organization, I wish to extend our sincere appreciation to the U.S. Senate Committee on the Judiciary for hosting this timely and crucial hearing on "*A Threat to Justice Everywhere: Stemming the Tide of Hate Crimes in America*." In the face of an alarming resurgence of hate crimes, particularly those targeting American Muslims and individuals advocating for Palestinian human rights, the outcomes of this hearing will be instrumental in addressing systemic discrimination and ensuring justice for all Americans.

For over 30 years, CAIR has worked to protect the civil liberties of American Muslims, advocate for justice, and combat hate crimes in all their forms. Our experience in defending civil rights and promoting social justice has given us unique insights into the challenges faced by marginalized communities, and the data we collect reveals troubling trends that demand immediate action. Today, we present for the record findings from several of CAIR's most recent 2023 and 2024 reports, along with an overview of the ongoing watchlist and legislative challenges facing the Muslim American community.

1. CAIR's 2024 Civil Rights Report: Fatal: The Resurgence of Anti-Muslim Hate

CAIR's *2024 Civil Rights Report: Fatal: The Resurgence of Anti-Muslim Hate* outlines the unprecedented rise in Islamophobic incidents throughout 2023, with CAIR receiving 8,061 complaints of anti-Muslim discrimination nationwide—the highest in our organization's history. This 56 percent increase over the previous year was driven largely by the escalation of violence between Israel and Palestine in October 2023, which sparked a surge of Islamophobic and anti-Palestinian backlash in the United States. The number of complaints received by CAIR in the last three months of 2023 alone surpassed the period following the implementation of the Trump administration's Muslim Ban.

Our report also details the categories of complaints received in 2023:

- **Immigration and asylum-related complaints** accounted for 20 percent of all complaints.
- **Employment discrimination** comprised 15 percent.
- **Education discrimination** made up 8.5 percent.
- **Hate crimes**, the most disturbing category, accounted for 7.5 percent.

CAIR also notes that from January to June 2024, our organization documented 4,951 incoming complaints, a sixty-nine percent increase over the same period in 2023. Education discrimination incidents spiked in May, as student encampments urging universities to take an anti-genocide stand dominated media headlines. The experience of students and employees during this cycle of anti-Muslim, anti-Palestinian hate remains the standout trend compared to past cycles.

Behind these statistics are human tragedies and systemic failures that have allowed Islamophobia to thrive unchecked. Muslim Americans are facing discrimination not only in public spaces but also within their workplaces and schools. For instance, many of the employment-related complaints stem from Muslim employees being terminated or harassed for expressing solidarity with Palestinians in Gaza facing genocide or raising concerns about human rights violations. Schools have also become hotspots for discrimination, with Muslim students, particularly those advocating for Palestinian human rights, facing threats, bullying, and harassment from peers and faculty alike.

Among the most notable incidents was the brutal murder of six-year-old Palestinian-American Wadee AlFayoumi in Chicago. His family had endured months of harassment by their landlord, who ultimately attacked Wadee and his mother, shouting, "*You Muslims must die*!" before stabbing Wadee to death and injuring his mother. This horrifying crime that will undoubtedly be a part of the focus of today's hearing epitomizes the broader wave of Islamophobic and anti-Palestinian violence that has permeated the country. In another case, a seventh-grade Muslim student in Warner Robins, Georgia, faced threats from a teacher, who told the student he would "*slit [the student's] god***n throat and cut her head off*" after the student inquired about an Israeli flag in the classroom.

Muslim women, particularly those wearing hijabs, continue to face frequent harassment and threats. In Washington, D.C., a Palestinian woman was threatened by a man on the Metro, who repeatedly asked her, "*How'd you like to lose your life?" and "How'd you like to have your head beheaded?*" The man reportedly carried a firearm during the incident, underscoring the level of threat faced by Muslim women in public spaces. These acts of violence are symptomatic of a larger societal problem that necessitates a comprehensive legislative response.

Key Recommendation: We strongly urge Congress to enact comprehensive anti-Islamophobia legislation, such as the *Combating International Islamophobia Act (H.R. 3985/S. 1916)*, which would establish an Office to Monitor and Combat Islamophobia within the Department of State. In addition, we encourage support for congressional resolutions like *H.Res. 989* and *S.Res. 534*, which seek to designate January as "*Muslim-American Heritage Month*," recognizing and celebrating the rich heritage and contributions of Muslim Americans. Congress should also adopt *H.Con.Res. 99*, which honors the memory of Wadee AlFayoumi by acknowledging his tragic death as a hate crime targeting his Palestinian-Muslim identity.

We also call on lawmakers to back the *End Racial and Religious Profiling Act*, aimed at eliminating discriminatory profiling by law enforcement based on race, religion, and other characteristics. This legislation would ensure that federal, state, local, and tribal law enforcement agencies adopt policies and practices to prevent such profiling, making compliance a requirement for receiving federal funding.

By advancing these crucial measures, Congress can make significant strides in combating hate, safeguarding civil rights, and recognizing the valuable contributions of Muslim and Palestinian Americans, while addressing the ongoing violence and discrimination they face.

2. CAIR's Report: "Hostile: How Universities Target Anti-Genocide Protesters While Enabling Anti-Palestinian Racism and Islamophobia"

In our 2024 report, *Hostile: How Universities Target Anti-Genocide Protesters While Enabling Anti-Palestinian Racism and Islamophobia*, CAIR identified significant patterns of discrimination against students and faculty advocating for Palestinian human rights on college campuses. The report highlights the troubling practices at several major universities, where Muslim, Palestinian, and Arab students have faced retaliation, harassment, and even violence for engaging in peaceful anti-genocide protests. Institutions of particular concern include The George Washington University (GWU), the University of California, Los Angeles (UCLA), and Emory University.

In the fall of 2023, students across the country engaged in civil disobedience to protest their universities' complicity in Israeli apartheid and the genocide of Palestinians in Gaza. Despite the peaceful nature of these protests—95 percent of which were confirmed by researchers at Princeton University to be non-violent—many universities responded by suppressing free speech and implementing harsh disciplinary measures. At GWU, Palestinian and Muslim students were

not only targeted by pro-Israel voices but also by the administration itself. The Students for Justice in Palestine (SJP) chapter at GWU was suspended, and its president, Lance Lokas, was placed on probation for participating in peaceful protests against Israeli military actions. These actions were taken despite no specific university policies prohibiting such forms of protest.

At UCLA, police brutality against peaceful anti-genocide protesters further exacerbated the already hostile environment for Palestinian and Muslim students. On May 2, 2024, officers in riot gear fired rubber bullets into crowds of student protesters, leaving many injured. Meanwhile, pro-Israel counter-protesters were allowed to bring weapons onto campus, where they assaulted Palestinian and Muslim students without intervention from university authorities. This stark contrast in how peaceful protesters were treated versus violent counter-protesters illustrates the deep-seated discrimination that exists at these institutions.

Emory University also engaged in the violent suppression of student protests, using tear gas and stun guns against anti-genocide demonstrators. Reports from Emory reveal that administrators failed to protect Muslim, Palestinian, and Arab students from ongoing harassment, and in some cases, administrators themselves contributed to the hostile environment. In one instance, students reported that a parent of another student verbally accosted a Muslim student, accusing them of supporting terrorism. Rather than intervening, university staff cited their open expression policy as a reason for not stopping the harassment.

Last week, CAIR also designated Columbia University, New York University (NYU), Northwestern, and the University of Texas – Austin as "institutions of particular concern" due to their hostile treatment of anti-genocide protesters. These universities have been the sites of significant student activism, and their administrations have similarly taken steps to suppress free speech, discipline student organizers, and allow Islamophobic and anti-Palestinian rhetoric to flourish unchecked.

Key Recommendation: We urge Congress to investigate the discriminatory practices at universities that have violated Muslim, Arab, and Jewish students' First Amendment rights to free speech and protest the government of Israel's genocide of Palestinians in Gaza and ongoing policies of apartheid and expanding occupation in the West Bank. Universities that receive federal funding should be held to stringent standards to ensure that all students, regardless of their political or religious beliefs, are protected from discrimination and violence. Furthermore, we call for greater Department of Education and Department of Justice oversight of incidents involving police brutality on university campuses, particularly when peaceful protests are met with disproportionate force. Universities must also be required to develop anti-discrimination policies that explicitly protect students advocating for Palestinian human rights.

3. CAIR's Ongoing Battle Against the Unconstitutional and Discriminatory Watchlist

For more than a decade, CAIR has led efforts to challenge the federal government's use of secret watchlists that disproportionately target American Muslims. These watchlists, particularly the

No-Fly List and Selectee List, have long been criticized for their lack of transparency, due process violations, and the discriminatory impact on Muslim communities. This March, CAIR secured a landmark U.S. Supreme Court 9-0 ruling in favor of Yonas Fikre, allowing his watchlist lawsuit against the No-Fly List to proceed despite the government's efforts to dismiss the case as moot.

Yonas Fikre, an American Muslim who was tortured and imprisoned in the United Arab Emirates at the request of U.S. officials, was placed on the No-Fly List after refusing to become an FBI informant. Although the government eventually removed him from the list, they sought to avoid legal scrutiny by arguing that Fikre's case was moot because he was no longer listed. The Supreme Court's unanimous ruling rejected this argument, affirming that the government must provide assurances that Fikre would not be relisted in the future. This ruling is a landmark moment in the battle against the unconstitutional use of secret government watchlists, and it paves the way for greater accountability.

CAIR's work on behalf of watchlisted individuals has revealed the staggering extent to which American Muslims are disproportionately targeted. According to expert statistical analysis of the No-Fly List and Selectee List, as documented in CAIR's 2023 report, titled "*Twenty Years Too Many, A Call to Stop the FBI's Secret Watchlist*," an estimated 98.3 percent of the names on the lists are identifiably Muslim. Of the more than 350,000 entries on the lists, the top 50 most frequently occurring names are all Muslim names, with variations of Mohamed, Ali, and Mahmoud appearing thousands of times. This discriminatory practice not only violates constitutional rights but also stigmatizes Muslim communities, subjecting them to unwarranted scrutiny and harassment.

One of the most alarming cases involves Saadiq Long, a Muslim-American Air Force veteran who has been repeatedly stopped, detained, and harassed by law enforcement due to his placement on the watchlist. In January 2023, Long was pulled over by the Oklahoma City Police Department, handcuffed at gunpoint, and his vehicle was searched. Similarly, Mayor Mohamed T. Khairullah of Prospect Park, New Jersey, was barred from attending the White House's annual Eid al-Fitr celebration, likely due to his prior placement on the watchlist. These cases, among many others, exemplify how the watchlist system is being misused to target Muslims with no legitimate basis.

In addition to Fikre and Long's cases, CAIR recently filed a lawsuit on behalf of two Palestinian-American activists, American Muslims for Palestine Executive Director Dr. Osama Abu Irshaid and Mustafa Zeidan, who were placed on the No-Fly List and subjected to harassment for their advocacy against Israel's genocidal war crimes in Gaza and illegal occupation of the West Bank. Dr. Abu Irshaid's phone was seized at the U.S. border, and federal agents interrogated him about his lawful political activities. This case is part of a broader pattern in which the government uses watchlists to intimidate and silence Muslim activists who speak out against U.S. foreign policy and human rights abuses.

Key Recommendation: We urge Congress to collaborate with the White House to dismantle the unconstitutional and discriminatory watchlist system, which has subjected thousands of innocent Americans to unwarranted surveillance and harassment.

The watchlist, established by presidential proclamation without a congressional mandate, has become an administrative bureaucratic burden that operates without due process, transparency, or judicial oversight. Congress must also initiate a comprehensive investigation into the FBI's discriminatory use of these watchlists, focusing on the extent to which they disproportionately target Muslims based on their religious beliefs or political activities.

4. Current Challenges in Congress to Muslim Civil Rights

The political climate in 2024 has presented significant challenges to the civil rights of American Muslims. With the upcoming election, there has been a disturbing rise in legislative proposals aimed at curbing the free speech and activism of those who oppose U.S. foreign policy, particularly concerning the U.S. supporting Israel's genocidal actions in Gaza and its expanding policies of apartheid and occupation in the West Bank. These efforts disproportionately target Muslim activists and organizations, seeking to silence their voices and undermine their advocacy for Palestinian human rights.

In this context, CAIR and the American Muslim community are urging all members of Congress to reject further attacks on the American Muslim and Palestinian American communities. This can be best exemplified by the anti-Muslim and anti-Palestinian investigations being advanced by the Republican-led U.S. House Oversight and Accountability Committee and the U.S. House Education and Workforce Committee. These investigations dishonestly target more than 20 Muslim, Palestinian, and Jewish advocacy organizations, accusing them of having ties to terrorism or foreign influence due to their actual or perceived support of pro-Palestinian human rights activities, especially on college campuses. CAIR, alongside American Muslim, Palestinian, Jewish, and civil rights organizations, has already condemned the discriminatory and Islamophobic motives behind these investigations initiated by House Committee Chairs James Comer (R-KY) and Virginia Foxx (R-NC).

These committees in April wasted American tax-payer dollars by demanding that the Department of Treasury provide Suspicious Activity Reports (SARs) and other banking information on our organizations, even though it's unclear if such reports exist (to our knowledge they do not). They are also directly requesting sensitive information from Palestinian nonprofit groups, and making false accusations against charitable foundations associated with philanthropists like Bill and Melinda Gates and the Soros family.

One of the most concerning legislative threats to community and religious organizations in support of Palestinian human rights is *H.R. 6408 / S. 4136*, an act that would grant the Secretary of Treasury the authority to revoke the tax-exempt status of nonprofit organizations, including mosques, based on unsubstantiated claims of supporting terrorism. Already having passed the

U.S. House of Representatives earlier this year, and once again advancing through the U.S. House Ways and Means Committee (as a section of *H.R. 9495*), this act threatens the ability of civil society organizations to operate without fear of political reprisals. The vague and subjective criteria in the bill would allow the government to target any organization that is critical of U.S. foreign policy or advocates for Palestinian rights, raising serious First Amendment and due process concerns.

Similarly, the *Antisemitism Awareness Act (H.R. 6090 / S. 4127)* seeks to conflate criticism of the Israeli government with antisemitism by adopting the controversial International Holocaust Remembrance Alliance (IHRA) definition of antisemitism. While CAIR unequivocally opposes antisemitism in all its forms, we are deeply concerned that this bill would suppress legitimate criticism of Israeli human rights violations and war crimes and stifle free speech on college campuses. By expanding the definition of antisemitism to include criticism of Israel, the bill would make it easier for pro-Palestinian activists to be unfairly labeled as engaging in hate speech.

Another troubling proposal is the *Countering Antisemitism Act (H.R. 7921/S. 4091)*, which calls for the creation of a federal interagency task force to combat antisemitism based on the IHRA definition. This bill, if passed, would also disproportionately target Arab Americans, Muslims, and those who speak out against Israeli policies, further marginalizing communities already facing discrimination.

Key Recommendation: We urge Congress to reject any legislation that seeks to criminalize peaceful activism or curtail free speech, particularly those bills that target Muslim and pro-Palestinian activists. Congress must protect the First Amendment rights of all Americans, regardless of their political views, and ensure that no individual or organization is punished for exercising their constitutional rights. We also call on lawmakers to provide greater protections for nonprofit organizations and civil society groups that are engaged in lawful advocacy efforts. For more information, please refer to our report: "CAIR Congressional Legislative Priorities in the 118th Congress."

Conclusion

As the nation's largest Muslim civil rights organization, CAIR remains committed to confronting the rising tide of hate crimes, advocating for justice, and protecting the civil liberties of all Americans. We thank the Senate Committee for hosting this important hearing and for considering our recommendations. We urge Congress to take decisive action to combat Islamophobia, safeguard free speech, and ensure that Muslim Americans can exercise their rights without fear of discrimination or retaliation.

Sincerely,



Robert S. McCaw
Government Affairs Director
Council on American-Islamic Relations (CAIR)

Testimonial of Commissioner Channyn Lynne Parker, CEO of Brave Space Alliance, for Senate Judiciary Committee on Hate Crimes

Dear Members of the Senate Judiciary Committee,

My name is Channyn Lynne Parker, and I am the CEO of Brave Space Alliance, a Black and trans-led LGBTQ+ center on the South Side of Chicago. As a Commissioner on the Illinois Commission on Discrimination and Hate Crimes, I am honored to offer my testimony today on behalf of the communities I serve.

At Brave Space Alliance, we provide life-saving resources, advocacy, and support to the most marginalized members of the LGBTQ+ community. Our work focuses on empowering individuals who face systemic oppression due to their race, gender identity, sexual orientation, and socioeconomic status. From food access and housing assistance to mental health services and leadership development, we are on the front lines of addressing the deep-seated inequities that LGBTQ+ people, particularly trans women of color, experience on a daily basis.

In Illinois, and across the nation, we have witnessed an alarming rise in hate crimes, discrimination, and targeted violence against the LGBTQ+ community. Chicago, a diverse and vibrant city, is not exempt from these challenges. Trans women of color, in particular, are disproportionately impacted, often facing hostility, threats, and physical violence simply for existing as their authentic selves. The dangerous rhetoric and harmful policies emerging on a national level continue to fuel hate and intolerance, making it even more vital for organizations like Brave Space Alliance to stand as a beacon of hope and a shield for those under attack.

The climate for LGBTQ+ individuals has become increasingly hostile, exacerbated by anti-LGBTQ+ legislation and the demonization of our communities in public discourse. This environment empowers acts of hate, emboldening individuals to engage in violence and discrimination against LGBTQ+ people, especially those from communities of color. It is critical to understand that these acts are not isolated incidents but are part of a broader, systemic issue that requires urgent attention and action.

At Brave Space Alliance, we hear firsthand accounts of the violence and discrimination our community members endure. Many are survivors of hate crimes who, despite their trauma, continue to show incredible resilience. However, this resilience should not be a necessity for survival. It is the responsibility of our society and our government to ensure that every person, regardless of their identity, is protected from harm and able to thrive.

I implore you to take decisive action to strengthen hate crime laws, increase protections for LGBTQ+ individuals, and hold accountable those who perpetuate violence and discrimination. The work we do at Brave Space Alliance, along with the efforts of so many others across the nation, can only go so far without meaningful policy changes and a collective commitment to eradicating hate.

Thank you for the opportunity to share this testimony. I remain committed to working alongside you and the Illinois Commission on Discrimination and Hate Crimes to build a future where all individuals are treated with dignity, respect, and equality.

Sincerely,
Commissioner Channyn Lynne Parker
CEO, Brave Space Alliance
Illinois Commission on Discrimination and Hate Crimes

Statement of Professor Emeritus Brian Levin

Formerly of California State University – San Bernardino

"A Threat to Justice Everywhere: Stemming the Tide of Hate Crimes in America"

Hearing Before the U.S. Senate Committee on the Judiciary

September 2024

Committee on the Judiciary

United States Senate

Washington, D.C. 20510

Chairman Durbin, Ranking Member Graham, and Members of the Senate Judiciary Committee thank you for another special opportunity to present some of my latest analysis and findings on hate and extremism, which Congress has used since 1987 - much of which will appear in my report for the Washington, DC based Criminal Justice Research Alliance's forthcoming publication entitled Report to the Nation.

I am so incredibly pleased to see two extraordinary friends, policy experts and admired human rights advocates, the Arab-American Institute's Maya Berry and Bard College's Ken Stern – both of whom I have had the pleasure of bestowing deserved awards for their critical pioneering work countering prejudice. We indeed owe them a debt of gratitude.

I am Prof. Emeritus Brian Levin, now a Commissioner on the California Commission on the State of Hate – which I helped establish, and formerly of the School of Criminology and Criminal Justice at California State University, San Bernardino (CSUSB), where I founded the firmly nonpartisan independent data, research and policy institution, the Center for the Study of Hate and Extremism ("CSHE") a quarter century ago. While I am happy to invoke these marvelous past and present affiliations, this statement presented today is mine solely and should not be attributed to any of these fine institutions. I would like to thank among others James Nolan, PhD; Sonya Zabludoff, PhD, Darrell Claybrook, and Karen Nakashima among others for assistance with research.

My quantitative and qualitative trend analysis, often conducted with colleagues, on violent manifestations of political conflict and prejudice across both borders and the ideological spectrum, has been used in Congressional hearings and by scholars, for decades and has been

published in various Journals including Stanford Law & Policy Review, Northwestern University Law School's Journal of Crime and Criminology and American Behavioral Scientist, *inter alia.* In 2020, this continuing research, won recognition with the Wang Family Excellence Award for outstanding scholarship in the California State University system, the nation's largest.

My statement consists of three basic parts:

1.) a brief discussion of the new 2023 Federal Bureau of Investigation (FBI) data and some limitations and inconsistencies associated with it,

2.) Analysis from my recent curated survey of major city /state data which show significant increases in Anti-Arab, Anti-Jewish, and Anti-Muslim hate crime in 2023, as well as a modern record for overall hate crime and anti-Jewish ones – which continue to rise into 2024's election year,

3.) A graphic appendix with historic prior years' FBI data, multi-city data, and events by bias category.

Definition

Hate crimes are criminal events where the target is selected because of the actual or perceived group status of another. The FBI definition is "a committed criminal offense motivated in whole or in part by the offenders' bias(es) against a race religion disability sexual orientation ethnicity, gender and gender identity." The HCSA initially required the Attorney General to collect data voluntarily submitted by the states on crimes motivated by race, religion, sexual orientation and ethnicity with an amendment including disability later in the 1990s.

FBI Reports Small Overall Increase Amid Platform Transition Issues

The FBI's latest 2023 hate crime data showed a 2% increase in hate crime last year, with a rise of total criminal incidents from 11,634 in 2022 to a record 11,862 in 2023. Although, this annual record is consistent with my multi-state/city samples, my sample showed higher overall percentage increases. Adding to the mix, the FBI, using a smaller cadre of more consistently reporting agencies found hate crimes declined by 0.6% from 10,687 in 2022 to 10,627 in 2023. Recall, as well, the Bureau of Justice Statistics, (BJS) which relies on older victimization surveys has found hate crime events are far more frequent with around 200,000 annually – accounting for about one percent of all violent crime.

The FBI found anti-Jewish hate crime increased in 2023 between 55-63% (depending on data set) to a modern record as well: 1,832 up from 1,222. Anti-Muslim hate crime, rose 51% from 158 to 236 - a level not seen since the middle of last decade. Anti-Arab hate crime rose 34% to the highest level since that data was broken out in 2015. It should be noted that anti-Arab hate crimes peaked in 2001, when the category was subsumed by the Bureau into the more broad "ethnic non-Latino" bias victim category. As you will see in the presentation of my most recent data, the FBI increases in anti-Jewish and anti-Muslim hate crime were roughly in line with the increases from my curated sample of larger police agencies, though anti-Arab hate crimes rose more in mine, though from a smaller sample. My sample includes a concentration of agencies that have hate crime units and procedures with long standing reporting and policies.

Still, my data and FBI data have found vast informational deserts by both bias category and jurisdiction. This can even happen around high profile crimes or in cities with a track record of

recording incidents. For example, in New York, the nation's largest city, neither the NYPD's initial data, nor the filtered federal FBI data found a single anti-Arab hate crime there in 2023 – a questionable finding. Similarly, the Plainfield, Illinois police department did not count any homicides, despite the horrifying murder of 6 year old Wadea Al-Fayoume there from an anti-Palestinian/Arab hate crime. It came around the same time a major presidential candidate called for a total exclusion of Palestinian refugees from Gaza who invoked bigoted tropes in doing so.

Moreover, in 2023 there were sometimes inconsistencies between local, state, and federal data reports that varied to a far greater extent than ones found previously. While it is expected that some declines will surface as preliminary local reports are filtered and curated by the FBI, issues continue to exist with the integration of the newer and superior incident-based NIBRS (National Incident Based Reporting System) from the older UCR one. This bumpy transition appears to be a contributor to greater variances between local and federal data than what was found previously.

This appears in numerous places like Los Angeles, Chicago and Philadelphia, three of the nation's highest reporting agencies where such platform integration is occurring. For example, the Los Angeles police department reported 841 victims in 2023, but both the state's and FBI totals are less than 500. In Chicago, the police department's official website currently lists 282 criminal hate events, while the FBI's total is far lower at 181. Initial internal Philadelphia police department 2023 hate crime totals were 136, while Pennsylvania State totals were less at 102, with the FBI even less at only 52. The differentials in the hundreds of incidents in these cities alone, are enough to change the trajectory of the FBI's smaller curated sample of "stable" reporting agencies from showing a decline to an increase. Similarly, the small 2% rise found in

the FBI's 2023 overall total would be far more pronounced even if only some of these forementioned incidents were included. Importantly, the newer NIBRS system, however, can update new additional information to prior counts, so totals listed in the future, could be revised by local agencies upwards later, from the more widely disseminated initial official federal totals.

Election Years Always Have Increases in Hate Crime And 2024 Is Already Up

While the data presented here is my latest assessment specifically on rising hate crime in the United States, it is key to put these increases in context. They are occurring when there is significant personal and communal change, stress, and conflict – increasingly advanced by domestic and foreign manipulation. These threats to both democratic institutions and intergroup relations domestically and internationally face renewed threat. Xenophobia, replacement doctrine, misogyny, and conspiracy theories have been further intertwined and weaponized by influential opportunists around highly impactful catalytic events like the political season and brutal conflict in the Middle East. In recent years other catalysts occurred around the pandemic and racial injustice.

This fall's political season has amplified and focused stereotypes into political weapons, with dire consequences. FBI data going back decades show an increase in hate crime in every election year, and 2024 does not appear to be an exception. So far, in 2024 in major cities such as New York, Chicago, Houston, Philadelphia, Seattle, Kansas (MO.) and Washington, DC have reported increases which will likely result in a sustained record for overall and anti-Jewish hate crime in the nation's most populous cities this year. It is not only large cities that are suffering from hate crime this election year. After proven racist falsehoods about legal Haitian residents of

Springfield, Ohio hunting and eating domestic pets were promoted in the presidential campaign, the city, which had only 4 hate crimes in 2023 had dozens of bomb threats in just a month. Other types of directed threats and violence in this election season has ensnared candidates, office-holders, and those involved in the election process.

As illustrated above, there has been a significant correlation between conflictual catalytic events, the online invective around these events and politics. While the January 6 insurrection is a noteworthy example, this is hardly the first time we've seen an increase in violence around politics or elections. The highest volume day (the FBI counted the El Paso massacre as a single event) for all hate crime in 2019 was in early December when news outlets announced impeachment hearings would go forward and tied for the second-worst day that year was when President Trump maligned Congressperson Omar and other house members. Election month, November 2016, was the worst month in 14 years with 758 FBI-reported hate crimes. Interestingly, other data showed a corresponding increase in the volume of both bigoted speech on 4chan, as well as an increase in manipulative racially divisive ad buys by the Russians on Facebook around that time.

The Report On The Investigation Into Russian Interference In The 2016 Presidential Election (Mueller Report), March 2019 concluded:

"Collectively, the IRA's social media accounts reached tens of millions of U.S. persons. Individual IRA social media accounts attracted hundreds of thousands of followers.... According to Facebook, in total the IRA-controlled accounts made over 80,000 posts before their deactivation in August 2017, and these posts reached at least 29 million U.S. persons and 'may

have reached an estimated 126 million people.'" The day after the elections – November 9, 2016 was the worst day for reported hate crime in 13 years. It was also the day three interdicted militia extremists planned to truck bomb a Garden City, Kansas apartment complex populated by Somali-American Muslims. This pattern of bursts in hate crime, vile internet chatter, and terror around conflictual political events continues in this election as the number of foreign malefactors appears to include an expanding list of nations. Later in 2018, days before a conflictual national mid-term election an extremist killer motivated by the politically mainstreamed replacement doctrine murdered 11 congregants at the Tree of Life Synagogue in Pittsburgh.

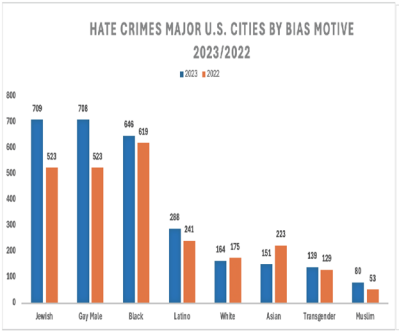
My Study: U.S. Hate Crime Records Continue To Fall for Overall and Anti-Jewish Amid Other Increases

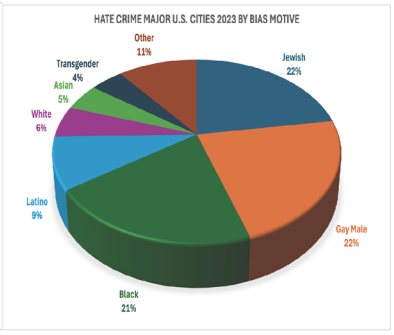
Hate crime reported to American police is up according to separate police surveys of the nation's largest states and cities. In 2023 hate crime in ***the nation's ten most populous cities rose 16%*** - to another consecutive ***modern record of 2,258***. A ***larger 40 multi-city sample (MCS) rose 14%*** – both up on another annual increase in religion oriented crimes. A separate ***20 state/DC survey of 2023 police data was up 8%.*** Incoming preliminary 2024 data indicated, yet another election year increase. By contrast overall crime decreased in 2023 according to the FBI.

Arab +136% 22 to 52	***Muslim +51%*** 53 to 80	***Jewish + 48%*** 480 to 709 (Record Total)	***Gay Male +35%*** 523 to 708	***Latino +16%*** 241 to 288
Overall Hate Crime +13.8% 3,138 to 3,572	**Transgender +8%** 129 to 139	**Black +4.4 %** 619 to 646	**White - 6%** 175 to 164	**Asian - 32%** 223 to 151

Anti-Jewish hate crimes reported to police across 20 major cities in 2023 rose 48% to a new record, while anti-Muslim crimes rose 51%, with spikes starting in October 2023 following escalated violent conflict in Israel/Gaza. Relatedly, anti-Arab crimes rose 136% in a smaller

sample. In 2023 Anti-Gay (Male), Anti-Latino, Anti-Transgender and anti-Black hate crime also rose. In 2023 Jewish targeted hate crimes were for the first time, the most frequent in the largest U.S. cities. The three most frequent bias crime targets in major cities in 2023 accounted for nearly two thirds of all reports: Jews and Gay Males at 22% each and Blacks, at 21%; were closely clustered, but reordered from 2022.





Reported Bias Crimes: Ten Largest U.S. Cities 2022-2023						
City	2022 Census Pop. Est. (Millions)	2023	2022	% Change	Top Bias Targets	Overall Record/ Notes for 2023
New York City, NY	8.34	669	612	9.3%	Jews/325, Gay M/98, Blacks/51	Yes: Record Overall &Anti-Jewish
Los Angeles, CA	3.82	841	720	17%	Blacks/219, Jews/157, Gay M /133	Yes: Record Overall & Anti-Jewish by victim, 1992 totals incomplete
Chicago, IL	2.67	281	192	43%	Blacks/69, Jews/43, Gay M/36	Yes: Record Anti-Jewish
Houston, TX	2.30	31	29	186%	Gay M/18, Blacks/16, Latinos/13	No
Phoenix, AZ	1.64	111	106	5%	Blacks/33, Latinos/10, Whites/6	No
Philadelphia, PA	1.57	136	146	-7%	Whites/34, Jews/27, Blacks/22, Gay &TG 21	No, Record Anti-Jewish
San Antonio, TX	1.47	42	37	5%	Blacks/12, Gays/10, Latinos/7	No
San Diego, CA	1.38	65	34	47%	Race/20, Gay/17, Religion/14	No
Dallas, TX	1.30	31	29	7%	Jews/8,Latinos/6,Gay M/4, LGBTQ Mix/ 4	No
Austin, TX	.974	50	42	9.5%	Gay M/12, Blacks/9, LGBTQ Mix 7	Yes
Total 10 Largest Cities	25.46	2,258	1,948	15.9%	Jews, Blacks, Gays Top Target in 10 largest cities	

In the previous 2022 MCS hate crime survey of 42 cities (also labeled CSHE in some charts), overall hate crime rose 10%, with those in the ten largest ones rising 22%. The highest percentage increases in the 2022 MCS were other race/ethnicity, LGBTQ (Mixed), Gender non-conforming and Jewish. The FBI's 2022 national hate crime total showed a lower 7% overall

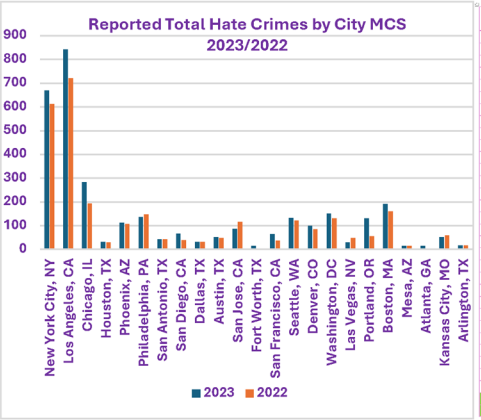
rise, though religion hate crime rose 27%. The 2022 FBI increase to a modern record of 11,643 occurred on a declining number of participants.

Jewish targeted hate crime hit new record totals in 2023 on the largest numerical increase (over 220) of any MCS group surveyed, and on one of the larger percentage increases: +48%, among surveyed groups, and these increases continue into 2024. In 2023 Anti-Muslim hate crime reached a new multi-year high in an identical twenty city survey. In October 2023 nine major U.S. cities registered a 285% increase in anti-Jewish hate crime over October of 2022, as various cities also reported significant increases in anti-Muslim, anti-Arab/Palestinian hate crime.

Jews who account for 4% of the population of major cities and 2% of the nation, were narrowly the most targeted at 709 reports. Next, Gay males with 708 reported crimes and a 35% increase were the second most common. For the second year in a row anti-Jewish and anti-Gay male bias in the larger sample were nearly identical.

Anti-Black hate crime, at 646, up 4%, was the third most frequent dropping from the most common hate crime in major cities (and nationally in previous years). Anti-Black hate crime, however, has been the most frequent type every year since FBI hate crime data collection began in 1991. Anti-Latino hate crime, was the fourth most frequent type at 288, with a 20% increase - following a record in 2022 in FBI hate crime totals. Black and Transgender directed hate crimes rose less at 4% and 8%, but both groups also reported significantly increased hate crime in recent years. Despite the reshuffling seen in major U.S. cities, Blacks continue to be the most targeted group nationally in 2023.

In addition to increases in religion hate crime, various cities also registered increases in anti-Arab, Palestinian and Israeli hate crimes. One in five cities surveyed in 2023 reported declines in hate crime. Religion hate crimes and anti-Arab hate crimes spiked in the Fall after the October 7 terror attack and subsequent War in Gaza. In 2022, the top ten cities' totals, various MCS cities and FBI national and Latino figures all hit records then for reported hate crime.



City	2022 Census Pop. Est. (Thousands)	2023	2022	% Change
San Jose, CA	971	85	115	-26%
Fort Worth, TX	960	14	12	17%
San Francisco, CA	810	56	36	56%
Seattle, WA	750	131	121	8%
Denver, CO	710	142	100	42%
Washington, DC	670	150	129	16%
Las Vegas, NV	660	29	47	-38% [victims]
Portland, OR	650	86	54	59%
Boston, MA	650	191	156	22.4%
Fresno, CA	546	13	16	-19%
Mesa, AZ	512	14	14	--
Atlanta, GA	510	14	3	367%
Kansas City, MO	510	50	57	-12%
Colorado Springs, CO	490	21	16	31%
Aurora, CO	430	36	25	44%
Tampa, FL	390	3	3	-
Arlington, TX	390	15	15	-
Cleveland, OH	360	108	98	10%
Irvine, CA	310	14	18	-22%
Santa Ana, CA	310	19	32	-41%
Cincinnati, OH	310	19	5	280%
Pittsburgh, PA	300	12	20	-40%
Newark, NJ	300	3	5	-40%
St. Louis, MO	290	13	11	18%
Jersey City, NJ	290	7	4	75%
Buffalo, NY	274	8	12	-33%
Madison, WI	272	21	15	40% [Offenses]
Reno, NV	270	14	12	17%
Boise, ID	240	9	13	-30%
Salt Lake City, UT	200	17	11	55%
30 City Total		1,314	1,175	11.8%
Full 40 City Total		3,572	3,138	13.8%

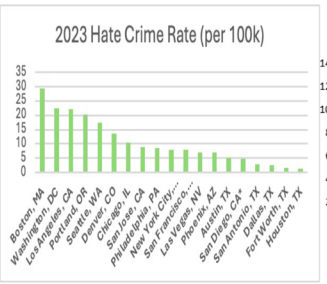
State	*2022*	*2023*
AZ	214	225
CA	2,120	1,970
CO	401	349
DC	129	150
DE	29	28
GA	188	128
ID	50	56

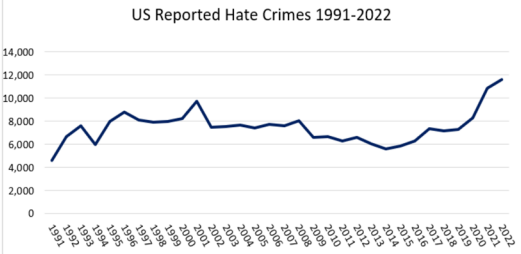
IL	390	370
KY	209	276 (victims)
MA	440	556
MN	168	180
MO	264	258
NV	98	83
NJ	2,178	2,699
NYS	959	1,089

OH	528	744
OR	409	370
PA	291	273
TX	509	474
VA	182	271
WA	546	576
Total 10,302 / 11,125 +7.9%		

A significant limitation with respect to much data across the field, including those presented here are the vast information deserts, that arise geographically, by agency, type of incident, reporting period and community targeted.

Densely populated eastern and west coast agencies had the highest reported rates of reported hate crime and the South, the lowest. Furthermore, data show wide differentials in reporting by groups where various obstacles to reporting exist relating to trust in, or access to support or law enforcement. Moreover, reporting issues in various states, such as California have rendered 2023 totals incomplete and not valid for annual comparisons as per the Attorney General's office. In New Jersey, the issue is another annual overcount relative to final FBI totals with various townships enumerating more than some of the nation's largest cities. As of September 1, 2024 at least 20 states had either 2023 raw or final data publicly available totaling 11,125, an increase of 7.9 percent.





While reported hate crime increased in recent years according to FBI annual data, those increases, until 2023 were from a declining number of participating agencies in the voluntary program. 2022 had the lowest agency participation in five years and in 2023 the number of participating agencies rose – though many of those were "zero" reporters.

Historic Chart: Hate Crimes This Century; Major U.S. Cities Year/Year 2000-2022

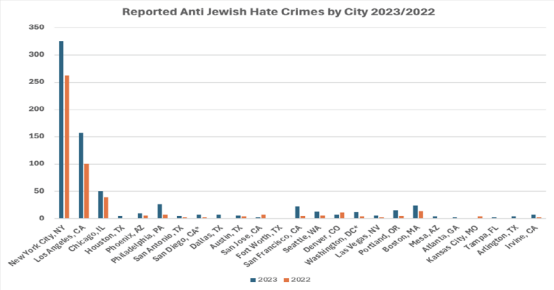
Bias Crimes Reported for Select US Cities, 2000-2022

City	% Change'22	2022	2021	2020	2019	2018	2017	2016	2015	2014	2013	2012	2011	2010	2009	2008	2007	2006	2005	2004	2003	2002	2001	2000
New York Ci	15%	612	531	275	428	361	386	345	307	307	314	374	242	350	271	258	295	255	237	261	324	290	484	467
Los Angeles,	66%	720	433	359	326	292	257	230	200	152	114	124	170	138	190	260	279	211	219	244	276	354	559	555
Chicago, IL	88%	193	103	77	100	77	61	71	59	64	59	68	51	46	27	31	37	33	36	54	58	52	103	87
Houston, TX	-41%	29	49	43	26	32	11	8	27	16	13	13	17	13	14	28	16	20	24	14	29	66	56	21
Phoenix, AZ	-24%	169	140	187	156	107	190	173	199	183	81	121	123	135	115	89	60	60		100	100	106	154	147
Philadelphia	21%	149	123	44	35	43	40	21	14	13	16	12	13	8	6	18	28	34	37	20	40	44	47	53
San Antonio,	-41%	37	63	35	45	7	4	10	13	14	11	17	2	5	9	7	22	28	19	24	14	19	28	13
San Diego, C	-25%	34	45	25	30	41	41	35	36	37	43	34	42	49	43	58	52	55	41	50	84	85	154	139
Dallas, TX	4%	29	28	39	30	33	14	11	11	15	18	30	16	12	11	17	23	39	45	48	41	47	29	26
San Jose, CA	-1%	115	116	90	94	37	45	19	6	11	15	15	32	24	40	43	34	29	22	15	31	49	62	36
Total 10 Larg	24%	2002	1611	1174	1210	1030	1041	923	912	812	684	808	708	780	725	829	886	764	682	680	997	1112	1676	1546
Austin, TX	45%	43	29	24	33	19	17	17	14	4	4	6	5	5	11	19	6	13	20	5	7	15	25	26
Columbus, O	-2%	82	84	110	91	84	75	190	194	149	136	44	40	46	37	49	94	81	50	123	48	71	77	69
San Francisc	-51%	44	112	55	64	66	41	35	28	22	24	35	46	63	23	68	66	94	104	138	117	180	164	141
Seattle, WA	-14%	121	141	139	114	125	113	89	84	51	33	28	12	15	14	21	28	11	18	25	25	18	27	21
Denver, CO	14%	84	74	71	88	55	61	40	26	20	45	52	34	62	61	37	24	11	12	7	6	3	16	7
Washington,	-13%	129	149	132	203	205	177	106	66	70	68	80	92	68	34	36	37	53	43	44	29	11	10	5
Sacramento,	27%	79	62	28	31	40	23	6	8	7	16	16	17	25	9	13	20	37	50	32	41	28	31	52
Total All Citi	14%	2601	2281	1734	1834	1624	1548	1406	1332	1135	1010	1069	954	1064	915	1072	1161	1064	979	1204	1270	1438	2026	1867

FBI Reported US Hate Crimes 2020-2022
Bias Motivation by Incident Count

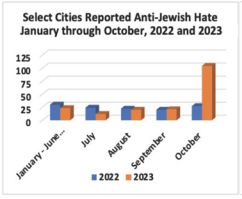
Bias Motivation	2020	2021	2022	3 Year Total	Change 2020-2021	% Change 2020-2021	Change 2021-2022	% Change 2021-2022
Anti-Black or African American	3,499	3,297	3,424	10,220	-202	-5.8%	127	3.9%
Anti-White	1,083	1,076	966	3,125	-7	-0.6%	-110	-10.2%
Anti-Gay (Male)	763	950	1,077	2,790	187	24.5%	127	13.4%
Anti-Jewish	854	824	1,124	2,802	-30	-3.5%	300	36.4%
Anti-Hispanic or Latino	610	694	738	2,042	84	13.8%	44	6.3%
Anti-Asian	334	753	499	1,586	419	125.4%	-254	-33.7%
Anti-LGBTQ	341	522	622	1,485	181	53.1%	100	19.2%
Anti-Other Race/Ethnicity/Ancestry	351	338	399	1,088	-13	-3.7%	61	18.0%
Multiple Bias	368	312	347	1,027	-56	-15.2%	35	11.2%
Anti-Transgender	222	250	338	810	28	12.6%	88	35.2%
Anti-Multiple Races, Group	234	196	232	662	-38	-16.2%	36	18.4%
Anti-Lesbian (Female)	128	189	191	508	61	47.7%	2	1.1%
Anti-Sikh	92	191	181	464	99	107.6%	-10	-5.2%
Anti-Muslim	129	153	158	440	24	18.6%	5	3.3%
Anti-Amer. Indian or Alaska Nat.	108	144	194	446	36	33.3%	50	34.7%
Anti-Gender Non-Conforming	61	103	131	295	42	68.9%	28	27.2%
Anti-Mental Disability	93	100	97	290	7	7.5%	-3	-3.0%
Anti-Catholic	76	99	107	282	23	30.3%	8	8.1%
Anti-Arab	80	103	92	275	23	28.8%	-11	-10.7%
Anti-Other Religion	81	75	91	247	-6	-7.4%	16	21.3%
Anti-Female	56	79	77	212	23	41.1%	-2	-2.5%
Anti-Other Christian	58	54	97	209	-4	-6.9%	43	79.6%
Anti-Eastern Orthodox	53	55	78	186	2	3.8%	23	41.8%
Anti-Physical Disability	58	54	74	186	-4	-6.9%	20	37.0%
Anti-Protestant	38	40	63	141	2	5.3%	23	57.5%
Anti-Multiple Religions, Group	52	37	42	131	-15	-28.8%	5	13.5%
Anti-Nat. Hawaiian or Other Pac. Islander	20	50	26	96	30	150.0%	-24	-48.0%
Anti-Bisexual	19	37	35	91	18	94.7%	-2	-5.4%
Anti-Buddhist	21	30	20	71	9	42.9%	-10	-33.3%
Anti-Male	21	18	18	57	-3	-14.3%	0	0.0%
Anti-Mormon	8	16	30	54	8	100.0%	14	87.5%
Anti-Atheism/Agnosticism	12	21	14	47	9	75.0%	-7	-33.3%
Anti-Heterosexual	12	13	22	47	1	8.3%	9	69.2%
Anti-Hindu	10	12	25	47	2	20.0%	13	108.3%
Anti-Jehovahs Witness	7	6	14	27	-1	-14.3%	8	133.3%
Total	9,952	10,891	11,643	32,486	939	9.4%	752	6.9%

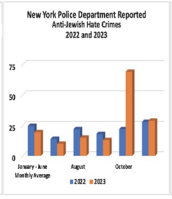
Anti-Jewish Hate Crimes Spike in Fall, Hit Another Annual Record, Up 48%

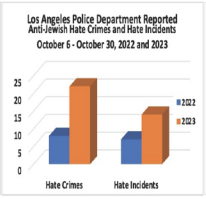


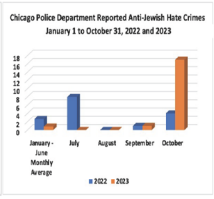
City	2023	2022	% Change 2022 to 2023
New York Ci	325	262	24
Los Angeles,	157	101	55
Chicago, IL	50	39	28
Houston, TX	5	1	400
Phoenix, AZ	10	6	67
Philadelphia,	27	8	238
San Antonio,	5	2	150
San Diego, C	8	2	300
Dallas, TX	7	1	600
Austin, TX	6	4	50
San Jose, CA	3	7	-57
San Francisc	23	5	360
Seattle, WA	13	6	117
Denver, CO	8	11	-27
Washington,	12	4	200
Las Vegas, N	6	2	200
Portland, OR	15	5	200
Boston, MA	24	14	71
Mesa, AZ	4	0	

In 2023 Anti-Jewish hate crime reports in major U.S. cities MSC survey rose 48% and broke records for another consecutive year following a fall spike. In October 2023 in nine major American cities anti-Jewish hate crime surged an average 285% over the previous October, following renewed violent conflict in the Middle East. New York, Philadelphia; Chicago; Washington DC; Boston; and Portland OR all broke modern records in 2023 for anti-Jewish hate crime reports. Jews are twice as likely to reside in the 21 largest metro areas than in the nation overall.









Select Cities Reported Anti-Jewish Hate Crimes January through October, 2022 and 2023			
	2022	2023	% Change 2022-2023
January - June Monthly Average	25.8	23.2	-22.3%
July	24	12	-50.0%
August	22	20	-9.1%
September	20	21	5.0%
October	27	104	285.2%
Total January - October	272	296	8.8%

New York Police Department Reported Anti-Jewish Hate Crimes 2022 and 2023			
	2022	2023	% Change 2022-2023
January - June Monthly Average	24.7	19.5	-20.9%
July	14	10	-28.6%
August	22	15	-31.8%
September	18	13	-27.8%
October	22	69	213.6%
Nov. 1 - Nov. 15	28	29	3.6%
Total January - October	252	253	0.4%

Los Angeles Police Department Reported Anti-Jewish Hate Crimes and Hate Incidents October 6 - November 17, 2022 and 2023			
	2022	2023	% Change
Hate Crimes	12	43	258.3%
Hate Incidents	8	33	312.5%
Total	20	76	280.0%

Chicago Police Department Reported Anti-Jewish Hate Crimes January 1 to October 31, 2022 and 2023			
	2022	2023	% Change 2022-2023
January - June Monthly Average	2.7	0.8	-68.8%
July	8	0	-100.0%
August	0	0	------
September	1	1	0.0%
October	4	17	325.0%
Total January - October	29	23	-20.7%

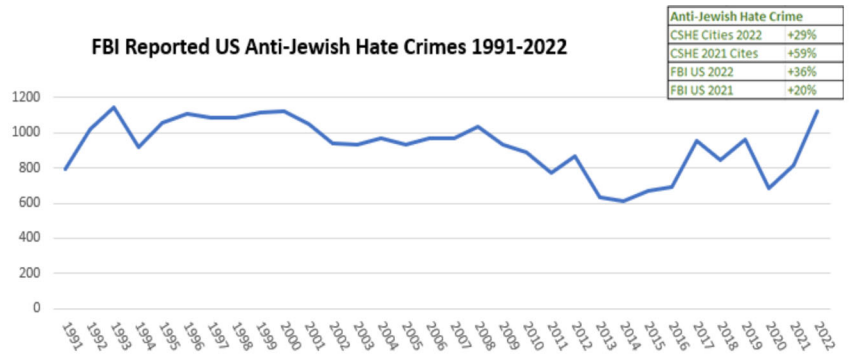
A 2023 American Jewish Committee survey of U.S. Jews found 63% believed the status of Jews in the U.S. was less secure, compared to 2022, when 41% thought so.

Anti-Jewish hate crime also rose 29% in 2022's MCS (or CSHE) city survey and 36% in FBI 2022 data, buttressed by a fall spike following singer Ye's "deathcon" and other statement's relating to Jews. In contrast to national 2022 FBI data where Jews accounted for 56% of all religion hate crimes, in larger MCS cities Jews represented 77% of all 2022 religion hate crimes. The 2022 FBI anti-Jewish hate crime report total of 1,124 is the third highest recorded, with FBI 2023 totals for anti-Jewish hate crime being a new record. Jews have been the top religious bias nationally for hate crime since 1991 and are consistently the top overall bias target in New York City, where one in six American Jews reside. Reported anti-Jewish hate crimes hit a record there in 2023 at 325, more than the overall hate crime total for any city in the U.S. outside of New York and Los Angeles. In 2023 the FBI found nationally, the overwhelming majority of known offenders were white – almost four times the total of all other assailants.

Anti-Jewish Bias Crimes Select Cities 2010-2022

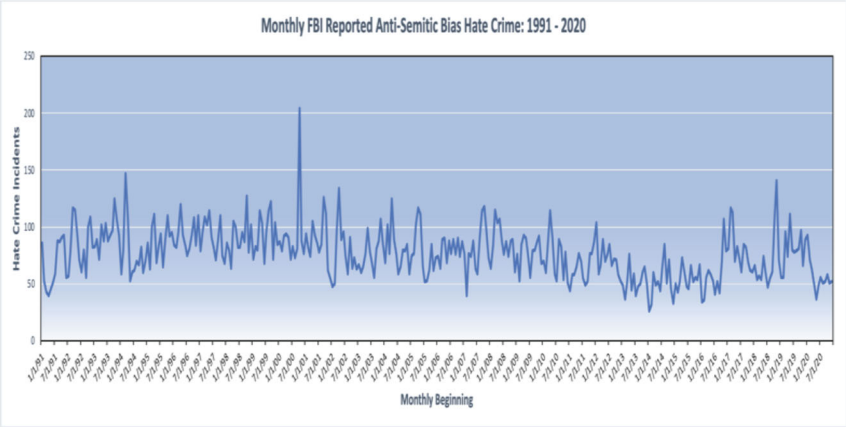
City	2010	2011	2012	2013	2014	2015	2016	2017	2018	2019	2020	2021	2022
Boston, MA	8	12	13	13	3	9	4	16	11	8	8	9	14
Chicago, IL	6	1	1	5	7	8	12	16	14	18	6	6	36
Denver, CO	5	1	1	2	0	0	1	1	0	8	7	10	11
Los Angeles, CA	23	26	24	23	36	39	29	30	50	71	52	80	91
New York City, NY	136	104	216	119	126	123	137	147	191	243	179	196	261
Philadelphia, PA	2	0	1	1	1	1	6	12	9	4	9	8	8
Phoenix, AZ	14	9	5	9	14	24	22	34	20	15	9	8	6
San Jose, CA	6	8	4	1	1	2	3	6	0	4	7	7	6
Washington, DC	2	2	5	4	3	2	12	11	5	1	0	13	9
Total	202	163	270	177	191	208	226	273	300	372	277	337	442

Los Angeles 2021/2022 are victims not events.



In past decades anti-Jewish hate crime spikes were mostly tied to conflicts in the Holy Land and Jewish holidays, while more recently spikes are also observable around domestic socio-political catalysts like elections and attacks by widely followed domestic influencers. Currently, all three conditions exist.

In the 1990s the monthly high occurred in 1994 when anti-Jewish hate crime spiked in March following the late February Hebron massacre by a Jewish extremist. The highest month for anti-Jewish reported hate crime in the following decade occurred during 2000's violent fall Intifada. The period of a conflictual 2018 mid-term election where the Senate majority flipped parties, not only was a decade high for anti-Jewish hate crime, it also marked the time of the worst American massacre of Jews in modern history when in October 2018 11 congregants were murdered by a white supremacist. In 2020 both MCS and FBI anti-Jewish hate reports fell, likely the effect of gathering restrictions in large cities where Jews represent a higher proportion of the population. In 2021, like this past year, anti-Jewish hate crime spiked during the Gaza conflict.



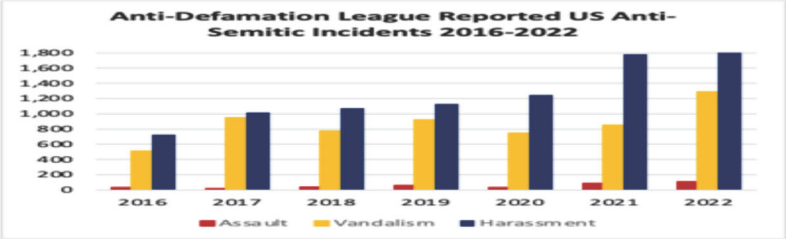
Anti-Jewish FBI Reported Hate Crime 1991-2020

	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	To
1991	86	53	43	40	46	51	59	88	87	91	93	56	
1992	57	79	117	115	93	71	61	80	56	100	109	82	
1993	83	89	72	102	88	103	88	93	97	125	107	93	
1994	59	79	147	109	53	61	62	70	67	82	60	70	
1995	86	63	101	111	69	84	94	65	89	110	92	95	
1996	84	82	95	120	93	84	75	81	93	108	84	110	
1997	79	97	109	102	114	91	83	71	89	110	75	68	
1998	86	79	64	105	100	82	82	95	87	127	78	102	
1999	72	83	80	114	103	68	95	114	122	72	104	85	
2000	87	79	92	94	91	72	83	73	81	204	88	77	
2001	94	81	74	105	93	86	78	85	126	112	62	55	
2002	48	50	96	134	89	96	75	59	91	64	73	63	
2003	67	60	65	76	99	78	69	56	81	88	107	85	
2004	69	102	77	125	89	76	59	65	80	79	85	59	
2005	75	77	102	117	111	66	52	53	62	85	62	73	
2006	74	64	89	90	69	88	77	89	76	90	74	87	
2007	77	40	77	74	88	63	59	91	114	118	98	73	
2008	64	84	115	104	107	87	76	87	74	88	89	61	
2009	76	53	85	93	90	73	56	79	80	87	92	68	
2010	70	60	85	114	91	59	53	89	83	54	78	51	
2011	44	58	58	65	77	70	55	49	52	77	77	87	
2012	104	59	66	89	70	76	85	66	72	71	58	53	
2013	49	37	50	76	45	59	40	48	50	61	65	50	
2014	26	32	60	49	52	44	64	85	51	71	46	33	
2015	50	43	52	73	61	48	46	66	52	56	54	67	
2016	34	36	56	62	58	53	41	52	42	70	107	79	
2017	81	117	113	70	83	72	61	85	82	69	62	61	
2018	66	54	57	54	74	58	47	55	61	110	141	71	
2019	56	56	96	74	111	80	78	79	81	97	66	89	
2020	93	71	63	50	37	49	56	51	52	58	51	52	
Total	2,096	2,017	2,456	2,706	2,444	2,148	2,009	2,219	2,330	2,734	2,437	2,155	

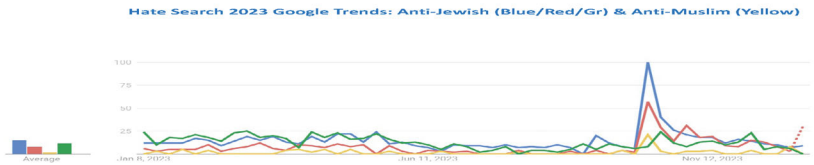
In 2023 the Anti-Defamation League (ADL), a Jewish advocacy group instituted new methodology in its four decade old annual audit of antisemitic "incidents." The ADL reported a record 8,873 antisemitic "incidents," the majority non-criminal, in 2023, up 140% from the 2022 total of 3,698. The ADL expanded its Audit in fall 2023 to include "certain expressions of opposition to Zionism, as well as support for resistance against Israel or Zionists that could be perceived as supporting terrorism or attacks on Jews, Israelis or Zionists." Excluding those additional reports resulting from the new methodology, the 2023 total of 7,523 incidents represents a 103% increase from 2022.

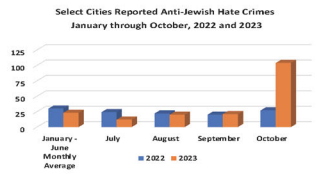
The increase in ADL reported violent and criminal incidents was noteworthy. Assaults rose 45%, from 111 in 2022 to 161 in 2023 and bomb threats increased ten-fold, from 91 to 1,009 - the majority of which were directed at synagogues. While anti-Jewish homicides increased over the last decade, there were none in 2023, and one in 2022.

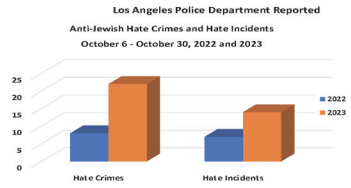
The ADL used a more expansive definition of antisemitism developed by the International Holocaust Remembrance Alliance (IHRA). Two non-academic journalist researchers, Shane Burley and Jonah ben Avraham, using a narrower definition of antisemitism as "discrimination, prejudice, hostility or violence against Jews as Jews (or Jewish institutions as Jewish)" reviewed the ADL audit and concluded that only 4,948 incidents were bona fide as clearly targeting Jews and fitting other parameters- an increase of just 25% over 2022, but still a record. The researchers also contend that right wing mainstreamed expressions of antisemitism were not fully analyzed.

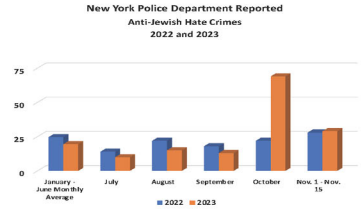


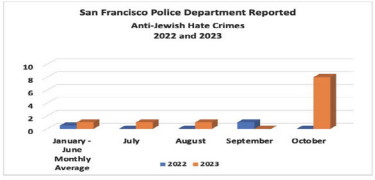
In late 2023, anti-Jewish and Muslim hate search, including eliminationist rhetoric rose online as well as seen in Google search trends from last year. This increase in online antisemitism correlated to increases in reported hate crime.

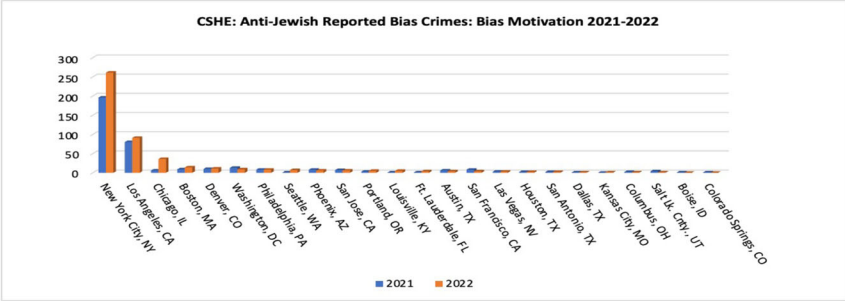










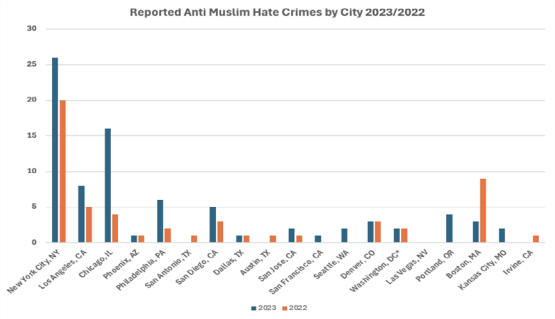


2023 Anti-Jewish Hate Crime Increases International In Scope

The increases in anti-Jewish hate crimes in major cities in 2023 were international in scope. In Toronto, Canada's largest city anti-Jewish hate crime rose 103%, from 65 to 132, while in Vancouver, BC anti-Jewish hate crime rose 62%, increasing from 29 to 47. B'nai B'rith Canada, a Jewish advocacy group utilizing the more expansive IHRA definition of antisemitism saw its enumeration of "harassment, vandalism and violence" anti-Jewish hate incidents rise 109% from 2769 to 5791, and violent acts spiking from 25 to 77.

In London anti-Jewish hate crimes reported to metropolitan police in 2023 rose 208%, from 562 incidents to 1,729. The Community Service Trust (CST), a United Kingdom Jewish advocacy organization found nationally "4,103 instances of anti-Jewish hate recorded across the UK in 2023…the highest annual total ever reported…[and a] 147% rise from the 1,662 antisemitic incidents in 2022." Of the 2023 incidents 1,299 involved "antisemitic incidents [that] exhibited anti-Zionist motivation." There were 2,261 incidents, reported in 2021, 1,684 in 2020, and 1,813 in 2019. In France the Council of Jewish Institutions (CRIF) using Interior Ministry and other data reported 1,676 "antisemitic acts" in 2023, a 284% increase from the 2022 total of 436.

Anti-Muslim and Anti-Arab Hate Crime Rise to Multi-Year Highs in 2023

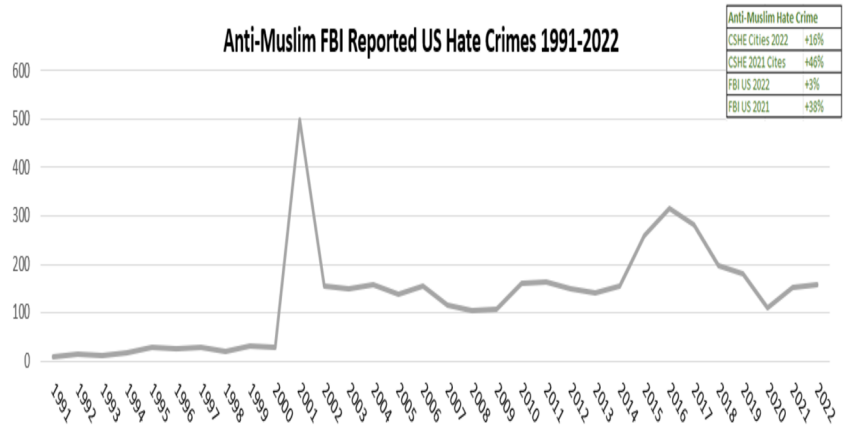


	2023	2022
New York Ci	26	20
Los Angeles,	8	5
Chicago, IL	16	4
Phoenix, AZ	1	1
Philadelphia,	6	2
San Antonio,	0	1
San Diego, C	5	3
Dallas, TX	1	1
Austin, TX	0	1
San Jose, CA	2	1
San Francisc	1	0
Seattle, WA	2	0
Denver, CO	3	3
Washington,	2	2
Las Vegas, N	0	0
Portland, OR	4	0
Boston, MA	3	9
Kansas City,	2	0
Irvine, CA	0	1

Anti-Muslim hate crime rose sharply in major U.S. cities in 2023, for a third consecutive annual increase. Anti-Muslim hate crime across MSC cities increased 51% in 2023, 16% in 2022, and 46% increase in 2021. The FBI increase for 2023 was also about 50%. National FBI annual increases for anti-Muslim hate crime rose less than those increases found in MCS cities, in 2022 and 2021, 3% and 38% respectively.

In recent decades, annual totals of FBI reported anti-Muslim hate crime have varied across several distinct periods with the decade before 9/11 reporting low levels, never exceeding a few dozen. This was followed by a record peak immediately around 9/11. In the years thereafter elevated multi-year plateaus were followed by a period of subsequent sharp fluctuations. From 2001 Muslims were the second most frequent target for religious motivated hate crimes both numerically and proportionately in FBI totals, after Jews until 2021. Anti-Sikh hate crimes replaced anti-Muslim hate crime as the second most frequent in 2021 and 2022, but not in 2023.

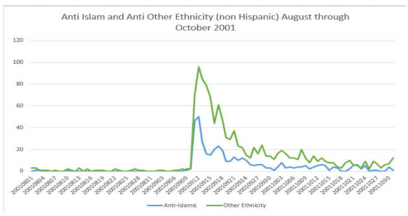
In the United States anti-Muslim and Anti-Arab (then classified within "ethnic, non-Latino" category) rose to record highs after 9/11, never reverting to pre-attack levels. Hate crimes against Muslims, Arabs, and others combined to make 2001 the worst year for overall hate crime since national record-keeping began in 1991, until this decade, when consecutive new records occurred. However, after a series of elevated plateaus, hate crimes against Muslims spiked once again in the middle of the last decade at a higher rate of increase than that of overall hate crime, before reversing into a decline. Fluctuations in anti-Muslim hate crime correlated most directly to brief periods around domestic terror attacks and overseas conflicts, and also to statements by political leaders around those events. Other groups stereotyped in socio-political discourse, like Latinos, sometimes experienced an inverse extended trend with Muslims, as other groups became the focus of sustained socio-political attacks during heated political seasons. Moreover, prejudice indicators in surveys relating to Muslims also remain at elevated levels in the nearly two decades following 9/11 as Muslims and others have been targeted not only as a terror threat but a demographic one as well in increasingly mainstreamed discourse.

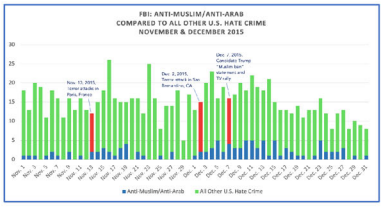


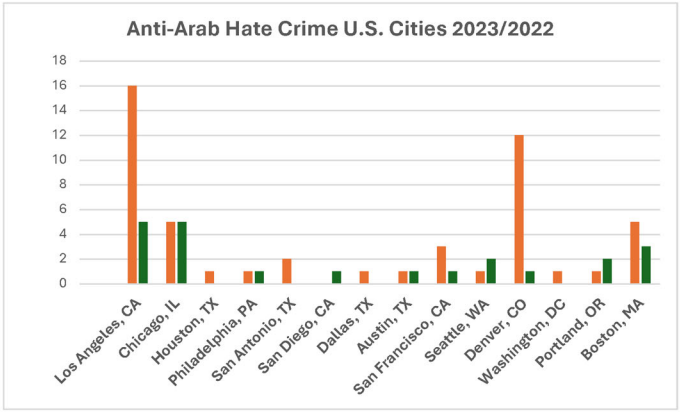
FBI Anti-Muslim Reported Hate Crime 1991-2020

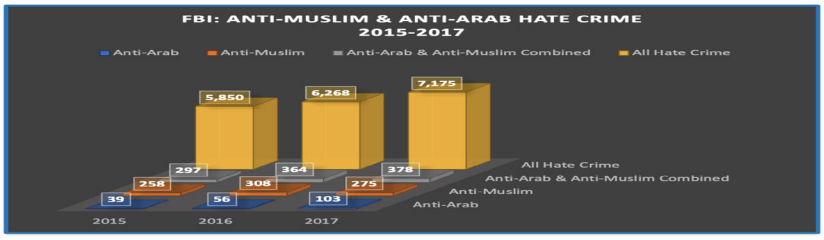
	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	Total
1991	1	3	-	-	2	2	-	1	1	-	-	-	10
1992	-	2	1	-	1	2	1	2	4	1	-	1	15
1993	-	-	1	2	1	-	-	2	2	2	1	2	13
1994	2	1	2	-	2	-	2	-	2	1	2	3	17
1995	3	2	1	10	-	2	-	6	1	2	1	1	29
1996	-	2	4	3	14	1	1	1	-	-	1	-	27
1997	-	1	5	6	1	4	2	1	2	4	-	2	28
1998	4	2	1	4	3	2	-	1	2	1	-	1	21
1999	4	6	1	-	2	2	1	5	4	3	1	3	32
2000	2	2	3	1	1	1	3	1	4	8	2	1	29
2001	1	1	2	2	5	2	5	3	330	94	25	29	499
2002	13	9	14	10	16	12	17	11	26	8	11	9	156
2003	11	7	21	21	16	12	8	15	19	6	7	5	148
2004	8	12	9	12	29	15	10	7	18	21	7	10	158
2005	11	3	9	12	15	14	16	12	16	7	14	9	138
2006	7	6	13	14	11	12	18	19	16	15	13	12	156
2007	12	13	7	16	12	7	11	6	13	10	2	6	115
2008	7	11	8	10	11	8	13	6	6	10	10	5	105
2009	9	9	6	6	8	4	12	14	9	9	14	7	107
2010	9	10	14	14	17	11	12	14	18	21	10	10	160
2011	10	6	11	18	15	14	14	22	20	8	13	11	162
2012	17	8	10	7	12	18	10	15	20	6	17	8	148
2013	3	8	12	17	18	4	16	15	16	10	9	10	138
2014	7	7	14	13	6	12	14	16	29	18	13	7	156
2015	17	16	12	18	21	18	17	8	13	21	30	69	260
2016	23	14	30	23	20	33	29	25	19	25	40	29	310
2017	27	29	28	27	21	19	28	17	15	23	28	15	277
2018	15	18	22	22	17	17	13	13	14	19	7	14	191
2019	7	7	24	20	20	23	12	13	18	11	14	11	180
2020	8	16	9	11	7	6	11	8	10	9	8	7	110
Total	238	231	294	319	324	277	296	279	667	373	300	297	3,895

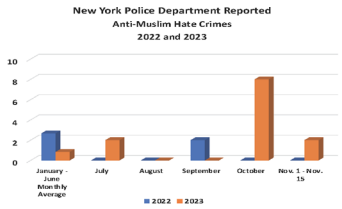
For Muslims in particular, these correlations appear not only to correspond to catalytic events, like the 9/11 terror attacks but also to political statements and media references, sometimes tied to those events as well. Other events where hate crimes contemporaneously spiked against Muslims were the December 2015 San Bernardino Terror attack and Muslim Ban days later, and in 2016, after the November election and June's Pulse night club massacre**.** Most recently, spikes in anti-Muslim and anti-Arab hate crime occurred during violent conflict in the Middle East in late 2023 and this year. Last year was the highest volume for anti-Muslim and anti-Arab hate crime since the middle of last decade, despite what I believe to be significant underreporting.

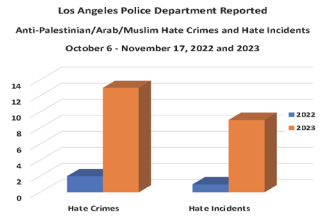

Anti Islam and Anti Other Ethnicity (non Hispanic) August through October 2001
Anti-Islamic
Other Ethnicity

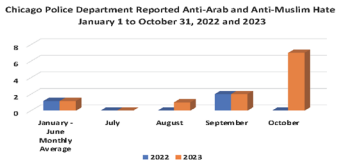

FBI: ANTI-MUSLIM/ANTI-ARAB
COMPARED TO ALL OTHER U.S. HATE CRIME
NOVEMBER & DECEMBER 2015
Anti-Muslim/Anti-Arab
All Other U.S. Hate Crime


Anti-Arab Hate Crime U.S. Cities 2023/2022
18
16
14
12
10
8
6
4
2
0
Los Angeles, CA
Chicago, IL
Houston, TX
Philadelphia, PA
San Antonio, TX
San Diego, CA
Dallas, TX
Austin, TX
San Francisco, CA
Seattle, WA
Denver, CO
Washington, DC
Portland, OR
Boston, MA


FBI: ANTI-MUSLIM & ANTI-ARAB HATE CRIME
2015-2017
Anti-Arab
Anti-Muslim
Anti-Arab & Anti-Muslim Combined
All Hate Crime
5,850
6,268
7,175
297
364
378
258
308
275
39
56
103
All Hate Crime
Anti-Arab & Anti-Muslim Combined
Anti-Muslim
Anti-Arab
2015
2016
2017







Recommendations

My recommendations for improving hate crime response, including to religious hate crime, largely mirror those of my friends at the Leadership Conference, though I highlight some specific ones of my own as well:

1. Make police hate crime data collection, training, investigation protocols and policies mandatory under state and federal law and provide incentives to do so including preferences for grants.

2. Bolster alternatives for victim reporting to include non-law enforcement entities and non-criminal incidents, like those found with CA v. Hate.

3. Bolster alternatives regarding victim care to include social workers, human relations and mental health professionals.

4. Bolster alternatives to prosecution for hate crimes that do not involve physical injury, particularly for those involving young people.

5. Establish independent state and regional commissions and working groups to address

hate and extremism.

6. Enhance practices to prevent bigots and other problematic individuals from joining police agencies or transferring.

7. Make hate crime data more accessible through online dashboards with quarterly updates at the local level and issue biennial updates nationally.

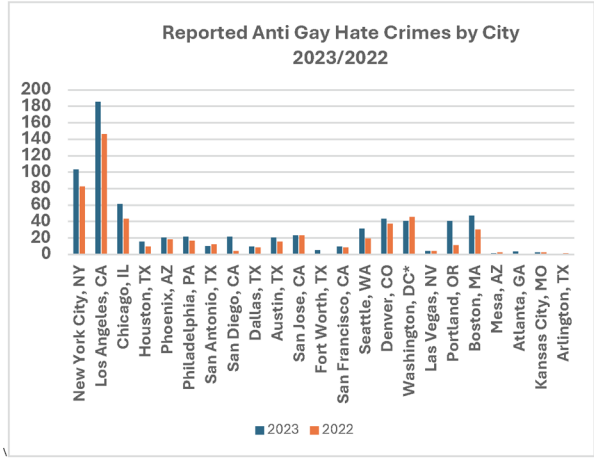
8. Expand legislation and policies, when applicable, to include actual or perceived gender, gender identity, disability, the unhoused and immigration status.

9. Expand programs and security grants to institutions such as houses of worship, schools and universities where targeted violence occurs.

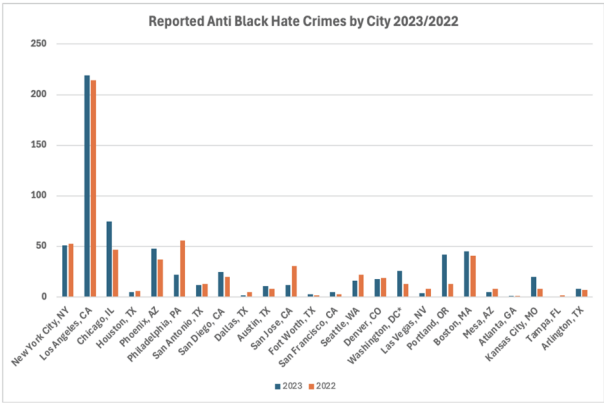
10. Pass proposed legislation like the Domestic Terrorism Prevention Act which mandates detailed information on counterterrorism initiatives, better addresses terrorism threats, and creates relevant administrative responses, without adding new offenses and the George Floyd Justice in Policing Act to enhance trust in law enforcement.

Once, again, thank you for this opportunity to share this late breaking, critical analysis with you and to speak against the scourge of religious and other bigotry.

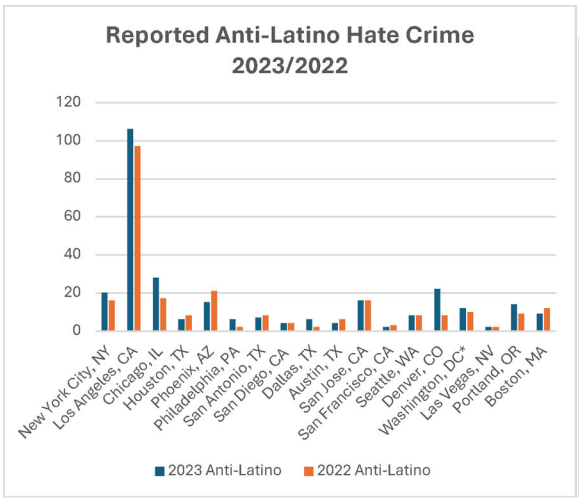
Appendix Additional Hate Crime Material From Multi-City/State Study



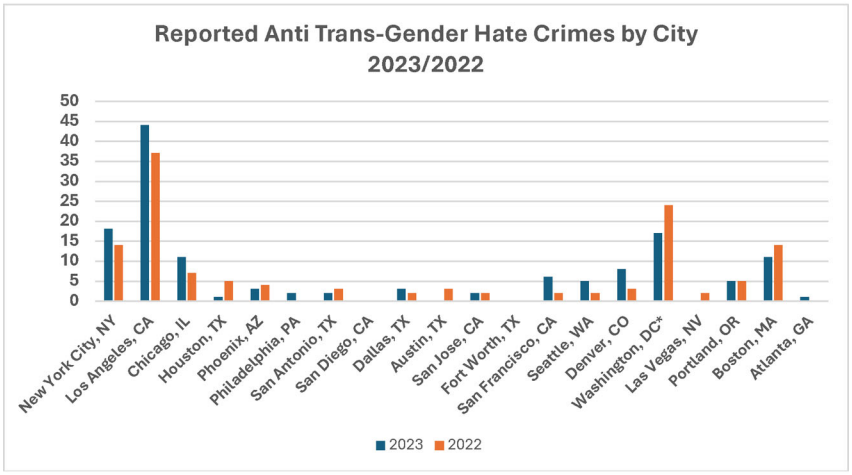
City	2023	2022
New York Cit	103	82
Los Angeles, (	185	146
Chicago, IL	61	43
Houston, TX	15	9
Phoenix, AZ	20	18
Philadelphia,	21	16
San Antonio,	10	12
San Diego, C.	21	4
Dallas, TX	9	8
Austin, TX	20	15
San Jose, CA	23	23
Fort Worth, T	5	0
San Francisc	9	8
Seattle, WA	31	19
Denver, CO	43	37
Washington,	40	45
Las Vegas, NV	4	4
Portland, OR	40	11
Boston, MA	47	30
Mesa, AZ	1	2

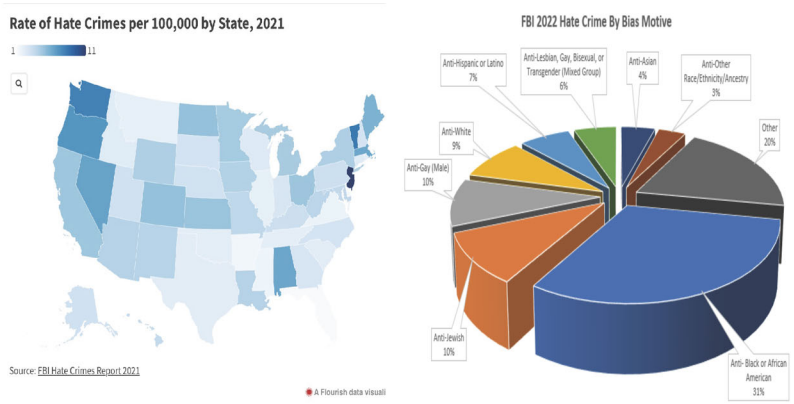


City	2023 Anti Bla	2022 Anti Bla
New York Cit	51	53
Los Angeles, (	219	214
Chicago, IL	75	47
Houston, TX	5	6
Phoenix, AZ	48	37
Philadelphia,	22	56
San Antonio,	12	13
San Diego, C.	25	20
Dallas, TX	2	5
Austin, TX	11	8
San Jose, CA	12	31
Fort Worth, T	3	2
San Francisc	5	3
Seattle, WA	16	22
El Paso, TX		
Denver, CO	18	19
Washington,	26	13
Las Vegas, NV	4	8
Portland, OR	42	13
Boston, MA	45	41
Mesa, AZ	5	8



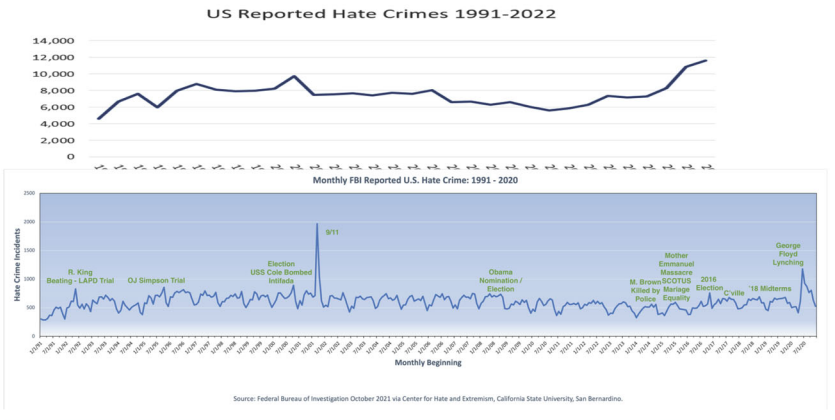
City	2023 Anti-L	2022 Anti-L
New York C	20	16
Los Angeles	106	97
Chicago, IL	28	17
Houston, T	6	8
Phoenix, AZ	15	21
Philadelphi	6	2
San Antonio	7	8
San Diego, (	4	4
Dallas, TX	6	2
Austin, TX	4	6
San Jose, C/	16	16
San Francis	2	3
Seattle, WA	8	8
Denver, CO	22	8
Washington	12	10
Las Vegas, I	2	2
Portland, OI	14	9
Boston, MA	9	12
Mesa, AZ	2	2
Atlanta	2	0
Kansas City	6	6



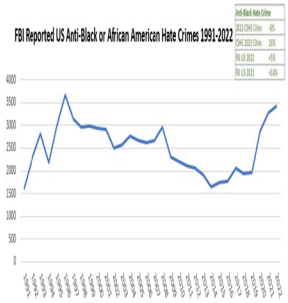


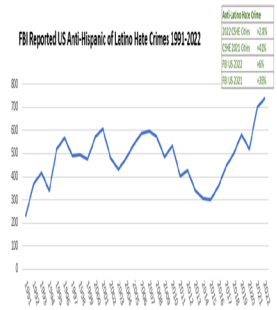
Heat Map/Data Courtesy of Steven Monacelli / Texas Observer

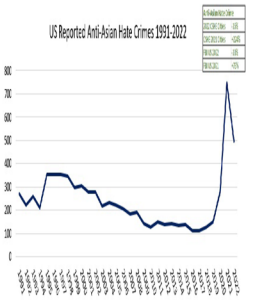
Nationally, FBI data over the last decade found that Blacks, Jews, Gay males and whites reported the most hate crimes, but reporting varies widely across different groups and cities. The current FBI hate crime definition is "a committed criminal offense motivated in whole or in part by the offenders bias(es) against a race, religion, disability, sexual orientation, ethnicity, gender and gender identity." These data across our survey may also include agencies using local definitions and standards. As seen below spikes are often correlated to conflictual events, terror attacks and elections.

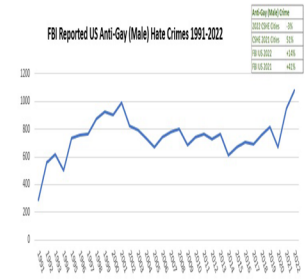


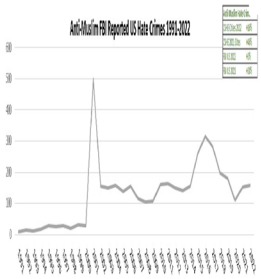
Spikes can also affect subgroups when they are scapegoated for such things as terror attacks, protests or the pandemic.

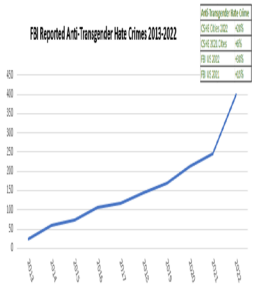


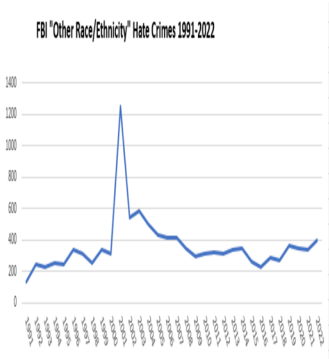


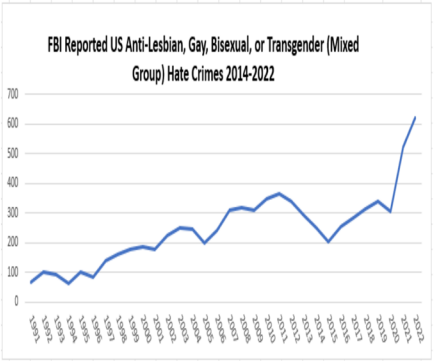




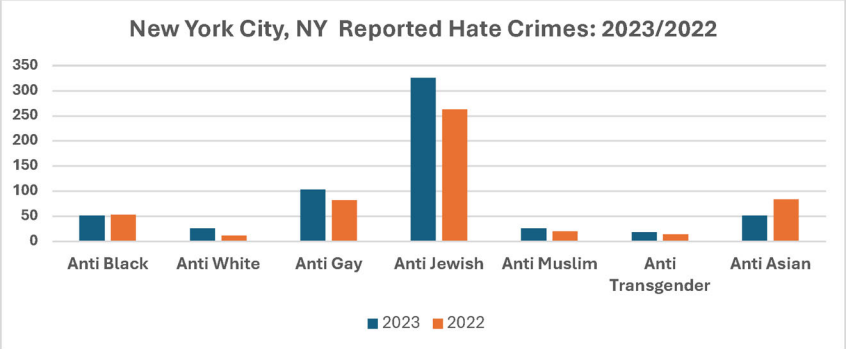


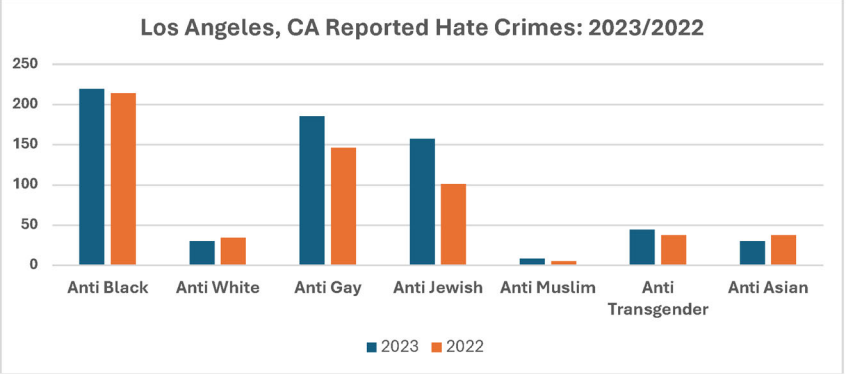


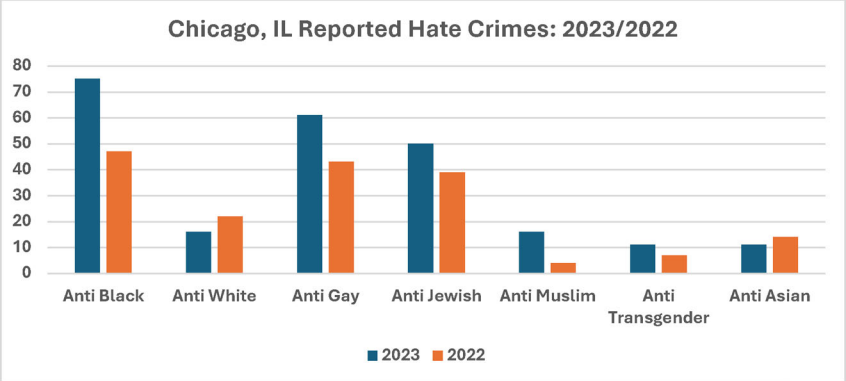


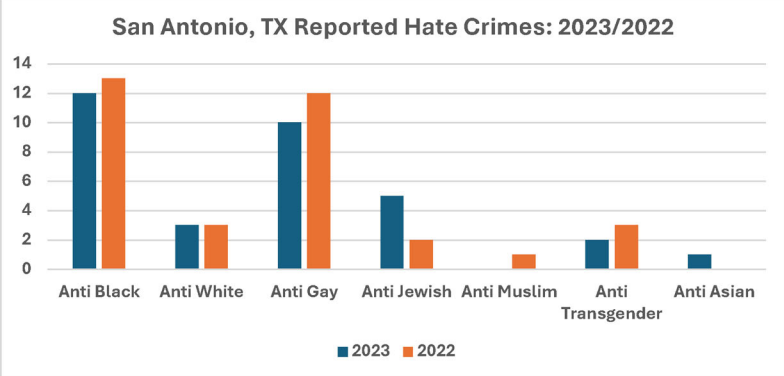


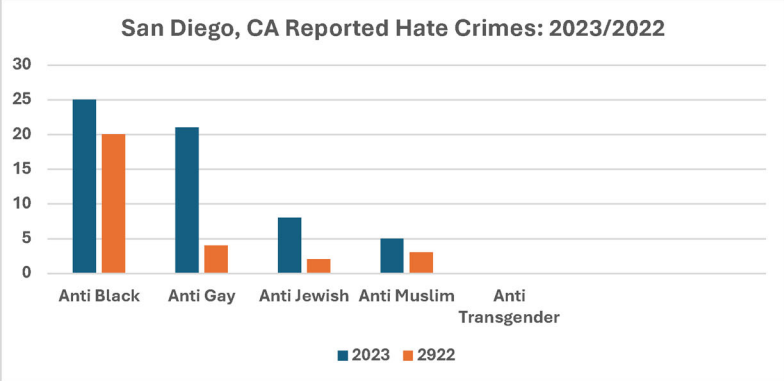
Hate Crime By City 2023/2022

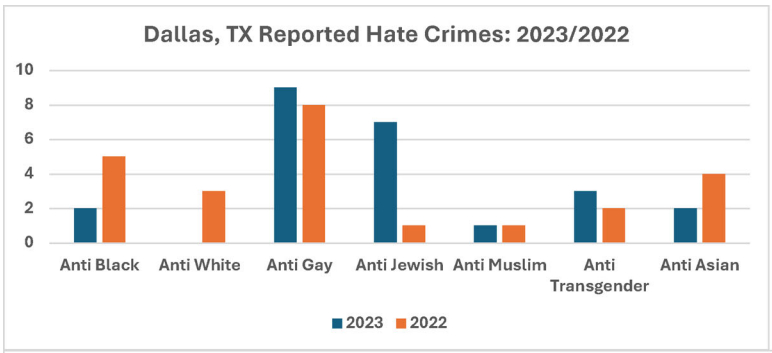


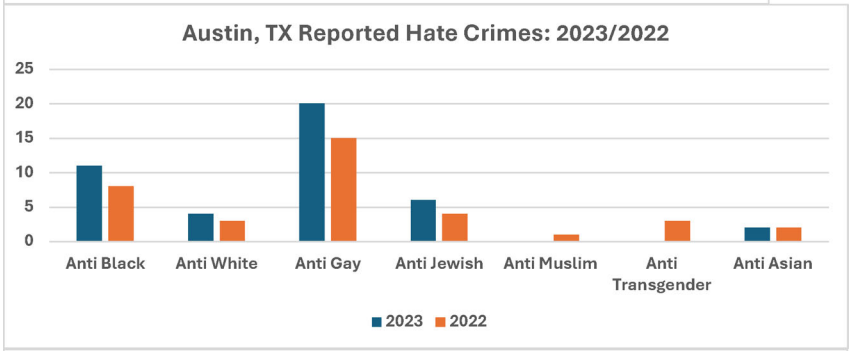


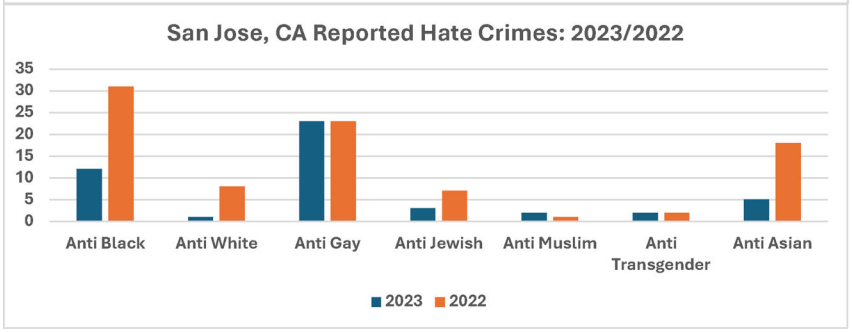

Chicago, IL Reported Hate Crimes: 2023/2022
80
70
60
50
40
30
20
10
0
Anti Black
Anti White
Anti Gay
Anti Jewish
Anti Muslim
Anti Transgender
Anti Asian
2023
2022

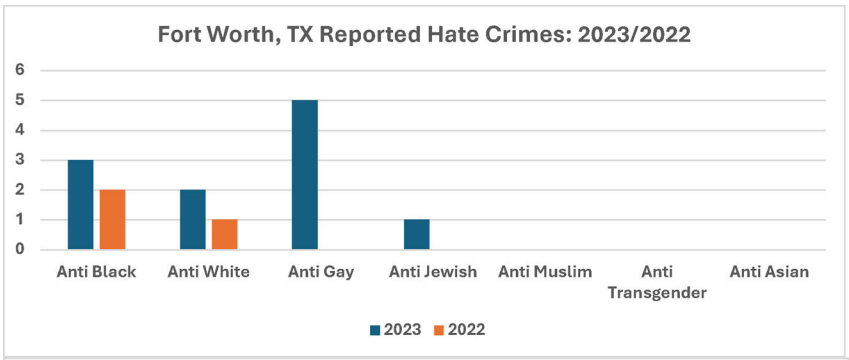

San Antonio, TX Reported Hate Crimes: 2023/2022
14
12
10
8
6
4
2
0
Anti Black
Anti White
Anti Gay
Anti Jewish
Anti Muslim
Anti Transgender
Anti Asian
2023
2022

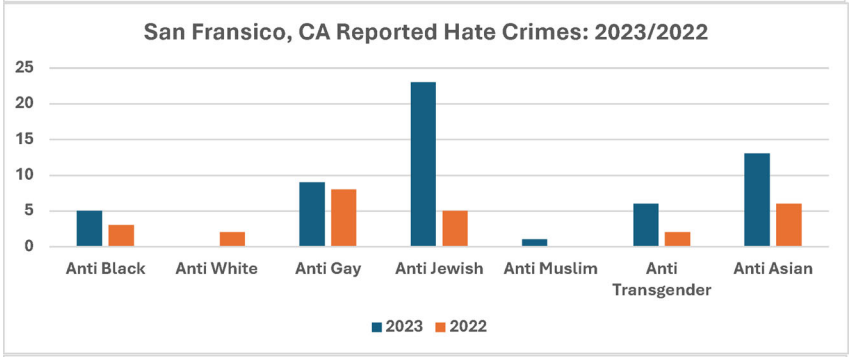

San Diego, CA Reported Hate Crimes: 2023/2022
30
25
20
15
10
5
0
Anti Black
Anti Gay
Anti Jewish
Anti Muslim
Anti Transgender
2023
2922

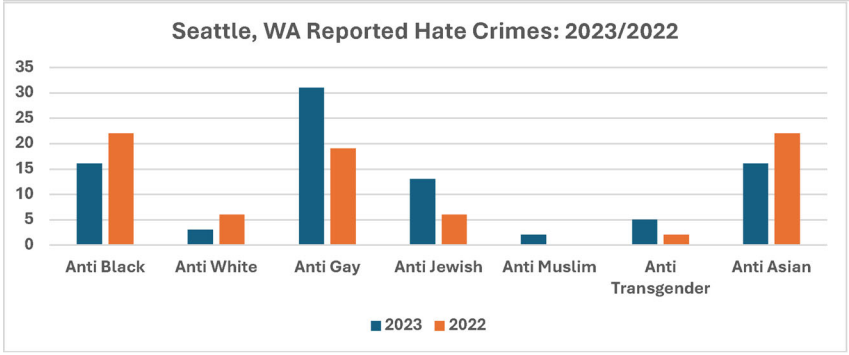

Dallas, TX Reported Hate Crimes: 2023/2022
10
8
6
4
2
0
Anti Black
Anti White
Anti Gay
Anti Jewish
Anti Muslim
Anti Transgender
Anti Asian
2023
2022

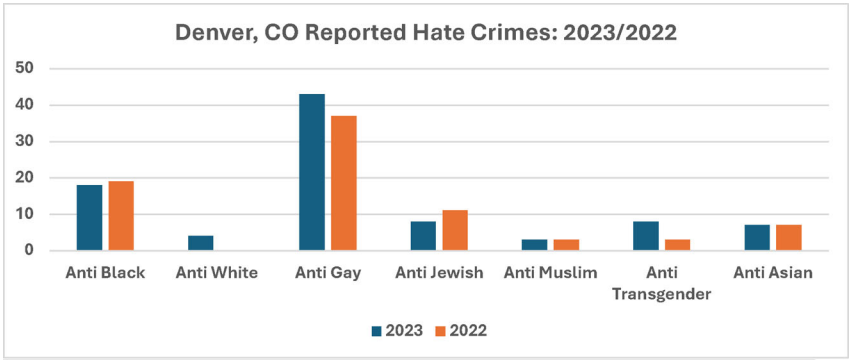

Austin, TX Reported Hate Crimes: 2023/2022
25
20
15
10
5
0
Anti Black
Anti White
Anti Gay
Anti Jewish
Anti Muslim
Anti Transgender
Anti Asian
2023
2022

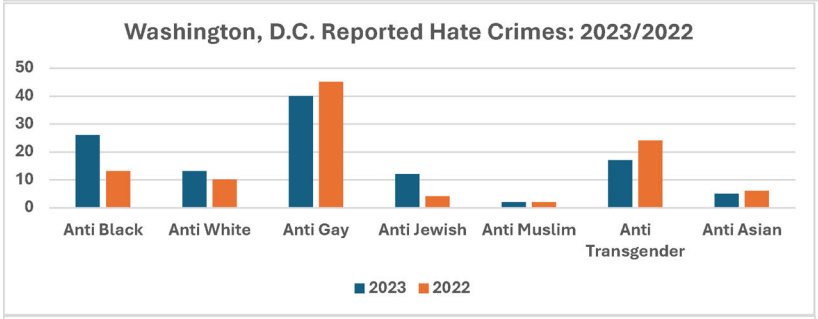

San Jose, CA Reported Hate Crimes: 2023/2022
35
30
25
20
15
10
5
0
Anti Black
Anti White
Anti Gay
Anti Jewish
Anti Muslim
Anti Transgender
Anti Asian
2023
2022

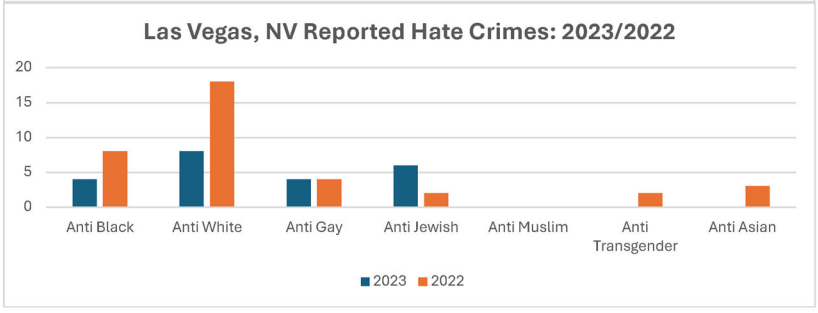

Fort Worth, TX Reported Hate Crimes: 2023/2022
6
5
4
3
2
1
0
Anti Black
Anti White
Anti Gay
Anti Jewish
Anti Muslim
Anti Transgender
Anti Asian
2023
2022

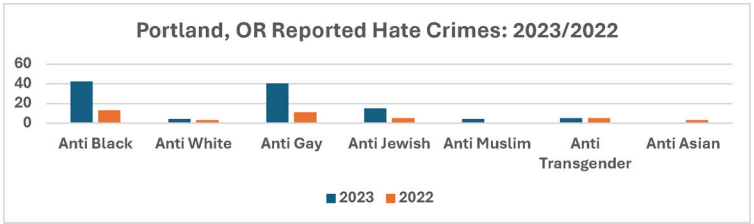

San Fransico, CA Reported Hate Crimes: 2023/2022
25
20
15
10
5
0
Anti Black
Anti White
Anti Gay
Anti Jewish
Anti Muslim
Anti Transgender
Anti Asian
2023
2022

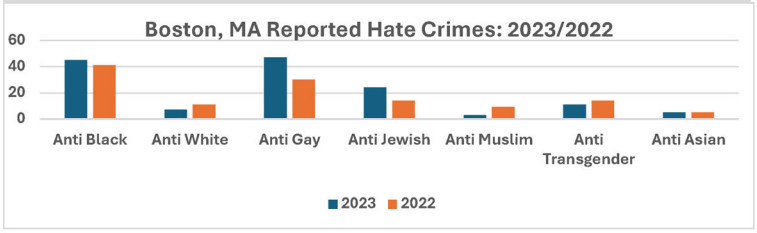

Seattle, WA Reported Hate Crimes: 2023/2022
35
30
25
20
15
10
5
0
Anti Black
Anti White
Anti Gay
Anti Jewish
Anti Muslim
Anti Transgender
Anti Asian
2023
2022


Denver, CO Reported Hate Crimes: 2023/2022
50
40
30
20
10
0
Anti Black
Anti White
Anti Gay
Anti Jewish
Anti Muslim
Anti Transgender
Anti Asian
2023
2022


Washington, D.C. Reported Hate Crimes: 2023/2022
50
40
30
20
10
0
Anti Black
Anti White
Anti Gay
Anti Jewish
Anti Muslim
Anti Transgender
Anti Asian
2023
2022


Las Vegas, NV Reported Hate Crimes: 2023/2022
20
15
10
5
0
Anti Black
Anti White
Anti Gay
Anti Jewish
Anti Muslim
Anti Transgender
Anti Asian
2023
2022





Hate Crime Spikes Correlate to Events and Public Statements About Them



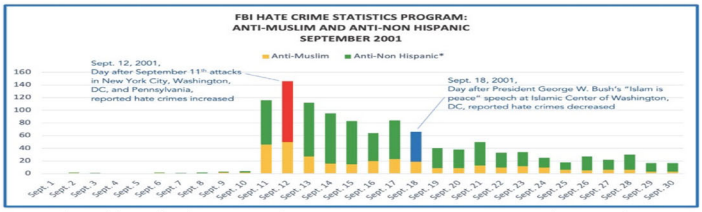
Six days after the terrorist attacks of September 11, President George W. Bush delivers remarks discouraging anti-Muslim sentiment at the Islamic Center of Washington, DC (George W. Bush Library).

"Like the good folks standing with me, the American people were appalled and outraged at last Tuesday's attacks. And so were Muslims all across the world. Both Americans and Muslim friends and citizens, tax-paying citizens, and Muslims in nations were just appalled and could not believe what we saw on our TV screens...

America counts millions of Muslims amongst our citizens, and Muslims make an incredibly valuable contribution to our country. Muslims are doctors, lawyers, law professors, members of the military, entrepreneurs, shopkeepers, moms and dads. And they need to be treated with respect. In our anger and emotion, our fellow Americans must treat each other with respect...

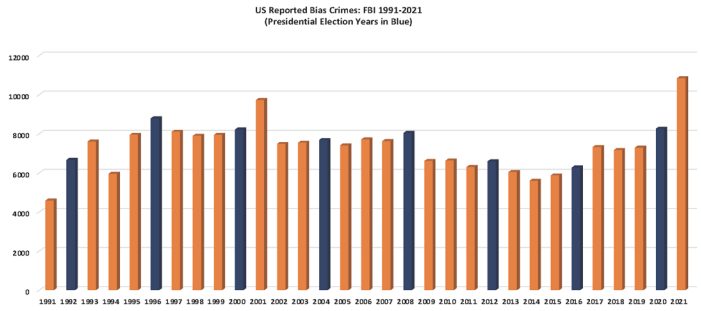
This is a great country. It's a great country because we share the same values of respect and dignity and human worth. And it is my honor to be meeting with leaders who feel just the same way I do. They're outraged, they're sad. They love America just as much as I do."

— *President George W. Bush, Remarks at Islamic Center of Washington, DC on Sept. 17, 2001 (source)*

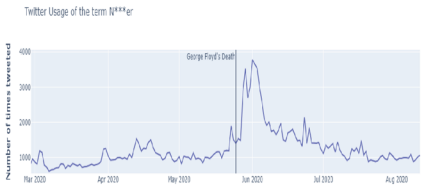


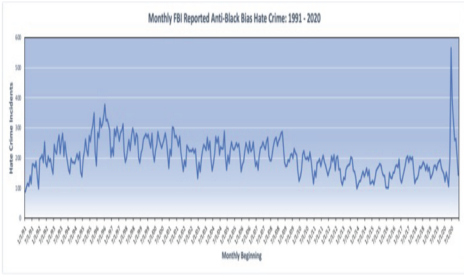
In 2001, the FBI did not collect data on anti-Arab crime as a separate category, so many anti-Arab perpetrated crimes were classified as "anti-Non Hispanic," a category that was renamed to "anti-Non Hispanic or Latino" in 2013. Source: FBI Hate Crime Statistics

Hate crimes have increased in every presidential election year since FBI records have been collected, but politicians' messages of tolerance have correlated to declines as well.



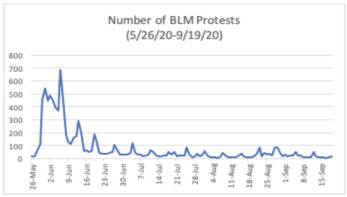
Hate crimes have increased not only around events like the Charlottesville and George Floyd murder and the related social justice protests that followed, but also around the statements of political leaders about the events.

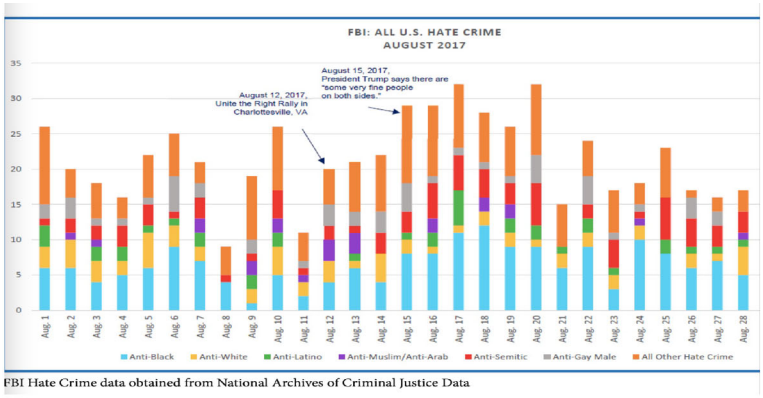




Highest Levels of Anti-Black Hate Crime By Day: 1991-2020

	Year	Date	Number of Incidents
1	2020	06/23	G.Floyd /Racial Justice Protests 30
2	2020	06/11	27
3	2020	06/06	26
4	1995	10/03	O.J. Simpson Trial 25
5	2020	06/01	25
6	2020	06/27	25
7	1997	08/01	24
8	2020	06/05	24
9	1996	07/07	23
10	2008	10/31	Obama Election/Halloween 23
11	2020	06/24	23
12	1996	09/30	22
13	2008	04/25	Obama Nears Nomination 22
14	2020	06/02	22
15	1995	10/04	21





FBI Hate Crime data obtained from National Archives of Criminal Justice Data

Partial Source List:

FBI
https://cde.ucr.cjis.gov/LATEST/webapp/#/pages/explorer/crime/hate-crime

LAPD
https://lapdonlinestrgeacc.blob.core.usgovcloudapi.net/lapdonlinemedia/hcrim_bias_ab485_030224.pdf

Pennsylvania
https://www.ucr.pa.gov/PAUCRSPUBLIC/Report/HateCrimeByORIReport

Arizona
https://azcrimestatistics.azdps.gov/tops/report/hate-crime/arizona/2023

California
https://data-openjustice.doj.ca.gov/sites/default/files/2024-06/Hate%20Crime%20In%20CA%202023f_0.pdf

CA v. Hate
https://cavshate2024report.com

Chicago
https://home.chicagopolice.org/statistics-data/data-dashboards/hate-crime-dashboard/

Nevada
https://nevadacrimestats.nv.gov/tops/report/hate-crime/nevada/2023

San Diego
https://data.sandiego.gov/datasets/police-hate-crimes/

San Francisco
https://data.sfgov.org/widgets/huqr-9p9x?mobile_redirect=true

NYPD
https://app.powerbigov.us/view?r=eyJrIjoiYjg1NWI3YjgtYzkzOS00Nzc0LTkwMDAtNTgzM2I2M2JmYWE1IiwidCI6IjJiOWY1N2ViLTc4ZDEtNDZmYi1iZTgzLWEyYWZkZDdjNjA0MyJ9

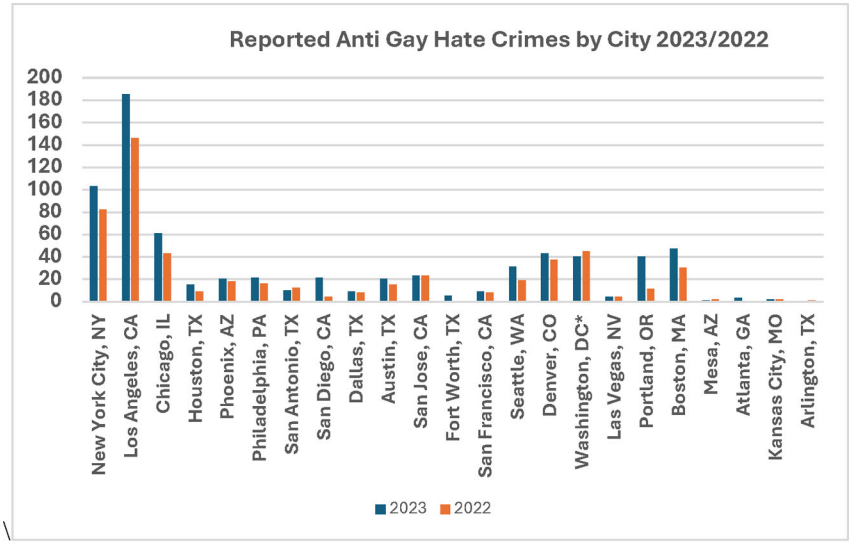
Texas
https://txucr.nibrs.com/Report/HateCrime

Colorado
https://coloradocrimestats.state.co.us/tops/report/hate-crime/colorado/2023

New Jersey
https://www.nj.gov/njsp/ucr/bias-incident-reports.shtml
San Jose
https://www.sjpd.org/records/crime-stats-maps/police-dashboards

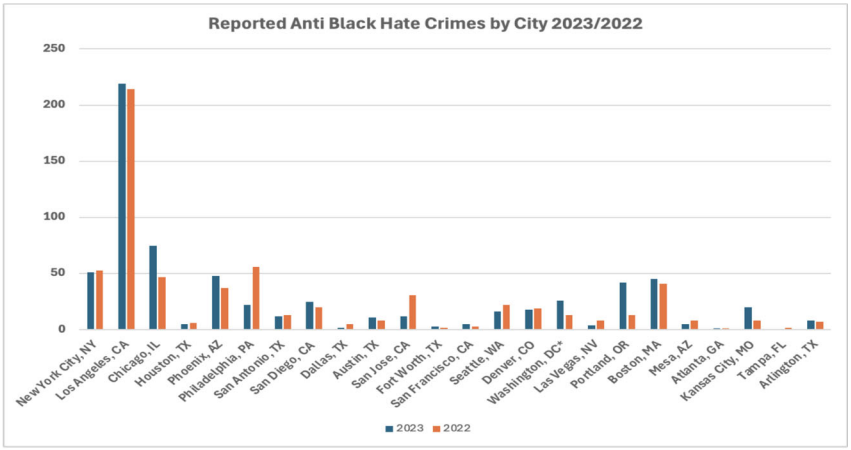
FBI
FEDERAL BUREAU OF INVESTIGATION, UNIFORM CRIME REPORTING (UCR) PROGRAM, HATE CRIME DATA COLLECTION GUIDELINES AND TRAINING MANUAL (2015), https://www.fbi.gov/file-repository/ucr/ucr-hate-crimedata-collection-guidelines-training-manual-02272015.pdf/view

Reuters
https://www.reuters.com/fact-check/no-evidence-haitian-immigrants-stealing-eating-pets-ohio-2024-09-10/



\

City	2023	2022
New York Cit	103	82
Los Angeles, (	185	146
Chicago, IL	61	43
Houston, TX	15	9
Phoenix, AZ	20	18
Philadelphia,	21	16
San Antonio,	10	12
San Diego, C.	21	4
Dallas, TX	9	8
Austin, TX	20	15
San Jose, CA	23	23
Fort Worth, T	5	0
San Francisc	9	8
Seattle, WA	31	19
Denver, CO	43	37
Washington,	40	45
Las Vegas, NV	4	4
Portland, OR	40	11
Boston, MA	47	30
Mesa, AZ	1	2



City	2023 Anti Bla	2022 Anti Bla
New York Cit	51	53
Los Angeles, (	219	214
Chicago, IL	75	47
Houston, TX	5	6
Phoenix, AZ	48	37
Philadelphia,	22	56
San Antonio,	12	13
San Diego, C.	25	20
Dallas, TX	2	5
Austin, TX	11	8
San Jose, CA	12	31
Fort Worth, T	3	2
San Francisc	5	3
Seattle, WA	16	22
El Paso, TX		
Denver, CO	18	19
Washington,	26	13
Las Vegas, NV	4	8
Portland, OR	42	13
Boston, MA	45	41
Mesa, AZ	5	8

SPLC

Written Statement by the Southern Poverty Law Center

Submitted to the U.S. Senate Judiciary Committee

In connection with its hearing entitled

A Threat to Justice Everywhere: Stemming the Tide of Hate Crimes in America

September 17, 2024

On behalf of the Southern Poverty Law Center (SPLC) Action Fund, we write to provide our insights for today's hearing, *A Threat to Justice Everywhere: Stemming the Tide of Hate Crimes in America.* We appreciate the opportunity to share our expertise on the nature and magnitude of hate crime in the United States, to underline the impact these crimes have on targeted communities and our communal institutions, and to offer several practical, achievable policy recommendations to improve response to hate violence and address this critical domestic threat. We respectfully request that this statement be included as part of the official hearing record.

Established in 1971, the SPLC has been tireless in identifying and rooting out extremist groups to create a fair, inclusive, and unified nation. We are a nonprofit advocacy organization serving as a catalyst for racial justice throughout the South. We work in partnership with communities of color to dismantle white supremacy, strengthen intersectional movements through transformative policies and initiatives, and advance human rights of all people. We work primarily in the Southeast United States, where we have offices in Alabama, Georgia, Florida, Louisiana, Mississippi, and Washington, D.C.

We have deep expertise in monitoring the activities of domestic hate groups and other extremists – including the Ku Klux Klan, the neo-Nazi movement, racist skinheads, antigovernment militias, and others. We currently track hundreds of extremist groups operating across the country and publish investigative reports, share key intelligence, and offer expert analysis to the media and public. The SPLC's seminal annual report on the threats posed by domestic hate organizations and anti-government militia groups, *Year in Hate and Extremism 2023,* was released in June.[1]

SPLC *Year in Hate and Extremism* Report

The SPLC's Year in Hate & Extremism report, issued annually, provides a comprehensive analysis of the groups and organizational infrastructure upholding white supremacy in the United States. Our most recent report documents trends in hard-right activity as a tool for media, advocates, and communities working to prevent radicalization and counter white supremacy, disinformation, and false conspiracies.[2]

The report documented 835 active antigovernment groups (an increase from 702 in 2022) and 595 active hate groups (an increase from 523 in 2022), including record numbers of white nationalist and anti-LGBTQ groups. The report revealed an intensifying effort by antigovernment extremists to undermine democratic institutions, especially at the local level.

Here are other highlights from this year's report:

- Extremists and those opposing inclusive democracy spent the last year legitimizing insurrection, painting hate as virtuous and transforming conspiracy theories into mainstream narratives — all in preparation for one of the most significant elections in U.S. history.

- Communities of color, immigrant communities, minority faith communities, and LGBTQ+ communities have all been targeted – and experienced the negative effects of hate-filled rhetoric and antigovernment conspiracies through actions such as banning books, protesting drag story hours, and using school boards as political battlegrounds.

- Extremist rhetoric about antisemitism seeped into mainstream narratives at an alarming pace in 2023, particularly after Hamas' Oct. 7 terrorist attack, blurring the lines between legitimate criticism of the Israeli government's actions and outright antisemitism. And we also tracked a shift back to hardline Islamophobia after Oct. 7 from anti-Muslim groups.

---

[1] Southern Poverty Law Center. (2023). *Year in Hate and Extremism 2023.* https://www.splcenter.org/resources/year-hate-extremism-2023.

[2] Southern Poverty Law Center. (2023). *Year in Hate & Extremism 2023,* https://www.splcenter.org/resources/year-hate-extremism-2023, (2024, June). An FAQ on SPLC's methodology in labeling hate and antigovernment extremist groups is here: https://www.splcenter.org/20220216/frequently-asked-questions-about-hate-and-antigovernment-groups.

- Christian supremacy and dominionism are now animating features of antigovernment conspiracies and movement organizing, with the goal of transforming U.S. culture and politics into an authoritarian state. Efforts by these activists to make Christianity authoritative and supreme in everyone's lives represent the greatest threat to American democracy that most people have never heard of.

- The militia movement continued to shift to a more local and regional structure, attempting to "rebrand" themselves as benign, supplemental law enforcement or disaster relief workers in their community. The national structure used by militias like Oath Keepers and Three Percenters proved a liability following the law enforcement crackdown after Jan. 6. This resulted in many militias reverting to the local/regional structure used in past decades. But these efforts are merely a smokescreen, a public relations ruse, as their combat trainings still feature heavily armed followers training for what they view as an inevitable battle with the New World Order.[3]

The Nature and Magnitude of the Current Hate Crime Threat

There is a long history of threats and violence directed against marginalized and historically discriminated against people – especially Black Americans and their institutions. Though it has been more than 60 years since Ku Klux Klan members bombed the 16th Street Baptist Church in Birmingham on September 15, 1963, killing four Black schoolgirls, the impact and harm of that horrific crime still resonates deeply today.[4] And over the past decade, our nation has witnessed far too many other racist and antisemitic attacks on houses of worship and community institutions.

- On August 5, 2012, six people were killed and three others wounded when a white supremacist gunman entered the Oak Creek, Wisconsin, Sikh Gurdwara and opened fire.
- On June 17, 2015, a white supremacist joined a prayer group meeting at the Mother Emanuel African Methodist Episcopal (AME) Church in Charleston, South Carolina, and opened fire, murdering nine worshippers and injuring one other in the historic Black church.
- On October 27, 2018, an avowed white supremacist entered Pittsburgh's Tree of Life Synagogue and murdered 11 Shabbat worshippers and injured two others from the three congregations that were meeting there for Shabbat morning services – the deadliest antisemitic incident in American history. Four law enforcement officials were also wounded responding to the shooting.
- On August 3, 2019, an individual who had posted a manifesto trumpeting white nationalist talking points traveled more than nine hours to El Paso, Texas, to target a heavily Hispanic shopping center, killing 23 people and injuring two dozen more people.
- On January 15, 2022, an individual seeking the release of an al-Qaeda operative held four Shabbat worshipper's hostage at Congregation Beth Israel in Colleyville, Texas.
- In the first few months of 2022, and then throughout the course of that year, there was a deeply disturbing increase in bomb threats across the country, about 50 of which targeted Historically Black Colleges and Universities (HBCUs), with 19 more against Predominately Black Institutions (PBIs). These threats – traumatizing campuses and communities and reminiscent of this country's long history of white supremacist attacks on Black churches – were attacks with the explicit goal of terrorizing Black communities to assert control.
- On May 14, 2022, a gunman traveled more than 200 miles to carry out a horrific, racist attack on the Black community, killing 10 people and wounding three others at a Tops grocery store in Buffalo, New York. The gunman left behind an online screed suggesting the attack was motivated by a racist conspiracy theory that has previously inspired other white supremacist acts of terror.

---

[3] McAdam, T. (2024). *Continued Insurrection Fallout Forces Militias to Adapt.* Southern Poverty Law Center. *The Year in Hate & Extremism.* https://www.splcenter.org/year-hate-extremism-2023/militias-adapt.

[4] National Park Service, (1963). *16th Street Baptist Church Bombing.* https://www.nps.gov/articles/16thstreetbaptist.htm.

In recent years, top officials at the Department of Justice, the FBI, the DHS, and the intelligence community have prepared reports,[5] assessments[6] and congressional testimony,[7] concluding that the two most lethal elements of today's domestic terrorism threat are (1) racially or ethnically motivated violent extremists who advocate for the superiority of the white race and (2) anti-government or anti-authority violent extremists, such as militia violent extremists.

Though the vast majority of hate crimes are not committed by members of organized hate groups, the symbols, slogans, discrimination, bigotry, conspiracy theories, and disinformation that undergird and motivate these groups can shape attitudes, encouraging and influencing others to engage in violent bias-motivated criminal activity. At this time of great polarization, when far-right conspiracies once promoted only by hate groups on the fringes of society have been mainstreamed, spread widely online, and even embraced by influential media figures, lobbying groups, and elected officials, the potential for rising bias-motivated violence has increased.[8] We must do more to educate against hate, to intervene, disrupt, and create off-ramps to inoculate against white supremacist radicalization.[9] Implementing early, age-appropriate education, far upstream and prior to exposure to radicalizing extremist content, has also proven to be an important component of challenging and mitigating extremist harm.[10]

Hate crimes are very personal crimes, with unique emotional and psychological impacts on the victim – and the victim's community. They are intentionally and specifically directed towards individuals because of their personal and immutable characteristics. These crimes effectively intimidate other members of the victim's community, leaving them feeling terrorized, isolated, vulnerable, and unprotected by the law. Hate crimes have a multiplier effect and can make an entire community fearful, angry, and suspicious of other groups – and the power structure that is supposed to protect them. The long-term repercussions of hate crimes are wide-ranging and can damage the fabric of our society and fragment communities.

For this reason, we recommend implementing mandatory reporting of hate crimes for more accurate data collection and more targeted responses to these domestic threats, increased funding for community investment, and education to combat extremism and misinformation upstream prior to radicalization.

It is impossible to address our nation's hate crime problem without measuring it accurately. Under the Hate Crime Statistics Act of 1990 (HCSA),[11] the FBI is required to compile hate crime data from the more than

---

[5] Office of the Director of National Intelligence. (2021, March). *Domestic Violent Extremism Poses Heightened Threat in 2021.* https://www.dni.gov/files/ODNI/documents/assessments/UnclassSummaryofDVEAssessment-17MAR21.pdf.

[6] FBI and Department of Homeland Security. (2023, June). *Strategic Intelligence Assessment and Data on Domestic Terrorism.* https://www.dhs.gov/sites/default/files/2023-07/23_0724_opa_strategic-intelligence-assessment-data-domestic-terrorism.pdf.

[7] Testimony of Christopher A. Wray, Director, Federal Bureau of Investigation, Senate Committee on Homeland Security and Governmental Affairs. (2021, September 21). *Threats to the Homeland: Evaluating the Landscape 20 Years After 9/11.* https://www.hsgac.senate.gov/imo/media/doc/Testimony-Wray-2021-09-21-REVISED.pdf and Testimony of Alejandro N. Mayorkas Secretary U.S. Department of Homeland Security Senate Committee on Homeland Security and Governmental Affairs. (2021, September 21). *Threats to the Homeland: Evaluating the Landscape 20 Years After 9/11.* https://www.hsgac.senate.gov/imo/media/doc/Testimony-Mayorkas-2021-09-21.pdf.

[8] Department of Homeland Security, National Terrorism Advisory System Bulletin. (2022, February 7). *Summary of Terrorism Threat to the U.S. Homeland*: "an online environment filled with false or misleading narratives and conspiracy theories, and other forms of mis-dis-and mal-information (MDM) introduced and/or amplified by foreign and domestic threat actors. These threat actors seek to exacerbate societal friction to sow discord and undermine public trust in government institutions to encourage unrest, which could potentially inspire acts of violence." https://www.dhs.gov/ntas/advisory/national-terrorism-advisory-system-bulletin-february-07-2022.

[9] Kieffer, C. (2023, may 12). *Buffalo Massacre: A Year Later, White Supremacist Propaganda Continues to Spur Violence.* https://www.splcenter.org/news/2023/05/11/buffalo-massacre-year-later.

[10] Southern Poverty Law Center and American University Polarization and Extremism Research and Innovation Lab (PERIL). *Parents & Caregivers Guide to Online Youth Radicalization.* https://www.splcenter.org/peril.

[11] U.S. Congress. (1990, April 23). *Public Law 101-275.* 101st Congress. Available at https://www.congress.gov/101/statute/STATUTE-104/STATUTE-104-Pg140.pdf.

18,000 federal, state, university, city, and tribal law enforcement authorities and publish an annual report. The FBI most recent HCSA report, published on October 16, 2023, documents 2022 hate crimes.[12]

The HCSA report provides data on the full range of hate crimes – race/ethnicity, religion, sexual orientation, disability, gender, and gender identity – aggregated by states, cities, counties, and colleges and universities. The FBI includes data from all police agencies that either report one or more hate crime or affirmatively report zero (0) hate crimes. Agencies that do not report any data are not included in the report.

Unfortunately, reporting is voluntary for state, local, and tribal law enforcement agencies, and many do not provide their information.[13] Underreporting remains a persistent issue, obscuring the scale and scope of hate crimes in this country. For the fifth year in a row, participation in the FBI data collection program declined in 2022.[14] To the extent states and cities are reporting credible hate crime data, the HCSA report provides a measure of accountability for states and cities and a revealing look into their ability and readiness to address hate crime. A large city that does not report data to the FBI – or affirmatively reports zero hate crimes – does not inspire confidence that they are ready and able to address hate violence.

Highlights of the 2022 FBI HCSA report:

- The FBI reported 11,643 hate crime incidents –the highest figures the FBI has ever recorded and 7.4 percent higher than the 10,840 reported for 2021 (the previous highest reporting year).

- **Race-based crimes** were most numerous – as they have been every year since 1991.
    - 6,570 race-based crimes – 56 percent of the total – and the highest number of race-based crimes ever recorded.
    - 3,424 hate crimes against Black people (4 percent more than in 2021, 52 percent of the race-based crimes, 29 percent of the total hate crimes). Every year since 1991, a majority of race-based crimes have been against Black people.

  There were 525 crimes directed against individuals and property in Asian American/Pacific Islander communities in 2022 – the second highest number since 1991, but a 34 percent decrease from 789 in 2021, the highest figures ever recorded.

  Anti-Hispanic hate crimes increased, from 698 to 738, a 6 percent increase and the highest number of anti-Hispanic crimes ever reported.

- **Religion-based** hate crimes were the second highest category.
    - 2,044 hate crimes directed at people because of their religion – a 28 percent increase over 1,590 in 2021 and the highest number of religion-based crimes ever reported.
    - 1,124 directed at Jews or Jewish institutions – a 38 percent increase over the 817 reported in 2021 and the highest number of anti-Jewish crimes since 1993.
        - 55 percent of all religion-based hate crimes.

- **Sexual orientation** was the third highest category.

---

[12] U.S. Department of Justice, Federal Bureau of Investigation. (2022). *Hate Crime Statistics*. Federal Bureau of Investigation, Crime Data Explorer. https://cde.ucr.cjis.gov/LATEST/webapp/#/pages/explorer/crime/hate-crime.

[13] See **Appendix One** for a list of all 83 law enforcement agencies serving jurisdictions with populations over 100,000 that either did not report any data to the FBI in 2022, or affirmatively reported zero (0) hate crimes. Data compiled from FBI Table 13, Hate Crime Incidents per Bias Motivation and Quarter by State, Territory, Federal, and Agency, 2022, and Table 14, Hate Crime Zero Data Submitted per Quarter by State, Federal, and Agency, 2022.https://cde.ucr.cjis.gov/LATEST/webapp/#/pages/downloads.

[14] U.S. Department of Justice, Federal Bureau of Investigation. (2022). *Hate Crime Statistics Act Report*. https://cde.ucr.cjis.gov/LATEST/webapp/#/pages/explorer/crime/hate-crime.

- 1,947 hate crimes targeted at individuals because of their sexual orientation – a 14 percent increase over the 1,711 reported for 2021 and the highest number of sexual orientation-based crimes ever reported.

- 469 hate crimes were directed against people and property on the basis of their **gender identity**, a 37 percent increase over 342 reported in 2021 (after a 29 percent increase from 2020 to 2021) – and, by far, the highest reported since the FBI began collecting this specific data in 2013.

- A special five-year FBI retrospective on hate crime in in K-12 schools, colleges, and universities documented that schools are the third most common location for hate crimes, accounting for ten percent of all reported hate crimes offenses in 2022.[15]

Hate crime reports came from 14,660 participating law enforcement agencies in 2022 – out of more than 18,800 federal, state, local, and tribal law enforcement agencies nationwide.

- This is a decrease from the 14,859 reporting agencies for 2021, the lowest number of reporting agencies since 2012, and the fifth straight year of decline in police participation.

- 3,109 of the 14,660 agencies that participated in the FBI data collection effort – 21 percent – reported one or more hate crimes – the highest number of agencies reporting one or more hate crimes ever.

- 79 percent of all police agencies that participated in the 2022 HCSA data collection program affirmatively reported zero (0) hate crimes, including dozens of cities with over 100,000 in population.

Though clearly incomplete due to underreporting, the annual FBI HCSA reports provide the most comprehensive national snapshot available of hate violence in America. Because the FBI has integrated hate crime reporting into its overall Uniform Crime Reporting system (UCR) since 1991, the report can be compared to other crime data and used to analyze national trends. Even more important, the HCSA report has sparked many improvements in the way police departments across the country address hate violence.

To understand the annual FBI HCSA report, there are several key facts to keep in mind:

1) **Reporting hate crime data to the FBI is not compulsory.** The entire UCR system of crime reporting is voluntary – murders, rapes, kidnapping, robberies: all voluntarily reported to the FBI by federal, state, local, and tribal law enforcement agencies. In addition, 29 states and the District of Columbia mandate reporting this data to their own state criminal justice authority.[16] One state, New Mexico, mandates reporting to the FBI, as well.[17]

2) **The FBI HCSA reports exclusively on crimes – not arrests or prosecutions –** just the facts as they appear at the scene of the crime. 46 states and the District of Columbia have hate crime laws, but even states without a hate crime statute report hate crime data to the FBI. The 92-page 2022 FBI *Hate Crime Data Collection Guidelines and Training Manual* contains definitions, scenarios, and best practices for

[15] Federal Bureau of Investigation, (2024, January). *Reported Hate Crime at Schools: 2018-2022,* https://cde.ucr.cjis.gov/LATEST/webapp/#/pages/explorer/crime/special-reports.
[16] Movement Advancement Project, *Hate Crime Laws*. https://www.mapresearch.org/equality-maps/hate_crime_laws.
[17] Justia. (2023). *2023 New Mexico Statutes Chapter 31 - Criminal Procedure Article 18B - Hate Crimes Section 31-18B-4 - Hate crimes; data collection*. https://law.justia.com/codes/new-mexico/chapter-31/article-18b/section-31-18b-4/.

reporting this data to the Bureau.[18] The guide is an excellent resource to assist stakeholders in identifying and crafting a meaningful prevention plan and response to hate crime.

3) Studies have shown that more comprehensive, complete hate crime reporting can deter hate violence.[19] Better data will assist in the proper allocation of police resources and personnel – preventing crimes and reassuring victims.[20] In addition, effective data collection helps facilitate better police-community relations. Improved data collection will necessarily require outreach and expanded networking and communication with targeted communities, as well as more training for law enforcement personnel in how to identify, report, and respond to hate violence.
The International Association of Chiefs of Police has long recognized the importance of effective response to hate violence. Their March 2021 Model Hate Crime Policy is inclusive and excellent – and promotes mandatory hate crime reporting to the FBI and hate incident reporting as a best practice.[21]
The National Policing Institute's Open Data Initiative demonstrated conclusively the police-community relations benefits of credible, real-time open hate crime data.[22]

4) **The numbers do not speak for themselves.** On average, more than 32 hate crimes occurred every day in America in 2022. The impact of these crimes on communities can never be reduced to mere numbers. Behind each of the 11,643 reported criminal incidents in 2022 is a victim of violence, intimidation, or vandalism who has been targeted for no other reason than their race, religion, national origin, gender, gender identity, or sexual orientation.

5) **Accurate hate crime data collection is a two-way street.** Improved reporting requires both law enforcement agency capability and willingness to accurately report the data and trust from the community that reporting to the police will matter and make a difference. If Black, Indigenous, and people of color (BIPOC) or other targeted community members – including immigrants, people with disabilities, LGBT community members, Muslims, Arabs, Middle Easterners, South Asians, and people with limited language proficiency – cannot report, or do not feel safe reporting, law enforcement cannot effectively address these crimes, thereby jeopardizing the safety of all.

6) **Analyzing HCSA data requires nuance.** The voluntary nature of the HCSA program and the obvious, consistent underreporting have created gaps in our overall understanding of hate crimes in America. We really cannot know if the 2022 HCSA report accurately documented that more hate crimes were committed, or if the report merely reflects better, more complete reporting by police and victims. Many African Americans, Latinx, Muslims, LGBTQ people, and other historically discriminated communities do not trust the police and, for a variety of reasons, may be reluctant to report their hate crimes.[23]

---

[18] Department of Justice, Federal Bureau of Investigation. (2022). *Hate Crime Data Collection Guidelines and Training Manual.* https://le.fbi.gov/file-repository/hate-crime-data-collection-guidelines-and-training-manual.pdf/view.
[19] Schwencke, K. (2023, July 11). *There have been huge gaps in FBI hate crime data for years. A new law aims to fix that*. ProPublica. https://www.propublica.org/article/there-have-been-huge-gaps-in-fbi-hate-crime-data-for-years-a-new-law-aims-to-fix-that.
[20] International Association of Chiefs of Police. (2021, March). *Investigation of Hate Crimes,* Concepts and Issues Paper. https://www.theiacp.org/sites/default/files/2021-03/Hate%20Crimes%20Formatted%202021-03-23.pdf.
[21] International Association of Chiefs of Police. (2021, March) *Investigation of Hate Crime,* Model Policy. https://www.theiacp.org/sites/default/files/2021-03/Hate%20Crimes%20Formatted%202021-03-23.pdf.
[22] National Policing Institute. (2018, January). *Releasing Open Data on Hate Crimes: A Best Practices Guide for Law Enforcement Agencies.* https://www.policinginstitute.org/publication/releasing-open-data-on-hate-crimes-a-best-practices-guide-for-law-enforcement-agencies/.
[23] According to national surveys conducted by the Department of Justice's Bureau of Justice Statistics (BJS), almost 250,000 hate crimes occurred each year between 2005 and 2019. https://bjs.ojp.gov/sites/g/files/xyckuh236/files/media/document/hcv0519_1.pdf. The BJS bases its estimate not on FBI UCR data collected from law enforcement agencies but rather on its annual National Crime Victimization Survey, which samples about 95,000 households. https://bjs.ojp.gov/data-collection/ncvs. The actual number of hate crimes is likely somewhere between the BJS estimate and the number reported by the FBI.

Federal Legislative Response to Hate Violence.
Congress enacted the Matthew Shepard and James Byrd, Jr. Hate Crimes Prevention Act (HCPA) in 2009.[24] The HCPA complements and updates other federal criminal civil rights statutes, facilitating investigations and prosecutions and, for the first time, providing authority for federal officials to work in partnership with state and local law enforcement officials to investigate and prosecute cases in which the bias-motivated violence occurs because of the victim's actual or perceived sexual orientation, gender, gender identity, or disability. The HCPA attracted the support of a remarkably broad coalition of civil rights, religious, educational, professional, law enforcement, and civic organizations that promoted the enactment of the measure for more than a dozen years until it became law. It has proven to be the most important hate crime enforcement law enacted in the past 50 years.

In recent years, Congress has complemented existing federal criminal enforcement laws with important legislation designed to build community awareness and resilience, expand law enforcement training, and improve hate crime reporting. Importantly, over the past two years, Congress has provided unprecedentedly high levels of funding for hate crime training and prevention programs.[25] The Department of Justice Bureau of Justice Assistance has done excellent, essential work in translating these appropriations into grants for programs and initiatives that are making a difference in communities and law enforcement agencies across the country.[26] But much more needs to be done.

The COVID-19 Hate Crime Act
Enactment of the COVID-19 Hate Crimes Act in May 2021, which included the provisions of the Khalid Jabara and Heather Heyer National Opposition to Hate, Assault, and Threats to Equality Act (NO HATE Act) in Section 5, was an important step forward.[27] That law – sparked by thousands of incidents of violence, harassment, and intimidation directed against Asian American and Pacific Islander community members – authorized incentive grants to stimulate improved local and state hate crime training, prevention, best practices, and data collection initiatives. The law also authorized grants available for state hate crime reporting hotlines to direct individuals to local law enforcement and support services.

It is especially important that the mandate to create state hate crime hotlines be implemented with substantial input by community-based organizations and the lead civil rights and religious organizations with expertise on hate crime prevention and response. The plain language of the COVID-19 Hate Crime Act is designed to ensure that these hotlines are operated by state public health officials, victim assistance programs, or human relations/rights commissions, not by any law enforcement agency.[28] Approaches to hate crimes and violent extremism should be de-securitized, with a focus on community investment, education and prevention initiatives, and social and economic support rather than solely investing in law enforcement agencies and the after-effects of hate violence.[29]

---

[24] U.S. Congress. (2009, October 28). Public Law 111-84, Division E, 111th Congress. Available at https://www.congress.gov/111/plaws/publ84/PLAW-111publ84.pdf.
[25] Associate Attorney General Vanita Gupta Delivers Remarks at Reconciling the Past, Building the Future: Law Enforcement and Community Partnerships Against Hate. (2023, October 30). https://www.justice.gov/opa/speech/associate-attorney-general-vanita-gupta-delivers-remarks-reconciling-past-building
[26] For a listing of dozens of current and past grant programs funded by the Bureau of Justice Assistance, see https://www.hatecrimestta.org/Grantees.
[27] U.S. Congress. (2021, May 20). *Public Law 117-13*. 117th Congress. Available at https://www.congress.gov/117/plaws/publ13/PLAW-117publ13.pdf.
[28] The California statewide hate crime hotline, which is run by the California Civil Rights Department, is truly a model for the nation. The goals of the initiative are: 1) Help individuals and communities targeted for hate; 2) Identify options for next steps after an act of hate; 3) Connect people targeted for hate with culturally competent resources and care coordination services; 4) Improve hate incident and crime reporting data to enhance prevention and response. https://www.cavshate.org/.
[29] Panduranga, H. (2021, June 17). *Community Investment, Not Criminalization*. Brennan Center for Justice. https://www.brennancenter.org/sites/default/files/2021-06/2021_06_DHS_Targeted_Prevention.pdf.

The Improving Reporting to Prevent Hate Act of 2024
We strongly support this bipartisan legislation, sponsored by Reps. Don Beyer (D-VA) and Don Bacon (R-NE), that would condition federal funding for large law enforcement agencies (those serving jurisdictions over 100,000 in population) on credible hate crime reporting to the FBI or meaningful hate crime prevention, outreach, and awareness initiatives by such agencies.[30]

World events, political polarization, misinformation, and heightened racial, ethnic, and religious tensions have contributed to the recent surge in hate crimes across the United States.[31] Yet, as previously noted, in a year of record-breaking FBI hate crime reports, thousands of police agencies across the country did not report any hate crime data to the FBI – and almost 80 percent of the rest reported to the FBI that they had zero (0) hate crimes. That is a stunning statistic.

Improving data collection requires both targeted people reporting crimes and well-trained police knowing how to identify, report, and respond to hate violence. Research has shown that better hate crime data would assist in the proper allocation of police resources and personnel – preventing crimes, reassuring hate crime survivors, and building trust and relationships between law enforcement and the communities they serve.[32]

The Antisemitism Awareness Act
We oppose the Antisemitism Awareness Act, legislation passed by the House on May 1.[33] This legislation would mandate that the Department of Education consider a specific definition of antisemitism, the controversial non-legally binding International Holocaust Remembrance Alliance (IHRA) definition of antisemitism, in Department of Education Title VI anti-discrimination investigations, including its related "contemporary examples." The accompanying examples, without doubt, include First Amendment-protected speech and, therefore, could blur the distinction between antisemitism and criticism of the policies or government of the state of Israel. At a time of escalating concerns about antisemitism, the adoption of this harmful and unnecessary legislation would increase division and polarization – and do nothing to meaningfully counter antisemitism.

Criticism of Israel – even harsh criticism – is not inherently antisemitic. Individuals can cross the line from legitimate political speech to antisemitism when they target and punish individual Jews or Jewish institutions for the actions of the Israeli government. However, political protests and the right to criticize government policies are essential components of our democracy – not to be limited by political motivation or confined to a particular moment in time. For these and other overbreadth concerns, the American Bar Association House of Delegates rejected the use of the IHRA definition in adopting their very strong February 2023 Midyear Meeting Resolution condemning antisemitism.[34]

Importantly, this legislation is unnecessary. The Department of Education already has the authority to investigate instances in which anti-Israel activity – including antisemitic stereotypes and anti-Israel or anti-Zionism expressions coded as political discourse – cross the line to targeted, intentional, unlawful, discriminatory intimidation and harassment of Jewish students.

Since 2010, the Department of Education has determined that Title VI of the 1964 Civil Rights Act, which prohibits discrimination based on race, color, or national origin by federally funded programs, extends to

---

[30] H.R. 7648, *Improving Reporting to Prevent Hate Act of 2024*, 118th Congress. Available at https://www.congress.gov/118/bills/hr7648/BILLS-118hr7648ih.pdf.
[31] Leadership Conference on Civil and Human Rights, Leadership Conference Education Fund. (2023, April). *Cause for Concern 2024, The State of Hate*. https://civilrights.org/edfund/wp-content/uploads/sites/2/2023/04/Cause-For-Concern-2024.pdf.
[32] National Institute of Justice. (2023, August 1). *Using research to improve hate crime reporting and identification*. U.S. Department of Justice. https://nij.ojp.gov/topics/articles/using-research-improve-hate-crime-reporting-and-identification.
[33] H.R. 6090, *Antisemitism Awareness Act*. 118th Congress. (2023, March 13). Available at https://www.congress.gov/bill/118th-congress/house-bill/6090/text.
[34] U.S. House of Delegates. (2023, February 6). *Midyear Meeting 2023 - House of Delegates Resolution* [Video]. ABA. https://www.americanbar.org/news/reporter_resources/midyear-meeting-2023/house-of-delegates-resolutions/514/.

students who experience discrimination or harassment based on their actual or perceived shared ancestry or ethnic characteristics – including Jews, Muslims, Sikhs, and others.[35] In recent years, as concerns about antisemitism and Islamophobia have grown, the Department has made clear that it will use its authority to protect these students from discrimination. The Department's Office for Civil Rights deserves applause for its vigorous enforcement of its authority. The OCR website currently includes a listing of more than 150 elementary-secondary and post-secondary institutions that are currently under investigation for alleged antisemitism or other discrimination involving forms of shared ancestry.[36]

In May 2023, the Department announced a specific Antisemitism Awareness Campaign, providing resources and reminding schools of their legal obligations under Title VI to provide all students, including students who are or are perceived to be Jewish, a school environment free from discrimination. [37] Recent OCR Title VI enforcement actions further demonstrate the agency's commitment to addressing harassing or intimidating behaviors that deprive students of equal educational opportunities – including anti-Israel activity when it crosses the line into unlawful discriminatory conduct. [38]

It is disturbing that some Members of Congress, including Members supporting the Antisemitism Awareness Act, have supported *reducing* funding for this essential federal anti-discrimination enforcement agency. Last March, SPLC joined the Leadership Conference on Civil and Human Rights and many other national organizations in urging President Biden and congressional leaders to double funding for OCR.[39]

Countering Antisemitism Act

In addition, we have significant concerns about the narrow approach of the proposed Countering Antisemitism Act (CAA), legislation that would create a National Coordinator to Counter Antisemitism who would lead an interagency task force to implement the May 2023 U.S. National Strategy to Counter Antisemitism and future government strategies.[40] No one form of hate should be privileged over others. The recent rise in religion-based hate incidents is particularly concerning and not only threatens the safety and well-being of targeted communities but also erodes the social fabric and unity of our nation. If we are to truly become "one Nation under God, indivisible, with liberty and justice for all," we must adopt policies that foster a safe, inclusive, and equitable society for everyone. In addition, the CAA makes reference to only one definition of antisemitism, the International Holocaust Remembrance Alliance (IHRA) definition, stating that this definition "should be utilized by Federal, State, and local agencies." As previously noted, the adoption of the controversial IHRA definition, with its "contemporary examples," threatens to limit protected First Amendment speech and confuse and muddy the distinction between antisemitism and legitimate criticism of the policies or government of the state of Israel.

---

[35] Ali, R. (2010, October 26). *"Dear Colleague" letter from Assistant Secretary for Civil Rights*. United States Department of Education Office for Civil Rights. https://www2.ed.gov/about/offices/list/ocr/letters/colleague-201010.pdf.

[36] Office for Civil Rights (OCR). (2024, August 22). *Shared Ancestry or Ethnic Characteristics.* US Department of Education. https://www2.ed.gov/about/offices/list/ocr/sharedancestry.html.

[37] Office for Civil Rights (OCR). (2023, May 25). *U.S. Department of Education Launches Antisemitism Awareness Campaign.* U.S. Department of Education. https://www.ed.gov/news/press-releases/us-department-education-launches-antisemitism-awareness-campaign and Lhamaon, C. (2023, May 25). *Dear Colleague Antisemitism*. Department of Education's Office for Civil Rights (OCR). https://www2.ed.gov/about/offices/list/ocr/docs/antisemitism-dcl.pdf?utm_content=&utm_medium=email&utm_name=&utm_source=govdelivery&utm_term=.

[38] Office for Civil Rights (OCR). (2023, April 23). *U.S. Department of Education's Office for Civil Rights Resolves Investigation Addressing the University of Vermont's Responses to Allegations of Antisemitic Incidents.* U.S. Department of Education. https://www.ed.gov/news/press-releases/us-department-educations-office-civil-rights-resolves-investigation-addressing-university-vermonts-responses-allegations-antisemitic-incidents.

[39] The Leadership Conference on Civil and Human Rights, (2024, February 14). *Double the Funding for ED OCR.* https://civilrights.org/wp-content/uploads/2024/02/Double-the-Funding-for-ED-OCR.pdf.

[40] S. 4091 (2024, April 9), *Countering Antisemitism Act.* 118th Congress. Available at https://www.congress.gov/118/bills/s4091/BILLS-118s4091is.pdf. H.R. 7921 (2024, April 10), *Countering Antisemitism Act.* 118th Congress. Available at https://www.congress.gov/118/bills/hr7921/BILLS-118hr7921ih.pdf

SPLC supported the White House *National Strategy to Counter Antisemitism* and SPLC programs were included among the many whole-of-society initiatives announced in the comprehensive plan.[41] In the section entitled "Build Cross-Community Solidarity and Collective Action to Counter Hate," the Strategy states:

> Antisemitism does not exist in a vacuum. While antisemitism has unique characteristics, people who express hatred toward Jews frequently hold other biases based on actual or perceived religion, race, ethnicity, national origin, sexual orientation, gender, or gender identity. The perpetrators of hate-fueled attacks frequently deploy rhetoric that contains antisemitic, anti-Black, and anti-LGBTQI+ themes. The Neo-Nazis who marched in Charlottesville in 2017 believed in a toxic brew of myriad hatreds. Those who target Jews also target women, Black, Latino, Muslim, AANHPI, and LGBTQ+ Americans, and so many other communities.

Antisemitism does not appear in isolation. For decades, SPLC has been committed to tracking and combating antisemitism as part of our efforts to build an inclusive, multi-racial society. Effective efforts to dismantle white supremacy must include action to educate about and combat antisemitism, alongside and connected with actions to prevent other acts of hate and bias.[42]

Anti-Jewish hatred is one of the core components of bigoted ideologies – underlining the need for a more robust interracial and intercommunal approach to combating antisemitism in America. Efforts that isolate antisemitism from other forms of bigotry, such as anti-Black and anti–Asian racism and other forms of discrimination, fail to prevent and address the root causes of prejudice, hate, and bias-motivated criminal activity.

In July, forty organizations, led by the Leadership Conference on Civil and Human Rights, wrote to Senate and House leadership to urge Members to take an inclusive and intersectional approach in congressional action to counter all forms of hate.

> Our country finds strength in diversity and unity — and every person deserves to live in a community that is safe, welcoming, and inclusive….At this critical juncture, it is essential that administration and congressional efforts prioritize the need to combat all forms of hate, to promote mutual respect and understanding, and to ensure that all individuals, regardless of their background, feel protected and valued….Now is the time for more robust, more concerted interracial and intercommunal approaches designed to address hate.[43]

During the White House 2022 United We Stand Summit, in which SPLC participated, the administration stressed the need for a whole-of-society, coordinated effort to combat all forms of hate and bigotry that fuel toxic divisions in our country.[44] That is the better, more effective approach. We should focus on efforts to carry forward the significant programs and initiatives designed to address antisemitism together with other forms of

---

[41] The White House. (2023, May 25). U.S. *National Strategy to Counter Antisemitism.* https://www.whitehouse.gov/wp-content/uploads/2023/05/U.S.-National-Strategy-to-Counter-Antisemitism.pdf and The White House. (2023, May 25). *Fact Sheet: Biden-Harris Administration Releases First-Ever U.S. National Strategy to Counter Antisemitism.* https://www.whitehouse.gov/briefing-room/statements-releases/2023/05/25/fact-sheet-biden-harris-administration-releases-first-ever-u-s-national-strategy-to-counter-antisemitism/.

[42] Fugardi, R., et al. (2024, April 8). *Understanding and Countering Antisemitism and Islamophobia in Schools.* Southern Poverty Law Center (SPLC). https://www.learningforjustice.org/magazine/understanding-and-countering-antisemitism-and-islamophobia-in-schools. And see Corke, S. (2022, October 3). *Countering Violent Extremism, Terrorism, and Antisemitic Threats in New Jersey.* Southern Poverty Law Center's Intelligence Project. https://www.splcenter.org/sites/default/files/corke_countering-violent-extremism-terrorism-antisemetic-threats-jersey.pdf and Corke, S. and Lieberman, M. (2023, April 14). *Antisemitism: An Engine for anti-Black Racism.* State of Black America. https://stateofblackamerica.org/authors-essays/antisemitism-engine-anti-black-racism.

[43] Leadership Conference on Civil and Human Rights, (2024, July 25). *coalition letter from 40 organizations promoting inclusive response to hate crimes*, https://civilrights.org/wp-content/uploads/2024/07/Leadership-Conference-Letter-to-Congressional-Leadership-on-Countering-Hate.pdf.

[44] The White House, *United We Stand Summit.* (2022, September 15). *Hate-fueled violence can have no safe harbor in America.* https://unitedwestand.gov/ and Warren, L. (2022, September 23). *Attacking Extremist Violence: SPLC supports White House anti-hate initiatives announced during United We Stand Summit.* Southern Poverty Law Center (SPLC). https://www.splcenter.org/news/2022/09/23/splc-supports-white-house-anti-hate-initiatives.

hate-fueled discrimination and extremism announced at that impactful Summit. In fact, the very first commitment announced at the Summit was The White House Initiative on Hate-Motivated Violence, designed to

> strengthen interagency coordination in preventing and responding to hate-motivated violence, leverage federal research and resources, and enhance engagement and consultation with diverse stakeholders, including communities targeted for who they are or what they believe.[45]

We have called for Congress to appropriate $10 million to implement the Summit's meaningful commitments.[46]

Our country remains deeply divided, and hostility toward difference is growing. Administration and congressional efforts to act and speak out against all forms of hate and bias remain essential to make progress in our interconnected struggle for equality and justice. At this time of increased antisemitic violence, it is important that we prioritize meaningful efforts to dismantle antisemitism, *and* all the machinery used to manufacture fear and divide communities. As such, instead of advancing the Countering Antisemitism Act, Congress should take a more comprehensive approach to combatting hate and extremism.

Building Community Resilience and Assisting Victims

When religious communities, houses of worship, HBCUs and other institutions working to serve and uplift distinct communities are targeted for violence and vandalism, it is imperative that the needs of victims-survivors are addressed first. It is understandable that one instinct is to increase physical security for our houses of worship and community institutions – higher walls, more cameras, more bulletproof glass, and even armed guards. But this cannot be our only response. Broad community cohesion and support is essential. Houses of worship and HBCUs are different from airports – and they cannot become armed fortresses, isolated and segregated from the broader community.[47] To maintain the essence of our communal institutions, we must look beyond security measures and address the root causes of extremism and hate violence. The challenge is to find a balance between the imperative that our institutions continue to be open and welcoming and efforts to ensure that they remain safe spaces for worship, learning, and community building.

There is robust, bipartisan support in Congress for significantly increased funding for FEMA's Nonprofit Security Grant Program (NPSG), which is currently funded at over $430 million.[48] This program has helped fund bulletproof doors, shatterproof glass, secure entry systems, panic buttons, and security guards for many at-risk faith communities and essential public institutions. As Congress and the administration assess the proper budget for NPSG programs to deter and detect attacks, we urge that this support be complemented with a parallel commitment to fund research and prevention initiatives to address what the administration labeled as "long-term contributors to domestic terrorism" in its June 2021 National Strategy for Countering Domestic Terrorism.[49]

One of the four pillars promoted in the administration's holistic, government-wide National Strategy approach to addressing violent extremism is a commitment to confront long-term contributors to domestic terrorism:

> Individuals subscribing to violent ideologies such as violent white supremacy, which are grounded in racial, ethnic, and religious hatred and the dehumanizing of portions of the American community, as well as violent anti–government ideologies, are responsible for a substantial portion of today's domestic

---

[45] The White House, *United We Stand Summit*. (2022, September 15). https://unitedwestand.gov/.
[46] Warren, L. and Cook, S. (2024, March 11). *SPLC Letter Regarding FY25 Appropriations Priorities*, Southern Poverty Law Center (SPLC). https://www.splcenter.org/sites/default/files/splc-letter-appropriators-fy25-priorities-03112024.pdf.
[47] Kayyem, J. (2022, January 17). *A Synagogue Shouldn't Be a Fortress*. The Atlantic. https://www.theatlantic.com/ideas/archive/2022/01/colleyville-standoff-synagogues-risk-defenses/621280/.
[48] Department of Homeland Security. (2024, April 16). *FY 2024 Nonprofit Security Grant Program Fact Sheet*. Federal Emergency Management Agency. https://www.fema.gov/grants/preparedness/nonprofit-security/fy-24-fact-sheet.
[49] The White House. (2021, June). *National Strategy for Countering Domestic Terrorism*. https://www.whitehouse.gov/wp-content/uploads/2021/06/National-Strategy-for-Countering-Domestic-Terrorism.pdf.

terrorism. Tackling the long-term contributors to this challenge demands addressing the sources of that mobilization to violence – with leadership from relevant domestic-facing agencies, coordinated by the White House's Domestic Policy Council and in close partnership with civil society.

That means tackling racism in America. It means protecting Americans from gun violence and mass murders. It means ensuring that we provide early intervention and appropriate care for those who pose a danger to themselves or others. It means ensuring that Americans receive the type of civics education that promotes tolerance and respect for all and investing in policies and programs that foster civic engagement and inspire a shared commitment to American democracy, all the while acknowledging when racism and bigotry have meant that the country fell short of living up to its founding principles. It means setting a tone from the highest ranks of government that every American deserves the life, liberty, and pursuit of happiness that our Declaration of Independence recognizes as unalienable rights. And it means ensuring that there is simply no governmental tolerance – and instead, denunciation and rejection – of violence as an acceptable mode of seeking political or social change.[50]

Policy Recommendations

Speak out against hate, political violence, and extremism and improve interagency coordination
Words matter, especially from our leaders. It is impossible to overstate the importance of elected officials, business leaders, and community leaders using their public platforms to condemn hate crimes, threats to HBCUs, and vandalism and violence against houses of worship and other minority institutions. Advancing the goal of a multi-racial, inclusive democracy will require strengthened federal agency coordination and cross-community coalitions to respond with a unified voice against hate violence, discrimination, and bias – and to build resilience in the aftermath of incidents of hate-fueled violence.

- Congress should enact legislation to institutionalize President Biden's United We Stand Summit commitment to establish an interagency initiative on hate crimes, authorize $10 million to fund its continued implementation, and require periodic reports from the White House that outline the work of the initiative, including: how each agency has addressed hate crime issues, prevention and training initiatives, as well as research and programmatic plans for the next fiscal year.

- Congress and the administration must ensure that the planners and perpetrators of the deadly Jan. 6 insurrection at the Capitol — and those who financed and inspired them to act — are held accountable, with serious consequences.

Improve hate crime data collection efforts
The highest number of hate crimes ever reported to the FBI in 2022 – from the smallest number of law enforcement agencies in the past decade – prompts questions about what more can be done to improve reporting, to educate about the community impact of hate crimes, to prevent them from occurring, and, when they do occur, to enforce hate crime laws.

- Congress should increase funding for Department of Justice community-based programs authorized by the COVID-19 Hate Crimes Act, which includes the Jabara Heyer NO HATE Act, by an additional $30 million, including increased funds for state hate crime hotlines to promote expanded victim reporting and assistance and support services and restorative justice initiatives for those targeted and impacted by bias-motivated harms.

- After 30 years of incomplete data and consistent FBI HCSA underreporting, Congress and the administration should support H. R. 7648, the Improving Reporting to Prevent Hate Act, which would

[50] The White House. (2021, June). *National Strategy for Countering Domestic Terrorism*. https://www.whitehouse.gov/wp-content/uploads/2021/06/National-Strategy-for-Countering-Domestic-Terrorism.pdf.

make hate crime prevention initiatives and credible hate crime reporting by all law enforcement agencies a condition precedent to receiving federal funds.[51]

- The FBI recently designated civil rights and hate crime as one of its highest national threat priorities.[52] Though reporting hate crime data to the FBI is voluntary, the Department of Justice and the FBI should build the capacity of state and local law enforcement agencies to provide data to the FBI, and support efforts to expand the use of National Incident Based Reporting System (NIBRS) among local law enforcement agencies. Special attention should be devoted to large underreporting law enforcement agencies that either have not participated in the HCSA program at all or have incorrectly reported zero hate crimes.

  The FBI can and should do more to encourage reporting:
  - FBI Field Office and FBI Resident Agent offices should keep track of law enforcement agencies in their jurisdictions that are substantially underreporting hate crimes, communicate directly with them, and take more responsibility for ensuring their credible participation in the Bureau's HCSA program.

  - The success of this outreach should be taken into account as part of each FBI Field Office's evaluation, with recognition for improved reporting and ineffective cooperative communication with police departments on hate crime reporting factored in as part of the Special Agent in Charge's own evaluation and rating.

- Each of the 94 US Attorneys should promote comprehensive hate crime reporting for cities in their jurisdictions. Each office should publicly designate a person or team to lead hate crime prevention and response – and enable community-based organizations to have a point of contact.

- The Department of Justice and the FBI should expand their commitment to regional hate crime training sessions with a particular focus on jurisdictions that are underreporting hate crimes and where incidents appear to be on the rise. Closing these data gaps will enhance law enforcement's ability to recognize, investigate, and report accurate data on hate crimes, build community trust, and help educate and engage the public in combatting hate crimes.

- The Department of Justice should fund comprehensive research to understand gaps in hate crime reporting by law enforcement agencies, including why law enforcement agencies do not report, barriers to reporting by hate crime victims, and identification of best practices in hate crime training, data collection for both crimes and hate incidents, and reporting.

- Under the Cleary Act, colleges and universities are required to report their hate crimes to the Department of Education, yet very substantial gaps in reporting currently exist.[53] The administration and congress should ensure that colleges and universities are prioritizing the safety of their students, including comprehensive hate crime reporting to the Department of Education.

Enforce hate crime laws and provide more funding for training and community-based prevention initiatives

Enforcement of properly-crafted federal and state hate crime laws that include sexual orientation and gender identity – and training for judges, prosecutors, and law enforcement officials charged with enforcement – is

---

[51] H.R. 7648, (2024, March 13). *Improving Reporting to Prevent Hate Act of* 2024. 118th Congress. Available at https://www.congress.gov/118/bills/hr7648/BILLS-118hr7648ih.pdf.
[52] Department of Justice. *Combatting Hate Crimes.* https://www.justice.gov/opa/press-release/file/1428666/download.
[53] The Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics Act, 20 U.S.C. § 1092(f), with implementing regulations in the U.S. Code of Federal Regulations at 34 CFR 668.46.

critical, but insufficient. Hate-fueled violence and the harms they cause cannot be solved by law enforcement alone.

It is essential that administration and congressional efforts prioritize the need to combat all forms of hate, to promote mutual respect and understanding, and to ensure that all individuals, regardless of their background, feel protected and valued.[54] At the United We Stand Summit in September 2022, the White House announced a wide array of very welcome government initiatives, along with several public-private partnerships, designed to foster unity and build community trust and resilience in the fight against hate and extremism.[55]

- To fulfill the full promise of the United We Stand Summit, Congress and the administration should ensure adequate funding for these programs and initiatives.

- Congress should authorize and promote alternative sentencing and restorative justice programs.

- To advance a positive public health approach to hate crime prevention, the administration and Congress should fund immediate and long-term support services and develop community-based resilience and early intervention programs for youth that center social-emotional learning and not punishment.

- In 2010, the Department of Education developed a framework of common components found in bullying prevention state laws, policies, and regulations and created a chart of every state's bullying prevention law on its StopBullying.Gov site.[56] The Department of Justice should replicate this work on its hate crime website,[57] with a focus on hate crime laws and best state and local hate crime prevention practices.

- Proposals to include police officers in federal and state hate crime laws should be rejected. Adding police – or any other category based on vocation or employment – confuses the purpose of hate crime laws, which are designed to address crimes directed against people because of their personal characteristics. While bias-motivated crimes are frequently downplayed and underreported, all 50 states already have criminal statutes that specifically address and punish violence against a law enforcement officer – and there is no evidence that prosecutors anywhere in the country are failing to vigorously investigate and prosecute crimes against police.[58]

Expand anti-racism education and prevention initiatives

The law is a blunt instrument to confront hate and extremism – it does not address the disparate root causes of hate, nor does it adequately mitigate future harms to historically targeted and marginalized communities. Simply put, we cannot legislate, regulate, tabulate, or prosecute racism, hatred, or extremism out of existence.[59]

In addition, several states, particularly in the South, are currently passing laws restricting teaching about racism and other painful truths about our national history. Concealing the truth about our history does not protect our youth; it makes them susceptible to misinformation and fails to equip them with the critical thinking skills and education they need to navigate a new age where disinformation and manipulation are spreading on the internet. It is clear that much more needs to be done to teach young people the unvarnished truth about American history – both good and bad – so that we can learn lessons from the past to shape a better future.

---

[54] Leadership Conference on Civil and Human Rights, (2024, July 25). *coalition letter from 40 organizations promoting inclusive response to hate crimes*, https://civilrights.org/wp-content/uploads/2024/07/Leadership-Conference-Letter-to-Congressional-Leadership-on-Countering-Hate.pdf.

[55] The White House. (2022, September 15). *United We Stand Summit*. https://unitedwestand.gov/.

[56] Department of Education, StopBullying.Gov, Laws. Policies & Regulations. https://www.stopbullying.gov/resources/laws.

[57] U.S. Department of Justice. *Hate Crimes*. https://www.justice.gov/hatecrimes.

[58] Movement Advancement Project. (2021, July 28). *Policy Spotlight: Hate Crime Laws*. https://www.lgbtmap.org/file/2021-report-hate-crime-laws.pdf.

[59] Lieberman, M. (2021, 27 October). *Hate Crimes, Explained*. Southern Poverty Law Center. https://www.splcenter.org/hate-crimes-explained.

- The Department of Education and the Department of Justice should fund programs aimed at preventing extremism and promoting deradicalization – and move from punishment models to restorative justice initiatives that build community resilience.[60] Especially in these divided and polarized times, every elementary and secondary school should promote an inclusive school climate and activities that celebrate our nation's diversity.

- The Department of Justice, the Department of Education, the Department of Health and Human Services, and the Centers for Disease Control and Prevention should promote anti-bias education and public health approach programs that center social-emotional learning and help steer individuals away from hate and extremism. We need federal and state government leadership to promote anti-bias, anti-hate, and pro-democracy education programs, such as the SPLC's Learning for Justice resources,[61] and initiatives to address online hate and radicalization, such as the SPLC/American University Polarization and Extremism Research and Innovation Lab (PERIL) *Parents & Caregivers Guide to Online Youth Radicalization,*[62] in our nation's schools.

- Congress must continue to support the significant efforts the Department of Education has made to raise awareness of federal anti-discrimination protections, help ensure the protection of students, and vigorously enforce existing civil rights and anti-discrimination laws.[63]

- Congress should enact the Showing Up for Students Act, legislation that would double funding for the essential work of the Department of Education's Office for Civil Rights.[64]

- Congress and the Department of Education should provide increased funding for programs to develop and promote civics education, the universal lessons of the Holocaust, the history of slavery in the United States, digital and media literacy initiatives, curricula on avoiding harms from AI use and promoting safe use of AI technology, curricula to reduce structural racism, as well as funding for states to implement their own related initiatives.

- Congress and the administration should promote inclusive education and democracy-building school initiatives that celebrate our nation's diversity – and fiercely oppose efforts to falsely attack educational gag orders on teaching truth and hard history, and other efforts to place restrictions on inclusive education.

- Congress and the Department of Health and Human Services should fund research to better understand the impacts that hate incidents and crimes have on the health and well-being of targeted communities and victims and further investigate whether specific public health approaches can reduce hate incidents for communities.

---

[60] (2016, December 16). The grants authorized by the Emmett Till Unsolved Civil Rights Crimes Reauthorization Act of 2016 U.S. Congress. Public Law 114-325, 114th Congress. Available at https://www.congress.gov/114/statute/STATUTE-130/STATUTE-130-Pg1965.pdf awarded by the Department of Justice Bureau of Justice Assistance under the Emmett Till Cold Case Investigations and Prosecution Program are an excellent example of this work. https://bja.ojp.gov/funding/opportunities/o-bja-2024-172013.

[61] Learning for Justice. https://www.learningforjustice.org/.

[62] Southern Poverty Law Center and American University Polarization and Extremism Research and Innovation Lab (PERIL). *Parents & Caregivers Guide to Online Youth Radicalization.* https://www.splcenter.org/peril.

[63] Office for Civil Rights. *Education and Title VI.* United States Department of Education. https://www2.ed.gov/about/offices/list/ocr/docs/hq43e4.html.

[64] S. 3883 (2024, March 6), *Showing Up for Students Act.* 118th Congress. Available at https://www.congress.gov/118/bills/s3883/BILLS-118s3883is.pdf. H.R. 8271 (2024, May 7), *Showing Up for Students Act.* 118th Congress. Available at https://www.congress.gov/118/bills/hr8271/BILLS-118hr8271ih.pdf

H.R. 7648, (2024, March 13). *Improving Reporting to Prevent Hate Act of* 2024. 118th Congress. Available at https://www.congress.gov/118/bills/hr7648/BILLS-118hr7648ih.pdf.

Improve government response to political violence and domestic extremism

There must be more transparency and reporting on efforts that federal, state, and local law enforcement officials are making to address white supremacy and political and hate-fueled violence.

- The 119th Congress should hold oversight hearings on federal agency responses to this threat, closely track and assess the nature and magnitude of the problem of domestic extremism and provide funding for government and academic research on the best evidence-based responses to political violence and extremism.

- Congress should enact S. 1591, the Domestic Terrorism Prevention Act, legislation which would establish offices within the Department of Homeland Security (DHS), the Department of Justice, and the FBI to monitor, investigate, and prosecute cases of domestic terrorism – and require these offices to regularly report to Congress.[65] The legislation would also provide resources to strengthen partnerships with state and local law enforcement and community-based groups to confront far-right extremism. This legislation has attracted very considerable support from the civil rights community.[66]

- Congress should address white supremacy in federal law enforcement by enacting legislation to require the Department of Homeland Security, the Department of Justice, and the FBI — and all other federal agencies with law enforcement responsibility — to promptly "avoid the hiring and retention of law enforcement officers who promote unlawful violence, white supremacy, or other bias against persons based on race, ethnicity, national origin, religion, sex (including sexual orientation and gender identity), or disability" as mandated in President Biden's May 2022 police reform executive order.[67]

- Congress and the administration should provide equitable access to government funds for security infrastructure to houses of worship and community institutions targeted with violence, including HBCUs and LGBTQ centers.

- Congress and the administration should address white supremacy and extremism in the military and state guards at every stage: recruitment; expanding and clarifying prohibitions against advocating for, or involvement in, white supremacist or extremist activity for active-duty personnel; and more extensive efforts to help veterans transition into civilian life, including counseling, mental health, and social welfare services.[68]

---

[65] S. 1591 Domestic Terrorism Prevention Act. https://www.congress.gov/118/bills/s1591/BILLS-118s1591is.pdf.

[66] The Leadership Conference on Civil and Human Rights. (2022, May 18). *Letter supporting H.R. 350.* https://civilrightsdocs.info/pdf/policy/letters/2022/05182022_Leadership_Conference_Sign_On_Letter_Supporting_HR_350.pdf.

[67] The White House. (2022, May 22). *Executive Order on Advancing Effective, Accountable Policing and Criminal Justice Practices to Enhance Public Trust and Public Safety.* https://www.whitehouse.gov/briefing-room/presidential-actions/2022/05/25/executive-order-on-advancing-effective-accountable-policing-and-criminal-justice-practices-to-enhance-public-trust-and-public-safety/.

[68] The Department of Defense has issued guidance on the prohibition against active involvement in or promotion of extremist activities. Department of Defense Instruction 1325.06. (2021, December 20) *Handling Protest, Extremist, and Criminal Gang Activities Among Members of the Armed Forces.* *https://www.esd.whs.mil/Portals/54/Documents/DD/issuances/dodi/132506p.PDF?ver=lVFsHaG0F1cxC3WPD1EO9w%3D%3D.* And recently the Army Directive 2024-07 (2024, June 14) *Handling Protest, Extremist, and Criminal Gang Activities*). https://ig.army.mil/Portals/101/Documents/regs%20etc/AD%202024-07%20(Handling%20Protest%20Extremist%20and%20Criminal%20Gang%20Activities).pdf?ver=GQAIfSIsimnX5lBT1AdEeg%3d%3d Army Directive 2024-08 (2024, June 14) *Reporting Prohibited Activities (RPA)* https://ig.army.mil/Portals/101/Documents/regs%20etc/AD%202024-08%20(Reporting%20Prohibited%20Activities).pdf?ver=jsJAqStnTxgFPMJPeHdBg%3d%3d and the Marines *MARADMINS Number: 385/24* (2024, August 23). *Guidance on Reporting Extremist and Criminal Gang Activities.* https://www.marines.mil/News/Messages/Messages-Display/Article/3879286/guidance-on-reporting-extremist-and-criminal-gang-activities/ have issued their own clarifying guidance documents.

- Congress and the administration should do more to curb gun violence and provide care for impacted communities and individuals.[69]

- Every state prohibits private militias, and many states have laws prohibiting political violence, restricting firearms in the state capital/government buildings and near polling places, and banning paramilitary training in furtherance of, or in preparation for, a civil disorder.[70] Federal and state authorities should take action to raise awareness about these laws – and enforce them.

Promote online safety and hold tech and social media companies accountable

It is frighteningly simple for racists and extremists to disseminate propaganda, recruit followers, generate profits, and spread intimidation on major social media platforms. Social media companies should not enable the funding or amplifying of white supremacist ideas or provide a safe haven for extremists.

- Consistent with the First Amendment and privacy considerations, federal and state government officials should implement rules and regulations to ensure that tech companies comply with civil rights laws prohibiting discrimination. Law enforcement should scrutinize platforms and ensure they are enforcing prohibitions on activities that endanger the public or conspire against the rights of others.

Conclusion

We must acknowledge that hate crimes and the harm they cause to victims and their communities cannot be solved by law enforcement alone. We must do more to support victims, survivors, and their communities. Congress and the administration must support programs and initiatives designed to prevent hate, bias-motivated criminal activity, and extremism.

Thank you for holding this important hearing. We deeply appreciate this Committee's continued leadership in addressing hate, violence, and extremism. We look forward to working with you as you continue to focus on these domestic threats. If you have questions about this statement or need additional information, please contact Michael Lieberman, SPLC Senior Policy Counsel, Hate and Extremism, at Michael.Lieberman@splcenter.org.

---

[69] Southern Poverty Law Center, American University Polarization and Extremism Research and Innovation Law., (2023, July). *U.S. Youth Attitudes on Guns.* Everytown for Gun Safety. https://www.splcenter.org/peril-youth-attitudes-guns-report.

[70] Georgetown University Law Center. *Addressing political violence, unlawful paramilitaries, and threats to democracy.* Institute for Constitutional Advocacy and Protection. https://www.law.georgetown.edu/icap/our-work/addressing-political-violence-unlawful-paramilitaries-and-threats-to-democracy.

104 W. 29th St #4
New York, NY. 10001

GLAAD Statement for Senate Judiciary Committee Hearing, "A Threat to Justice Everywhere: Stemming the Tide of Hate Crimes in America"

September 13, 2024

The Honorable Richard J. Durbin
Chair, Senate Committee on the Judiciary
224 Dirksen Senate Office Building
Washington, DC 20510

The Honorable Lindsay Graham
Ranking Member, Senate Committee on the Judiciary
224 Dirksen Senate Office Building
Washington, DC 20510

Dear Senators Durbin and Graham, and Members of the Committee,

On behalf of GLAAD, the lesbian, gay, bisexual, transgender, and queer (LGBTQ) media advocacy nonprofit, we write to thank you for holding this critical hearing addressing hate crimes in the US and also to share our perspective on how these crimes impact the LGBTQ community. GLAAD is dedicated to uplifting the voices of LGBTQ Americans and accelerating acceptance through accurate and inclusive representation in the media. More than 7.6% of US adults and 22.3% of Gen Z are LGBTQ, and we know that hate crimes impacting our community impact *all* Americans.

According to GLAAD's newly released 2024 *Accelerating Acceptance* report, 89% of non-LGBTQ Americans believe that LGBTQ people (including transgender people) should have the freedom to live their lives and not be discriminated against. And yet, anti-LGBTQ extremists continue to promote inflammatory mischaracterizations of trans health care, baseless false assertions of LGBTQ people and our allies being threats to children, and malicious framings of LGBTQ people and identities as "ideologies" — all as a blatant political strategy for attacking basic LGBTQ equality and civil rights. Such fear-mongering and scapegoating of marginalized groups creates a dangerous environment for everyone.

Against the background of these rhetorical attacks, GLAAD is tracking an alarming rise in hate-fueled violence, harassment and intimidation against LGBTQ people. Our data shows **anti-LGBTQ incidents rose 112%** year-over-year, from June 2022 – 2023 to June 2023 – 2024. This hate tragically resulted in at least 21 deaths and 160+ injuries across the US. Over

30% of the incidents were also specifically motivated by hate targeting transgender and gender non-conforming people. These incidents are the undercurrent to the stories that make national headlines – the mass shooting at Club Q, the tragic deaths of Lauri Carleton, O'Shae Sibley, and Nex Benedict, and the hundreds of bomb threats every year which target drag performances, schools, libraries and health care facilities that offer safe spaces for LGBTQ people.

We also cannot ignore the intersectional nature of hate-fueled violence. The same extremists who seek to harm the LGBTQ community are the very same people who target, among others, Black, Jewish, Muslim, and immigrant communities in the US. Just four days ago, the Department of Justice announced the arrest of two leaders of the Terrorgram Collective - a transnational white supremacist accelerationist group which solicited group members to commit attacks including the deadly mass shooting at an LGBTQ bar in Slovakia, a knife attack near a mosque in Turkey, and planned attacks on US energy facilities and other "enemies of the white race." We could tell hundreds of similar stories, from the 2016 shooting at Pulse nightclub that targeted predominantly LGBTQ Latine people, to the disinformation campaigns targeting LGBTQ Jewish leaders, to the epidemic of violence facing Black trans women and trans women of color.

The path to a safer future for all Americans necessitates that we act now to stem the tide of hate crimes and hate-fueled violence. We are committed to uplifting the voices of LGBTQ people and all others impacted by this hate – and we urge you to join us in this fight. Thank you for your time.

Sincerely,



Sarah Kate Ellis

President & CEO, GLAAD

Hindu American Foundation (HAF)
Written Statement for the Record

Suhag A. Shukla, Esq.
Executive Director/Legal Counsel

Samir Kalra, Esq.
Managing Director/Legal Counsel

Submitted to the United States Senate Committee on the Judiciary
September 23, 2024

"A Threat to Justice Everywhere: Stemming the Tide of Hate Crimes in America"
G50 Dirksen Senate Office Building
September 17, 2024

The Hindu American Foundation (HAF) is the nation's oldest and largest nonprofit Hindu education and advocacy non-profit, providing a voice for nearly four million Hindu Americans. The Foundation educates leaders in public policy, academia, media, and the public at large about Hinduism and global issues concerning Hindus, such as religious freedom, misconceptions, inaccurate portrayals, hate speech, hate crimes, temple safety and security, and human rights. By promoting the Hindu and American ideals of understanding, tolerance, and pluralism, HAF stands firmly against hate, discrimination, defamation, and terror.

As an attorney-led non-profit, legal advocacy is one of HAF's main pillars. From issues of religious accommodation and religious discrimination to defending fundamental constitutional rights of free exercise and the separation of church and state, HAF has educated Americans on various aspects of Hindu belief and practice in the context of religious liberty, either as a party to the case or an amici (friend of the court). HAF has also consistently spoken out against hate speech, bias, and hate crimes, regardless of the religious or racial identity of the victims. HAF firmly believes that bigotry and violence impact all communities and must be collectively confronted.

We are a nation whose strength and unity derive from our diversity. As our Great Seal proclaims: E Pluribus Unum ("out of many, one"). This concept mirrors one of Hinduism's core teachings, the Truth is but One but it manifested in different ways. Like Hinduism itself, Hindu Americans constitute a growing and increasingly visible piece of America's religious mosaic.

HAF respectfully submits that while Hindu Americans on the whole enjoy religious liberty and freedom in the United States, hate speech, incidents of religious bigotry, temple attacks, and hate crimes continue to concern the community. The following provides a brief overview of specific anti-Hindu hate affecting Hindu Americans.

I. Background

Hindu Americans represent diverse ethnic backgrounds, including individuals of Indian, Pakistani, Bangladeshi, Malaysian, Indonesian, Afghani, Nepali, Bhutanese, Sri Lankan, Fijian, Guyanese, Caribbean, and European descent. The majority of Hindu Americans, however, are of Indian ethnic origin and are primarily an immigrant community. It was only after the lifting of the Asian Exclusion Act of 1924 in 1943 and the abolishment of quotas for immigrants based on national origin in 1965 that Hindus came to the United States in large numbers.

Like other minority and immigrant communities, Hindu Americans have experienced religiously motivated discrimination, intolerance, and violence. In particular, Hindus have been subjected to verbal abuse, slurs, and physical attacks on an individual level, while Hindu places of worship have been targeted for acts of vandalism, arson, and graffiti. Furthermore, the public sphere is replete with hate speech, pejoratives, and disparaging language denigrating Hinduism.

Unfortunately, incidents of bias and hate crimes against Hindu Americans have traditionally been difficult to track for a multitude of reasons. These include the conflation of religious and ethnic identity, underreporting or miscategorized reporting by victims due to fear of repercussions on their immigration status, and lack of knowledge of their rights. The unique challenges of reporting and categorizing intra-ethnic and intra-community hate crimes have also become more prevalent in recent years.

II. Hate Speech

Violence and bigotry are often fuelled by speech that can be construed as hateful and intolerant. While such speech is protected under the 1st Amendment, if left unchallenged, it can perpetuate discrimination, criminal discriminatory behavior, and even violence.

With the proliferation of social media, hate speech directed toward religious and ethnic groups has become increasingly commonplace.[1] Different social media platforms vary in the stringency of their policies, and those that do are often inconsistently applied. The utilization of AI in monitoring content on social media platforms has also caused issues, with AI failing to recognize hate speech and sometimes even flagging innocuous speech as problematic.

Like Americans of other faiths, Hindus routinely endure hate speech and the denigration of their religious beliefs. A 2022 report from the Network Contagion Research Institute at Rutgers University, *Anti-Hindu Disinformation: A Case Study of Hinduphobia on Social Media*, reported a steep increase in anti-Hindu activity across numerous online communities, indicative of a wider overall negative sentiment.[2]

The report provided an overview of the tropes used to demean Hinduism, documented the rise in anti-Hindu speech, and how it has evolved across various media platforms. Many users attempted to associate Hinduism with "themes of dehumanization, dirtiness, and immorality", while others conflated Indian politics with the Hindu faith. This type of activity fosters a dangerous environment that has led to acts of bigotry and violence against Hindus.[3]

Hate speech against Hindus has not been confined to online.. In the past 2 years, numerous Hindu temples have been targeted for desecration – the issue has become so frequent that the four Indian-origin members of Congress sent a letter to the US Department of Justice requesting an inquiry, while individuals have experienced harassment, intimidation, and violence.[4] Only a few perpetrators have been held accountable for their actions.

Therefore, while the freedom of expression must be faithfully protected, speech that repeatedly and exclusively targets a religious minority and their places of worship is not protected under the first amendment. Speech that promotes hatred, intolerance, and has the potential of manifesting violently must be publicly condemned by all Americans.

III. Bias or Hate Crimes

According to the latest available FBI statistics, in 2023 there were approximately 11,858 hate crimes reported to law enforcement impacting 12,146 victims. Of the incidents motivated by religious bias, 39 were anti-Hindu.[5] From HAF's work with law enforcement and victims, we know the true number is much higher as under-reporting remains a problem. Moreover, Hindus are often targeted in a conflation of

---

[1] "Hate Speech on Social Media: Global Comparisons" (June 7, 2019), Council of Foreign Relations https://www.cfr.org/backgrounder/hate-speech-social-media-global-comparisons

[2] "Anti-Hindu Disinformation: A Case Study of Hinduphobia on Social Media" (July 12, 2022) , Rutgers University NC Lab, https://www.rutgers.edu/news/rutgers-report-finds-increase-anti-hindu-disinformation

[3] *Ibid*

[4] "History of Anti-Hindu Bias and Hinduphobia in the United States", Hindu American Foundation https://www.hinduamerican.org/hinduphobia-history

[5] U.S Department of Justice Federal Bureau of Investigation Crime Data Explorer, 2022, https://cde.ucr.cjis.gov/LATEST/webapp/#/pages/explorer/crime/hate-crime

anti-India and/or anti-Indian sentiment.

Following 9/11, crimes against Hindus from outside the South Asian community have been based on the perpetrator's mistaken belief that the victim is Muslim or Arab. Several documented attacks occurred, during which Hindus were attacked due to their perceived association with the attacks.[6] For example, in November 2011, a Hindu man was beaten and called a "terrorist" in a Lucky shopping center parking lot in San Jose, California after picking up groceries for a family Thanksgiving dinner.[7] Similarly, in the summer of 2003, an Indian graduate student was robbed and beaten while delivering pizza in Boston by perpetrators who shouted "Go back to Iraq" and similar anti-Arab slurs.[8]

Today, attacks against Hindus are committed by both outside the South Asian community as well as from within the South Asian community.Several factors, including perceived political and social differences, contribute to anti-Hindu hate. According to statistics released by the California Civil Rights Department, in 2023 nearly a quarter of the anti-bias hotline calls were to report religious targeting of Hindus, the second highest after anti-Jewish.[9] Beyond attacks on individuals, Hindu places of worship and institutions have also been targets of anti-Hindu. With over a thousand temples across the United States, the Hindu-American community has witnessed acts of vandalism, graffiti, and arson on their religious sites. In September 2024,a temple in Melville, New York was vandalized with spray paint calling for death to Hindus. While no perpetrator has been held responsible, rising tensions against Hindus from activists seeking an independent nation-state called Khalistan have motivated nearly all recent Hindu temple attacks in the US.[10]

Crimes rooted in this conflict have become increasingly commonplace. In Canada, MP Chandra Arya has faced numerous attacks due to his ethnicity and faith, with perpetrators telling MP Arya to "go back to India", [11] while many Canadian Hindu temples have experienced similar vandalism to the Melville, NY incident.[12] In the United States, Hindus have faced similar harassment and intimidation at their places of worship at the hands of pro-Khalistan activists. After a temple was vandalized in late December of 2023, pro-Khalistan protestors camped outside the same temple in January and harassed devotees who were attempting to worship. Unfortunately, these events did not garner widespread attention and were not given publicity by mainstream media.

These attacks have not only occurred in Hindu places of worship but also at public events.. The attacks have proved challenging to report and investigate due to their intra-ethnic community roots. Since many anti-Hindu attacks also involve a political and/or intra-ethnic dynamic, they are often misattributed as political disagreements instead of the targeted religious attacks that they are. Combined with the existing challenges to reporting, including non-mandatory reporting, these events point to rising anti-Hindu

---

[6] SJ Hate Crime Victim Talks About Attack" (January 28, 2012), ABC Local News, http://abclocal.go.com/kgo/story?section=news/local/south_bay&id=8522432.

[7] *Ibid.*

[8] "History of Anti-Hindu Bias and Hinduphobia in the United States", Hindu American Foundation https://www.hinduamerican.org/hinduphobia-history

[9] "CA vs. Hate Fact Sheet", California Civil Rights Department, https://calcivilrights.ca.gov/wp-content/uploads/sites/32/2024/05/2024.05-CA-vs-Hate-Factsheet.pdf

[10] "The Khalistan Movement: History & Resurgence in the Western Diaspora", Hindu American Foundation, https://www.hinduamerican.org/khalistan

[11] Statement by MP Chandra Arya (July 24, 2024) , X, https://x.com/AryaCanada/status/1816045238965645689

[12] "Hindu Temple in Canada defaced with anti-India graffiti" (July 23, 2024), Times of India, https://timesofindia.indiatimes.com/nri/us-canada-news/hindu-temple-in-canada-defaced-with-anti-india-graffiti/articleshow/111945071.cms

sentiment.

Another issue facing many Hindu-Americans is the repercussions of the caste-based policies that have been implemented at many state and private universities and colleges that aim to discriminate against South Asian students and faculty by seeking to add “caste” to nondiscrimination policies, a facially discriminatory category that is associated with South Asians broadly and (incorrectly) Hindus more specifically. These are being passed in spite of existing federal and state laws which already covered discrimination based on shared ancestry, ethnic characteristics, citizenship, or residency in a country with a dominant religion or distinct religious identity.[13] In addition, the reports used by many of these schools to justify the policies have been criticized as both unscientific and non-generalizable in their methodology.[14] Students and faculty at these institutions fear that having their ethnic group singled out in nondiscrimination policies has left them viewed suspiciously and treated differently because of their background.

The above examples are only intended to demonstrate the type and nature of attacks endured by Hindu Americans over the past several years, and they do not reflect the full extent of the issues faced by the community. From religious bias and discrimination to hate speech and hate crimes, Hindu Americans continue to confront many challenges. Therefore, it is necessary to address the root causes of such intolerance and violence that not only impact Hindus but affect the lives of all Americans.

---

[13] Shared Ancestry or Ethnic Characteristics, (August 22, 2024), US Department of Education, Office for Civil Rights https://www2.ed.gov/about/offices/list/ocr/sharedancestry.html

[14] Social Realities of Indian Americans: Results From the 2020 Indian American Attitudes Survey, (June 9, 2021), Carnegie Endowment for International Peace, https://carnegieendowment.org/research/2021/06/social-realities-of-indian-americans-results-from-the-2020-indian-american-attitudes-survey?lang=en

12 September 2024

The Senate Judiciary Committee
224 Dirksen Senate Office Building
Washington, DC 20510

Dear Chairman Durbin, Ranking Member Graham, and Committee Members:

In coordination with the Sikh Coalition, I, Harpreet Singh Saini, am writing to inform the Committee of my personal experience relevant to your hearing, "A Threat to Justice Everywhere: Stemming the Tide of Hate Crimes in America."

In 2012, when I was 18 years old, I testified before Chairman Durbin and this Committee after my mother, Paramjit Kaur Saini, was among the six Sikh worshippers killed in the assault on the Sikh Temple of Wisconsin. At the time, that attack on our community's gurdwara was one of the deadliest assaults on a house of worship in our nation's history. Speaking about my mother's memory while the pain of her loss was so fresh in my mind and my heart was one of the hardest things I've ever had to do in my life.

At the time, I asked that Congress "give my mother the dignity of being a statistic." I made this request because the FBI was not yet tracking and publishing information about anti-Sikh hate crimes and bias incidents; thankfully, they began doing so just a couple of years later, in 2014. I am humbled that I was able to play a small part in encouraging this positive policy development. But more than a decade later, we must acknowledge that critical issues remain with how we handle hate crime data—and that those issues, in turn, negatively impact our shared efforts to prevent further tragedies.

According to the advocates at the Sikh Coalition, fewer and fewer law enforcement agencies are reporting hate crime data to the FBI every year. The FBI's most recent dataset, from 2022, reflects the participation of only 77 percent of the total number of law enforcement agencies across the country, and this is reportedly the fifth-straight year that the number of reporting agencies has decreased.[1] The undercounting that results from this lack of participation is a serious problem for multiple reasons. It doesn't allow lawmakers like you to make wise decisions about where to invest in hate crime prevention. It silences the lived experiences of families and communities like mine. And it allows some with political motives to pretend that hate and bias don't pose an urgent threat to our society.

Fortunately, there is a serious and bipartisan effort to address this issue: The Improving Reporting to Prevent Hate Act of 2024. According to the bill's sponsors in the U.S. House of Representatives, the Act would create a system to better understand if different places are reporting "credible and accurate" data about hate crimes—and if they aren't, it would require

[1] Sarah Chernikoff, "Hate crimes in the US: These are the locations where they're most commonly reported," USA Today, Oct. 23, 2023, https://www.usatoday.com/story/news/nation/2023/10/23/hate-crime-location-data-2022/71291866007/.

that they conduct "community education and awareness initiatives" in order to be eligible for some kinds of federal funding.[2]

Effectively requiring accurate reporting of hate crimes and bias incidents would be a huge step forward—and likely improve understanding of how to prevent, investigate, and charge these kinds of crimes across the country. This truly is the next 'step forward' following what this Committee helped to accomplish when it urged the FBI to start tracking more kinds of hate all those years ago. With more accurate data, and more education, we stand a chance at preventing further tragedies, whether they are the kind that affect individual families or entire communities.

I thank you for the opportunity to submit my story into the congressional record, both today and 12 years ago.

Sincerely,
Harpreet Singh Saini

[2] "Beyer, Bacon Introduce Bipartisan Legislation to Respond to Rise in Antisemitic Incidents And Other Hate Crimes," Office of Congressman Don Beyer, Mar. 15, 2024, https://beyer.house.gov/news/documentsingle.aspx?DocumentID=6091.

Testimony Submitted for the Record

Senate Judiciary Committee Hearing

A Threat to Justice Everywhere: Stemming the Tide of Hate in America

Anti-Defamation League
September 17, 2024

Working to stop the defamation of the Jewish people and to secure Justice and fair treatment to all since 1913

ADL Mission

Since 1913, the mission of ADL (the Anti-Defamation League) has been to "stop the defamation of the Jewish people and to secure justice and fair treatment to all." Today, ADL is a global leader in exposing extremism, delivering anti-bias education, and monitoring and fighting the spread of hate in our communities and online. One of the most important ways in which ADL has fought against bigotry and antisemitism has been by investigating extremist threats across the ideological spectrum, producing research to inform the public of the scope of the threat, and working with community partners, law enforcement, educators, the tech industry and elected leaders to promote best practices that can effectively address and counter these threats.

ADL Hate Crimes Work

Hate crimes cause unique harm. When an individual is targeted because of an actor's bias regarding their actual or perceived race, color, religion, ethnicity, national origin, gender, sex, sexual orientation, gender identity or expression, or disability, it deeply harms not only the individual, but also the group of people who share the characteristic for which the individual was targeted.

For decades, ADL has been a leader in efforts to counter the uniquely harmful impact of hate crimes on individuals and entire communities and to prevent such crimes in the first place. We do this by advocating for more comprehensive and inclusive hate crime laws, working to ensure that hate crimes receive the priority attention they warrant from law enforcement and government/policy leaders, and by supporting hate crime victims and communities who are disproportionately impacted.

In 1981, ADL crafted the first model hate crime law in the country. Today, 46 states, as well as the District of Columbia, have hate crime laws, many of which are based on or similar to our model, a version of which was unanimously upheld by the U.S. Supreme Court in 1993. We helped lead a coalition of more than 100 civil rights, faith-based, law enforcement and civic organizations that worked for 13 years to secure the passage of the landmark Matthew Shepard and James Byrd Jr. Hate Crimes Prevention Act in 2009, which expanded federal hate crime legislation to cover crimes motivated by the actor's bias against the actual or perceived gender, sexual orientation, gender identity or disability of the victim. We also continue to work at the state and local level, alongside community partners, to ensure comprehensive and inclusive hate crime laws and policy, support for victims and communities targeted by hate crimes, and education to prevent bias-motivated violence in the first place.

Current Trends

Overall Rise in Hate Crimes

The latest data from the Federal Bureau of Investigation (FBI) reflects that hate crimes reached a record high in 2022, continuing a disturbing trend over recent years. According to the FBI's annual report, there were 11,634 reported hate crime incidents in 2022, which is the highest number on record since the FBI began collecting hate crime data in 1991. This represents a 7% increase from the 10,840 incidents reported in 2021.

As has been the case consistently since hate crimes reporting began, race-based hate crimes—particularly anti-Black hate crimes—continue to account for the majority of these incidents. In 2022, approximately 56% of all reported hate crimes were motivated by bias based on race, ethnicity, or ancestry. Among these, anti-Black hate crimes constituted the vast majority, as they have for over three decades.

Reported single-bias anti-Jewish hate crimes increased sharply by 37%, reaching 1,122 incidents in 2022, the highest number recorded in nearly three decades and the second-highest number on record since the FBI began tracking hate crime data in 1991. Consistent with trends over the last several decades, reported anti-Jewish hate crimes also comprised more than half of reported religion-based hate crimes – despite the fact that Jews make up only 2% of the U.S. population. This rise underscores the persistent and pervasive nature of antisemitism in the United States. There were also 139 antisemitic assaults reported in 2022, representing a 28% increase from the 109 incidents reported in 2021.

In addition, the number of reported anti-LGBTQ+ hate crimes rose significantly. Hate crimes based on sexual orientation bias rose from 1,707 in 2021 to 1,944 in 2022, while hate crimes based on gender identity bias increased from 342 in 2021 to 469 in 2022.

Reported "anti-Hispanic or Latino" (the term used by the FBI) hate crime incidents rose from 698 in 2021 to 738 in 2022 (a 6% increase), and reported anti-AAPI hate crimes have also remained at concerningly high levels (294 in 2020, 789 in 2021, 525 in 2022). Reported anti-Muslim hate crime incidents rose from 152 reported incidents in 2021 to 158 reported incidents in 2022, and reported anti-Sikh hate crime incidents remained at historically high levels (185 in 2021 and 181 in 2022, compared with 67 in 2020). In addition, reported hate crime incidents based on disability bias rose from 152 reported incidents in 2021 to 171 in 2022 (a 12.5% increase)

The rise in reported hate crimes comes despite continuing concerns about underreporting. In 2022, a total of 14,631 law enforcement agencies participated in the FBI's hate crime reporting program, representing only 77.5% of all eligible agencies. Furthermore, many participating agencies continue to report zero hate crimes, which raises questions about the completeness and accuracy of the data.

Experts, including those at ADL, widely agree that the real volume of hate crimes targeting marginalized communities is likely significantly higher than the FBI's data indicate. Not only do many law enforcement agencies fail to report complete and accurate hate crimes data to the FBI, but research has shown that communities – particularly the communities most likely to be targeted by hate crimes – face significant barriers to reporting hate crime incidents to law enforcement. As a result, we know that even the record-high numbers of reported hate crime incidents that the FBI data reflects – 11,634 in 2022 – does not come close to the actual total. For example, while the FBI reported 1,122 anti-Jewish hate crimes in 2022, ADL's own tracking suggests that many additional incidents went unreported.

Rising Antisemitism

Since 1979, ADL has been compiling an annual Audit of Antisemitic Incidents ("the Audit") that includes both criminal and non-criminal acts of harassment and intimidation, including distribution of hate propaganda, threats, and slurs, as well as acts of vandalism and assault.

In 2023, ADL tabulated 8,873 antisemitic incidents across the United States. This represents a 140% increase from the 3,698 incidents recorded in 2022 and is the highest number on record since ADL began tracking antisemitic incidents in 1979. In fact, ADL tracked more incidents in 2023 than in the previous three years combined. Incidents increased in all major Audit categories. Assault incidents increased by 45% to 161 incidents, vandalism increased 69% to 2,177 incidents and harassment increased 184% to 6,535 incidents.

While the October 7, 2023, terror attacks in Israel were a major factor in driving the unprecedented spike in antisemitism recorded in 2023, even prior to October 7 there were monthly increases throughout the year: February (402), March (471), April (432), May (437) and September (513). Each of these months broke the prior year's record for most incidents recorded in a single month, set in November 2022 (394).

After October 7, ADL observed explicitly antisemitic and anti-Zionist rhetoric at 1,352 anti-Israel rallies across the United States. Even leaving out all Israel-related incidents from the data, antisemitic incidents still rose by 65% to 5,711, well exceeding the 3,457 non-Israel-related incidents recorded in 2022.

Murder and Extremism

Every year, individuals with ties to different extremist causes and movements commit acts of violence in the United States; the ADL Center on Extremism (COE) tracks extremist-motivated acts of murder. Extremists regularly commit murder in the service of their ideology, to further the objectives of a group or gang they may belong to, or even while engaging in traditional, non-ideologically motivated criminal activities.

In 2023, domestic extremists killed at least 17 people in the U.S., in seven separate incidents. The 2023 murder totals include two extremist-related shooting sprees, both by white supremacists, which together accounted for 11 of the 17 deaths. A third shooting spree, also by an apparent white supremacist, wounded several people but luckily did not result in fatalities. All the extremist-related murders in 2023 were committed by right-wing extremists of various kinds, with 15 of the 17 killings involving perpetrators or accomplices with white supremacist connections. This is the second year in a row that right-wing extremists have been connected to all identified extremist-related killings.

Hate Online

Hate and extremism are also significant concerns online. One urgent aspect of hate crimes is the proliferation of hate and harassment online. The ADL Center for Technology and Society conducts an annual survey to assess bias-motivated online harassment, and the 2024 report found disturbing results. Overall, 53% of respondents reported having experienced some form of online hate and harassment, with 38% of respondents experiencing severe forms of harassment, including sexual harassment, stalking, physical threats, swatting, doxing, or sustained harassment.

32% of respondents reported that the harassment was directly tied to an identity characteristic, such as sexual orientation, religion, race, ethnicity, gender identity, or disability.

The survey also highlighted troubling trends impacting historically marginalized groups. 30% of Hispanic or Latino respondents, 27% of African American respondents, and 20% of Asian American respondents reported experiencing harassment based on their race or ethnicity. 35% of Muslim respondents and 16% of Jewish respondents reported experiencing online harassment related to their religion.

For the third consecutive year, 63% of LGBTQ+ respondents reported experiencing harassment, making it the highest percentage of any demographic group. 24% of women respondents reported harassment based on their gender.

Policy Recommendations
ADL urges Congress to take the following critical steps, consistent with ADL's COMBAT and PROTECT Plans, comprehensive frameworks for elected officials and policymakers to take meaningful action to fight antisemitism and all forms of hate.

1. **Speak out against antisemitism and all forms of hate across the country**: The Jewish community has faced a disturbing and sharp rise in hate crimes and acts of harassment, vandalism, and assault. We need to know we are supported by leaders at the highest levels of government.

2. **Support implementation of the U.S. National Strategy to Counter Antisemitism:** Pass the Countering Antisemitism Act (CAA), the most comprehensive antisemitism initiative to be introduced in history, which will implement key parts of the National Strategy and ensure its policies and infrastructure are made permanent. This bill would strengthen federal efforts to counter antisemitism.

3. **Utilize the IHRA definition of antisemitism:** Pass the Antisemitism Awareness Act, which reinforces the use of IHRA in addressing campus harassment, and urge the Department of Education to issue regulations pursuant to Executive Order 13899 on Combating Anti-Semitism.

4. **Fund the Nonprofit Security Grant Program (NSGP)** in the annual appropriations process: The demand for grants continues to exceed the resources provided, even after the influx of funding from the supplemental appropriations bill. Nonprofit organizations, Jewish institutions, and houses of worship must have access to these resources to protect themselves from the rising threats.

5. **Ensure more robust and accurate hate crime reporting by law enforcement agencies**: Countering hate crimes is a critical task, especially now when manifestations of antisemitism and other forms of hate are on the rise. We are alarmed that the Federal Bureau of Investigation (FBI) hate crime statistics for 2022 continue to reflect insufficient participation from law enforcement agencies. Data drives policy, and without

having a complete picture of the issue, with all eligible jurisdictions participating meaningfully and accurately, we cannot effectively address the recent significant surges in hate violence. Accordingly, we welcomed the opportunity to be part of the coalition behind the introduction of the Improved Reporting to Prevent Hate Act which ties federal funding for state and local law enforcement agencies to meaningful, robust, and accurate participation in the FBI's hate crime data collection efforts each year. Improved data collection and reporting is a necessary step in the fight to address hate-motivated violence. We call on the Senate to introduce companion legislation and we urge both chambers to pass it.

6. **Fund hate crime prevention programs**: There must be sufficient funding for the COVID-19 Hate Crimes Act and the Matthew Shepard and James Byrd, Jr. Hate Crimes Prevention Act. Such funding is key to improving hate crime reporting and response, and implementing hate crime prevention initiatives and state hate crime hotlines. Congress must also fund grants that support community-based approaches to advancing justice and reconciliation, facilitating dialogue between parties, building local capacity, de-escalating community tensions, and preventing hate crimes through conflict resolution and community empowerment and education.

7. **Supporting victim- and community-centered approaches to hate crimes responses.** At a time when hate crimes have reached record highs and are continuing to increase, many communities across the country are feeling increasingly vulnerable to bias-motivated crimes and extremist-fueled attacks. At the federal, state, and local levels, it is important to a) champion efforts to provide funding and other support for victims of hate crimes and the community organizations who provide direct service to them, as well as b) support initiatives that provide alternative mechanisms to reporting hate crimes to law enforcement. Research shows that many of the individuals/communities who are most frequently targeted by hate crimes may be the least likely to feel safe reporting hate crimes to law enforcement. In light of the barriers that exist to reporting to police – and the continued importance of ensuring that hate crimes data collection is as comprehensive as possible and includes all targeted communities' lived experiences – implementing such alternative avenues for reporting is critically important.

8. **Pass the Domestic Terrorism Prevention Act**: Ensure that the Department of Homeland Security, the Department of Justice and the Federal Bureau of Investigation appropriately prioritize, monitor, analyze, investigate, and prosecute acts of domestic terrorism.

9. **Ensure enforcement of Title VI**: Sufficiently fund the U.S. Department of Education's Office for Civil Rights (OCR) so that it has full capacity to investigate complaints alleging harassment and discrimination on college and university campuses and in K-12 schools.

10. **Support preventative measures to counter violent extremism**: Prevention measures to address violent extremist radicalization and recruitment, including through the funding and reform of programs like the Center for Prevention Programming and Partnerships (CP3) and other community resilience approaches to preventing terrorism that have been

chronically underfunded. A law enforcement-only approach is insufficient to address the challenge of radicalization leading to violence; Congress must buttress funding to nongovernmental partners to promote more effective multidisciplinary strategies.

Interfaith America

Statement by Interfaith America

Submitted to the U.S. Senate Committee on the Judiciary

In connection with its September 17, 2024
hearing entitled:

"A Threat to Justice Everywhere:
Stemming the Tide of Hate Crimes in America"

Submitted September 16, 2024

Interfaith America

Introduction

On behalf of Interfaith America, we write to provide our insights on issues discussed during the U.S. Senate Committee on the Judiciary's September 17, 2024 hearing entitled "*A Threat to Justice Everywhere: Stemming the Tide of Hate Crimes in America*." We appreciate the opportunity to share our expertise and experience on the issue. We would ask that this statement be included as part of the Judiciary Committee's formal hearing record.

Interfaith America was founded in 2002 based on the idea that religious difference should serve as a bridge of cooperation rather than a barrier of division. Since that time, Interfaith America has evolved from a small Chicago-based nonprofit to the nation's premier interfaith organization. Interfaith America inspires, equips, and connects leaders and institutions to unlock the potential of America's religious diversity. Utilizing a research-backed approach, IA works across campus, corporate and civic sectors.

Background

The past few years have seen a dramatic and alarming increase in hate crimes and bigotry based in anti-Semitism, Islamophobia, racism, sexism, and other forms of marginalization. These incidents of hate are all occurring with increased frequency and violence. Efforts to combat these social ills tend to focus on them individually and their distinct sources. Yet often absent in the national discourse is an approach that focuses on building collaboratively, rather than tackling them separately. What can political and civic leaders build together to create more healthy diverse communities? A growing body of research indicates that advancing interfaith cooperation -- the proactive process of respecting diverse identities, building relationships across lines of religious difference, and acting together for the common good -- is an effective approach to reducing bigotry.

Hate crimes reached an all-time high in 2022 according to data from the FBI. Media reports on a study from the Center for the Study of Hate and Extremism at California State University, San Bernadino found that hate crimes surged in half of the nation's 10 largest cities, with an average increase of 11% in 2023. This distressing trend extended beyond the 10 largest cities as an analysis of 25 American cities found hate crimes increased by an average of 17%. Hate crimes targeting Jewish and Muslim populations fueled these increases in the wake of the horrific events of October 7. The report said that with the spike in late 2023, Jewish Americans have supplanted African Americans as the most targeted group in terms of hate crimes in the country's 10 largest cities. The numbers and narrative are clear – crimes against people or property that are motivated by the offender's bias against race, religion, disability, sexual orientation, ethnicity, gender, or gender identity are on the rise in the United States.

The United States is the world's first attempt at a mass-level multiracial, multiethnic, interfaith democracy. For centuries, political philosophers believed that a country as diverse as ours was impossible. There are those who would point to the rise in hate crimes and draw the same conclusion, that somehow diversity is destined to be a barrier to building a socially coherent and flourishing democracy. Studies and experience show, however, that when positively engaged

diversity can become pluralism, where people of different identities respect and relate to one another and cooperate together for the common good.

The Potential Power of Bridgebuilding

Interfaith America works with institutions across the higher education, civic, and corporate sectors. These institutions can be natural places for bridgebuilding, as they bring together a wide range of identities in a small physical space to learn, serve, and work together. Unfortunately, however, individuals can sometimes face pronounced incidents of hatred and identity-based bigotry in these spaces. For example, the Interfaith Diversity Experiences and Attitudes Longitudinal Survey (IDEALS) confirmed other research on the negative aspects of Jewish students' collegiate experiences. In the first year of college, Jewish students report more insensitivity on campus and experience more negative engagement with religious diversity compared to their peers.[i] An April 2024 poll by the Institute for Social Policy and Understanding (ISPU) found that American Muslims were most likely to experience discrimination from peers in their place of work or school; the same survey found that overwhelming majorities of Muslims (71%) and Jews (59%) experienced religious discrimination from strangers in public places.[ii]

These same studies and organizations also find, however, factors that have the potential to positively influence attitudes toward minority groups. ISPU found that individuals with a close Muslim friend scored far lower on the Islamophobia Index than individuals who do not know a Muslim.[iii] Evidence from IDEALS shows that a combination of supportive environments for individual identity groups, balanced with provocative encounters across lines of religious difference, lead to increased appreciation of others as well as a commitment to engaging religious diversity positively. Beyond higher education, Dr. Linda R. Tropp and Trisha Dehrone cite the growing body of research showing that meaningful and authentic engagement with others helps people invest more in each other's lives and groups which moves people to work toward building communities and social institutions to make sure everyone feels like they belong.[iv] In other words, creating communities, institutions, and spaces where individuals are able to cooperate and positively engage their respective identities is a research-backed way to lower rates of hatred.

Interfaith America is proud to be an active catalyst, collaborator, and thought leader in this sector, partnering with field leaders and providing insights that show how Americans are cooperating and positively engaging diversity to reduce hatred in their communities. For example:

- The Team Up Project, a collaboration with three of the nation's leading civic service organizations – Catholic Charities, Habitat for Humanity, and the YMCA of the USA – launched in 2023 to expand local bridgebuilding activities across the country. Under this program the YMCA of Florida's First Coast partnered with the Jewish Community Alliance to unify against the rise of anti-Semitism and other hate motivated behavior in their community. The partnership is now entering its second year of events, dialogue and service opportunities partnering around uniting the community. This is just one of the 32 communities across the country working to train 10,000 bridgebuilders with the tools they need to build connections in their communities.

- Through IA's Bridging the Gap program dozens of campuses across the country are educating and training their students in the skills of civic bridgebuilding alongside collaborative problem solving and sharing action. The institutions themselves represent a cross-section of American life: large public universities, community-focused liberal arts colleges, deeply Christian institutions, and activist-oriented historically Black colleges and universities (HBCUs). These campuses are proactively cultivating environments where students and staff alike practice ways to disagree on some fundamental concerns while working together on others to strengthen their community.

Interfaith America is part of a vibrant and growing bridgebuilding field working to combat the challenges of polarization and hate-based violence. The experiences, practices, and results of the bridgebuilding field can be a starting point for understanding what can be done to stem the tide of hate crimes in our country. The federal government has an opportunity to galvanize bridgebuilding organizations and movements that support spaces where people can engage across lines of difference. The Building Civic Bridges Act (BCBA), as introduced in both the Senate and the House of Representatives would create an Office of Civic Bridgebuilding within AmeriCorps. This office would, among other things, oversee a grant program to support civic bridgebuilding initiatives across the country. These programs would foster meaningful connections across lines of difference, whether political, race, ethnicity, or religion. By encouraging empathy, understanding, shared action and dialogue, the BCBA aims to bridge divides and build a stronger, more cohesive society. Corporate, civic, political, and religious leaders recognize the dangers and costs of hatred and polarization within their spheres, and many are supporting BCBA as a starting point for moving the national conversation on bridgebuilding forward.

We can build a pluralistic America – with decreased prejudice and more positive attitudes about diverse groups – by cultivating environments where people can learn bridgebuilding skills and provide opportunities to exercise the muscles of cooperation across difference. Barriers like racism, misogyny, Islamophobia, and anti-Semitism prevent people from making their contribution to a pluralistic society. Bigotry in all its forms must be called out and defeated. However, the eradication of prejudice is not enough; we must proactively build a pluralistic democracy that cherishes the contributions of all. When people are proactively invited into productive interreligious or intergroup engagement, they can and do serve as active bridgebuilders, creating a different world for themselves and the next generation.

---

[i] Rockenbach, A. N., Mayhew, M. J., Giess, M. E., Morin, S. M., Staples, B. A., Correia-Harker, B. P., & Associates. (2020). IDEALS: Bridging religious divides through higher education. Interfaith Youth Core.
[ii] April 2024 Poll: US Jews & Muslims Face Rising Discrimination - Bridge Initiative (georgetown.edu). https://bridge.georgetown.edu/research/april-2024-poll-us-jews-muslims-face-rising-discrimination/. Accessed September 13, 2024.
[iii] Mogahed, Dalia & Ikramullah, Erum. American Muslim Poll 2022: A Politics and Pandemic Status Report. August 2022: Institute for Social Policy and Understanding
[iv] Tropp, L. R. & Dehrone, T. A. (2022). Cultivating Contact: A Guide to Building Bridges and Meaningful Connections Between Groups. American Immigration Council.

THE INSTITUTE FOR THE UNDERSTANDING
OF ANTI-PALESTINIAN RACISM

It is important to raise awareness of all forms of discrimination and specifically anti-Palestinian racism because it is under-recognized, pervasive, highly prevalent and has a significant health impact.

Key study findings from the Institute for the Understanding of Anti-Palestinian Racism:

1. Anti-Palestinian racism affects both Palestinians and non-Palestinians.
2. 88% of more than 1200 survey respondents reporting experiencing or witnessing anti-Palestinian racism.
3. Prevalent in the most significant sectors of society including schools, work, healthcare settings & public spaces.
4. >75% of respondents reported feeling isolated and alone and 55% of respondents reported feeling afraid.
5. >70% of all respondents (and >75% of students, faculty, teachers and staff) reported mental and physical health effects from anti-Palestinian racism.
6. 74% of over 260 students, faculty, teachers and staff reported experiencing anti-Palestinian racism, >60% was from faculty, educators or staff.

The key principles of Anti-Palestinian Racism:

1. It is distinct from anti-Muslim hate, Islamophobia and anti-Arab racism.
2. It impacts both Palestinians and non-Palestinians regardless of their race, religion or ethnic background.
3. Anti-Palestinian racism framing is an anti-oppression tool, not a weapon.
4. Naming anti-Palestinian racism is a step towards addressing the smearing, erasure and exclusion of Palestinians and their narratives.

Anti-Palestinian Racism takes various forms, including:

- **Erasure:** e.g. denying the Nakba; failing to acknowledge Palestinians as an Indigenous people to occupied and historic Palestine; excluding or pressuring others to exclude Palestinian perspectives, Palestinians and their allies; upholding a Palestine exception to freedom of speech.
- **Justification of violence against Palestinians:** e.g. rationalizing use of violence against Palestinians; dehumanization of Palestinians; erasing the human rights, equal dignity and worth of Palestinians; characterizing Palestinians as lacking basic human emotions such as not caring for their children.
- **Defamation:** e.g. smearing those who support Palestinian human rights; claiming Palestinian rights movements are motivated by hate or antisemitism; defaming Palestinians and their allies with slander such as being inherently anti-semitic, a terrorist threat/sympathizer or opposed to democratic values.

The primary targets of Anti-Palestinian Racism:

- Palestinians in Israel, the Occupied Palestinian Territories and diaspora;
- People perceived to be Palestinian or those who simply express support for Palestinian rights;
- Allies and advocates for Palestinian human rights.

The Palestinian identity is always at the core of anti-Palestinian racism even when it affects non-Palestinians.

Anti-Palestinian Racism is distinct from Islamophobia

- While there may be intersectionality with anti-Arab racism and Islamophobia, anti-Palestinian racism is a distinct form of racism. It specifically targets the Palestinian identity and those advocating for Palestinian rights.

The Effects of Conflating Anti-Palestinian Racism with Islamophobia:

- It erases the religious diversity of Palestinians who may practice many faiths or none at all;
- It mischaracterizes Israel/Palestine as a religious conflict instead of one of settler-colonialism and apartheid;
- Resources are misdirected and thereby fail to address anti-Palestinian racism allowing it to persist.
- Ignores the devastating impact of anti-Palestinian racism;
- Silences Palestinians and their allies, contributes to their suppression and perpetuates harm;
- Contributes to the erasure of Palestinian identity and narratives.

Harmful Impacts of Anti-Palestinian Racism include:

1. Experiencing violence or witnessing violence against Palestinians and allies in the media or public sphere.
2. Negative stereotypes in mainstream media, school, workplaces. Dealing with microaggressions at school/workplaces.
3. Not being believed or supported when smeared, or falsely accused of promoting hate.
4. Facing criticisms, discipline or scrutiny because of Palestinian identity or support of Palestinian rights.
5. Being denied equal opportunities or advancements because of Palestinian identity or supportive views on Palestine.
6. Being treated as controversial, divisive, primitive or inferior and dismissed because of work on Palestine.
7. Racial trauma - feelings of fear, anxiety, self-doubt, depression, low self-esteem, hypervigilance, insecurity and isolation among other negative emotions or physical symptoms e.g. insomnia, headaches, body pain, loss of appetite
8. Hiding identity, alienation, isolation.

September 18, 2024

Regarding Senate Judiciary Committee Hearing on Sept. 17, 2024 — in honor of Wadee Al-Fayoume

Dear Senator Durbin,

My family and I were so very moved by the resolution that you co-authored in honor of young Wadee Al-Fayoume. It honored the history of Palestinian Americans in the US, and simply humanized them. This resolution against hate — of any kind — is so critical right now.

I was moved very much by the comments of Senator Welch from Vermont. He showed what many of us have been feeling, but unfortunately there is too much hatred around for anyone to hear it. Basically, this is not a zero-sum game. We can be horrified by antisemitism in this country, and equally outraged by anti-Palestinian racism, anti-Muslim hate, and anti-Arab hate. We can fight against all of these things, as it's the right thing to do.

Unfortunately, the comments of Senator Kennedy were an incredible display of anti-Palestinian racism, anti-Arab racism, and anti-Muslim hate — and case in point why this must be passed. Calling Maya Berry a terrorist sympathizer, because she advocates for the human rights of Palestinian Americans — like Wadee Al-Fayoume, and Hisham Awartani — is anti-Palestinian racism. I don't need to remind you that he ended his comments by saying she should "hide [her] head in a bag."

This was dehumanizing hate speech — and not only should the record of Senator Kennedy's comments be part of the argument for passage of this resolution — but he should be censured for his hate speech.

Thank you again, for your quite beautiful resolution, and I hope dearly that it passes.

Katrina Saba, MD
Pediatrician
Oakland, California

CAIR-Chicago - Client Statement

Name: Khalid Hassan

Location: North Chicago

Statement

One day, while we were on our way to work, we stopped at a traffic light because it was red, and a man in a van hit our car from behind. When we got out to talk to him, he immediately started fighting with us. He pushed my friend and brother and used many offensive words. He told us to "go back to your country" and said other hateful things.

When I saw that he was behaving aggressively, I called the police. While I was on the phone with the police, my friend tried to record him, but the man grabbed his phone and threw it on the road, breaking it. Suddenly, he pulled out a gun and threatened us, saying he would shoot us. We were terrified because he had a weapon.

The police arrived within a few minutes, but the man ran away before they got there. It was a terrible day for us. We explained everything to the police, and they gave us a card, saying they would let us know when they find the man. We also provided them with pictures of the car, which included part of his face and the license plate number.

However, the police still haven't been able to find him. My brother, who is 18, is still scared when he sleeps because the man almost shot us, punched my friend, broke our phones, and damaged my car.

KHALID JABARA FOUNDATION

September 17, 2024

Senate Judiciary Committee Hearing - *A Threat to Justice Everywhere: Stemming the Tide of Hate Crimes in America*

Honorable Chairperson and members of this distinguished committee,

We are writing to you on behalf of our family, all the families affected by hate-fueled violence, and the memory of our beloved brother, Khalid Jabara. We thank you for allowing us to share our story and for bringing attention to the rise of hate incidents and hate crimes, particularly those targeting Arab, Palestinian, and Muslim Americans. We also stand in solidarity with the families of victims from other communities who have been similarly targeted by hate —including Jewish, Asian, Hispanic, African, Sikh, Hispanic, Native and LGBTQ+ Americans.

Khalid was a kind and compassionate person who loved his family and his community. But on August 12, 2016, he was murdered on the doorstep of our family home in Tulsa, Oklahoma, by a neighbor consumed with hatred for who we are and where we come from. This man had harassed our family for years, referring to us as "dirty Arabs" and "terrorists," “filthy Lebanese.” Our family endured trauma for years as we lived under a constant state of fear and harassment from this neighbor. We sought protection from the police and the legal system, but our concerns were minimized and ignored.

The hatred escalated in 2015 when our mother, Haifa Jabara, was nearly murdered by the same man who later killed Khalid. He ran her over with his car, causing severe injuries that almost took her life. Yet, despite this violent attack, he was released from custody and allowed to remain a threat to our family. Less than a year later, he took Khalid’s life. Khalid’s death was not just the result of one man’s hatred—it was a result of the system’s failure to act when it was most needed. We lost our brother, and my mother’s near-death experience added to the unimaginable trauma our family has endured.

One year later, Heather Heyer was murdered in Charlottesville, Virginia. She died while standing up to the same hate that took Khalid’s life—white supremacy. Her loss was another painful reminder that hate continues to grow unchecked in our country. We are grateful that, in response, Congress passed the Khalid Jabara and Heather Heyer NO HATE Act, a bi-partisan effort championed by the Biden-Harris Administration. This legislation seeks to improve the reporting of hate crimes and provide better support to victims.

Already, the Jabara-Heyer NO HATE Act has enabled critical programming across the country, including the creation of state-run hate crime reporting hotlines in states like California and Illinois, where victims can report incidents anonymously and receive support from trained professionals. These hotlines are essential tools for collecting hate crime data and providing immediate resources to victims. Through the Office for Victims

of Crime (OVC), grants have been made available to further establish these hotlines, providing states with up to $1,165,000 to implement these programs. These hotlines serve as lifelines for victims who may not feel comfortable going directly to law enforcement. Programs like these are a direct result of the Jabara-Heyer NO HATE Act, offering tangible support to those most in need.

Hate knows no boundaries.

We are witnessing a disturbing rise in anti-Arab, anti-Palestinian, and anti-Muslim rhetoric, as well as a surge in hate against other marginalized groups. The recent violence and verbal assaults targeting Jewish, Asian, Black, Hispanic, and Sikh Americans, among others, highlight that no community is immune to the dangers of hate. From physical assaults to online harassment, hate is being amplified by public figures, media, and social platforms, feeding into an environment that emboldens violent acts.

More must be done.

While the Jabara-Heyer NO HATE Act is a critical tool, it is only the beginning. Hate crimes are still underreported and often mishandled, and we cannot allow these failures to continue. The following actions are essential to ensure that hate crimes are properly addressed and that victims receive the support they deserve:

1. **Mandatory Hate Crime Reporting through NIBRS:** We demand that the National Incident-Based Reporting System (NIBRS) be made mandatory for all law enforcement agencies across the country. Without accurate and consistent data on hate crimes, we cannot fully understand the scope of the problem or allocate resources where they are needed most. Currently, many jurisdictions either do not report hate crimes or fail to classify them properly, leaving large gaps in our understanding. Mandatory NIBRS reporting is essential for accountability and transparency in hate crime data collection.

2. **Training for Prosecutors, Law Enforcement, and Personnel:** Hate crimes are often under-recognized and under-prosecuted, partly because many prosecutors and law enforcement officers are not familiar with hate crime statutes in their own states. We call for increased training programs at the federal, state, and local levels to ensure that all personnel are equipped to recognize hateful conduct and respond appropriately. These programs must include specific guidance on identifying hate-based motivations and understanding the unique harms caused by hate crimes. Without this training, hate crimes will continue to be dismissed or downgraded to lesser charges, allowing perpetrators to escape full accountability.

3. **Increased Visibility of Federal Authorities in At-Risk Communities:** We urge the FBI, Department of Justice, and U.S. Attorneys' Offices to be more visible and accessible to communities at risk of hate crimes. Many communities feel isolated and vulnerable, uncertain about where to turn for help. Federal authorities must engage directly with these communities, building trust and ensuring that victims know where to report incidents and how to seek justice. Additionally, the DOJ should explore the use of hate crime crisis response teams to offer immediate support and demonstrate federal commitment to communities affected by hate incidents. These teams would provide rapid response, assess the needs of affected communities, and coordinate with local resources to address the fallout of hate crimes.
4. **More Resources for Local Crime Victim Advocates:** At the local level, crime victim advocates play a crucial role in providing immediate support to victims of hate crimes. Yet, they are often underfunded and overstretched. We demand increased funding and resources for crime victim advocates at the county and municipal levels to ensure that every victim has access to trauma-informed care and support services. These advocates are essential in helping victims navigate the legal system, recover emotionally, and rebuild their lives after traumatic incidents.

5. **A Nationwide Hate Crime Reporting Hotline:** We need a universal, nationwide hate crime reporting hotline, modeled after the National Mental Health Crisis Hotline, to ensure that victims across the country have a single, reliable point of contact for reporting hate crimes. Such a hotline would allow victims to report incidents anonymously if they choose, connect them with local resources, and ensure their cases are followed up on. A centralized hotline would provide a uniform response and allow for better data collection on hate crimes nationwide.

Our family lost Khalid to hate, just as Heather's family lost her. We cannot afford to lose more lives because of the toxic hate that continues to spread in this country. We cannot allow communities—whether Arab, Muslim, Jewish, Asian, Black or African American, Hispanic, Sikh, or any other—to continue living in fear. We need stronger laws, better enforcement, and more resources to combat hate and protect the most vulnerable among us.

KHALID JABARA FOUNDATION

September 17, 2024

How we honor Khalid.

The Khalid Jabara Foundation was created in memory of our beloved brother and son, Khalid Jabara. The foundation stands as a testament to his legacy, committed to combating hate crimes and advocating for greater awareness, prevention, and legislative reform. Over the years, we have worked tirelessly to bring attention to the systemic challenges that allow hate to fester in our communities. Through public campaigns, partnerships with advocacy groups, such as The Leadership Conference on Civil and Human Rights, the Lawyer's Committee for Civil Rights Under Law, the Arab American Institute, Southern Poverty Law Center, and many others, and direct support to victims of hate crimes, we aim to create a safer, more inclusive society.

One of our core missions has been raising awareness about the gaps in hate crime legislation and how they contribute to underreporting and ineffective prosecution. We have developed educational programs for communities, collaborated with law enforcement agencies to improve reporting mechanisms, and worked alongside lawmakers to push for stronger protections. Our work has reached across different demographics, bringing together diverse groups to foster unity and shared responsibility in combating hate. Through these efforts, we honor Khalid's memory by building a world where love triumphs over hate, and no one has to fear for their life because of who they are.

We implore you to act now. Your decisions will determine whether more families will suffer the same pain we have endured. We ask you to strengthen your commitment to fighting hate in all its forms, to ensure that no community is left to fend for itself, and to make clear that hate has no place in America.

Khalid's life mattered. Heather's life mattered. The lives of every victim of hate crimes matter. It is up to you to ensure that these lives are honored, and that hate is met with the full force of justice.



Statement from Life After Hate Executive Director and CEO Patrick Riccards

To the U.S. Senate Judiciary Committee

September 17, 2024

My name is Patrick Riccards, and I am executive director and CEO of Life After Hate, the United States' leading violence intervention organization and one of the world's leading social service organizations helping individuals successfully disengage from violent extremist groups and online hate spaces.

Now, more than ever, our nation needs individuals and organizations who are committed to building safer communities by combating violent extremism and hate crimes. By offering practical paths to help individuals disengage from their lives of violent and destructive hate, Life After Hate is without peer in providing a place where violent extremists can take accountability for their past actions and reintegrate into society in meaningful, productive ways.

The data is clear. The United States continues to experience a surge in homegrown domestic terror incidents. This reality is flooded into our lives on a daily basis through social media platforms and news outlets. Buffalo, Pittsburgh, Charleston, Orlando, Jacksonville…. the deadly violence of domestic terrorism continues to threaten our nation on overwhelming levels. And recent public opinion data from Life After Hate clearly shows Americans believe that ideologically-driven violence has gotten worse over the last decade.

The vast majority of these incidents come at the hands of white supremacists, antisemetics, xenophobes, homophobes, and anti-government extremists. According to data compiled by the Center for Strategic International Studies and analyzed by The Washington Post, "since 2015, right-wing extremists have been involved in 267 plots or attacks and 91 fatalities, the data shows." Recent FBI data shows ideology-based violent crimes at their highest levels in more than a decade.

This frightening data only accounts for physical, in-person actions. It doesn't begin to factor in the attacks, threats, vitriol, tropes, and the hate and rhetoric that is being circulated across social media platforms for promotion and recruitment purposes. Hate is stronger, and continues to grow in many who have the protection of hiding behind a keyboard, and equipping themselves with the tools to terrorize communities.

Simply put, violent extremism in the United States poses a clear and present danger to our nation, our communities, and our loved ones. Research study after research study demonstrates that ideology-based violence continues to rise, year after year. Despite the data and despite the public

understanding, we, as a civil society, still do very little to address this scourge. We fear that calling out the violent far right is somehow a political statement, rather than one targeting hate-based ideology. We fear that calling out violent antisemitism, for instance, is somehow an endorsement of islamophobia. We fear that calling out violent misogyny or attacks against the LGBTQ+ community is an affront to the male ego. And we fear that calling violent extremism what it is — domestic terrorism — is somehow an idea that can be misunderstood, misapplied, or misperceived as an overreaction, a misrepresentation, or a fiction.

So I commend the Senate Judiciary Committee for taking on this issue, and taking it seriously.

Last year, Life After Hate conducted a national survey, determining public perceptions about this trend. It found that 66% of Americans believe that the number of violent hate crimes has increased over the last decade, while 68% believe that violent acts of hate should be considered domestic forms of terrorism. But almost half, 48%, also believe that those who commit such acts cannot reform or change their ways. We recognize that the threats posed by hate crimes are very real, and growing, but we doubt there is anything that really can be done to combat it.

As a result, much of the collective work focused on addressing issues of violent extremism in the United States is a nibbling around the edges of our societal fabric, doing very little to actually step the tide of hate crimes in America. We take action, but not too much out of fear of being targeted. We treat the primary and tertiary care necessary to help individuals disengage from hateful ideology much like Hogwarts did with Voldemort — work that should not be named. We seek out labels that will not offend, we minimize the risks not addressing the problem causes, and we struggle to adequately discuss the benefits of confronting violent extremism and the societal costs of not doing so.

If we are to take hate crimes and those who commit them seriously, we need to adopt approaches that require individuals, groups, and the government to take specific action.

It means not only acknowledging that hate crimes are a problem, but also being ready to commit to a solution. That means transforming one's personal or societal concerns into a call to arms to demonstrate to a variety of audiences, in dramatic and memorable ways, that there are real solutions for addressing violent extremism, solutions that are the right ones for the particular problems we now face.

It means realizing that ideologically driven violence is not only an urgent concern, but it is also one that demands those available solutions. If one has been successful in defining the scourge of violent extremism in the correct terms, it will be easier for us to state solutions convincingly.

It means being prepared for the inevitable reality that some people will reject the proposed solutions. This leads to the most difficult stage of successful social change. Some will be reluctant to face the truth regarding the size, scope, and impact of violent extremism today, others will say the tradeoffs and the costs that come from making violent extremism public enemy number one aren't worth it, and will try to poke holes in our solutions. This resistance may be heightened by misunderstanding, narrow thinking, wishful thinking, or resistance to change.

It means that, once one has pushed through this resistance, they can weigh the choices rationally and look to a variety of options for moving recommendations into practice. As leaders in this process —

with a unique awareness of how decisions are made — groups like Life After Hate can clarify the pros and cons of each decision and allow time and opportunity for deliberation. Those that matter must see that violent extremism is a growing problem, that there are viable acts for confronting it, and that those acts are worth our time and attention.

The process of moving from awareness to action takes time. If we, as a civil society, are committed to standing up and rejecting violent extremism and its resultant hate crimes, then we have to accept that we are taking on ideologies that issues that are largely driven by emotion and in the absence of fact or truth. Ideologically based hate is emotional. Hate crimes are emotional. Terrorism is emotional. There is no getting around it.

That is why we must harness the power of compassion, of understanding, of redemption, and of community to combat such emotions. If one believes that violent extremism is a clear and present danger threatening the our communities and our collective strength, we must engage it head on, with all that we collectively possess.

Commitment to Mission

Violent extremism (VE) in the United States today includes violence-justifying white supremacist, antisemitic, misogynist, anti-LGBTQ+, anti-immigrant, anti-Latino, anti-Asian, anti-Muslim, and anti-government beliefs. As previously shared, Life After Hate's primary mission is to help individuals disengage from violent extremist groups and online hate spaces and reintegrate into society after involvement in VE. We provide services at the individual, family, and local community levels in conjunction with public education initiatives to weaken the growth and impact of violent extremist groups by showing individuals pathways away from hate and ideologically-driven violence.

Life After Hate is clear that our priority is the safety and wellbeing of those we serve and of society at large. This means that the decisions and recommendations made to exiting individuals should align with our commitment to the safety of society, the individuals' wellbeing, and with best and promising practice.

The tertiary intervention services that Life After Hate is pioneering is but one way that our community can prevent future acts of violent extremism, an essential part of a comprehensive approach to preventing and countering violent extremism today. That care requires that the exiting individual, and not the organization itself, be the focus. Those committed to the exit process should not be exploited as PR tools to help boost an organization's public position, and no former extremist should ever be forced to tell his or her story. The individual, their successful exit from violent extremism, and the safety of society must always be our priority. Life After Hate will continue to release our policies and guidance for organizations working with exiting individuals and Formers that will demonstrate a commitment to focusing on the client, as we have over the past few years.

The Mental Health Aspects of Hate Crimes

In our work, we find that the scope of violence often far exceeds the traditional definition of terrorism and violent extremism. If we focused our services only on hate crimes, we would be placing exiting individuals, their families, and our communities at risk from other forms of violence. Unfortunately, countering violent extremism (CVE) programs are not often composed of

multidisciplinary teams with the training and experience working with other forms of violence, such as intimate partner violence and child abuse, nor recognizing, assessing, and managing risk for suicide. Sometimes, this means that interventions or advice that focuses solely on addressing violent extremism causes or can cause harm to those individuals in an extremist's environment.

Based on the Life After Hate data, we determined:

- 88% of exiting individuals endorsed experiencing at least one mental health symptom or risk factor such as suicidal ideation, violence ideation, depressed mood, anxiety, panic, major shifts in mood, angry outbursts, or low self-esteem.
- Nearly 50% of exiting individual reported some form of risk at intake, with 42% reporting suicidal ideation and 28% reporting violence ideation or intent within the past 30 days.
- When asked, 42% of exiting individuals reported feeling alone and 35% reported feeling helpless. Individuals who were actively involved in violent far right extremist groups and those who had recently disengaged were most likely to report feeling alone and helpless, while those who had been disengaged for multiple years were less likely to endorse those feelings.

Mental health is a key consideration to confronting hate crimes today, and programs who seek to support self-referred individuals who are or have been involved in violent extremism should be prepared to assess for and respond to mental health needs. This reinforces the need for a multidisciplinary team with licensed behavioral health providers who are trained to recognize, screen, and respond to mental health needs. Though mental health symptoms or disorders may not be the reason the individual became involved or remained in violent extremism, they may be barriers to disengagement and reintegration.

Loneliness and helplessness are major factors, and programs working with exiting individuals should address issues of loneliness and social isolation. Direct social support, such as peer mentoring, or through services that promote the development of healthy social support networks such as education or skills training to develop interpersonal skills may be helpful. Likewise, programs should empower and support socially responsible self-determination in exiting individuals through future-oriented planning, goal setting, and services to address barriers to achieving personal goals.

These realities demonstrate the challenges that organizations like Life After Hate face at the start of each exit and highlights the need for the changes we are currently adopting in the services we provide. The individuals coming to Life After Hate are grappling with serious issues. For years, there is much that providers like Life After Hate believed, based on anecdotal evidence. Now, there is clear data directly from those individuals who are involved in and exiting violent extremism to support those assumptions.

Tertiary Care Provided by a Multidisciplinary Team

While the proverb, "It takes a village …" is grossly overused, it is a truth when it comes to countering violent extremism and helping individuals successfully disengage from lives of violent hate and reintegrate into civil society.

Those who have known Life After Hate since 2011 may have noticed that we have evolved tremendously as an organization in recent years. Today, our work is built on priorities like

transparency, professional standards, codes of ethics, data-driven practices, and outcomes. We have evolved from being the first nonprofit organization in the United States dedicated to facilitating exit from the violent far right to now being the national leader in tertiary intervention from violent extremism, while working with individuals from around the globe on their journeys out of ideological hate and violence. We continually recognize our responsibility to society, our clients, the organization, the nation, and the world.

This evolution was intentional. Today, all of Life After Hate's work is based on a simple philosophy – compassion with accountability. It isn't every non-profit organization that can put such a statement forward as its mantra. For us, though, it is a statement that reflects our commitment, our passion, and our work.

Declaring such a goal is easy. Fulfilling it, particularly in the CVE space, is far more challenging. One key to Life After Hate's work is our commitment to a dynamic and diverse team of professionals focused on our mission and the difficult work at hand. By employing a multidisciplinary team with psychologists, social workers, and former extremists, there is a higher likelihood of success in promoting disengagement and reintegration. By creating and maintaining a safe space to build awareness of the dangers of ideology-based violence, we address a range of issues within our communities of influence. In many instances, our models and approaches have been adopted by the community – and by partners and competitors – who recognize our work as being industry-leading.

Our case managers are trained as social workers, providing case management services, psychoeducation, and skills training to promote exit from violent extremism. Our team offers psychoeducational support groups that are developed for exiting individuals and led by these case managers and by our Exit specialists, all of whom have successfully left behind their past lives of violent extremism to now stand as exemplars of the second chances society can provide if one takes responsibility for their past actions.. Today, these Exit specialists work with individuals to challenge and modify violent extremist beliefs, behaviors, and social networks to promote reintegration into society.

These services, and the teams that provide them, are an essential tool to helping build safer communities and prevent future acts of violent extremism. When Life After Hate was first established, we were simply a group of former violent extremists looking to offer our own experiences to others. At the time, such support was all that was necessary. Over time, we came to realize that the people we were mentoring often had complex needs that required the skilled intervention and support of a variety of professionals, including social workers and mental health professionals. Today, we realize that addressing hate crimes and those responsible for them requires far, far more than simply meaning well and trying hard. It demands services developed and led by an interdisciplinary team of licensed professionals, partnering with those with shared, lived experiences. Those services are delivered by Life After Hate professionals virtually, allowing us to protect confidentiality, ensure the safety of our team, and serve individuals in need across the globe.

The role of former extremists in the process is central to the success of this work. Formers play an essential role to exiting individuals, as no one else brings the experiences they do in understanding both living a life of violent hate and the struggles and benefits that come from ultimately leaving it and taking responsibility for the hate crimes they have committed. Our Exit specialists are some of the strongest individuals one will find, each day taking accountability for their past actions and each day making amends through their current work. From my point of view, a dedicated commitment to

reducing ideology-based hate crimes in the United States is not be possible without the hard work, the proven achievements, and the dedication of this population of professionals with lived experiences in violent extremist groups and online hate spaces.

The policies, standards, and procedures adopted by Life After Hate and organizations like it further our collective commitment to compassion with accountability. All members of our team, regardless of their histories, should be held accountable both for their past actions and current work. If we expect exiting individuals to take accountability for their actions, then we must do the same ourselves. Accountability is a non-negotiable in this work, along with compassion, empathy, integrity, and redemption.

The services Life After Hate provides to exiting individuals is labor intensive. Our participants come to us in various stages of disengagement from violent behavior; it can take months or years to completely disengage from VE and reintegrate into society. To see this through completion, our multidisciplinary team sustains meaningful connections and partnerships with those that we serve.

In addition to being intensive, this work is getting more and more complex. Recent efforts to provide targeted services to women engaged in violent extremism is one example, with case managers and specialists collaborating to offer the individual and group support these individuals need to successfully disengage. The complexity of this example pales in our recent commitments to take on court-mandated cases and to work with juveniles (often also court mandated). As a mandate-to-report organization, we do this not only because we are asked, but also because we know it is necessary to make our communities safer and to confront the growth of violent ideology in society.

Conclusion

I'm often asked if "these people," those seeking to exit lives of violent hate, are worth the time, effort, and expense. One only needs to see the impact a multidisciplinary team can have on a struggling individual, providing the roadmap and supports necessary to travel the road of redemption and rebirth. These skilled team members make our communities stronger and safer each day, strengthening the roots a modern civil society demands and helping law enforcement prevent future hate crimes. Equally important, they show individuals the kindness, empathy, and tough love necessary to reject violent extremism and leave behind lives of violent hate. They show that life after hate is indeed possible, both in their work and in the impact it has on the many individuals they help.

###

12 September 2024

The Senate Judiciary Committee
224 Dirksen Senate Office Building
Washington, DC 20510

Dear Chairman Durbin, Ranking Member Graham, and Committee Members:

In coordination with the Sikh Coalition, I, Lakhwant Singh, am writing to inform the Committee of my personal experience relevant to your hearing, "A Threat to Justice Everywhere: Stemming the Tide of Hate Crimes in America."

On April 29, 2020, my wife and I were tending our convenience store in Lakewood, Colorado, when a man entered and became agitated. He repeatedly told us both to "go back to your country." I asked him to leave, and when he did, I followed him outside into the parking lot so I could take a photograph of his license plate for the police; when I attempted to do so, he struck me with his car and left me for dead.[1] I was later told by officers of the Lakewood Police Department that the man described me as an "older Arab" to the officers who ultimately arrested him.

It was clear to me and my wife, as well as the attorneys at the Sikh Coalition, that this man attacked me due to his negative opinions about my race, national origin, and potentially my religion. Unfortunately, the district attorney who brought charges in the case did not initially share that opinion. It took months of advocacy—including more than 2,600 emails to the district attorney's office, a coalition of 29 civil rights and faith-based organizations speaking out, and significant media pressure—to ensure those charges were ultimately filed.[2]

My attacker is moving through the justice system; for years, he has been cycling in and out of judicial hearings as his competency to stand trial is discussed. But more relevant to your Committee's conversation, the fight to achieve hate crime charges in my case is emblematic of the struggles faced by Sikhs and other marginalized groups who face violent hate. Too often do we come forward to tell our stories and relive our trauma, only to have police refuse to investigate the harm done to us as hate crimes or prosecutors refuse to bring hate crime charges. I am fortunate, in short, that it "only" took months for my case to be handled properly.

What's more, according to my attorneys, the delay in my specific circumstances seems to have been caused by a district attorney's office misunderstanding whether or not Colorado allows for

---

[1] Sam Tabachnik, "A Sikh business owner was told to "go back your country" before being run over by a car. Now the community is demanding justice." The Denver Post, Jul. 1, 2020, https://www.denverpost.com/2020/07/01/lakhwant-singh-hate-crime-lakewood/.
[2] May Ortega, "Man Accused Of Running Over Sikh In Lakewood Charged With Hate Crime," Colorado Public Radio, Jul. 23, 2020, https://www.cpr.org/2020/07/23/man-accused-of-running-over-sikh-in-lakewood-charged-with-hate-crime/.

mixed-motive prosecutions. According to advocates like those at the Sikh Coalition, this is an issue that persists at the federal level: Current law does not allow for these mixed-motive prosecutions, meaning that law enforcement must gamble on a motive that is difficult to prove when pursuing a hate crime conviction at the federal level. This dramatically weakens the federal government's ability to step in and provide an avenue towards justice when state or local authorities aren't handling cases properly.

The loophole could be closed with legislation like the Justice for Victims of Hate Crimes Act, but unfortunately, it was last introduced in Congress in 2020, but has not been discussed since then. It is my hope that this is one of many policy prescriptions that your Committee might consider as you continue this important conversation of how to reduce and effectively counter hate violence in our nation. Anything you can do to help people who experience what I experienced have a smoother path to peace and justice would be a welcome change.

I thank you for the opportunity to submit my story into the congressional record.

Respectfully,
Lakhwant Singh

This hearing took place on September 17, 2024 at 10:AM Eastern and was live broadcast.

I attended this hearing via the Live Broadcast feed. Your introduction to the meeting was compassionate, giving recognition to Wadee Al-Fayoumi, the six year old Palestine-American who was shot dead when he opened the door. You recognized his grieving mother. Then you Recapped the hate crime also citing the murder of the students wearing the Kefayah.

Senator Lindsay Graham was the first of the Minority Party to speek and completely hijacked the hearing. He did not recognize Wadee's mother who was present in the room nor offer condolences as most polite and courteous people would do.

The first thing he brought up was the Tree of Life Synagog Massacre in 2018. He didn't go into much detail, but here is what I found:

The gunman Robert Bowers at the time of the crime was approximately 46 years old. Mug shots show he was a well-built middle age white male. He had 63 criminal counts against him, and the jury found him guilty and Recommended the death sentence in August of 2023. I did not find evidence of the execution taking place. This was truely a hate crime!

As I re-read the account, my heart weeps for the victims and the survivors.

Graham then went into a tyrade about thinking the meeting was about Student protesting, and perceived violence Jewish students experienced on campus. Showing images from various protests on US campuses and possibly some abroad.He asked for expaination of Arabic words and when he didn't hear what he wanted, he badgered the Majorty Witness with insults and islamaphobic rhetoric. He slammed his book closed and walked out of the meeting.

The whole of the Minority committee members followed suit, showing signs and photos of world demonstration events relating to the anhilation of Gaza's citizens. At one point Senator Cruz badgered the Majority Party witness, this was later repeated by Senator Hawley with as much hate and venom as he could muster. This in itself was a 'hate crime' being committed live and on camera. A third Senator did likewise.

My hats off to the Arab American Lawyer and Witness for the Majority party who took the higher road and responded intelligently to the insane badgering of these bullies.

This is not the hearing I expected when I tuned in. Is ther a possibility ofa do-over where both sides stick to the topic of Hate Crime in America as experienced by many americans of different skin colors, Faiths, countries of origin, etc.

About Me.

I am a 76 year old white female Muslima. You have no idea how often I am harassed when I wear my religious garments in public. You don't know the fear of having the hijab ripped off or being verbally abused. You don't know the fear I have experineced as a 76 year old white skinned American-born Muslim woman when I go into a grocery store, or approach my car in a parking lot. I keep to myself and don't pester anyone, and yet these hateful actions occur often. The Muslim men and boys are harassed too. As the majority of Muslims in the United States are either first or second generation Americans, they have a tendency to not report these crimes to authorities as some of them are Islamaphobs. Since 9-11 we have had to have police security present for every Friday prayer meeting, for Sunday School for the kids, and in some areas, security has to be present in Masjids (Mosques) for each of our five daily prayers.

The majority of Muslims around the world express respect for those following the Jewish and Christian faiths, In some communities, we have social events together, and have interfaith prayers often. It is only when Zionism is introduced that Islamaphobia is introduced. To be clear, Zionism is a social construct, separate from Judahism.

Thank you Senator for the work that you do. We include you in our daily prayers. May you be rightly guided.

--

Luci

MJF

MuslimsforJustFutures.org

WRITTEN STATEMENT OF
Darakshan Raja, Executive Director
Muslims for Just Futures
A Threat To Justice Everywhere: Stemming the Tide of Hate Crimes in America
UNITED STATES SENATE
COMMITTEE ON THE JUDICIARY
September 17, 2024

Muslims for Just Futures ("MJF") submits the following statement for the Senate Judiciary Committee's hearing titled *A Threat To Justice Everywhere: Stemming The Tide of Hate Crimes in America*. MJF is a grassroots organization that works to build power in Muslim communities through collective care, organizing, advocacy, and movement-building. MJF is dedicated to countering the widespread divestment from Muslim communities resulting from criminalization, structural Islamophobia, and gendered Islamophobia by focusing on investing in economic justice, gender justice, and healing justice. MJF envisions a society where all of our communities live with dignity, power, and freedom. Our organization was founded in direct response to hate violence, systemic Islamophobia, and the persistent violence disproportionately impacting Muslim women. As we reflect on 23 years since the post-9/11 backlash, we continue to see an alarming rise in hate crimes against Muslim women, along with the expansion of discriminatory government policies justified by the so-called 'War on Terror.' The recommendations in this statement are drawn from a cross-movement community memorandum we developed, with input and endorsement from 95 community organizations for government agencies on ways to address Islamophobia and hate in our communities.[1]

Black, Arab, Muslim Middle Eastern, South Asian ("BAMEMSA"), Southwest Asian and North African ("SWANA"), and Sikh communities have long faced acts of bigotry, violence, anti-immigrant bias, structural Islamophobia, and a climate of dehumanization in the United States. These experiences are further exacerbated during times of national and international crises, evidenced by the backlash after the September 11th attacks and anti-Palestinian racism in the midst of the ongoing genocide in Gaza and occupied Palestine. As we mark twenty-three years of post-9/11 backlash, the death toll from anti-Muslim government policies is staggering. According to Brown University's Cost of War Project, a staggering 4.7 million people have lost their lives, 38 million refugees have been created as a result of the War on Terror, and a minimum of 8 trillion dollars have been wasted.[2] These government policies establish the precedent and political context for the normalization of the dehumanization of BAMEMSA and SWNANA communities, fueling hate violence, discriminatory targeting, and a culture sustained by impunity and a lack of accountability. **Our communities have endured this violence without respite for over 23 years.**

---

[1] Muslims for Just Futures, *et. a*l. "Community Memorandum: Recommendations for A Foundational White House Islamophobia Strategy," April 2024, available at https://www.muslimsforjustfutures.org/blog/communitymemo.
[2] Brown University. Watson Institute for International and Public Affairs. Costs of War Project. Accessed from https://watson.brown.edu/costsofwar/

As the Committee explores the climate of hate in the United States currently, we urge you to:

- Uplift and center the voices and perspectives of community members directly affected by the climate of dehumanization and bigotry;
- Expose and address the root causes of generational inequity and injustice that foster the environment for bigotry and hate to emerge and permeate society, especially government policies that harm and hurt communities;
- Call for an end to the genocide in Gaza and an embargo on arms to Israel;
- End post 9/11 War on Terror state policies that surveil, profile, and target our communities, reinforce state power, and result in further criminalization, reinforcing a cycle of systemic neglect and violence;
- Eradicate structural Islamophobia, which MJF defines as a system of dehumanization that impacts Muslims and communities racialized as Muslim;
- Fund and support restorative justice programs, victim compensation funds, and culturally, mentally, and linguistically appropriate care and services for victims and survivors of hate violence, including access to legal services, mental health services, and community support networks;
- Buttress the ability of civil rights agencies to investigate complaints of discrimination from affected community members;
- Refrain from expanding domestic terrorism laws and surveillance programs under the guise of addressing hate violence;
- Invest in community-centered solutions that reduce harm and foster community safety and well-being;
- Establish a federal interagency task force to address the structural roots of Islamophobia and the ensuing detrimental state policies, such as the War on Terror, that stems from such prejudice;
- Provide regular updates, information, and data to organizations working with directly affected communities;
- Pledge to refrain from engaging in divisive and inflammatory rhetoric as elected officials and political leaders; and,
- Support K-12 education about diverse community histories and experiences.

The Current Climate is Unprecedented in its Scope

Since October 2023, Palestinian, Arab,[3] and Muslim[4] community members have been reporting unprecedented levels of discrimination, hate, and bigotry that fall into five overarching categories, as

[3] The national chapter of the Council on American-Islamic Relations ("CAIR") reported receiving 8,061 reports of discrimination, marking the most significant number of complaints received in the organization's 30-year history. *See* "2024 Civil Rights Report: Fatal: The Resurgence of Anti-Muslim Hate," Council on American-Islamic Relations, Janury 2024, available at https://islamophobia.org/wp-content/uploads/2024/04/2024_Fatal_The_Resurgence_of_Anti-Muslim_Hate-1.pdf.

[4] The American-Arab Anti-Discrimination Committee ("ADC") received 2,500 reports of anti-Arab hate between October 2023 and March 2024, a stark difference from October 2022 to March 2023, when ADC received less than 500 complaints of discrimination. *See* Mirna Alsharif, "Anti-Arab hate, harassment and threats loom over this year's Arab American Heritage Month," NBC News, April 13, 2024, available at https://www.nbcnews.com/news/us-news/arab-american-history-month-2024-rcna146874.

detailed and illustrated below. MJF has partnered with the Building Movement Project, which has been tracking civil rights and harms over the past 11 months in order to support our national Advocacy and Movement Table, composed of 22 organizations, to increase awareness and coordination against these forms of violence.

1) **Physical violence: Actual or threatened harm of physical violence targeting people and/or institutions.**
    - On October 14, 2023, a six-year-old Palestinian American boy, Wadee Alfayoumi, was stabbed 26 times by his family's landlord, who said, "You Muslims must die" during the rampage inside the family's apartment in Plainfield, a suburb of Chicago, Illinois. The boy's mother was also attacked.[5]
    - On November 26, 2023, three 20-year-old college students, Hisham Awartani of Brown University, Kinnan Abdalhamid of Haverford College, and Tahseen Ahmad of Trinity College, were shot by Jason Eaton, as they took a walk during Thanksgiving break in Burlington, Vermont. The students were speaking Arabic, and two of them were wearing keffiyeh scarves.[6]
    - On April 10, 2024, a man wrote "You will all burn in hell" on a mosque in San Francisco while yelling Islamophobic rhetoric; and, on the same day, the Muslim Chaplaincy house at Rutgers University, also known as the Center for Islamic Life at Rutgers University was vandalized and burglarized. The San Francisco Mosque has been repeatedly targeted.[7]

2) **Violations of Constitutional Rights: Political speech and freedom of assembly violations; encroachment of freedom of religion or due process rights.**
    Several colleges and universities, including George Washington University, Brandeis, Columbia, and Rutgers, have deactivated, sanctioned, or suspended student groups such as Students for Justice in Palestine that have long organized for Palestinian human rights. "Doxxing trucks" have also appeared at campuses, including Harvard, Yale, and Columbia, to intimidate and silence students speaking out in support of Palestine.[8] In the three months between October 7 and December 31, 2023, Palestine Legal received 1,037 requests for legal support, including 478

[5] Marlene Lenthang, Kailani Koenig, Samira Puskar and Corky Siemaszko, "Suspect in death of 6-year-old Palestinian American boy was obsessed with Israel-Hamas war, prosecutors say," NBC News, October 16, 2023, available at https://www.nbcnews.com/news/us-news/suspect-wadea-al-fayoume-death-was-obsessed-israel-hamas-war-prosecuto-rcna120589.

[6] Aliza Chasan, "Arrest made after 3 Palestinian college students shot in Burlington, Vermont, police say," CBS News, November 27, 2023, available at https://www.cbsnews.com/news/palestinian-students-shot-burlington-vermont-hisham-awartani-kinnan-abdalhamid-tahseen-ahmed/.

[7] "CAIR-SFBA Condemns Repeated Vandalism Targeting San Francisco Mosque During Ramadan," CAIR National, April 10, 2024, available at https://www.cair.com/press_releases/cair-sfba-condemns-repeated-vandalism-targeting-san-francisco-mosque-during-ramadan/.

[8] Hadas Thier, "College Administrations Are Failing Their Palestinian and Jewish Students," The Nation, November 22, 2023, available at https://www.thenation.com/article/activism/university-protests-antisemitism-islamophobia/.

requests for legal help related to universities, compared to 214 requests received during the entirety of 2022.[9]

3) **Civil rights violations: Workplace discrimination, bullying, denials of service, etc.**
At least five (5) public school teachers have been suspended in Maryland after publicly expressing support for Palestinian human rights.[10] One Maryland teacher is pursuing a discrimination complaint after being subjected to an investigation for 'replying all' to an email about the Israel-Gaza curriculum in which she asked colleagues to be "mindful" of rhetoric used when discussing Israel and Gaza.[11]

Conference venues nationwide are breaking contracts for events organized by affected communities. Events planned by the US Campaign for Palestinian Rights[12] and CAIR National[13] in various cities have been postponed or canceled after anti-Palestinian, anti-Muslim, and anti-Arab individuals and groups pressured venues.

4) **Unfair government actions and practices: Encroachment, surveillance, and profiling**
Various investigations have been launched into nonprofit organizations by state and federal authorities. The Virginia Attorney General's office launched an investigation into the nonprofit American Muslims for Palestine for allegedly using funds "raised for impermissible purposes…including benefitting or providing support to terrorist organizations."[14] FBI agents have questioned and detained numerous Palestinian nationals and made visits to multiple mosques.[15]

5) **Climate of dehumanization: Inflammatory and divisive rhetoric and narratives**
Political leaders and elected officials have contributed to a climate of dehumanization, utilizing divisive and inflammatory rhetoric and narratives that only foster the climate of hate and bigotry.

---

[9] "Reverberations of October 7: Mobilization against Genocide Undeterred by Peak Anti-Palestinian Repression," Palestine Legal, May 24, 2024, available at https://palestinelegal.org/news/2024/5/23/new-report-analyzes-crackdown-on-palestine-solidarity-in-the-usnbsp.

[10] Ray Coleman, "Montgomery County, Maryland public schools remove teachers expressing pro-Palestinian sentiments," WSWS, December 19, 2023, available at https://www.wsws.org/en/articles/2023/12/20/figm-d20.html.

[11] Paul Gessler, "Teacher, CAIR file discrimination complaint against Anne Arundel County schools," CBS News, January 11, 2024, available at https://www.cbsnews.com/baltimore/news/teacher-cair-file-discrimination-complaint-against-anne-arundel-county-schools/.

[12] "Hilton Hotel capitulates to hate, cancels Palestinian voices," US Campaign for Palestinian Rights, January 6, 2024, available at https://uscpr.org/hilton-hotel-capitulates-to-hate-cancels-palestinian-voices/.

[13] Nadine El-Bawab, "Council on American-Islamic Relations' banquet canceled after receiving bomb threats," ABC News, October 20, 2023, available at https://abcnews.go.com/US/muslim-organizations-banquet-canceled-after-receiving-bomb-threats/story?id=104174066.

[14] Jason S. Miyares Attorney General of Virginia, "Attorney General's Office Opens Investigation into American Muslims for Palestine Nonprofit," Office of the Attorney General of Virginia, October 31, 2023, available at https://www.oag.state.va.us/media-center/news-releases/2630-october-31-2023-attorney-generals-office-opens-investigation-into-american-muslims-for-palestine-nonprofit.

[15] Daniel Boguslaw and Prem Thakker, "FBI Targets Muslims and Palestinians in Wake of Hamas Attack, Civil Rights Advocates Warn," The Intercept, December 5, 2023, available at https://theintercept.com/2023/10/13/palestinians-muslims-fbi/.

Last year, the House of Representatives censured Representative Rashida Tlaib (MI-D), the only Palestinian American member of Congress, for her remarks to raise awareness about the genocide in Gaza.[16] In Florida's State Congress, when State Representative Angie Nixon asked how many dead Palestinians are enough, Republican Representative Michelle Salzman remarked, "All of them."[17] Missouri State Representative Chris Dinkins called for a statewide prohibition of the resettlement of any Palestinian refugees in Missouri.[18]

Bigotry and Hate Do Not Occur in a Vacuum

It is important to underscore that these horrific acts of bigotry and violence are not happening in a vacuum; instead, such acts are often reinforced and normalized by the actions of leadership in various sectors, political rhetoric, and unfair policies. Since October 7, for example, various sectors, from universities and public school systems to law firms and entertainment agencies, have targeted, suppressed, and retaliated against people engaging in Palestinian advocacy.[19] Congress has introduced several dangerous bills that are rooted in preserving and expanding structural Islamophobia and/or anti-Palestinian racism, many of which blatantly direct punishment against Americans for exercising their free speech rights to protest.[20] These include the following:

- S.4136[21] and H.R. 6408[22] authorize the Treasury Department to unilaterally designate nonprofits as terrorist-supporting organizations and strip nonprofits of their tax-exempt status, effectively shutting them down, which poses a grave threat to the fundamental rights of civil society organizations and nonprofits, particularly those exercising their freedom of expression. The provisions of H.R. 6408 are now included as Section 4 in H.R. 9495, which is currently pending in the House.[23]
- S. 4274, known as the "No Fly" bill,[24] directs the FBI to add anti-Israel protesters to the "No Fly" list;
- H.R. 8321 requires students convicted of unlawful activity on the campus of an institution of higher education to provide community service in Gaza[25];

[16] U.S. House of Representatives (118th Congress), "House Resolution 845: A Resolution Censuring Representative Rashida Tlaib," passed November 7, 2023, available at https://www.congress.gov/bill/118th-congress/house-resolution/845/text/eh.
[17] A.G. Gancarski, "Florida Democrats Wade into Michelle Salzman Controversy after Hours on Friday," Florida Politics - Campaigns & Elections: Lobbying & Government, November 13, 2023, available at https://floridapolitics.com/archives/644134-fdp-salzman/.
[18] Mark Maxwell, "Missouri State Rep calls for parson to ban Palestinian refugees, he says she doesn't know the law," KSDK NBC St. Louis, November 29, 2023, available at https://www.ksdk.com/article/news/politics/missouri-state-rep-parson-ban-palestinian-refugees-she-doesnt-know-law/63-674d9013-ea8a-44d2-80fa-a7a54b921d52.
[19] Palestine Legal, "New Report Analyzes the Crackdown on Palestine Solidarity in the U.S." May 24, 2024, available at https://palestinelegal.org/news/2024/5/23/new-report-analyzes-crackdown-on-palestine-solidarity-in-the-usnbsp.
[20] U.S. House of Representatives, HR 4274, available at https://www.congress.gov/bill/118th-congress/senate-bill/4274/text.
[21] U.S. Senate, S. 4136, available at https://www.congress.gov/bill/118th-congress/senate-bill/4136.
[22] U.S, House of Representatives, HR. 6408, available at https://www.congress.gov/bill/118th-congress/house-bill/6408.
[23] U.S. House of Representatives, HR 9495, available at https://www.congress.gov/bill/118th-congress/house-bill/9495.
[24] U.S. Senate, S. 4274 available at U.S. House of Representatives, HR 4274, available at https://www.congress.gov/bill/118th-congress/senate-bill/4274/text.
[25]US House of Representatives, HR 8321, available at https://www.congress.gov/bill/118th-congress/house-bill/8321.

- H.R. 8322 revokes visas "of certain aliens for rioting or unlawful protests, and for other purposes."[26]

Recommendations

To comprehend fully the broad reach of harm experienced by our communities, it is vital to understand how structural Islamophobia functions in our society. MJF defines structural Islamophobia as a system of dehumanization that impacts Muslims and communities racialized as Muslim. Eradicating structural Islamophobia requires a thorough and multifaceted strategy that should be guided by those directly affected, as government policies, laws, and institutions serve as the primary drivers of structural Islamophobia.[27] Any government framework and definition of Islamophobia, including terms like anti-Muslim racism, anti-Muslim discrimination, and anti-Muslim bigotry, must prioritize the role of the state, institutions, government policies, and laws as foundational to the construction and proliferation of Islamophobia, including hate-motivated violence towards Muslim communities and those perceived as Muslim. Any proposed framework must also include language that names the interlocking nature of structural Islamophobia with anti-Palestinian racism, anti-Arab racism, anti-Black racism, and other systems of oppression.

The recommendations below are organized into three areas:

I. **Address Root Causes that Perpetuate a Climate of Harm and Hate**
   - **Acknowledge Harm Caused by Government Policies and Programs:** Acknowledging the substantial role of the U.S. government in perpetuating structural Islamophobia is the starting point for dismantling policies and laws entrenched in Islamophobia and broader anti-Muslim national security frameworks. This includes the recognition of the historical continuity of national security programs, past and present, that perpetuate structural Islamophobia such as the National Security Entry-Exit Registration System (NSEERS), Countering Violent Extremism (CVE), Targeted Violence and Terrorism Prevention (TVTP), Preventing Violent Extremism (PVE), Controlled Application Review and Resolution Program (CARPP), and enactment of the Muslim ban, to name a few. Many broader recommendations for establishing government accountability are offered in a *Community Memorandum: Recommendations for A Foundational White House Islamophobia Strategy* endorsed by 95 organizations.[28]
   - **Preserve and Protect the Lives and Rights of Palestinians:** Congress must call for a permanent ceasefire and an end to the genocide of Palestinians and suspend arms to Israel. Additionally, Congress must end the witch hunts and investigations of nonprofit

[26] US House of Representatives, HR 8322, available at https://www.congress.gov/bill/118th-congress/house-bill/8322.
[27] Muslims for Just Futures, *et. al.* "Community Memorandum: Recommendations for A Foundational White House Islamophobia Strategy," April 2024, available at https://www.muslimsforjustfutures.org/blog/communitymemo.
[28] Muslims for Just Futures, *et. al.*, "Community Memorandum: Recommendations for A Foundational White House Islamophobia Strategy," April 2024, available at https://www.muslimsforjustfutures.org/blog/communitymemo.

organizations, foundations, and universities. Congress must also affirm the constitutional rights to protest, speak up, and dissent in the context of Palestinian advocacy.

- **Eliminate "War on Terror" Policies:** Federal government agencies must reverse the tactics and policies from the post-9/11 War on Terror era. These include profiling, targeted immigration enforcement measures such as special registration and bans on migration from Muslim-majority nations, detentions, deportations, interrogations, surveillance, and infiltration of places of worship, educational institutions, community centers, student associations, and other establishments, and the government's use of material support statutes to inject unfounded investigations into community-serving organizations.

II. Address Hate and Bigotry with Community-Centered Solutions

- **Transitional and Restorative Justice Frameworks:** To address hate violence and bigotry, government agencies must divest from law enforcement strategies and invest in programs that center transformative and restorative justice and collective well-being. Applying a transformative justice approach requires addressing root causes and transforming the underlying systems and structures. This is particularly important in addressing hate violence and includes considering individual victims' experiences, addressing the community's needs as the impact of hate violence reverberates through the broader community, and tackling the underlying systemic conditions and root causes that foster such violence.
- **Community Consultation:** Taking note of the significant increase in threats against Black, Muslim, Arab, Palestinian, and South Asian communities, the DOJ Civil Rights Division and Community Relations Service should consult with these communities about their needs and concerns. Efforts must be rooted in a transformative justice framework to engage communities through an approach that recognizes the multigenerational harm of many government policies.
- **Federal Interagency Task Force:** Establish a federal interagency task force to address the structural roots of Islamophobia and the ensuing detrimental state policies, such as the War on Terror, that stems from such prejudice; and provide regular updates, information, and data to organizations working with directly affected communities;
- **Community Outreach:** Civil rights components should conduct culturally, linguistically, and faith-appropriate outreach to BAMEMSA communities, open investigations into civil rights infractions, and track BAMEMSA-related complaints. Such agencies should also provide FAQs and Know Your Rights information in languages commonly spoken by BAMEMSA communities.
- **Civil Rights Enforcement:** Civil rights components should vigorously enforce civil rights laws that protect individuals against discrimination. Given the widespread impact of this targeting, the Office for Civil Rights (OCR) in the Department of Education ("Ed.") should *sua sponte* and promptly open and comprehensively investigate

allegations of violations of Title VI of the Civil Rights Act of 1964[29] for discrimination based on shared ancestry and ethnic characteristics, especially in cases of reported anti-Palestinian, anti-Arab and anti-Muslim discrimination and hostile environment. Ed. must provide guidance, resources, and training to universities to ensure the protection of Palestinians and their allies calling for Palestinian freedom in ways that do not contribute to the troubling rise of surveillance and policing of these communities. This includes students, teachers, and university staff targeted for their support of Palestine. Ed. should also issue clear guidance that schools should be discouraged from contacting FBI or law enforcement in the absence of actionable evidence, to promote a safe and bias-free learning environment. Ed. should issue guidance that advocacy for Palestinian rights and criticism of Israel is protected speech under the First Amendment and does not constitute harassment; it represents a desire for justice by colonized people who have legitimate criticism of a colonial state.

- We also call on the Department of Education to reject the codification of the International Holocaust Remembrance Alliance IHRA (IHRA) in agency rules and affirm the mandate for the Office of Civil Rights at the Department of Education to protect the rights of all vulnerable student groups. Ed. must refrain from utilizing or citing the IHRA or any similar definitions or justification in its rulemaking, policy guidance, or enforcement actions.
- Other civil rights agencies such as HUD and the EEOC must also vigorously enforce civil rights laws. HUD must exercise its Title VI authorities by investigating complaints and by opening investigations *sua sponte* to address rising Islamophobia and anti-Arab and anti-Palestinian discrimination. The EEOC should improve access to its complaints filing process for workers of Muslim, Arab, and Palestinian background to timely address allegations of religious-based and national origin discrimination in the workplace and should conduct more "Know Your Rights" outreach and engagements with these communities. EEOC should issue commissioner charges as an inquiry into both individual and systemic discrimination against Arab Americans, Palestinian Americans, and Muslim Americans.

3. Refrain from Engaging in Policies and Practices that Perpetuate Structural Islamophobia

- **Refrain from Expanding Domestic Terrorism Laws.** Congress must ensure that domestic terrorism laws and statutes are not expanded under the guise of fighting white supremacy, hate crimes, pandemics, national emergencies, and/or natural disasters. This entails safeguarding against weaponizing and introducing new domestic terrorism laws, strategies, or initiatives framed as 'violence prevention' and employing threat evaluations or similar methods to target 'terrorism,' 'extremism,' and 'radicalization.'
- **End Profiling:** The government must prevent and prohibit profiling based on nationality, ethnicity, faith, race, and immigration status. This includes amending the DOJ's "Guidance for Federal Law Enforcement Agencies Regarding the Use of Race, Ethnicity,

[29] 42 U.S.C. § 2000d et seq.

Gender, National Origin, Religion, Sexual Orientation, Gender Identity and Disability"[30] (the "Guidance") to state that federal law enforcement personnel "may not consider race, ethnicity, gender, national origin, religion, sexual orientation, gender identity, or disability in law enforcement or intelligence activities" unless certain conditions are met. The DOJ excluded nationality as a protected characteristic despite long-standing community recommendations to include it. The DOJ should revise the Guidance to include nationality as a protected characteristic, ensure that federal law enforcement personnel are routinely trained on the Guidance, and establish accountability structures when allegations of misconduct and civil rights violations are made.[31] The DOJ should eliminate any national and homeland security loopholes.[32]

- **End the use of secret and discriminatory watchlists.**[33] In 2019, there were 1.5 million people on the watchlist, 98% of whom were individuals with Muslim names.[34] The list has since grown to include 2 million people.[35] As an interim measure, while the agencies move toward abandoning the practice altogether, agencies must provide notice, the reason for inclusion, and a meaningful right and process to challenge inclusion on the list.
- **End intrusive, discriminatory, and unconstitutional surveillance of Muslim communities**. These practices, which include using paid informants, have broken trust, manufactured crimes, and deeply harmed our communities. The FBI's Domestic Investigations and Operations Guide ("DIOG") should be amended to prohibit the deployment of informants into religious and community spaces. The DOJ Office of the Inspector General should investigate the FBI's abusive informant coercion and recruitment practices and publish its findings and recommendations. This should include an assessment of the scope and impact of these practices and the FBI's compliance with even the minimal existing FBI Guidelines 28. The DOJ should dismantle Joint Terrorism Task Forces ("JTTFs"), all their field offices and collaborative networks, including with state and local agencies and those established internationally, and any future such iterations that may go by other names.[36] The DOJ Office of the Inspector General ("DOJ

[30] "Guidance for Federal Law Enforcement Agencies Regarding the Use of Race, Ethnicity, Gender, National Origin, Religion, Sexual Orientation, Gender Identity and Disability," Department of Justice, May 2023, available at https://www.justice.gov/d9/2023-05/Sec.%209%28e%29%20-%20Guidance%20for%20Federal%20LEAs%20on%20the%20Use%20of%20Protected%20Characteristics_FINAL%205.25.23_508.pdf.

[31] "ACLU Acknowledges Improvements to DOJ Racial Profiling Policy, But Says Far More is Needed." ACLU, May 25, 2023, available at https://www.aclu.org/press-releases/aclu-acknowledges-improvements-to-doj-racial-profiling-policy-but-says-far-more-is-needed.

[32] "Joint Letter Critiquing 2023 Justice Department Racial Profiling Guidance,"ACLU,October 2023, available at https://www.aclu.org/documents/joint-letter-critiquing-2023-justice-department-racial-profiling-guidance.

[33] *See*"The Watchlisting System Exemplifies the Government's Post-9/11 Embrace of Biased Profiling,"ACLU,Sept. 9, 2021, available at https://www.aclu.org/news/national-security/the-watchlisting-system-exemplifies-the-governments-post-9-11-embrace-of-biased-profiling.

[34] "Twenty Years Too Many, A Call to Stop the FBI's Secret Watchlist," CAIR, June 12, 2023, available at https://www.cair.com/wp-content/uploads/2023/06/watchlistreport-1.pdf.

[35] "U.S. terrorist watch list grows to 2 million people — nearly doubling in 6 years," CBS News, Dec. 14, 2023, available at https://www.cbsnews.com/news/us-terrorist-watchlist-grows/.

[36] "Unconstitutional and Unjust: Dismantling 20 Years of Discriminatory 'National Security' Policy," Asian Americans Advancing Justice - Asian Law Caucus, September 20, 2021, available at https://www.advancingjustice-alc.org/wp-content/uploads/2021/09/Final_9.11Memo-1.pdf.

OIG") must examine and publish findings on what types of information JTTFs share and have shared with other federal agencies, including DHS, DHS Fusion Centers, and other components of DHS, and how these agencies have used this information.[37] Additionally, the federal government must cease the use of specially designated Communications Management Units ("CMUs"), and Congress should investigate their scope and violations of due process rights.[38]

- **Restrict the conflation of immigration and national security priorities.** The federal government must maintain a transparent firewall to prevent information sharing, particularly about immigration status, between federal law enforcement agencies. U.S. Customs and Border Protection ("CBP") should dismantle the use of Tactical Terrorism Response Teams ("TTRTs") and rules-based screenings at ports of entry that have repeatedly and unnecessarily violated the civil rights of BAMEMSA travelers. CBP and the Transportation Security Administration ("TSA") also screen travelers at ports of entry and airports based on the FBI's terrorist watchlist, on other bases, and under different authorities. These duplicative efforts discriminately target BAMEMSA communities, subjecting travelers to secondary inspections, improper questioning about religious practice, electronic searches, and lengthy detention, all without a meaningful redress process for people to even understand why they are subjected to more screening. CBP and TSA's use of the watchlist in screening procedures, and their screening authorities, should be reviewed and amended for redundancy, and DHS should develop a new redress process that centers on the experiences of communities most impacted by these aggressive screening tactics. Additionally, U.S. Citizenship and Immigration Services ("USCIS") must not institute Denaturalization policies.[39] This includes canvassing federal agencies and/or dismantling any other offices whose primary or significant function is to focus on denaturalization.[40] Finally, the USCIS's Controlled Application Review and Resolution Program ("CARRP"), a discriminatory, deeply harmful, and unnecessary program that has caused undue delays for many BAMEMSA applicants, must be eliminated.[41]
- **Eliminate any programs that profile, surveil and create harm to communities under the guise of "countering violent extremism."** DHS should eliminate the Targeted Violence and Terrorism Prevention Grants Program and its administering office, the Center for Prevention Programs and Partnerships. President Biden had promised to end the TVTP Grants Program, but the program has expanded under his watch and has

[37] "Unconstitutional and Unjust: Dismantling 20 Years of Discriminatory 'National Security' Policy," Asian Americans Advancing Justice - Asian Law Caucus, September 20, 2021, available at https://www.advancingjustice-alc.org/wp-content/uploads/2021/09/Final_9.11Memo-1.pdf.

[38] Nausheen Husain, Aly Panjwani, and Haley Moreland, "'Little Guantánamo' Gets Bigger," The Appeal, August 19, 2024, available at https://theappeal.org/little-guantanamo-communication-management-units-cmus.

[39] "Denaturalization and Revocation of Naturalization," National Immigration Project of the National Lawyers Guild and the Immigrant Resource Center, February 2020, available at https://www.ilrc.org/sites/default/files/resources/denaturalization_pa.pdf

[40] Presidential Power," Muslim Advocates, November 2020, available at https://muslimadvocates.org/wp-content/uploads/2020/11/Muslim-Advocates-Transition-Memo_FINAL.pdf.

[41] Muslims Need Not Apply," ACLU of Southern California, August 21, 2023, available at https://www.aclusocal.org/en/publications/muslims-need-not-apply.

doubled in funding. These programs continue to target Muslims and BAMEMSA communities, especially in the current environment of commonly invoked anti-Muslim, anti-Arab, and anti-Palestinian tropes. Furthermore, the program is still overly reliant on law enforcement despite promises to the contrary. For example, a Brennan Center report shows that DHS grants have not shifted to address white supremacist violence, which is the leading threat, and instead continue to target Muslims and other marginalized communities.[42] Only three of thirty-seven grants in 2021 and two of forty-three grants in 2022 did more than name-check white supremacy.[43] Many still focus on Muslims.[44] The grants continue to support—and even increase funding—for law enforcement involvement. Many grants expanded the carceral system by converting trusted mental health professionals into informants. We recommend investing in U.S. Department of Health and Human Services grants for communities that do not rope social welfare and mental health professionals into law enforcement functions.

Conclusion

The need to establish a holistic strategy to combat the tide of Islamophobia, anti-Arab, and anti-Palestinian racism is as pressing as ever, given the relentless backlash targeting Palestinian, Arab, Muslim, and allied communities. For BAMEMSA, Sikh, and SWANA communities, the current climate of dehumanization leaves vulnerable people at risk of racial profiling, hate violence, unfair government surveillance, and risks to education and employment. Congress must follow up on hearings like this one to address the root causes of hate violence in society, including the elimination of laws and policies enacted and implemented by various levels of government that harm communities including ours. Finally, congressional leaders must pledge to refrain from creating a climate of dehumanization with their language and actions in order to finally eradicate the scourge of hate violence in its many manifestations, from physical violence to suppression of dissent, through community-centered, non-carceral solutions.

---

[42] "Little Change in Biased, Ineffective DHS Countering Violent Extremism Program," Brennan Center, February 27, 2024, available at https://www.brennancenter.org/our-work/research-reports/little-change-biased-ineffective-dhs-countering-violent-extremism-program.

[43] "Little Change in Biased, Ineffective DHS Countering Violent Extremism Program," Brennan Center, February 27, 2024, available at https://www.brennancenter.org/our-work/research-reports/little-change-biased-ineffective-dhs-countering-violent-extremism-program.

[44] "For example, three grantees from 2020 and four grantees from 2021 continue to name 'jihadism' and 'Islamic extremism' as key focus areas. "DHS Rebrands and Expands Biased, Ineffective Countering Violent Extremism Program,"Brennan Center, April 27, 2023, available at ,https://www.brennancenter.org/our-work/research-reports/dhs-rebrands-and-expands-biased-ineffective-countering-violent-extremism.

MUSLIM PUBLIC AFFAIRS COUNCIL

September 16, 2024

Statement for the Record
Muslim Public Affairs Council
U.S. Senate Committee on the Judiciary
A Threat to Justice Everywhere: Stemming the Tide of Hate Crimes in America

Chairman Durbin, Ranking Member Graham, and distinguished members of the Senate Judiciary Committee, thank you for the opportunity to submit this Statement for the Record on behalf of Muslim Public Affairs Council (MPAC).

Since 1988, MPAC has advocated for policies to advance American Muslims' civil liberties, defend freedom of speech and religion, and ensure the equitable application of our nation's greatest ideals of justice for all. In light of ongoing challenges faced by the American Muslim community, particularly concerning hate crimes and discrimination, we thank the Chairman for calling this hearing.

In recent years, there has been an increase in hate crimes targeting American Muslims, and it has increased significantly since October 7, 2023. These crimes range from verbal harassment and vandalism of mosques to violent assaults and, in some tragic cases, murder.

On October 14, just one week after October 7, 6-year-old Wadea Al-Fayoume was killed after being stabbed 26 times at home in Plainfield Township, IL. His mother was strangled and repeatedly stabbed but survived the attack.

A month later, in November 2023, three Palestinian college students were shot in Burlington, Vermont, in what is being investigated as a potential hate crime. In April of this year, the Center for Islamic Life at Rutgers University was broken into and vandalized as the students prepared to celebrate the end of Ramadan.

In fact, from October 7, 2023, to November 4, 2023, CAIR's national headquarters and chapters received a staggering 1,283 requests for assistance and reports of bias, marking a 216 percent increase from the previous year. A recent Pew Research survey found that 70 percent of American Muslims expressed that they faced increased discrimination since October 7th.

These statistics likely underrepresent the true extent of the problem, given significant gaps in the reporting of hate crimes.

mpac.org
hello@mpac.org

1112 16th St. NW Suite 500
Washington, D.C., 20036
202-547-7701

5930 N Figueroa Street, #421005
Los Angeles, CA 90042
323-258-6722

MUSLIM PUBLIC AFFAIRS COUNCIL

The impact on American Muslims is profound. Many families live with the fear of being targeted, whether at their local mosque or simply going about their daily lives. Children face bullying at school, while adults experience discrimination in the workplace and public spaces. These experiences not only harm individuals but also tear at the social fabric that binds us as a nation.

At this moment, we must ask ourselves what kind of country we want to be. Will we allow fear and intolerance to shape our society, or will we reaffirm our commitment to equality, justice, and mutual respect? The rise in hate crimes against American Muslims is not just an issue for one community—it is a challenge for all of us. By standing together and upholding the ideals of inclusion and respect, we can ensure that the United States returns to a place where everyone, regardless of their religious background, can feel safe and valued.

As United States Senators and members of the Senate Judiciary Committee, you are uniquely positioned to create meaningful change. Given that, we at the Muslim Public Affairs Council strongly believe the following policy changes counter the rise in hate crimes against not just American Muslims but all communities who have borne the brunt of this evil.

Policy Recommendations:

1. **Mandate Reporting of Hate Crimes:**
    a. Attempts to improve hate crime reporting belie the underlying issue; reporting is not mandatory. Without a statutory requirement, that problem will persist.
        i. Hate Crime tracking began with the 1990 Hate Crime Statistics Act, which was approved by unanimous consent by the Senate Judiciary Committee, and required the Attorney General to collect hate crimes data but did not require law enforcement to report it.
        ii. We urge members of this Committee to introduce legislation that would make reporting a requirement and work to ensure it is signed into law this Congress.

Change the Way State and Local Enforcement are Incentivized to Report:

    b. Instead of providing additional resources for meeting metrics related to reporting, baseline funding must be contingent on reporting. The Department of Justice (DOJ) and the Department of Homeland Security (DHS) must make funding contingent on reporting metrics and criteria.

mpac.org
hello@mpac.org

1112 16th St. NW Suite 500
Washington, D.C., 20036
202-547-7701

5930 N Figueroa Street, #421005
Los Angeles, CA 90042
323-258-6722

2. **Expanding Community Outreach**
    a. Local law enforcement must create stronger programs to foster meaningful relationships between houses of worship to ensure best practices are shared. Congress must earmark funding for local Law Enforcement agencies through the Department of Justice (DOJ) to focus on community outreach and engagement to better create awareness around hate crimes reporting.

3. **Training Law Enforcement on Bias-Motivated Crimes**:
    a. Law enforcement officers often lack the training to properly identify and report hate crimes, which can result in incidents being misclassified as simple assaults or other crimes. Congress must provide funding to develop comprehensive training programs on how to identify, investigate, and report hate crimes to be administered to state, local, and federal law enforcement. This training should include culturally competent practices that respect the dignity of diverse communities and encourage victims to come forward.

4. **Creating a Federal Hate Crime:**
    a. A centralized federal hate crime data dashboard must be developed and made accessible to the public. This tool would allow for real-time tracking of hate crimes by location, type of offense, and target community, providing transparency and enabling both the public and policymakers to assess the scope of the problem. It could also facilitate data sharing between federal, state, and local law enforcement agencies.

5. **Holding Social Media Companies Accountable/Addressing Domestic Terrorism Online**:
    a. There must be mechanisms put in place to hold social media platforms accountable for failing to prevent the spread of hate speech that incites real-world violence. A legal framework must be created to ensure that platforms that knowingly allow the spread of domestic terrorism content. The rise in hate crimes is closely linked to the spread of domestic terrorist ideologies particularly online, often facilitated through private chat rooms and encrypted messaging platforms. Congress must support initiatives that engage social media through public awareness campaigns. These efforts should involve collaboration with civil society organizations, including American Muslim groups.

mpac.org
hello@mpac.org

1112 16th St. NW Suite 500
Washington, D.C., 20036
202-547-7701

5930 N Figueroa Street, #421005
Los Angeles, CA 90042
323-258-6722

National Council of Jewish Women

National Council of Jewish Women
Statement for the Record
Hearing on "A Threat to Justice Everywhere: Stemming the Tide of Hate Crimes in America"
United States Senate
Committee on the Judiciary

September 24, 2024

Chairman Durbin, Ranking Member Graham, and Members of the Senate Committee on the Judiciary:

National Council of Jewish Women (NCJW) is a grassroots organization of volunteers and advocates who turn progressive ideals into action. Inspired by Jewish values, we strive for social justice by improving the quality of life for women, children, and families and by safeguarding individual rights and freedoms. We mobilize our network of 50 local sections and over 225,000 advocates to affect lasting social change at all levels of government and in communities across the United States.

Throughout our over 130 year history, NCJW has boldly imagined a world where every person can live with dignity and in safety, free from violence and hate. This vision is not yet a reality, as our country experiences an upward trend in hate-motivated incidents and attacks. NCJW submits this statement for the record to demonstrate the impact hate-driven violence has on communities, and to recommend concrete steps for Congress to mitigate this trend.

In order to properly illustrate the impact and consequences of hate, we must first address the events of the Senate Judiciary Committee hearing on September 17th, 2024 titled "A Threat to Justice Everywhere: Stemming the Tide of Hate Crimes in America." This hearing could have been an important moment for Congress to meaningfully discuss the stark rise in hate-driven violence and the policies and resources needed to support communities in pain, as it was intended. Instead, the hearing was derailed by certain members of the Committee in a manner that was counterproductive and detrimental to the collective efforts of communities building bridges and forming partnerships to push back against hate.

National Council of Jewish Women

The questioning of Maya Berry, Executive Director of the Arab American Institute and Co-Chair of the Leadership Conference on Civil and Human Rights Hate Crime Task Force, was underpinned by bigotry, misogyny, and anti-Arab and anti-Muslim stereotypes. Additionally, a spectator interrupted the hearing with an antisemitic slur. We cannot stem the tide of hate if our leaders are perpetuating the very biases we are working to undo. Jewish, Muslim, and Arab communities — and every single individual and group harmed by hate — deserve meaningful dialogue and tangible actions from our leaders. We need our leaders in Congress, and beyond, to be part of the solution.

The events of this hearing are a critical reminder of how much work is left to be done to build a world that is safe for our children, for all families, and for every targeted community. Recent hate crime statistics further illustrate the urgent need for solutions.

The 2023 FBI hate crime data released on September 23, 2004 showed **11,862 reported hate crime incidents last year, the highest number of incidents ever reported *for the third year in a row*.** This data is not just a set of statistics — these data points are real people, families, and communities forever scarred by the lasting impacts of violence and hate, and continually living in fear. As a Jewish organization, we know what this hate feels like. **2023 saw the highest number of anti-Jewish hate crimes ever reported since the FBI began collecting this data, a 63% increase from 2022. These crimes continued to account for the largest portion of reported religious-based hate crimes (68%), as they do nearly every year.** And, the number of hate crime incidents based on *any* religion skyrocketed by 32% between 2022 and 2023. Even as antisemitic incidents have risen annually and spiked in the months following the horrific Hamas attack on Israel on October 7th 2023, this increase is striking.

And yet, these statistics do not reflect the full scope of how this hate has impacted the Jewish community as antisemitic incidents increase year after year. Parents are afraid to drop their children off at Hebrew school. Clergy are afraid for their safety, and the safety of their congregants and loved ones during religious gatherings. And with the holiest days on the Jewish calendar approaching in October, when thousands of Jewish communities across the country will gather in observance, this fear is only heightened.

This alarming rise in hate is not specific to the Jewish community. The 2023 data showed **record high numbers** of hate crimes across several categories including religion-motivated and anti-Hispanic hate crimes, and crimes targeting individuals based on their sexual orientation or gender identity. 2023 saw the largest number of anti-Arab incidents recorded since the FBI started tracking this specific category nine years ago (a 34% increase from 2022), along with a disturbing increase in anti-Muslim crimes (a 49% increase from 2022).

Hate is intersectional, and very often impacts and targets each victim in distinct ways. Within these staggering record-high numbers, there were over 400 multi-bias hate crime incidents where victims were targeted for more than one characteristic. As a Jewish feminist organization, we know that Jewish women are facing violence and hate in a distinct way. The data is clear that there were 1,832 anti-Jewish and 67 anti-female hate crime incidents in 2023. However, the data is not clear about exactly which motivations underpin multi-bias crimes. And moreover, some elements are often overlooked in hate crimes motivated by multiple biases. The FBI is equipped to collect this data and report out on it. Further transparency and reporting to clarify the full scope of motivations behind multi-bias incidents would be a welcome improvement in the data collection.

We are pleased to see that thousands more law enforcement agencies submitted data to the FBI in 2023 than in 2022. The boost in law enforcement agency participation was a welcome step in the right direction and the result of countless hours of advocacy from the coalition directed at the Department of Justice and state and local law enforcement. However, thousands of other agencies are *still* not participating in this crucial data collection. Hate-driven violence is still happening in many areas around the country that is not being properly recorded or reported. Without accurate and complete data, government agencies and civil society organizations cannot mobilize adequate policies and resources to support victims and respond to rising hate.

NCJW™
National Council of Jewish Women

The FBI hate crime data is just a snapshot of the devastating impact hate has had on every community. Those most vulnerable around us are the ones who suffer the most. Six-year-old Wadea Al-Fayoume, murdered in his home last October, should be alive today. The 11 people murdered at the Tree of Life congregation in October of 2018 should be alive today. **Families and communities targeted by this scourge of violence and mourning the loss of loved ones taken by hate, like the families of Wadea Al Fayoume and the Tree of Life victims present at the September 17th hearing, deserve better.**

NCJW urges members of the Senate Judiciary Committee, and all Members of Congress, to take meaningful action to help create a society free from hate by:

- **Passing the Improving Reporting to Prevent Hate Act,** which was introduced by Representatives Don Beyer (D-VA) and Don Bacon (R-NE) in the House and is awaiting Senate introduction. This landmark legislation would make hate crime data more accurate and consistent by incentivizing law enforcement agencies to report hate crimes to the FBI. It requires agencies serving cities of over 100,000 people to credibly report hate crimes, or have substantial hate crime public education and awareness initiatives, in order to be eligible for funding under the Omnibus Crime Control and Safe Streets Act of 1968.
- **Passing the Disarm Hate Act,** introduced by Senator Bob Casey (D-PA) in the Senate and Representatives Veronica Escobar (D-TX) and Maxwell Frost (D-FL) in the House, would ensure those convicted of violent misdemeanor hate crimes cannot purchase or possess firearms.
- **And, increasing funding for critical community-based hate crime prevention programs and initiatives**. Federal funding should be increased for Department of Justice community-based programs under the COVID-19 Hate Crimes Act, including the Jabara Heyer NO HATE Act. Specifically, state hate crime hotlines require more resources and funding to ensure victims have the support they need and are reporting hate crimes, and to expand restorative justice initiatives and services for those impacted by hate. This should also include continued, and increased, funding for the Department of Justice's Community Relations Service to facilitate mediation, training, and support to communities in responding to hate.

National Council of Jewish Women

Jewish texts, our values, and our unique history remind us to honor the dignity of each person and care for one another, particularly safeguarding the rights of those being marginalized or targeted. Our nation's greatest strengths are its democratic ideals of equality under the law, the diversity of its people, and our shared interest in respect and inclusion for all. We should all have equal opportunity and the freedom to live without fear of violence and persecution.

Thank you for your leadership. Please contact Talya Steinberg, NCJW Associate Director of Government Relations and Advocacy, at tsteinberg@ncjw.org with any questions.

POLARIZATION & EXTREMISM RESEARCH & INNOVATION LAB

PERIL Congressional Testimony

Tuesday, September 17th, 2024

The Honorable Richard J. Durbin
Chair, Senate Committee on the Judiciary
224 Dirksen Senate Office Building
Washington, DC 20510

The Honorable Lindsay Graham
Ranking Member, Senate Committee on the Judiciary
224 Dirksen Senate Office Building
Washington, DC 20510

Dear Senators Durbin and Graham, and Members of the Committee,

To begin, we would like to express our gratitude to Chair Durbin, Ranking Member Graham, and the entirety of the Senate Judiciary Committee for dedicating this full hearing to this important subject: *A Threat to Justice Everywhere: Stemming the Tide of Hate Crimes in America.* Anywhere a hate crime occurs, it threatens the foundations of our democratic society.

PERIL, the Polarization & Extremism Research & Innovation Lab, is a leading expert in the field of preventing violent extremism. Our lab employs a public health approach to design, test, and scale-up evidence-based tools and strategies that effectively reduce the threat of radicalization, as well as susceptibility to supremacist ideologies, conspiracy theories, mis/disinformation, and propaganda. All of these are either the drivers of hate or its final, awful

outcome. We see this clearly as polarization stokes antisemitic and Islamophobic hate on college campuses, as hatred of women and minorities fuels movements to strip them of their equal rights, and in conspiracy theories such as the so-called "Great Replacement" which begin and end in violent hatred.

Therefore, PERIL understands that the work of combating hate is essential to preventing violence. Because we operate in the arena of primary prevention, we focus on upstream solutions to these problems. Our work empowers individuals and communities to intervene and interrupt pathways to hatred and violence, and it supports their efforts to build resilience.

Others will address the committee about the alarming rise in hate crimes, their growing violence, and their increasing lethality. We, like the members of this Committee, are grateful for (and rely upon) the great work done by so many agencies and institutions that track and monitor the spread of hate crimes in America. Our expertise as a lab differs from many other experts presenting in this session: PERIL looks for innovative, upstream approaches that minimize the likelihood of individuals and communities developing or deepening the hatred that ends in violence. **By working to prevent the conditions that give rise to hatred and extremism, we seek to minimize the number of individuals likely to commit crimes of hate**.

There is a **growing body of evidence showing what works to disrupt the pathways to hate**, hate crimes, and violent extremism. These approaches equip the public with tools and knowledge to shore up their capacity and resilience. Importantly, these approaches protect the right to free speech and reduce the need for security-based responses. These methods, many of which have been pioneered overseas and are now being brought to the US, focus on community-based programs that can be broadened, coordinated, and sustained by State and Federal commitments to

collaboration and funding. These methods focus on primary methods of intervention with **the goal of building resilience against hatred**, polarization, and their correlates at the individual, communal, state, and federal levels. The best of these approaches can be classified under the umbrella of a "public health" strategy.

The public health model asks us to think about hate preventatively and holistically. There are numerous examples from the medical field to which we can draw comparisons. From addressing the connection between smoking and lung cancer, to identifying the risks and deadly impacts of drunk driving, public health campaigns have helped change laws and shift social norms to reduce dangerous and destructive behavior. Successful campaigns such as these must be broad-based, proactive, and take aim at the root of the problem. They offer communities resources to address the unmet social and emotional needs that lead to destructive behavior, such as trauma, dislocation, and the need for meaning. They educate communities in their schools, places of worship, and in the media they enjoy. They call on community leaders to show the way and government to provide these leaders the resources they need to build a foundation for the future.

The anti-drunk driving campaigns of the 1980s and anti-smoking campaigns of the 2000s made our country safer and healthier. This same approach will work for hate. **Reducing rates of radicalization towards hate might involve public education campaigns in arenas like media literacy, civic engagement clubs for kids, and** policy **to** address **the spread of mis- and disinformation online**. Programs such as these free up valuable resources for law enforcement, with communities at reduced risk for future acts of hate-fueled violence. Law enforcement plays a needed role in protecting communities, but it does not have to serve as the primary provider of prevention services, especially if community trust is to be built and sustained. There remains distrust of law enforcement in some communities historically targeted by hate crimes, and prevention efforts can enjoy

the trust and active engagement of those who may be reluctant to involve law enforcement.

Trust still needs to be built by active, consistent networking and programming with a sustainable presence. This means working with community leaders across all racial, ethnic, and religious backgrounds to create shared social capital. It also means building long-term funding opportunities so communities don't have to be worried that services will be "unplugged" with changes in government administrations. Traditional interventions typically focus resources on individuals susceptible to adopting hate-fueled ideologies and fail to acknowledge the trauma and damage caused suffered by targeted communities. While we must work to support those people who are susceptible to radicalization, successful prevention programs must include therapeutic, educational, and financial support for the individuals affected by hate crimes., both directly and indirectly Such an approach ensures equity by building supports for members of historically targeted and marginalized communities, as well as those who are victim-survivors of hate. Supporting marginalized communities, building democratic resilience, and early intervention are essential elements of mainstream prevention work.

The public health approach, like all strategies to combat hate and prevent violence, must include rigorous evaluation of its programs and projects, both in the lab and in the field. Emerging program models must include iterative feedback streams, subject to ongoing evaluation, adjustment, and redeployment. This process should treat experts and community members as equal partners in data gathering, interpretation, and decision-making. Finally, there is a critical need for compatible evaluation measures to be developed for prevention programs so that these interventions can be adequately compared, and the most effective strategies can be identified.

To be sure, as in all community-based work, no "one size fits all" intervention will work in every

location. Flexibility and adaptability are foundational to addressing hate crimes, especially in response to the voices of community members. A localized approach must strike a balance between top-down guidance and local input. This requires determining community-specific criteria for evaluating success and a robust national support structure. Those larger support structures include registries that can more accurately provide statistics and information on instances of bias, harassment and discrimination; databases of resources that can be linked across agencies and sectors; working groups and councils for technical issues and joint standards; national certification standards for counseling and training; and a national hotline infrastructure for rapid response.

Evidence shows that with the right tools it is possible to make communities safer from the threat of hate crimes. Parents, grandparents, teachers, coaches, mental health professionals, and others deserve these resources to confront the unprecedented risk posed by today's cultures of hate. All communities need information and tangible action steps to help their loved ones resist the manipulative rhetoric, propaganda, conspiracy theories, and disinformation they are exposed to online and offline. They need guidance and capacity to build communities where the search for significance and control does not point toward hate. It is our responsibility to provide these resources while avoiding censorship, surveillance, monitoring, or other security-based approaches against law-abiding Americans. Creating community-based, trust-focused programs that work upstream to counter polarization will do this, helping to rebuild our fractured society and make us more resilient.

To advance this model of prevention, we at PERIL recommend pursuing the following policies to reduce the potential for hate-fueled violence:

1. **Invest in a holistic, community-based, public-health approach** to preventing pathways to hate and hate-fueled violence. This work must address past harms and center the needs of vulnerable communities. This investment needs both to initiate new programs and to stabilize already-existing systems that have proven effective:
    a. Fund the testing of **innovative upstream prevention strategies**, specifically in arenas beyond the security sector, including:
        i. **Digital Literacy curricula**. Nearly one-in-five parents of a child younger than 12 in the US say their child has a smartphone. At the same time, children under 12 are prime targets for campaigns of harmful mis/disinformation, propaganda, and recruitment by malign actors. By combining elements of both Social Emotional Learning and up-to-date digital literacy, we can help young people to recognize and resist harmful dynamics such as these. We can reduce reactive or impulsive behaviors, cultivate awareness of one's mental processes, reinforce individual responsibility for information consumption and communication, and increase self-awareness, self-confidence, and self-efficacy.
        ii. **Widespread Civic Support campaigns**. Resilience takes root in communities that are connected and educated. Coordinated resilience campaigns such as dialogue across difference and training to spot the risks associated with hate can build civic bonds and will also work to mitigate the influence of supremacist thinking and conspiracy theories. Policy at all levels can fund and scale such efforts to keep the community informed and resilient against the risks of polarization and extremism.
        iii. **Pilot testing and scaling of innovative intervention approaches**:
            - **Community Advisory, Resource, and Education CARE Centers**: PERIL has launched a multi-year initiative to establish the first CARE centers in the United States. This network provides resources at the grassroots, state and local-governmental levels to prevent and counter the causes of hate-fueled violence. Modeled after the 23-year-old German mobile advisory centers, CARE Centers will provide on-site support, workshops, trainings, support groups, and other resources for those impacted and affected by hate, discrimination, and supremacist ideologies as well as those susceptible to radicalization. CARE Centers will build local networks of practitioners and experts to address community needs and serve affected and concerned community members.
            - The creation of new programs to recognize and "offramp" radicalized

individuals from further engagement with hate and violence. Such programs currently exist in many forms and require rigorous analysis to test for effectiveness and scalability.

b. Ensure **adequate funding for government initiatives** and public-private partnerships. This includes making evergreen already-existing state and federal allocations, and creating sustainability for projects initiated by philanthropy. In this arena, PERIL especially recommends creating new funding pathways through Federal agencies *not* dedicated to law enforcement:
    - The Department of Education can create prevention initiatives focused on preparing students to recognize and reject harmful and hateful online content
    - The Department of Health and Human Services can create funding streams that recognize hate as a Public Health Crisis and respond in appropriate frameworks.

2. Support the creation of **inter-agency task forces and networks beyond the security sector** that include civil society institutions like schools, communities of faith, mental health professionals, NGOs and advocacy groups improving community wellness.

3. Create a **central, national, nonpartisan center for extremism prevention** to provide federal, state and local governments and all local communities with tools, resources, training, capacity-building, and evidence of what works. Such a center could take the form of a public-private partnership and, in keeping with the United Nations International Covenant for Civil and Political Rights, serve as a "national human rights institution" as called for in the Paris Principles.

12 September 2024

The Senate Judiciary Committee
224 Dirksen Senate Office Building
Washington, DC 20510

Dear Chairman Durbin, Ranking Member Graham, and Committee Members:

In coordination with the Sikh Coalition, I, Raghuvinder Singh Deol, am writing to inform the Committee of my personal experience relevant to your hearing, "A Threat to Justice Everywhere: Stemming the Tide of Hate Crimes in America."

On August 5, 2012, the assault of the Sikh Temple of Wisconsin by a white nationalist gunman became what was, at the time, one of the deadliest attacks on a house of worship in U.S. history. Six individuals were killed that day, but others survived only with life-changing wounds, both physical and mental. My father, Baba Punjab Singh, was shot in the cheek, resulting in brain and spinal injuries that left him with full-body paralysis for the final seven and a half years of his life; he could not move or speak, but could blink once for "no" and twice for "yes" when others spoke to him. On March 2, 2020, he became the seventh person to pass away from complications of the injuries that he sustained on that horrific day.

My father was a remarkable man. Born in Pakistan in 1947, his family eventually ended up in Punjab due to the Partition. He began studying to become a *granthi* (Sikh religious leader) in his teenage years. He served in the Indian Army for 19 years, including as a religious counselor; after retiring, he became a traveling religious teacher who went from village to village teaching about Sikhi and quietly performing acts of *seva*, or selfless service. It was this work that ultimately took him to the United States, and specifically the Sikh Temple of Wisconsin—he was in town working with the local community on outreach and education when the attack happened.

Sikhs have a concept called *chardi kala*, best translated as an 'eternal optimism.' It is not a blind faith that things will improve, or a stubborn refusal to reckon with the harshness of our world; it is, however, a commitment to maintaining positive spirits and continuing to improve ourselves and our communities through constant service. Even when he was paralyzed—even when many others might have given up any notion of hope—my father would blink twice for "yes" when asked if he was still living in *chardi kala.* The overwhelming strength of his moral and spiritual example still guides me, my family, and others in our community today.

The Oak Creek tragedy spurred Congress to action. Chairman Durbin and some other members of this Committee will remember a young man, Harpreet Singh Saini, who testified at a hearing barely a month later; he argued that his mother, who was killed in the attack, should at a bare minimum be given "the dignity of being counted as a statistic" by mandating that anti-Sikh hate incidents be tracked by the FBI.[1] That change, which arrived in 2014, was a step in the right

[1] "Hate Crimes and the Threat of Domestic Extremism," 112th Cong. 3 (2012) (testimony of Harpreet Singh Saini).

direction. But 10 years later, with a few meaningful but infrequent exceptions, our government's actions to create innovative and forceful policy in the fight against violent hate have largely stagnated.

One such exception was the 2021 passage of the COVID-19 Hate Crimes Act, which included the Khalid Jabara-Heather Heyer NO HATE Act. While this legislation was a significant milestone—the first major hate crimes legislation from our federal government in 12 years—there is still essential progress to be made in its thoughtful implementation. According to the advocates of the Sikh Coalition, it remains important to:

- Make state-level hate crime hotlines and reporting websites language accessible, so that individuals who speak minority languages (like Punjabi, which is spoken by many Sikhs) have equal access to resources and help in the face of hate;
- Ensure that information is being collected about the ethnicity and religion of individuals targeted in hate crimes and incidents;
- Share this appropriately anonymized data on hate crimes with community advocates, so that organizations who provide direct support know where their services are most needed; and
- Continue to provide federal resources to the states who are thoughtfully implementing the various components of this law.

I encourage this Committee, which moved so decisively and compassionately to help honor families like mine and young Harpreet's in 2012, to explore these recommendations and other ways of both preventing and countering violent hate in our society. I do not want one more person to experience the pain that I have endured.

I thank you for the opportunity to submit my story into the congressional record.

In Chardi Kala,
Raghuvinder Singh Deol

UNION OF ORTHODOX JEWISH CONGREGATIONS OF AMERICA

ADVOCACY CENTER

MITCHEL R. AEDER
President

RABBI MOSHE HAUER
Executive Vice President

RABBI JOSH JOSEPH, ED.D.
Executive Vice President
& Chief Operating Officer

NATHAN J. DIAMENT
Executive Director

ISAAC PRETTER
Chairman, Advocacy

YEHUDA NEUBERGER
Chairman, Board of Directors

September 16, 2024

Hon. Richard Durbin, Chairman
Hon. Lindsey Graham, Ranking Member
U.S. Senate Committee on the Judiciary
Washington, DC
by electronic mail

Dear Chairman Durbin, Ranking Member Graham
and Senators of the Judiciary Committee,

We write to you on behalf of the Union of Orthodox Jewish Congregations of America – the nation's largest Orthodox Jewish umbrella organization – regarding your September 17 hearing: "*A Threat to Justice Everywhere; Stemming the Tide of Hate Crimes in America*".

We appreciate that the Committee is holding this hearing and that, we expect, it will include an extensive examination of the unprecedented surge in antisemitism in the United States that has occurred since the October 7, 2023 Hamas attack upon Israel. However, we would be remiss if we did not say that our appreciation is mixed with disappointment.

In 1790, President George Washington wrote to the Jewish community of Newport, RI and famously said that Jews would enjoy unprecedented freedom in the United States because the newly founded nation would "give to bigotry no sanction, to persecution no assistance."

Since October 7, American Jews have been subjected to physical assaults on sidewalks, slander and harassment in subways, raucous protests outside our synagogues and array of attacks – physical and verbal – on school campuses. This has been going on for months. It's made headlines. President Biden and other senior officials of his Administration have spoken out and taken various actions to address the crisis (but surely more must be done because the crisis has not abated). The surge of antisemitism in the U.S. has been the subject of multiple hearings by congressional committees -- but only committees in the House of Representatives. Until today, nearly a year into this crisis, the Senate Judiciary Committee (not to mention the Senate HELP Committee) has been missing in action. This has been dispiriting to our community.

Yet, there is much this Committee and the U.S. Senate can do, even now, to respond to the wave of unprecedented antisemitism in

America and thereby uphold the basic civil rights of American Jews – and recommit to fulfill George Washington's promise to the American Jewish community. In that constructive spirit, we offer the following.

1. There are several federal laws which should be actively utilized to better protect American Jews from antisemitic attacks. These include 18 U.S.C. § 241 (prohibiting conspiracies to interfere with citizens' civil rights) and 18 U.S.C. § 248 (the "FACE Act", which prohibits obstruction, injury and intimidation of citizens seeking to exercise their free exercise of religion at a place of worship).

   In addition to the much reported incidents that have occurred on American university campuses over the past year, antisemites have targeted Jewish synagogues and sought to obstruct and intimidate Jews accessing our synagogues. Two prominent examples of this occurred in Los Angeles[1] and in New Jersey[2]. We have urged the Department of Justice to use the federal statutes cited above to prosecute those who have sought to intimidate our community and interfere with our fundamental rights. We have yet to see such charges brought.

2. Federal authorities could – and should – give better guidance to campus administrators and police about First Amendment law. As Senators on this Committee are well aware, "freedom of speech" is not a right without any limitations. Content neutral – time, place and manner restrictions are constitutional as are other limitations when speech can be inciteful and lead to harassment and violence. Yet, we have seen over the past year that antisemites, especially on university campuses, hide behind invocations of "free speech" and too many administrators and campus police seem to know how to respond appropriately. The Department of Justice should offer detailed guidance with illustrative examples – in parallel to guidance issued by the Department of Education[3] – to both inform and hold accountable university officials who are responsible for protecting the rights of their Jewish students to be free from harassment.

3. The Senate should pass new legislation that will concretely address and combat the crisis of antisemitism. Several bills have already passed the House on a bipartisan basis and await Senate action. These bills include the following:

   a. Antisemitism Awareness Act (H.R.6090, S.4127)
      The AAA will codify the IHRA definition of antisemitism and expand its usage across the Federal government. It is currently utilized by the Dept. of State and the Dept. of Education. The IHRA definition has been endorsed by more than 40 countries and is recognized as the gold standard and a critical tool in combatting antisemitism.[4]

---

1 https://www.cnn.com/2024/06/24/us/los-angeles-synagogue-palestinian-israeli-protest-violence/index.html

2 https://www.northjersey.com/story/news/bergen/teaneck/2024/04/01/demonstrations-outside-teaneck-nj-synagogue-over-israel-gaza-war/73173689007/

3 https://www2.ed.gov/about/offices/list/ocr/letters/colleague-202405-shared-ancestry.pdf

4 https://forward.com/fast-forward/642348/deborah-lipstadt-antisemitism-jerusalem-declaration-nexus-ihra/

b. Deterrent Act (H.R.5933)
The Defending Education Transparency and Ending Rogue Regimes Engaging in Nefarious Transactions Act is a bill about transparency. The bill requires an institution of higher education to annually disclose to the Department of Education (ED) any year in which the IHE: receives a gift from a foreign country of concern (e.g., China or Russia) or foreign entity of concern of any dollar amount; receives a gift or contract from a foreign source (other than a foreign country of concern or foreign entity of concern) that is valued at $50,000 or more, considered alone or in combination with all other gifts or contracts within a calendar year (current disclosure threshold is $250,000 or more), or which has an undetermined monetary value; enters into a contract with a foreign country of concern or foreign entity of concern after receiving a waiver for such contract; or is substantially controlled by a foreign source. The bill passed the House on a broad bipartisan vote.

c. H.R. 6408
This bill suspends the tax-exempt status of terrorist supporting organizations. The bill defines *terrorist supporting organization* as any organization designated as having provided (during the three-year period prior to its designation) material support or resources to a terrorist organization in excess of a *de minimis* amount. The Department of the Treasury must provide notice to such organizations of the impending designation and an opportunity to cure. Treasury must rescind a designation that it determines was erroneous or if the organization did not receive notice of designation. The bill provides for administrative review by the Internal Revenue Service Independent Office of Appeals of any dispute regarding a designation of an organization as a terrorist supporting organization. The U.S. district courts shall have exclusive jurisdiction to review any such designation. The bill passed the House on a broad bipartisan vote.

d. Domestic Terrorism Prevention Act (S.1591)
This bill establishes new requirements to expand the availability of information on domestic terrorism, as well as the relationship between domestic terrorism and hate crimes. It authorizes domestic terrorism components within the Department of Homeland Security (DHS), the Department of Justice (DOJ), and the Federal Bureau of Investigation (FBI) to monitor, analyze, investigate, and prosecute domestic terrorism. DHS, DOJ, and the FBI must review the anti-terrorism training and resource programs of their agencies that are provided to federal, state, local, and tribal law enforcement agencies. It creates an interagency task force to analyze and combat white supremacist and neo-Nazi infiltration of the uniformed services and federal law enforcement agencies.

Since October 7, the American Jewish community has endured a wave of antisemitism that is unprecedented in our history in the U.S. Since the founding of this nation, Jews have experienced freedom and liberty of a kind our ancestors never experienced in any nation outside Israel in which Jews lived. That is because religious liberty and equality was built into the foundational 'DNA' of this country.

The events we have experienced these past months – and the inability of national leaders and institutions to act effectively and reverse this tide of antisemitism – has caused too many Jews to question whether the promise of liberty and equality for Jews in America will continue for future

generations. We are wondering whether George Washington's words to the Jews of Newport remain true.

Today, we look to this Committee and you – Senators – of the United States to give this crisis its due attention and plan to take action in the U.S. Senate to defend the civil rights of American Jews and ensure the continuity of America's promise to its Jewish citizens.

Sincerely,

Nathan J. Diament
Executive Director



September 16, 2024

Muslim Civic Coalition
200 W. Madison St., Suite 300
Chicago, IL 60606

Senator Dick Durbin
Chair, Senate Judiciary Committee
711 Hart Senate Building
Washington, D.C. 20510

Subject: Introduction of Supplementary Materials for Hearing on Hate Crimes Targeting Palestinians, Muslims, Jews, and Arabs

Dear Senator Durbin and Esteemed Members of the Senate Judiciary Committee,

I hope this letter finds you well. As you prepare for the upcoming Senate Judiciary Committee hearing on hate crimes, we are pleased to submit a packet of supplementary materials that provides critical context and detailed information on the troubling rise in hate crimes and dehumanization of Palestinians, Muslims, Jews, and Arabs in the United States.

These supplementary materials are intended to support the Committee's efforts in understanding these crimes' scope and impact and assist in formulating effective legislative and policy responses. Enclosed, you will find the following documents:

1. **Bridge Initiative (Georgetown University)**, *Fanning the Flames: How Western Media Fuels Islamophobia in Coverage of Pro-Palestine Campus Protests*: Focuses on the dehumanization of Palestinian Americans through biased media narratives, suppression of dissent, and Islamophobic tropes. It highlights how the media ignores the human rights struggles of Palestinians and frames their cause as extremist, fostering anti-Palestinian bias.
2. **Council on American-Islamic Relations (CAIR),** *Fatal: The Resurgence of Anti-Muslim Hate (Presentation on Civil Rights Report 2024)*: Presentation regarding the rise of Islamophobia in the United States, particularly focusing on late 2023 and the beginning of 2024 in light of the Israel/Palestine conflict. For the full report please visit https://ca.cair.com/sacval/wp-content/uploads/sites/9/2024/04/UPDATE_2024-Report_Online-2.pdf.
3. **Institute for Social Policy and Understanding (ISPU),** *Islamophobia is Pervasive, Systemic, and a Threat to All*: This research provides a detailed overview of the systemic and institutionalized Islamophobia faced by Muslims in America. It focuses on how

anti-Muslim discrimination permeates various aspects of life, including social media, education, employment, healthcare, banking, and interactions with law enforcement. For more than twenty years, (ISPU) has conducted and shared research on American Muslims and the issues impacting Muslim communities in the United States. Since 2016, that research has included several editions of the American Muslim Poll, which captures Muslims' attitudes, opinions, and lived experiences alongside Americans of other or no faith. These studies, taken together, provide a robust understanding of the prevalence, manifestations, and consequences of anti-Muslim bigotry as well as responses to it.

4. **Institute for Social Policy and Understanding (ISPU),** *Religious Groups' Views on Ceasefire: American Muslims, Especially Students, Most Likely to Experience Religious Discrimination* (April 16, 2024): This research provides a detailed analysis of the rising levels of religious discrimination experienced by Muslim and Jewish Americans, especially in the wake of the crisis in Gaza. The report focuses on survey results that examine the frequency and settings of religious bias in the United States, comparing the experiences of Muslims, Jews, and the general public.
5. **International Resistance Project (IRP)**, *U.S. Citizens and Relatives Trapped in Gaza* (September 16, 2024): This document examines the dehumanization of Palestinian Americans via the juxtaposition of the U.S. State Department's efforts to evacuate Israeli-Americans as compared to their abandonment of Palestinian Americans in the Gaza Strip, and provides some of the stories of Palestinian Americans and their relatives who are currently trapped in the Gaza Strip.

To effectively navigate and address the issues of this hearing, we would like to present you with two recent examples of Islamophobia that will provide invaluable insight into the distress caused by the dehumanization of Palestinian Americans. The first is the story of Wadee Alfayoumi, a 6-year-old Palestinian-American boy who became a tragic symbol of rising Islamophobia and anti-Palestinian sentiment in the United States. On October 14, 2023, Wadee was brutally murdered through 26 knife stabs from his landlord. During the attack, the murderer yelled anti-Muslim and anti-Palestinian slurs and also stabbed Wadee's mother mutiple times. A picture of Wadee can be found above and also in the materials attached. The second disturbing example of the dehumanization of Palestinian Americans is the shooting of three Palestinian students, Hisham Awartani, Kinnan Abdalhamid, and Tahseen Ahmed, near the University of Vermont. The three boys were targeted because they were speaking Arabic and wearing keffiyehs. A picture of Hisham, Kinnan and Tahseen can be found above. We hope these examples can provide you an idea of the distress that has been experienced by Muslims, Arabs and particularly Palestinian Americans.

As a result of the hearing, we hope the following legislative measures could be considered to address the issue of Islamophobia effectively:

1. **Strengthening Hate Crime Reporting and Response**:
    - **Hate Crimes Prevention Act**: Strengthen existing hate crime laws to ensure better reporting mechanisms. Mandate that local and state law enforcement agencies report all hate crime incidents to the FBI. Many hate crimes go

unreported, especially those targeting Muslim and Arab communities, so accurate data is essential for understanding the scope of the problem.

2. **Islamophobia Prevention Act**:
    - **Definition of Islamophobia**: Legislation that defines and criminalizes Islamophobia could mirror anti-antisemitism measures. This law could also address both interpersonal and systemic discrimination, including racial profiling and institutional bias.
3. **Domestic Terrorism Prevention Act**:
    - **Focus on White Supremacist Extremism**: Since Islamophobic hate crimes are often driven by white supremacist and far-right extremism, legislation like the **Domestic Terrorism Prevention Act** (DTPA), reintroduced by Senator Durbin, could be passed to combat domestic terror groups that frequently target Muslim communities. This would create federal offices to monitor and prevent domestic terrorism and provide more resources to law enforcement to address these threats.
4. **School and Workplace Anti-Discrimination Policies**:
    - **Student and Worker Protection Act**: Extend protections for Muslim students and employees who face discrimination, bullying, or harassment in schools or workplaces. This would involve better anti-discrimination policies and reporting mechanisms, particularly in educational institutions, and ensure there are clear consequences for Islamophobic actions.
5. **Protection of Religious Sites**:
    - **Religious Institution Protection Act**: Increase funding for programs that protect mosques and Islamic centers from vandalism and violence, similar to current federal protections for synagogues and churches. This could include grants to enhance security infrastructure and rapid response systems for threats.
6. **Social Media Accountability Act**:
    - Hold social media platforms accountable for allowing Islamophobic and hate-filled content to proliferate. This legislation could require platforms to take stronger action against users promoting hate speech and extremist ideologies, and impose penalties for failure to act on reports of hate crimes or incitement.
7. **Bias in Law Enforcement Act**:
    - This act could address Islamophobic practices within law enforcement agencies. It would ban racial profiling and discriminatory practices, ensuring that Muslim communities are not unfairly targeted in counterterrorism operations and surveillance programs.
8. **Funding for Community Education Programs**:
    - Establish grant programs for community outreach, public awareness, and education about Islamophobia. These programs could support anti-bias training for law enforcement, school officials, and the general public, aimed at reducing hate crimes and promoting interfaith dialogue.

These legislative actions would target the rise of Islamophobia and Anti Palestinian hate crimes by ensuring better reporting, stronger protections for victims, and accountability for institutions

and individuals promoting hate. In addition to the legislative actions, we believe elected officials and policymakers could make an immediate impact on this issue by using measured rhetoric when speaking about Muslims or Palestinians since inciteful rhetoric fuels hate against these communities.

We believe that this packet will be a valuable resource for the Committee as you consider measures to enhance protections for marginalized communities and combat the rising tide of hate crimes. Your leadership and commitment to addressing these critical issues are commendable, and we hope that these materials contribute meaningfully to the discussions and decisions made during the hearing.

Should you require any additional information or wish to discuss any aspect of the materials further, please do not hesitate to contact me directly. Thank you for your attention to this important matter.

Muslim Civic Coalition

Dr. Dilara Sayeed, President, Muslim Civic Coalition
Maaria Mozaffar, Legislative Lead, Muslim Civic Coalition
Amina Barhumi, Advocacy and Policy Lead, Muslim Civic Coalition
Sameer Afsar, Board Chair, Muslim Civic Coalition
Reema Kamran, Board Treasurer, Muslim Civic Coalition
On behalf of the Muslim Civic Coalition partners and allies

BRIDGE
A GEORGETOWN UNIVERSITY INITIATIVE



(Image Source: Getty Images/Spencer Platt)

FANNING THE FLAMES: HOW WESTERN MEDIA FUELS ISLAMOPHOBIA IN COVERAGE OF PRO-PALESTINE CAMPUS PROTESTS

by Mobashra Tazamal
Published on 22 May 2024

Print

Sharable Link
https://bridge.georgetown.edu/research/fanning-the-flames-how-

Copy Link

It has been over seven months since Israel began its latest bombardment of the Gaza strip, a tiny strip of land that it has occupied for decades. The area is home to 2 million Palestinians, nearly half of whom are children. Since October 7th, 2023, Israel has killed over 36,000 Palestinians, including more than 15,000 children.

Israel's most recent onslaught of the occupied territory occurred following a surprise attack by the militant wing of Hamas, the political entity that controls Gaza. As a result of the attack, an estimated 1,139 Israelis were killed and around 200 were held hostage. Currently, there are 129 Israeli hostages in Gaza.

Over the past seven months, western political and media discourse on the genocide has exposed the blatant double standards and anti-Palestinian biases within these institutions. Western media coverage of Israel's genocide in Gaza has often included Islamophobic tropes. These include the claims that 1) all Palestinians are Hamas, 2) All in support of Palestine are potential "terrorists"'/"extremists," and 3) all voices in support of Palestinian human rights are antisemitic.

Israeli military aggression and daily bombings (bombing that has been more intense than even WWII) are justified under the guise of "self-defense," despite the fact that under international law, Israel cannot claim self-defense from a territory it occupies. Additionally, while the families of Israeli hostages receive consistent airtime, Palestinian voices are frequently ignored and erased by Western media outlets. Furthermore, the media's framing of this conflict using the 'war on terror' narrative—where the occupied people are labeled as 'terrorists'—instead of recognizing it as an issue of settler-colonialism and Palestinian self-determination, unjustly targets all Palestinians.

In response to Israel's genocide in Gaza and the US government's complicity in the mass murder of tens of thousands of Palestinians, American university students have embarked on an anti-war movement echoing that of the Vietnam era. Beginning at Columbia University, students established Palestine solidarity encampments on college campuses across the US calling on their respective administrations to divest from Israel. The protests have also expanded to universities across the globe in support of the rights of Palestinians and an end to Israel's occupation of Palestine.

In the US, many of the school's administrations have responded to protests in an authoritarian manner, calling in law enforcement to violently suppress them. Videos from these events reveal intense police brutality targeting students and faculty. As a result, many students and faculty have been hospitalized for injuries, including broken ribs.

In one instance in April 2024 at the Univesrity of Californa, Los Angeles, pro-Israel supporters including several far-right activists and white nationalists, launched a late night attack on the peaceful pro-Palestine encampment on campus, including violently assaulting protesters with sticks and weapons, shooting fireworks at the encampment, and using pepper spray, all the while police officers stood by and did nothing for hours. Over 30 individuals were injured. When law enforcement responded, it only arrested the pro-Palestine student protesters and faculty.

The actions of University administrations raise serious questions about their commitment to free speech. Further such violence against peaceful protesters is grounds for legal action as these attacks violate the institutions' obligations to protect the welfare of their students and staff.

Coverage of these pro-Palestine protests from both the media and political sectors has heavily promoted Islamophobic tropes. This has been done by 1) labeling all participants as "terrorists," "extremists" or "Pro-Hamas," and 2) claiming that those calling for an end to the genocide are motivated by antisemitism. In addition to engaging in Islamophobia, these voices have largely remained silent on the the surge in anti-Muslim harassment and violence targeting student protesters as well as the wider American Muslim community.

Throughout mainstream media and among pro-Israel supporters, the prevailing narrative has been that these protests consist of "pro-Hamas" supporters who are "extremists," and "terrorists," accusations that are rooted in Islamophobia. Despite the Israel-Palestine issue fundamentally revolving around self-determination and human rights, pro-Israel supporters and elements within Western media and political circles have framed it as a religious conflict: Jews versus Muslims. Despite protesters being from all backgrounds (including Jewish students), the narrative has been that these are largely Muslim groups rallying for a Muslim cause, and therefore warrant the "extremist," and/or "pro-Hamas" label. This dangerous smear is Islamophobic and seeks to delegitimize the anti-genocide efforts of these students. It also puts them in harm's way.

Government officials are characterizing students exercising their First Amendment rights as "terrorists" in order to criminalize and suppress dissent. Portraying the protesters as "terrorists" is a tactic drawn from the War on Terror (WoT) playbook, which entails constructing Muslims, particularly those who are politically vocal and active, as terrorists. Recently, Senators Roger Marshall and Marsha Blackburn introduced legislation describing student protesters as "Hamas sympathizers" and "terrorist agitators," and pushed for them to be placed on the FBI's No-Fly list, another hallmark of the WoT. The No-Fly list overwhelmingly targeted Muslims, an estimated 98 percent, barring them from travel and making them susceptible to extra scrutiny at airports. The Senators' efforts to reignite the no-fly lists, which involved arbitrarily placing individuals, including babies, on these lists, is a stark reminder that the WoT playbook will continue to be used to silence political dissent.

Claims that those in support of Palestine, the rights of Palestinians, and an end to the genocide are motivated by antisemitism also rely on Islamophobic tropes. The assumption is that these protesters are largely Muslim, and that Muslims are inherently antisemitic. Such a racist notion is reliant on the idea that antisemitism is inherent to

Islam. Not only is this false but this belief also fails to understand antisemitism, given that it arose in Europe and that Jews and Muslims in the Middle East had lived together in harmony for centuries. It's also important to note that Jewish students have been involved in the pro-Palestine protests as well. The current conflict is a political one, not religious but accusations of antisemitism seek to frame it as such.

The prevalence of this Islamophobic trope when it comes to discourse on Israel-Palestine was highlighted in a November 2023 report by Rutgers Center for Security, Race and Rights. The report's authors, Professor Sahar Aziz and Mitchell Plitnick, note that throughout American society that the portrayal of Muslims as "loyal to terrorists and presumptively antisemitic is a well-worn image," and one that has heavily informed public discourse and policy. The report also states that this Islamophobic trope claims "that Palestinians (who are presumed to all be Muslims) are motivated not by their own interests in freedom and dignity but by a hatred for Jews that renders them inherently untrustworthy." Thus, any advocacy efforts for Palestinian self-determination is framed as part of a "conspiracy by Arabs and Muslims to physically annihilate Israel and its Jewish citizens," and used to "silence any criticism of Israeli state practices and policies."

It can be argued that the current climate in the US is a turning point in public awareness of Israel's decades-long violent occupation of Palestine and discrimination against Palestinians. The younger generation is no longer confined to Western mainstream media, which has often exhibited Islamophobia and maintained a pro-Israel/anti-Palestinian bias, for information and is instead turning to social media where Palestinian journalists, activists, and residents of the occupied territories are sharing their on the ground accounts of Israeli aggression and violence. The newfound access to the Palestinian narrative, long denied a platform in Western mainstream media, enables Americans to attain a more realistic understanding of the issue. This is seen as a threat by the pro-Israel camp. In an effort to clamp down on growing criticism and protest, pro-Israel and Zionist voices have employed Islamophboic tropes, alleging antisemitism amongst the pro-Palestine encampments across the country.

There is no denying that antisemitism is prevalent today but smearing the pro-Palestine movement as antisemitic is dangerous, Islamophobic, and undermines the issue. For the past few months, a number of members of Congress have been exploiting the issue of antisemitism, accusing University administrators of fostering a dangerous environment for Jewish students. The House Committee on Education and the Workforce has held a number of hearings on antisemitism, where university presidents have been grilled about antisemitism on campus. However, Professor Robin D. G. Kelley argues that "House Republicans are less interested in anti-Semitism than racking up "gotcha" soundbites for their fundraising campaigns, advancing the right-wing assault on DEI and what they define as "critical race theory," and attacking the university as a whole," and that is they truly wanted to tackle antisemitism, they "would investigate the white nationalists, neo-Nazis, and QAnon conspiracy theorists" that make up part of their [Republicans] base.

Much of the manufactured hysteria around antisemitism within the Pro-Palestine movement has also been done to derail and divert attention away from Israel's ongoing genocide of Palestinians. Additionally, while universities have responded swiftly to Jewish students feeling unsafe, little to no action has been taken for Muslim and Arab students who are facing real threats and violence. The Council on American-Islamic Relations (CAIR) reported a 54 percent increase in anti-Muslim incidents, with over half of the complaints reported in the final three months of 2023. Since October 7th, 2023, the Center for Muslim Life at Rutgers University was vandalized, three Palestinian-American students were shot with one left paralyzed, an Arab Muslim student was targeted in a hit and run at Stanford University, students reported having their hijabs pulled off at George Washington University, and there have been countless reports of Muslim and Arab students subjected to anti-Arab and anti-Muslim slurs including being called "terrorists." The failure of university officials to acknowledge these threats and incidents of violence, and to ensure the safety and security of their students, highlights their active role in perpetuating Islamophobia.

Furthermore, unlike antisemitism, Islamophobia is systemic. While Congress has held hearings addressing antisemitism, no comparable governmental effort has been made to confront the scourge of Islamophobia. This discrepancy exists because anti-Muslim racism is ingrained within societal structures and institutions, often perceived not as a problem but as an acceptable and justified belief and behavior. This is prevalent in US politics as well as mainstream media. Additionally, the failures of university administrations to acknowledge, address, and tackle anti-Muslim racism demonstrates how academic institutions play a role in upholding and normalizing Islamophobia.

Administrators have not just sought to violently disband student protests, they have also actively silenced Muslim students. In April, the University of Southern California canceled class valedictorian Asna Tabassum's speech, citing security risks. Officials failed to explain the safety concerns and Tabassum noted that the university had previously hosted high-profile individuals such as former President Barack Obama, and was thus capable of providing security. The valedictorian believed she was silenced for fear that she may use her speech to mention the genocide in Gaza.

In another instance, Columbia University student Noreen Mayat explained the Religious Life staff made her feel like a "puppet," after experiencing multiple rounds of censorship for her speech that she was to deliver as the Muslim senior representative at Columbia's Baccalaureate Service. She explained that staff told her "not to mention Palestine, nor name any specific regions of the world where my community was suffering." She published a piece outlining why she could not take part in the service:

"I am left with the understanding that to be Muslim at Columbia is to face extreme censorship of your language to appease an audience that doesn't represent nor respect you. To be Muslim at Columbia is to be racially profiled and doxxed, beg for administrative resources and support, and still receive none. To be Muslim at Columbia is to face Islamophobia on campus—to be spat on and called "terrorists"—and receive no University acknowledgment or recognition. Instead, our experiences are interrogated, as administrators try to poke holes in our narratives, questioning whether they even happened, while others get seats at the table with the University President and the governor of New York, dedicated to making sure they feel seen, heard, and valued.

To be Muslim at Columbia is to have your community and peers be suspended, arrested, and brutalized by the New York Police Department for peacefully protesting the genocide of those who widely look and practice like us, and still being made out to be the aggressors."

Muslim students across the country have voiced their frustration and disappointment with university administrations, asserting that they have failed to listen to and protect them. They highlight this as a stark contrast to the prompt response of officials in addressing the concerns of Jewish students. Sinq, a rising sophomore Pomona College in California stated, "I would say there were Muslim, Arab and Palestinian students who did not receive the same type of care and commitment to their well-being as their Jewish counterparts. The focus was always making sure Jewish students felt safe on campus, never about Muslim students. There was a huge disparity."

In early May, the *Guardian* reported that the US government had opened an investigation into Emory University's alleged discrimination against students with Palestinian, Muslim or Arab ancestry. The complaint against Emory is "one of at least six title VI claims regarding discriminatory treatment of Palestinian, Muslim and Arab students on US campuses; others include Columbia, Rutgers, University of Massachusetts-Amherst and the University of North Carolina-Chapel Hill." It will be interesting to see the conclusions of these investigations.

US universities have emerged as focal points in the national conversation on Israel-Palestine, while also becoming breeding grounds for virulent Islamophobia. Crackdowns on pro-Palestine protests serve as symptoms of systemic Islamophobia and anti-Palestinian hate. In this context, victims of violence are unjustly labeled as terrorists or potential terrorists, while their supporters are branded as "antisemitic" and "terrorist sympathizers." The pro-Palestine campus protests have illuminated a disturbing reality of rampant Islamophobia and the weaponization of antisemitism to discredit and silence dissenting voices.

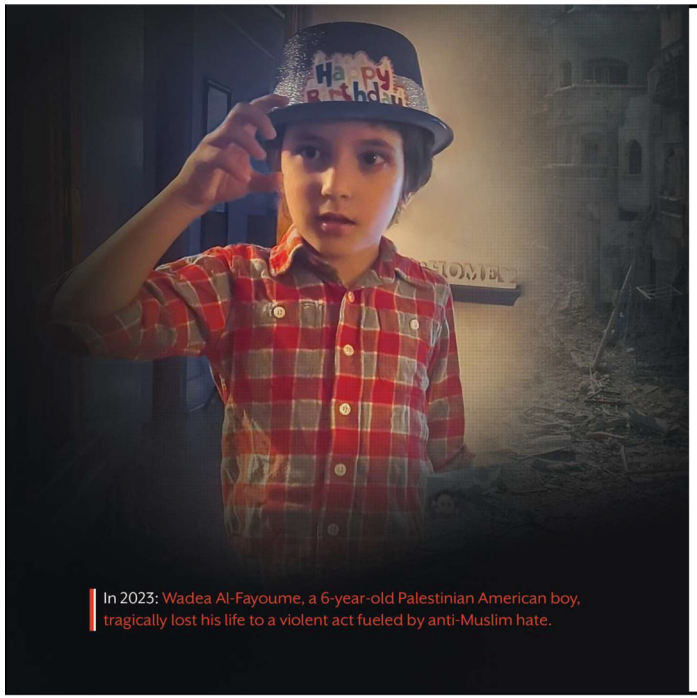
Related

FACTSHEET

20 Nov 2023

REPORT: ANTI-PALESTINIAN RACISM & ISLAMOPHOBIA IN GAZA WAR COVERAGE

In November 2023, the Center for Security, Race and Rights at Rutgers University published a comprehensive report called



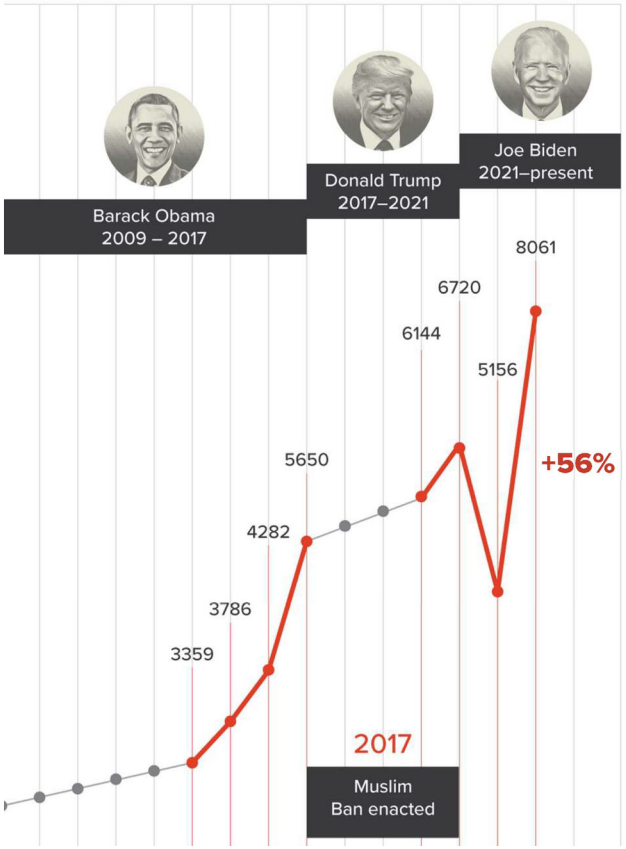
In 2023: Wadea Al-Fayoume, a 6-year-old Palestinian American boy, tragically lost his life to a violent act fueled by anti-Muslim hate.

FATAL

THE RESURGENCE OF ANTI-MUSLIM HATE

2024 Civil Rights Report

CAIR



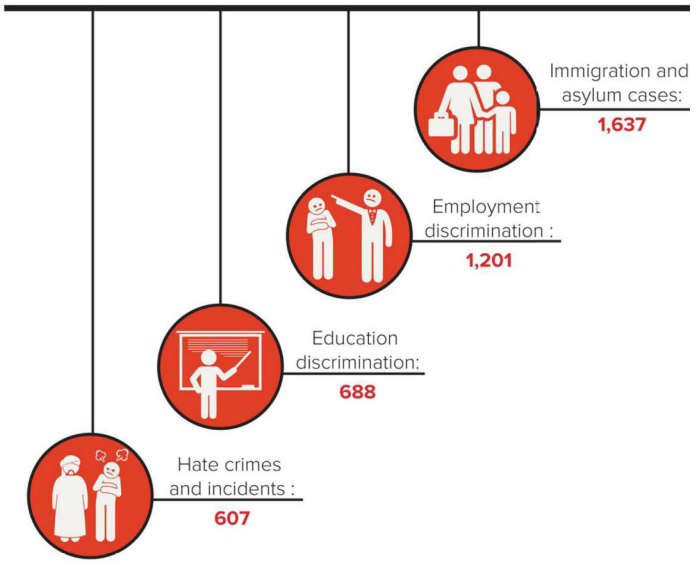
Total Complaints CAIR Received By Year

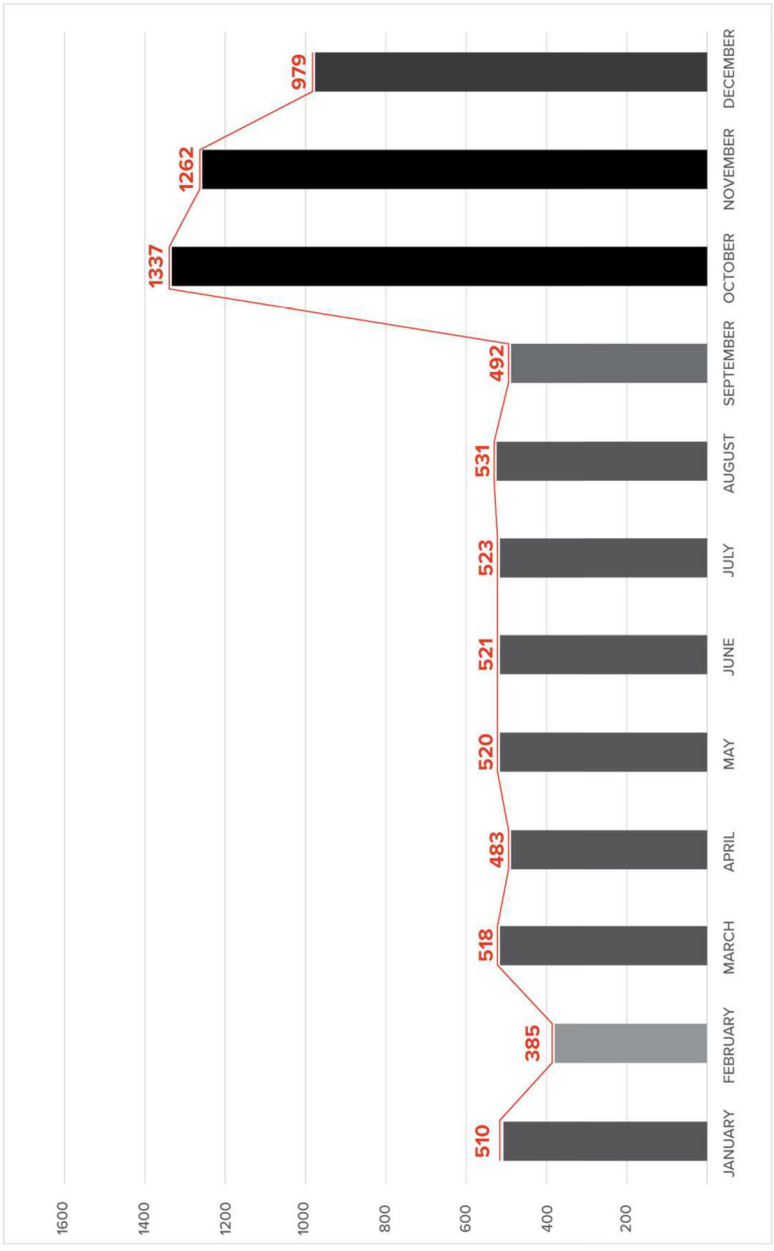
IN 2023

CAIR received a total of

8,061

Complaints

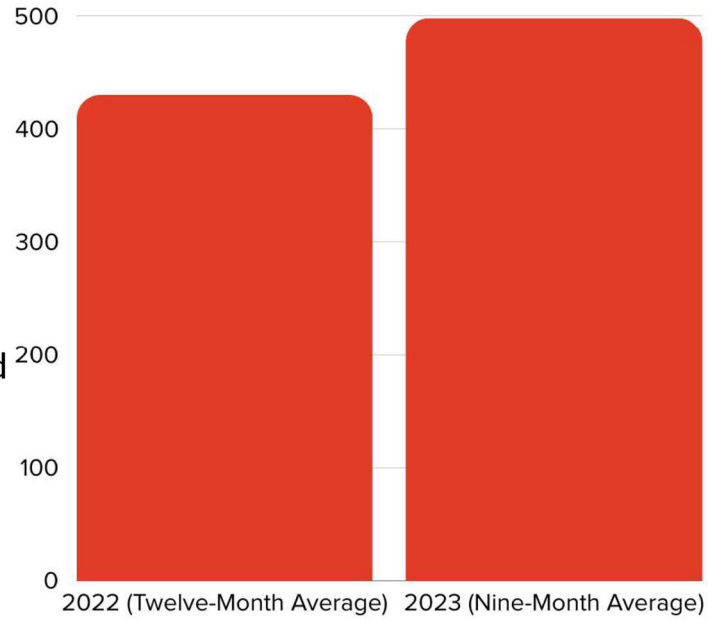



2023 Complaints By Month
1600
1400
1200
1000
800
600
400
200
JANUARY
FEBRUARY
MARCH
APRIL
MAY
JUNE
JULY
AUGUST
SEPTEMBER
OCTOBER
NOVEMBER
DECEMBER
510
385
518
483
520
521
523
531
492
1337
1262
979

Pre-October, 2023 Would Have Likely Seen a Slight Increase In Total Complaints

In 2022, CAIR received 5,156 complaints, with an average of 430 complaints per month.

In 2023, CAIR received 4,483 complaints in the nine-month period between January and September, with an average of 498 complaints per month.



Last Three Waves of Anti-Muslim Bias Compared

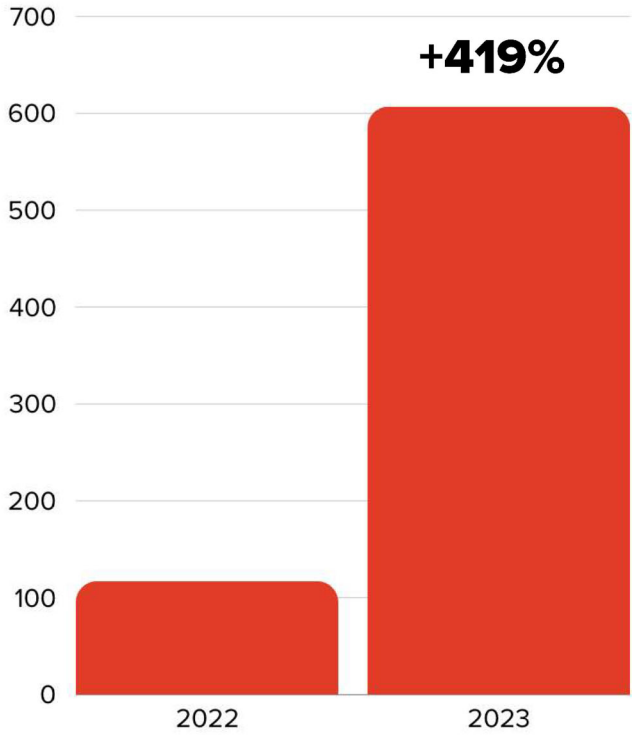
	Biden-backed Genocide in Gaza (Oct.-Dec. 2023)	Trump's Muslim Ban Announcement (Dec. 2015-Feb. 2016)	Trump's Muslim Ban Implementation (Feb. 2017-Apr. 2017)
Month 1	1337	425	874
Month 2	1262	373	610
Month 3	979	300	329
Total	**3578**	**1098**	**1813**

Table: Total monthly complaints received by CAIR, covering the first three months after inciting incident.

2023 Trends: Hate Crimes/ Hate incidents

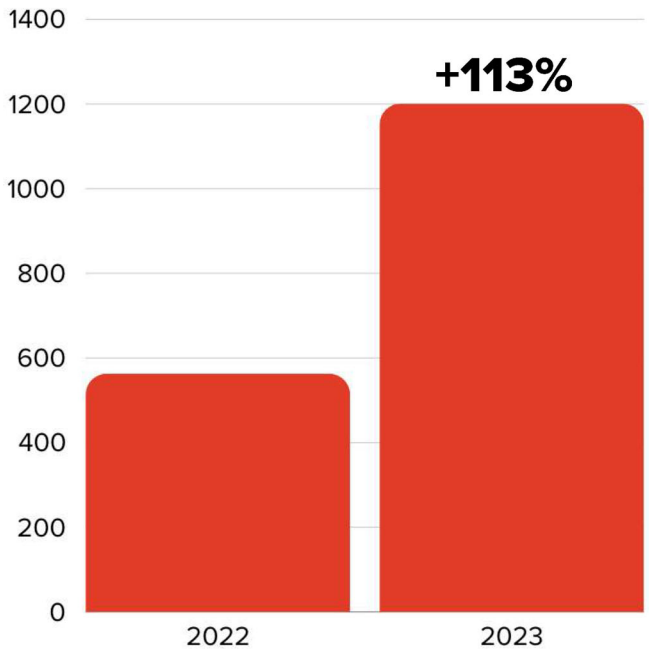
In 2022, CAIR received
117 complaints of hate crimes/incidents.

In 2023, CAIR received
607 complaints of hate crimes/incidents.
472 of these complaints were reported
between October and December 2023.

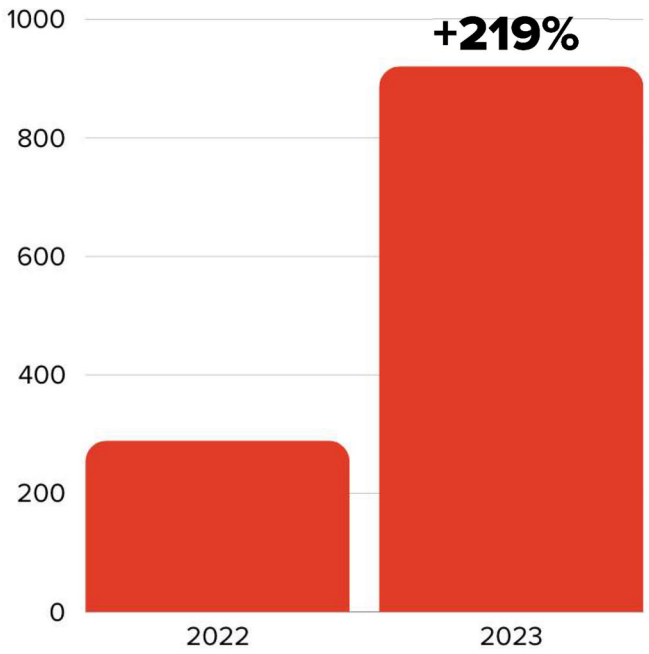


2023 Trends: Employment and Education-Related Complaints

Employment Discrimination, 2022 v. 2023



Education-Related Complaints, 2022 v. 2023



2023 Successes: Expanding Equal Recognition of Muslim Religious Identity



Minneapolis and New York City permitted mosques to broadcast the adhan, or call to prayer, over loudspeakers

New Jersey and Georgia adopted the practice of recognizing a Muslim American Heritage Month in 2023, and North Carolina adopted it in 2024, bringing the total to at least eight states





School districts in at least six states added the observation of one of two major Muslim holidays to their yearly calendars

Recommendations



The U.S. Must Accept and Adhere to Ruling By the International Court of Justice and Call for a Permanent Ceasefire in Gaza

Government Officials, Corporate Leaders, and Universities/Schools Must Respect Free Speech on Palestine





The Biden Administration Must Suspend Dissemination of the FBI's Watchlist

Congress Must Enhance Anti-Doxxing Laws





State and Local Governments Must Continue to Accommodate Muslim Religious Practices in America's Routine Faith Landscape

Islamophobia is Pervasive, Institutionalized, and a Threat to All

For more than twenty years, the Institute for Social Policy and Understanding (ISPU) has conducted and shared research on American Muslims and the issues impacting Muslim communities in the United States. Since 2016, that research has included several editions of the American Muslim Poll, which captures Muslims' attitudes, opinions, and lived experiences alongside Americans of other or no faith. These studies, taken together, provide a robust understanding of the prevalence, manifestations, and consequences of anti-Muslim bigotry as well as responses to it.

Islamophobia is Pervasive:

- Anti-Muslim discrimination has been sustained at high levels for many years, with the majority (62%) of Muslim adults experiencing it each year between 2016 and 2022.
    - A different poll fielded in late 2023 and early 2024, reveals that 74% of Muslims reported experiencing religious discrimination, compared to 66% of Jewish Americans and 39% of the general public.
- Interpersonal discrimination experienced by Muslims is pervasive, with Muslims being the most likely faith group to report experiencing it when interacting with co-workers (43%) or with others on social media (56%).
- Muslim students in higher education or a trade/vocational program are especially impacted by religious discrimination. An overwhelming majority of Muslim students in higher education or a trade/vocational program (84%) say they experienced religious discrimination, in general, in the last year compared to 66% of non-students. Muslim students (78%) are more likely than non-students (56%) to report experiencing religious bias from peers at school or work, in particular.
- Children are not immune. Nearly half of Muslim families with school-age children have at least one child experiencing religious-based bullying.

Islamophobia is Institutionalized:

- Additionally, what is unique to Muslims is the level of institutionalized and systemic Islamophobia they experience, which takes many forms:
    - Banking: Muslims are the most likely faith group to face banking challenges (27%). These challenges are not limited to personal accounts but also affect nonprofits and businesses.
    - Legal system: Muslims experience high levels of discrimination when interacting with law enforcement (38% of those who say they have experienced discrimination). Additionally, in instances of ideologically motivated violence, accused Muslim-perceived defendants face far more significant legal consequences than their non-Muslim perceived (white supremacist or anti-government) counterparts accused of a similar attempted crime, and receive more media coverage and public communication from the Department Of Justice.
    - Report facing discrimination from social media platforms themselves, which could include having messages removed, accounts closed, or being kicked off a platform.
    - Political participation: Muslims are more than twice as likely as the general public to face obstacles to voting (46% vs. 19%).
    - Healthcare and Employment: Among Muslims who have experienced discrimination in the past year, a significant number experienced it when applying for a job (37% vs. 6% of the general public) and when receiving healthcare (27% vs. 8% of the general public).

- Social media: Nearly half of Muslims (46% versus 36% for the general public)
- Authority figures: More than half of Muslims (57%) report experiencing religious discrimination from authority figures at their place of work or school, compared to 39% of Jewish Americans and 29% of the general public. Muslims are twice as likely to report this discrimination occurring regularly.
  - Nearly 7 in 10 Muslim students in higher education or a trade/vocational program (68%) report facing discrimination for their religion by people in authority at school or work.
- Places of worship: In the past decade (2010-2019), 35% of mosques encountered significant resistance from their neighborhood or city when they tried to obtain permission to move, expand, or build. This increased from 25% between 1980-2009.
- Airports/travel: Muslims are twice as likely as the general public to face secondary screening when entering the United States (30% vs. 12%). This is especially true for those who are visibly Muslim.

Islamophobia is a Threat to All:

- Manifestations of Islamophobia hinder individual potential and community development among Muslims.
- Institutionalized Islamophobia can contribute to interpersonal Islamophobia, signaling acceptance from the top down. As such, Muslims look to policy solutions to counter Islamophobia. According to a recent ISPU poll, the majority of Muslim voters across three swing states, regardless of partisanship, would be more likely to vote for a presidential candidate who supports countering Islamophobia. Harms of Islamophobia are not confined to Muslims but also those perceived to be Muslim.
- Islamophobia is but a 'branch on the tree of -isms,' with the same roots, empirically linked to anti-semitism and anti-Black racism.
- Islamophobia is a threat to democracy. Those who harbor anti-Muslim sentiment are more likely to approve of discriminatory policies targeting Muslims and agree to limit democratic freedoms when the country is under threat.

Tools for Responding to Islamophobia:

- Countering and Dismantling Islamophobia: A Comprehensive Guide for Individuals and Organizations
- Four Data-Driven Ways to Combat Islamophobia
- Countering Anti-Muslim Opposition to Mosque and Islamic Center Construction and Expansion
- ISPU's Islamophobia Index

About the Institute for Social Policy and Understanding (ISPU)

The Institute for Social Policy and Understanding (ISPU) provides objective research and education about American Muslims to support well-informed dialogue and decision-making. Since 2002, ISPU has been at the forefront of discovering trends and opportunities that impact American Muslim communities. Our research aims to educate the general public and equip community change agents, the media, policymakers, and others to make evidence-based decisions. In addition to building in-house capacity, ISPU has assembled leading experts across multiple disciplines, building a solid reputation as a trusted source of information for and about American Muslims.

We are happy to answer questions or discuss these data further in any capacity. Additional research and expert insight are available at ISPU.org, and you can contact us at info@ispu.org.

Religious Groups' Views on Ceasefire: American Muslims, Especially Students, Most Likely to Experience Religious Discrimination



Authored by: **Erum Ikramullah**
Senior Research Project Manager, ISPU

April 16, 2024

Religious Groups' Views on Ceasefire:

American Muslims, Especially Students, Most Likely to Experience Religious Discrimination

Introduction

The crisis in Gaza, which as of this writing has claimed the lives of around 1,200 Israelis and more than 32,000 Palestinians, has captured the attention of the world. Since October 7, several surveys have captured American public opinion on the situation. These studies examined the views of the old and young, Democrats and Republicans, men and women, college-educated and non-college-educated. The missing voice has been that of religious groups, particularly Muslim and Jewish Americans, who are often perceived as on opposing sides of this crisis.

This multi-part analysis of a survey aimed to assess the views of these two key American religious groups, as well as Catholic, Protestant, including white Evangelicals, and those not affiliated with a religious group, on a number of contentious topics. See part one here, and part two here.

This article, the third in a three-part series, is focused on the experience of religious discrimination in the past year, in general and in various settings, among Muslims, Jews and the American public in general. Our sample size did not allow us to examine the experiences of subgroups within religious communities like Arab Muslims for example.

Since October 7 and the ensuing crisis in Gaza, Muslim and Jewish Americans have reported a surge in bias incidents. For Muslims, some of these incidents have been life-altering or lethal. Even prior to October 7, in 2022 when we last polled on experiences with religious discrimination, Muslims were the most likely to say they faced discrimination because of their religion, followed by Jews.

Since bias incidents are defined and documented differently by distinct reporting organizations, it has been difficult for decision makers and the media to get an accurate picture of the relative extent of the problem in each community and therefore devote the proper attention and resources to address it. A national scientific survey provides this much-needed side-by-side comparison. The full methodology is available in Appendix I.

Findings

1. A majority of Muslims and Jews report facing religious discrimination in the past year

When asked how often, if at all, they experienced discrimination in the past year because of their religion, the majority of Muslims (74%) and Jews (66%) reported experiencing some frequency of bias. This compares to 39% of the general public. Where Muslims stand out as a religious minority is in how frequently members of the group report experiencing religious discrimination "regularly." At 15%, this is twice as likely as Jewish Americans and the general public (both at 7%), a statistically significant difference.

Muslims Most Likely to Experience Religious Discrimination in Past 12 Months

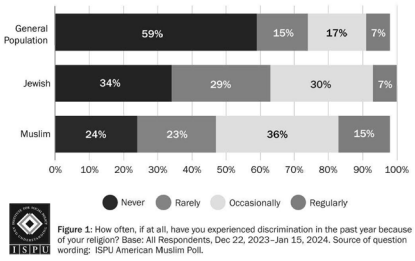


Figure 1: How often, if at all, have you experienced discrimination in the past year because of your religion? Base: All Respondents, Dec 22, 2023–Jan 15, 2024. Source of question wording: ISPU American Muslim Poll.

2. Muslims are most likely to experience religious discrimination from peers

Muslims (65%) are significantly more likely than Jewish Americans (41%) and the general public (33%) to report experiencing discrimination at work or school when interacting with peers. Jewish Americans are more likely than the general public to report some frequency of discrimination from peers, but less frequently than Muslims. Muslims (13%) are also more likely than Jews (6%) and the general public (7%) to report this type of experience occurring regularly.

Muslims Most Likely to Experience Religious Discrimination From Co-workers or School Peers

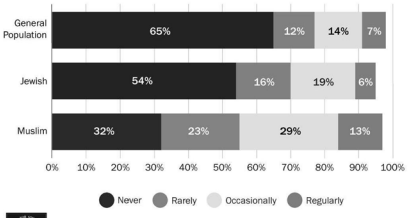


Figure 2: For each of the following situations, please tell me if you experienced religious discrimination in the last year: at your place of work or school interacting with your peers. Base: All Respondents, Dec 22, 2023–Jan 15, 2024. Source of question wording: ISPU American Muslim Poll.

3. Muslims are most likely to experience religious discrimination from authority figures

More than half of Muslims (57%) report experiencing religious discrimination from authority figures at their place of work or school, compared to 39% of Jewish Americans and 29% of the general public. Like other contexts, Muslims are twice as likely to report this discrimination occurring regularly. This suggests an institutional bias towards Muslim employees and students, also seen across sectors prior to October 2023.

Muslims Most Likely to Experience Religious Discrimination From Authority Figures at Work or School

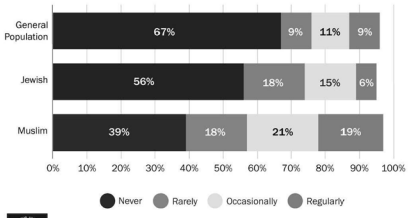


Figure 3: For each of the following situations, please tell me if you experienced religious discrimination in the last year: at your place of work or school interacting with people in authority. Base: All Respondents, Dec 22, 2023–Jan 15, 2024. Source of question wording: ISPU American Muslim Poll.

4. The majority of Muslims and Jews experience discrimination in public places from strangers

The majority of both Muslims (71%) and Jews (59%) report experiencing religious discrimination from people they do not know in public places. This is significantly more frequent than the general public, where only 41% report some frequency of religious bias in the same setting. This reflects the heightened fear both Muslims and Jews have reported feeling since October of last year. As with discrimination from peers and people in authority, Muslims (14%) are twice as likely as Jewish Americans (7%) and the general public (6%) to report experiencing it regularly.

Muslims Most Likely to Experience Religious Discrimination from People They Don't Know in Public Places

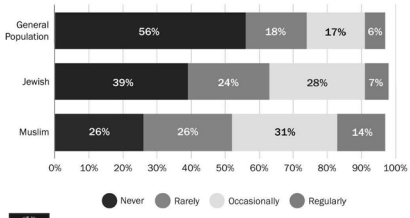


Figure 4: For each of the following situations, please tell me if you experienced religious discrimination in the last year: when interacting with other people you don't know in public places. Base: All Respondents, Dec 22, 2023–Jan 15, 2024. Source of question wording: ISPU American Muslim Poll.

5. Muslim students in higher education and trade/vocational programs are especially impacted by religious discrimination

Muslims are more likely than Jewish Americans or the general public to experience religious discrimination 'regularly', whether in public places from strangers or at work/school from both peers or people in power. That bias, however, is not felt equally among Muslims. An overwhelming majority of Muslim students in higher education or in a trade/vocational program (84%) say they experienced religious discrimination, in general, in the last year compared to 66% of non-students. Muslim students (78%) are more likely than non-students (56%) to report experiencing religious bias from peers at school or work, in particular. Muslims students (68%) were also more likely than Muslims who are not students (50%) to report facing discrimination for their religion by people in authority at school or work.

Anti-Muslim bias in institutional settings is a serious issue overall in the United States today. However, it is especially felt by students, underscoring the urgent need for university administrators to address Islamophobia on campus, including incidents by those in positions of authority.

Muslim Students More Likely To Experience Religious Discrimination than Non-Students

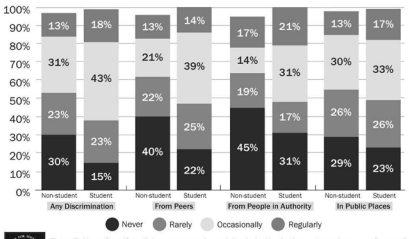


Figure 5: How often, if at all, have you experienced discrimination in the past year because of your religion? For each of the following situations, please tell me if you experienced religious discrimination in the last year: At your place of work or school interacting with your peers? At your place of work or school interacting with people in authority? When interacting with other people you don't know in public places? Base: All Respondents, Dec 22, 2023–Jan 15, 2024. Source of question wording: ISPU American Muslim Poll.

Conclusion

The crisis in Gaza has had a devastating humanitarian toll on the people of the strip. It also has had reverberations closer to home, with growing tensions on college campuses, workplaces, and in the public square. This research equips decision makers with much-needed data showing the growing need to address anti-Muslim and antisemitic climates in those arenas.



Institute *for* Social Policy *and* Understanding

RESEARCH MAKING AN IMPACT

© 2024 Institute for Social Policy and Understanding. All rights reserved.

No part of this publication may be reproduced or transmitted in any form or by any means without permission in writing from the Institute for Social Policy and Understanding. The Institute for Social Policy and Understanding normally does not take institutional positions on public policy issues. The views presented here do not necessarily reflect the views of the institute, its staff, or trustees.

About ISPU

ISPU provides objective research and education about American Muslims to support well-informed dialogue and decision-making. Since 2002, ISPU has been at the forefront of discovering trends and opportunities that impact American Muslim communities. Our research aims to educate the general public and equip community change agents, the media, and policymakers to make evidence-based decisions. In addition to building in-house capacity, ISPU has assembled leading experts across multiple disciplines, building a solid reputation as a trusted source for information for and about American Muslims.

For more information, please visit: www.ISPU.org.

Institute *for* Social Policy *and* Understanding
info@ISPU.org

Michigan Office
3200 Greenfield Rd, Suite 300
Dearborn, MI 48120
+1 (800) 920-4778

U.S. Citizens and Immediate Relatives Trapped in Gaza

Wadee al-Fayoume's tragic murder is a symptom of a larger epidemic of Islamophobia and anti-Palestinian sentiment that has permeated every part of American society and government, including the U.S. State Department.

Since October 7th, 2023, the State Department has repeatedly abandoned Palestinian-Americans and their relatives trapped in the Gaza Strip. Despite their enduring pleas for assistance, there have been little to no coordinated efforts to evacuate these U.S. citizens. This neglect is even more troubling given the speed and efficiency with which the State Department evacuated Israeli Americans and their families through chartered flights and cruise ships in the first weeks of the violence. The juxtaposition of evacuation assistance provided to Israeli-Americans as compared to Palestinian-Americans is a direct result of the utter dehumanization of Palestinian people through the symbiotic nexus of Western governments and mainstream news media.

Since October 2023, the message from the U.S. government has been clear—the lives, suffering, and humanity of Palestinians are less worthy than the lives, suffering, and humanity of Israelis, even where both parties are Americans.

The U.S. has previously deployed its military, including naval vessels and helicopters, for the evacuation of U.S. citizens from similar situations, such as when the Taliban took over Afghanistan in 2021 and, in 2006, when Israel invaded Lebanon, leaving 15,000 Americans in need of evacuation assistance. Following both those evacuations, the U.S. government published reports highlight areas of improvement and vowing never again to abandon Americans. Yet, it has now been 346 days and Americans and their immediate family members who qualify for evacuation remain stranded in Gaza despite having reached out repeatedly to every level of their government.

Since October 2023, U.S. citizens and landed permanent residents (LPRs) in Gaza have all been abandoned. If and when their names appeared on the evacuation list, these individuals were expected to make their own travel arrangements through an active warzone where there are no safe zones to present themselves at the Rafah Crossing, the border between Egypt and Gaza.

On more than one occasion, while these Americans waited to be processed at Rafah Crossing, there were missile strikes within several feet of them. And, on numerous occasions, these Americans and their immediate qualifying relatives were arbitrarily turned away at the border.

Since May 2024, Israeli forces have taken over and militarized the Rafah Crossing which, to date, remains closed. Before closing, many Americans and their immediate qualifying relatives were still in Gaza and were begging the State Department to get them out before it was too late. However, the border closed leaving them trapped and fighting for their deaths daily. To date, these Palestinian Americans have barely received adequate messaging from the State Department, let alone assistance from their U.S. Government. Without access to food, water, electricity, shelter, nor medical treatment, Palestinian Americans are forced to dodge weaponry their tax dollars have paid for and have been effectively served a death sentence via the U.S. government's inaction to evacuate them.

Every American — including Palestinian-Americans — deserves the unequivocal support and protection of their government when faced with life-threatening circumstances. Palestinian-Americans are not collateral damage. Palestinian-Americans should not have to prove their humanity to stop being treated as such. **We urge the U.S. government to cease its discriminatory treatment and arrange for the immediate and thorough evacuation of all Palestinian-Americans and their families trapped in the Gaza Strip and in Israeli custody.**

U.S. Citizens and Immediate Relatives Trapped in Gaza

Khalid Mourtaga

Khalid Mourtaga is a 22-year-old American born in Oxford, Mississippi who had been living in Gaza when war broke out. He is still trapped there. In the last nine months, Khalid has been forcibly displaced countless times. He has lost everything – his family home and farm are rubble and his grandfather and many friends have been killed by Israeli bombardment. Right now, Khalid is sheltering with ten family members in Deir-el-Balah. The Israeli Defense Forces (IDF) announced on August 17th, 2024 a planned offensive in Khalid's neighborhood. Khalid is not only facing imminent death by Israeli bombardment; the skyrocketing costs of food and other necessities has made it difficult for his family to eat regularly.

As of December 2023, Khalid and his parents have been cleared by the State Department to exit Gaza. However, only his mother's name appeared on the Exit List on December 14. Understandably, Khalid's mother refused to abandon her husband and son.



Khalid and his family sheltering in a dental clinic in Rafah, Gaza.

Khalid and his attorney appeared on CNN in April 2023 to make a plea to the Biden administration to evacuate him immediately. Despite their persistent efforts and regular contact with the American Embassies in Jerusalem and Cairo, Khalid remains trapped in Gaza.

Khalid dreams of studying in America to earn his M.B.A. His father is a Rhodes Scholar. Khalid is an American and deserves the opportunity to live a life free of fear and suffering.

Borak and Hashem Alagha



Borak and Hashem Alagha, aged 18 and 20, are U.S. citizens who were born and raised in Chicago. Prior to October 2023, the brothers were engineering students at a top university in Gaza.

In February 2024, their shelter in Khan Younis was raided in a sweep by Israeli forces. Borak and Hashem's mother and younger siblings were blindfolded, tied up, and thrown onto the street. The brothers, their father, and their uncle—who has a mental disability—were tied up and taken into Israeli detention. They are now being held in Ofer Prison.

At a court date in July, the Israeli judge informed the Alagha brothers that **there are no charges against them, yet they will continue to be detained in Ofer prison until the end of the war.**

Israeli prisons for Palestinian administrative detainees are notoriously inhumane. Recent reports by human rights group have outlined the ongoing torture and rape of Palestinian detainees at Israeli prisons, including Ofer. Since October 2023, at least 59 prisoners have died while detained in Israeli military-run detention centers. Over the past six months, Borak and Hashem have regularly been subjected to severe physical abuse and have been denied adequate medical treatment for their injuries and health conditions.

Although Borak and Hashem were cleared by the U.S. to exit Gaza, their names failed to appear on the Exit List, preventing their evacuation. Prior to their detention, the brothers pled with the U.S. government for months to assist with their evacuation, but were ignored. Borak and Hashem continue to be arbitrarily detained without charge. Borak and Hashem Alagha are Americans. The responsibility for their wellbeing and their immediate release from arbitrary Israeli detention rests with the U.S. government.

U.S. Citizens and Immediate Relatives Trapped in Gaza

Mariam Elrayyes

Mariam is a U.S. citizen and mother of three. She and her young children were able to evacuate from Gaza in April. Mariam and two of her siblings were born in Illinois. Her father, Bassam S. S. Alrayyes Nazik, came to America on a visa, applied for political asylum, and was granted a social security number. However, before he could get a green card, his asylee status was denied in 1996 after the institution of a civil government in Gaza. The family was forced to leave the United States, and they returned to Gaza.



Although Mariam and her children were able to evacuate in April 2024, her father, Bassam S. S. Alrayyes, and her mother, Heba Faieq Faris Al Tamimi, her little sister, Rama B. S. Alrayyes (13) and little brother, Ibrahim B. S Alrayyes (21), remain in Gaza, trapped in an active warzone. They are sheltering in a crowded tent in the Al-Mawasi area of Khan Younis in Gaza, and have limited access to internet. Mariam is only able to contact them every 2-3 days via Facebook Messenger.

Her father is a 70-year-old diabetic with sciatica. He cannot walk without a cane, and needs surgery to treat the pain in his leg; yet the hospitals in Gaza are too overwhelmed to admit him. Sometimes he finds medicine; other times, he does not because medicine has become extraordinarily expensive and scarce.

Mariam's sister, Reem, a U.S. citizen, was in contact with the U.S. Embassy in Jerusalem until they simply stopped responding to her.

Recently, tents in the al-Mawasi area were crushed by a 2,000 pound bomb so powerful that it left a crater in the ground. Mariam's family was close enough to hear the explosion. They fear for their lives, and her father, Bassam's leg grows more painful by the day; Mariam's family must be evacuated immediately.

Marowa Abusharia



Marowa is a 24 year old U.S. citizen who lives in Perth Amboy City, Middlesex County, New Jersey, with her one-year-old twins, Mariam and Mayar Loai Abusharia. She recently came to New Jersey to give birth and study public health at an American university. Her husband and her parents' families, however, are still trapped in Gaza.

Her husband, Loai Omar Abusharia, has an approved green card petition, and the last step in the process requires him to appear at the U.S. Embassy. Despite being approved to exit the U.S. as a spouse and parent of a U.S. citizen, he remains trapped in Gaza and unable to attend his gren card interview. He is in Sabra in North Gaza and has been forced to move from house to house 7-10 times over the past 11 months. He has yet to meet his daughters and longs to be reunited with Marowa in America.

Marowa has contacted all of her representatives and the State Department. Recently, no one from the U.S. Embassy in Jerusalem has been responding to her emails. One of the buildings that Marowa's husband, Loai, has been sheltering in is next to a mosque that has been bombed repeatedly.

Marowa worries that she may never see her husband again, and begs the United States government to evacuate him as soon as possible.

Sahar Harara

Sahar is a U.S. citizen living in Dallas,Texas. Her elderly parents have been Lawful Permanent Residents (LPRs) since 2016. Despite being LPRs eligible for immediate evacuation assistance, they remain trapped in Gaza. At the beginning of the war, Sahar filled out the State Department's Crisis Intake Form, and emailed both the American Embassies in Cairo and Jerusalem.



Sahar's parents, Mariam and Mufid, in November 2023.

Sahar's 74-year-old mother, Mariam Mohammed Harara, appeared on the Exit List in January, but she refused to leave without Sahar's 76-year-old father, Mufid Rashid Harara. While Sahar was attempting to secure her family's evacuation, her parents' shelter was hit during an Israeli bombardment. Mufid—a green card holder—was killed, and Mariam was injured in the chest and leg. Mariam is now sheltering in Remal, still in pain and grieving.

Three of Sahar's sisters and her brother, along with multiple nieces and nephews, are spread out across Gaza in different shelters. Some are in crumbing schools, others in crowded tents. Sahar's niece has been badly injured twice. After one Israeli strike, she suffered severe stomach injuries. The hospitals did not have the adequate equipment to treat her niece's wound, and it has become infected.

During her attempts to communicate with the Embassy, Sahar has been met with ineptitude and inefficiency. They have repeatedly told her via email that they have no control over the Exit List, and that they need certain documents that Sahar has already shared.

Mohanad Alnajjar

Mohanad became a citizen in March 2024. He lives in Hillsboro, Oregon. His almost 70-year-old mother, Asmaa A. A. Alnajjar, is currently trapped in Gaza. He traveled to Egypt in April to receive his mother on the other side of the Rafah Border; however, the Israeli military occupied the border before she could evacuate.



Mohanad's mother, Asmaa

While Mohanad was in Egypt, Representative Suzanne Bonamici agreed to take the lead on communicating with the U.S. State Department and the U.S. Embassy in Jerusalem. The responses from the State Department and Embassy have not been helpful. Mohanad's mother has yet to appear on the Exit List.

Asmaa is currently sheltering in the al-Mawasi area. She has diabetes and struggles with high blood pressure and stroke, and she has no medicine and must evacuate immediately.

Statement on record from
Hindus for Human Rights (HfHR)

United States Senate Committee on the Judiciary Hearing

"A Threat to Justice Everywhere: Stemming the Tide of Hate Crimes in America"

September 19, 2024

Hindus for Human Rights (HfHR) submits this statement for the record for the aforementioned Judiciary Hearing.

HfHR is a human rights advocacy and social justice organization rooted in peace, justice, and truth. HfHR seeks to provide an explicitly Hindu voice of resistance to religious nationalism, caste, and bigotry. We work with a broad range of civil society partners to advocate for human rights issues in South Asia and the diaspora. As the only progressive Hindu advocacy organization in the world, we explore how our communities have been affected by the global rise of hate and xenophobia. In the US, this means we are closely monitoring how white Christian nationalism, Hindu nationalism, casteism, and transnational repression have harmed Hindu Americans.

To this end, we urge Congress to pass legislation that will ensure the safety and freedoms of Hindu Americans, including the Transnational Repression Policy Act, the Improving Reporting to Prevent Hate Act, and the Safe Workplaces Act. We also recommend that the federal government engage with Hindu Americans across caste, class, and ethnic identities to understand the diversity of our community. Hindu Americans are not a monolith and to effectively engage with Hindu Americans, the US government must understand our community's diverse needs.

Rising Hate in the United States

Hindu Americans, like other religious minorities, have faced increasing threats to their freedom of religion in the face of rising Christian nationalism in the United States. This includes state-level efforts to institutionalize Christian practices in schools, incidents of racial and Islamophobic violence, and vandalisms of places of worship. However, we must also acknowledge that the term "Hinduphobia" has been weaponized to divide South Asian communities, undermine hard-won efforts to advance the civil rights of Hindu, Muslim, and Sikh Americans after 9/11, and construct a politically motivated narrative of rampant 'Hinduphobia' to silence and censor anyone who speaks out against the violence of Hindu supremacy and caste oppression.

- In 2017, an Indian Hindu man was murdered and his friend was shot in a bar in Kansas. When the shooter targeted both men, he shouted, "Get out of my country." As anti-immigrant rhetoric and policies again take center stage, Hindu Americans, many of whom are Indian American, will face violence.
- In 2022, a woman racially abused and attacked three Indian American women in a parking lot in Plano, Texas. While the women identify as Hindu, they were attacked because of their race and perceived foreignness, as Indian Americans.

- In 2024, the Oklahoma State Superintendent ordered public schools to include the Bible in the education curriculum for 5th-12th graders. Absent any orders to implement curricula that would educate Oklahoma students about other religions, this is an imposition of the Christian faith and will encourage the bullying of Hindu and other non-Christian students.
- In 2024, Louisiana passed a law requiring public schools to display the Ten Commandments, and the law effectively prioritized Christian students over other students. A similar law was introduced in Texas in 2023, but failed.
- In 2023 and 2024, reports emerged of a spate of vandalisms of temples. While these vandalisms on houses of worship caused concern within the Hindu American community, they were not attacks on Hindu Americans from majority communities. Instead, these vandalisms reflect politics within the South Asian diaspora surrounding the relationship between India's Sikh community and the Indian government.

Commented [1]: Please review and link, anyone!

Rising Hindu supremacy in the US

Organizations closely aligned with the far right Indian political movement of Hindu nationalism have used their positions as some of the only Hindu American organizations to allege that they are the true representatives of the Hindu American community. However, in their advocacy, they have propagated narratives and engaged in policies that materially harm all Indian Americans, including Hindu Americans.

- In Illinois, Hindu nationalists drafted General Assembly Public Act 102-1058 to establish an Indian American Advisory Council. The legislation initially described "Indian citizens" as members of any South Asian diaspora, except for Muslims, even though Indian Americans include Indian Muslims. Additionally, South Asian Americans who trace their origin to other countries in South Asia are, by definition, not Indian. While legislators eventually changed the definition of "Indian" to reflect reality, the Council did not reflect the linguistic, caste, or religious diversity of the Indian American community in Illinois.
- At Edison, New Jersey's India Day parade in 2022, organizers included a float of a bulldozer with images of Uttar Pradesh Chief Minister Yogi Adityanath and India Prime Minister Narendra Modi. The bulldozer, which has been used to demolish the homes of Muslims across India, has become a symbol of hate in Indian politics. As we argued, alongside our Indian American Muslim partners, this bulldozer sent a clear message to Indian American Muslims that they would not be welcome in the US or in India.
- In 2024, in New York's India Day Parade in Manhattan, organizers included a float depicting a temple to the Lord Ram in Ayodhya. The temple (or mandir), which was inaugurated by Prime Minister Modi in January 2024, was built on the land where a 16th century mosque was demolished by Hindu nationalists in 1992 and whose destruction led to Islamophobic pogroms across India. Modi's inauguration of the temple was widely viewed as a breakdown of secularism in India, the launch of his electoral campaign, and his clear support for Islamophobia in India. The Vishwa Hindu Parishad of America, which sponsored the float, also organized rallies in the US in support of the consecration of the Ram Mandir. For many Indian Americans across faiths, the inclusion of the Ram Mandir in the India Day Parade was a clear endorsement of hate.
    - New York City officials, including Assemblymember Zohran Mamdani, City Councillors Shekhar Krishnan and Shahana Hanif, Comptroller Brad Lander, and Mayor Eric Adams, denounced the float as a hate symbol. No officials from the City of New York attended this India Day parade.

Transnational repression in the US

In 2023, as Indian democracy under Prime Minister Narendra Modi has decayed further, the Modi regime has begun targeting civil society actors outside of India's borders. This shift has been exemplified by two high-profile recent cases: the alleged assassination of a Canadian citizen on Canadian soil, and the alleged conspiracy to assassinate an American citizen on U.S. soil. These incidents, however, are not isolated cases, but rather form part of a larger pattern of transnational repression. While this is not an exhaustive list of incidents or tactics of transnational repression, below are a number of choice incidents that exemplify the violations of free speech and civil rights of Indian Americans, especially Indian Hindu Americans:

- Hindu nationalists doxxed a number of Indian American students because of their membership in Harvard University's Palestinian Caucus.
- Throughout 2023, the BJP circulated antisemitic conspiracy theories on their official accounts, and directed harassment towards Hindus for Human Rights (HfHR) Executive Director Sunita Viswanath.
    - The conspiracy theory, which was first constructed by Disinfo Labs, was then amplified by Hindu nationalist civil society organizations in the United States, including Hindu Action, which was then amplified by BJP officials.
- In October 2023, the Indian government withheld the Twitter/X accounts of major human rights organizations, Indian American Muslim Council (IAMC) and HfHR.
- The Indian government has refused entry to individuals with an Overseas Citizenship of India (OCI) and even suspended the OCIs of critics of the Indian government. The Indian government has also refused visas to human rights activists. Finally, the Indian government has suspended the passports of journalists, activists, and students, rendering these individuals stateless.
    - In 2022, Vice journalist Angad Singh, an OCI holder, was deported from Delhi airport. Singh previously made documentaries about India's COVID crisis and the 2020-2021 Farmers' protest.
    - In 2023, the Middle East Eye reported that the Indian government suspended the passports of at least 10 Kashmiri journalists, students and activists, including individuals living abroad.
- Kashmiri Americans who advocate for human rights in Kashmir have alleged that their families in Kashmir have been detained or questioned arbitrarily because of their advocacy. Indian Americans from other communities have recently reported similar incidents.
- In 2023, IAMC led a coalition of organizations expressing alarm about Hindu nationalists who filmed and took pictures of participants at an anti-Modi protest, including IAMC and HfHR staff.
- In September 2023, Canadian Prime Minister Justin Trudeau alleged that agents of the Indian government killed Canadian citizen Hardeep Singh Nijjar. Nijjar was targeted because of his support for the Khalistan movement, which seeks the creation of an independent state for Sikhs.
- In November 2023, the US Department of Justice announced charges against an Indian national for an attempt to assassinate US citizen Gurpatwant Singh Pannun. Like Nijjar, Pannun is a supporter of the Khalistan movement.

Caste-based discrimination

As the South Asian American community grows, and other immigrant communities build more political power, our communities are grappling with the rise in caste-based discrimination. Employers, educational institutions, and even cities are now exploring how to ensure that workers, students, and city residents have access to tools to combat caste discrimination. However, as the City of Seattle's Civil Rights Department noted when Seattle passed the country's first civil rights bill to make caste a protected category, legislation to ban caste discrimination, they would be unable to help Seattle residents pursue civil rights cases without legislation.

- After a 2020 California Civil Rights Department lawsuit against Cisco Systems in Silicon Valley, Equality Labs reported receiving 260 complaints from workers in the tech industry involving caste-related bias
- In 2023, the City of Seattle passed the country's first law that established caste as a protected category for civil rights. The law will ensure that no one can be discriminated against based on their caste identity.
- In 2023, California also passed the nation's first state-level bill to establish caste as a protected category. While the bill passed both chambers with broad support, the bill was vetoed by Governor Gavin Newsom, who argued that caste was already covered by ancestry. We, along with other anti-caste activists, maintain that this is not the case and that laws that protect against discrimination based on ancestry exclude many caste-oppressed individuals, including people who marry into a different caste.
- Many universities, including Brown University and the California State University system, have now included prohibitions on caste discrimination in their student codes of conduct.
- Apple became the first of a string of Big Tech employers to ban caste discrimination in their employee code of conduct.

Policy Recommendations

- The Senate should introduce a Senate companion to H.R.7648 – Improving Reporting to Prevent Hate Act (IRPHA). This bill would address underreporting of hate crimes by law enforcement by creating standardized requirements for law enforcement to more accurately report these incidents to the federal government.
- The Executive Branch should engage with a diverse array of Hindu American stakeholders to properly educate policymakers around the multitude of challenges facing the Hindu American community. For the Senate, this means increasing funding to the Department of Justice's Community Relations Service as well other community engagement programs for Executive Branch agencies.
- Pass the Transnational Repression Policy Act and/or the International Freedom Protection Act, which would create a federal definition of transnational repression and equip the federal government with tools to address transnational repression.
- Congress should amend the Civil Rights Act of 1964 to include caste as a protected class and ensure that there are federal protections for Americans against caste discrimination.
- The Senate should pass the S.1591 - the Domestic Terrorism Prevention Act of 2023 to strengthen monitoring of white supremacist and neo-Nazi terrorism. We also caution against the over-policing and surveillance of racial and religious minority communities who are often most vulnerable to white Christian nationalist violence.

- The Senate should pass a suite of reforms to existing gun laws to understand gun violence and prevention through laws like S.1026 - the Gun Violence Prevention Research Act of 2023 and H.R.8669 - the Safe Workplaces Act. The Senate should also pass the S.2776 - Disarm Hate Act to prevent individuals guilty of hate crimes from accessing guns. Moreover, the Senate should adopt stronger background checks, training, and licensing requirements for Americans to access guns. Finally, lawmakers make it much more difficult for Americans to access weapons that are designed to inflict maximum damage on other humans and have no recreational purpose.

We are grateful to the Committee for holding this hearing on hate violence, especially as it affects religious and cultural minority communities in the United States. To effectively do so, we are grateful to provide an honest look at the challenges facing Hindu Americans, both because of the rise of white Christian nationalism and Hindu nationalism. We would be remiss, however, if we did not also note the appalling treatment of Dr. Maya Berry by a Member of the Committee who accused Dr. Berry of supporting Hamas and Hezbollah - organizations that she disavowed repeatedly. She was only targeted because she is an Arab American, and it is ironic that she faced this racism during a hearing to address the rise of anti-Arab hate crimes in this country. None of our communities will be safe until we are all safe from hate crimes, and we will continue to advocate for the safety of Hindu Americans as well as other religious and racial minorities in the United States and around the world.



September 24, 2024

The Honorable Richard Durbin
Chair
Committee on the Judiciary
United States Senate
Washington, DC 20510

The Honorable Lindsey Graham
Ranking Member
Committee on the Judiciary
United States Senate
Washington, DC 20510

Re: **NAPABA's Statement for the Record**
September 17, 2024, Hearing:
A Threat to Justice Everywhere: Stemming the Tide of Hate Crimes in America

Dear Chairman Durbin and Ranking Member Graham,

The National Asian Pacific American Bar Association (NAPABA)[1] is all too familiar with the demonization of communities of color, especially those

[1] The National Asian Pacific American Bar Association (NAPABA) represents the interests of over 80,000 Asian American, Native Hawaiian, and Pacific Islander (AA and NHPI) legal professionals and is comprised of a network of nearly 90 affiliated national, state, and local Asian Pacific American bar associations. NAPABA is a leader in addressing civil rights issues confronting AA and NHPI communities. Through its national network, NAPABA provides a strong voice for increased diversity of the federal and state judiciaries, advocates for equal opportunity in the workplace, works to eliminate hate crimes and anti-immigrant sentiment, and promotes the professional development of people of all backgrounds in the legal profession.

hailing from immigrant populations in the United States. At the height of the Covid-19 pandemic, broad swaths of the Asian American, Native Hawaiian, and Pacific Islander (AA and NHPI) community sustained an onslaught of hate based on mere stereotypes rooted in race and national origin. And since then, as this Committee addressed during the September 17, 2024, hearing, so many communities across the Nation have recently borne the brunt of hate because of nothing more than their religion or who they are. We commend the Committee for convening a hearing on this very important issue.

Yet, during the hearing, the very notion that underlies so many acts of hate – perceiving others as "perpetual foreigners" – was on full display in some of the questions posed to a witness. U.S. Senator John Kennedy repeatedly and baselessly accused one of the witnesses, Maya Berry, of supporting foreign terrorist organizations, and even after the witness denied such unsupported accusations, the Senator continued to interrogate the witness relentlessly.

This line of attack is not new, unfortunately, and we have seen this before from members of the Committee. For example, when Adeel Mangi, a nominee to be a judge on the U.S. Court of Appeals for the Third Circuit, appeared before the Committee in December 2023, some Committee members asked him a series of offensive questions, such as:

"You condemn what terrorists did to New York on 9/11"

"Is this the way you celebrate 9/11?"

"Do you condemn the atrocities of the Hamas terrorists?"

Mangi, an eminently qualified attorney with a long list of professional achievements, would be the first Muslim American to serve on any federal appellate court in the Nation. Questions regarding the nominee's professional qualifications, character, and temperament are all fair. These questions, like the ones posed to Berry, were not. Such hostile questions suggest an unsubstantiated conclusion that simply holding a certain faith or national origin, by itself, somehow warrants increased scrutiny. It is not only

unjustified, but it is a dangerous exercise in profiling that ought to have no place in the U.S. Senate or in our country.

Our national experience proves this point. Questioning a person's integrity solely based on their national origin or descent has taken a harmful toll on the AANHPI population, which is chronically plagued by so-called "perpetual foreigner syndrome." Across the country, states continue to introduce and enact restrictions on the property rights of Asian Americans, equating ordinary Chinese Americans with the actions of the Chinese Communist Party or the Chinese government. At the September 17, 2024, hearing, the Committee heard testimony regarding the rise of hate crimes against Asian Americans following damaging comments and false scapegoating towards them during the Covid-19 pandemic.

Today, the political rhetoric against new Americans continues with baseless claims that immigrants are stealing and eating pets. In the face of such absurd claims, Connecticut Attorney General William Tong, the son of Chinese immigrant restaurant owners, shared his experience recently of his childhood, where he shrugged off countless stereotyped accusations about the eating of dogs. But now, he wrote, the stakes have changed:

> These corrosive lies accumulate in the stomach and settle into an anti-immigrant bile that boils inside the most hateful until they act. Hate that turns into violence does not metastasize alone. These words justify action against people who "do not belong here" — the migrants, invaders who are "destroying" our country, who "pollute" and "replace" the blood of our nation. For the disaffected and angry, it is a short walk from here to where they pick up a gun and slaughter six Asian-American women in a spa in Atlanta.[2]

The divisive and baseless attacks on witnesses who have voluntarily appeared before Congress to testify about the shared goal of combating hate or aspire to ascend to the federal judiciary simply due to their national origin or religion must stop. Our leaders must avoid the reckless rhetoric, and all

[2] https://www.ctpost.com/opinion/article/trump-cats-ct-tong-19763757.php

Americans must now, more than ever, unite in common cause to tackle our Nation's problems together. As Chair Durbin so eloquently stated at the hearing, we must all be on the side of common decency and democracy.

Thank you for the opportunity to address this Committee.

Respectfully submitted,



Priya Purandare
Executive Director

Senate Hearing: "A Threat to Justice Everywhere: Stemming the Tide of Hate Crimes in America"

As the hearing opened, I felt hopeful that the U.S. Congress would finally address the trials and tribulations faced by our Muslim brothers and sisters right here in America. I anticipated discussions about the Islamophobia I've witnessed in my own community, in Washington, D.C., and Chicago, Illinois.

It has been heartbreaking to see students, community members, and religious leaders subjected to hate-filled threats, told by bigots that they deserve to die. This dangerous rhetoric has been directed at activists simply for advocating for the lives of Palestinian children in Gaza.

I have witnessed the dehumanization of those who dare to question the Israeli government's tactics, which many see as an ethnic cleansing of Gaza and the West Bank.

As the hearing began, I hoped our Palestinian brothers and sisters would finally be heard and valued, allowing them to honor their slain children in the halls of Congress. I envisioned this hearing as an opportunity to address the root causes of hatred and division, and to confront the harmful rhetoric propagated by our leaders. Instead, the senators on this committee contributed to more hate and division, putting my family, friends, and colleagues in danger.

I am deeply disappointed in Senator Durbin for his lack of leadership in permitting certain members of the committee to spread lies about students protesting the genocide in Gaza.

I urge Senator Durbin to reflect on this and publicly denounce the hateful rhetoric expressed during this hearing. I hope he and the Democratic Party will begin to confront the hatemongers on the other side of the aisle. It is crucial that our leaders in Washington stop allowing foreign entities to dictate our foreign policy. I also hope Senator Durbin will join Senator Bernie Sanders in calling for a halt to weapon sales to Israel.

Sincerely

Sonny Garcia

Bloomington IL

Statement for the Record
By Michael Masters, National Director and CEO
Secure Community Network
U.S. Senate Committee on the Judiciary
A Threat to Justice Everywhere: Stemming the Tide of Hate Crimes in America
September 17, 2024

Thank you for convening this important bipartisan hearing to explore the persistent and alarming rise of hate crimes and solicit feedback on ways our Nation can better track, prevent, and respond to hate crime incidents. On behalf of the Secure Community Network (SCN), please accept our statement for the record.

SCN, a 501(c)(3) nonprofit, is the official safety and security organization of the Jewish community in North America. Founded in 2004 by leadership of the North American Jewish community, SCN serves as the central organization dedicated exclusively to the safety and security of the American Jewish community, working across 146 federations, 50 partner organizations, over 300 independent communities, and other partners in the public, private, nonprofit, and academic sectors. SCN is dedicated to ensuring that Jewish organizations, communities, life, and culture can not only exist safely and securely, but flourish.

Our mission is to create a comprehensive security shield over the Jewish community. We achieve this through a multifaceted approach that includes intelligence and information sharing, extensive training, exercises, and education. Additionally, we conduct facility assessments, provide grant support, and engage in incident response and crisis management, among other essential standardized, best practice security efforts. Consistent and coordinated reporting of threats, incidents, and suspicious activity is a critical component of the security shield SCN is building over the Jewish community in North America. This proactive approach is vital in addressing the evolving and expanding nature of threats faced by our community.

In 2021, SCN launched a state of the art National Jewish Security Operations Command Center (JSOCC) from which to coordinate all intelligence and information sharing efforts. The Duty Desk, housed in the JSOCC, leverages Project RAIN (Realtime Actionable Intelligence Network), a proprietary technology platform that identifies and tracks threats to more than 12,400 Jewish facilities across North America. Staffed 24 hours, 7 days a week by trained professional intelligence analysts, the JSOCC receives reports of and identifies record numbers of threats, working in close coordination with local, state, and federal authorities to respond to these incidents. Investing in the JSOCC and team of professional intelligence analysts has provided the most accurate and complete picture, to date, of the threat landscape affecting the Jewish community.

SCN also directly manages community security initiatives that cover more than 35 communities, as well as regional efforts led by Regional Directors covering 11 regions across the United States and Canada. All security initiatives are led by experienced law enforcement professionals. In total, the network of Jewish communal security professionals covers more than 115 communities and is rapidly expanding. Our security directors maintain and develop strong relationships and partnerships with local, county, and state law enforcement partners. This collaboration ensures effective communication and coordination between law enforcement and the Jewish community across North America. The importance of this partnership cannot be overstated, as it enhances our collective ability to respond to and mitigate threats.

The Jewish community is currently facing the most complex and dynamic threat environment in our nation's history. According to the Federal Bureau of Investigation (FBI), more than half of religiously motivated hate crimes in the United States target the Jewish community, even though Jewish individuals represent less than three percent of the total population. This disproportionate targeting underscores the urgent need for enhanced protective measures and community awareness.

Last year alone, SCN logged more than 5,400 threat incidents and suspicious activity reports, marking an alarming 112% increase from the previous year. Over 50% of these reports were logged in the three months following the Hamas terror attacks against the State of Israel, which triggered an outpouring of hate and calls for violence directed at Jewish people both globally and here in the United States.

In addition to recorded incidents, SCN has worked closely with local, state, and federal law enforcement agencies, including the FBI, to refer 1,619 individuals to authorities in 2023. This represents a significant 110% increase in referrals compared to 2022. The record year was further highlighted by a surge of nearly 200 swatting incidents and false bomb threats targeting Jewish institutions across the country during a single weekend in December. In total, SCN recorded 998 swatting incidents and false bomb threats in 2023, which is a staggering 768% increase from the 115 incidents reported in 2022.

It is evident that there exists a significant disparity between the number of hate crime incidents we document and those reported by our nation's federal, state, and local law enforcement agencies. This discrepancy can be attributed to several factors, including the variations in hate crime definitions across different jurisdictions, the reluctance of victims to engage with law enforcement, and the inconsistent reporting practices by law enforcement agencies of varying sizes. These issues create a complex and disparate landscape that complicates our understanding of the true extent of hate crimes in our society.

In 2021, the FBI's National Incident-Based Reporting System (NIBRS) became the national standard for law enforcement crime data reporting. While NIBRS represents a significant improvement in how reported crime is measured, the transition for law enforcement agencies has

proven to be challenging. Many agencies have yet to make the transition, while others face difficulties due to the resources, time, and personnel required to upgrade their systems, train staff, and report accurately.

Improving our nation's reporting of hate crime statistics is critical to effectively countering hate motivated crimes. Community organizations, local, state, and federal governments, law enforcement agencies, and policymakers cannot adequately protect vulnerable communities without accurate statistics that identify the prevalence, distribution, and specific nature of hate crimes. Accurate data is essential for developing informed policies and interventions that can effectively address these issues.

In this challenging and unprecedented threat environment, the Jewish community is working more closely than ever on these issues, especially between national partners such as the Anti-Defamation League (ADL), American Jewish Committee (AJC), Conference of Presidents of Major American Jewish Organizations, The Jewish Federations of North America (JFNA), the Orthodox Union (OU), and SCN. The increasing coordination and collaboration of these leading organizations representing the breadth and diversity of the American Jewish community reflects both the seriousness of the moment as well as our collective commitment to addressing our shared threats through collaboration.

Given our focused mission and coordinative role, SCN is uniquely positioned and eager to contribute to finding workable solutions to improve our nation's hate crime reporting ecosystem. We believe that collaboration amongst various stakeholders, to include the community, law enforcement, and policymakers, is essential to enhancing the accuracy and reliability of hate crime data. By fostering partnerships and sharing best practices, we can work towards a more comprehensive understanding of hate crimes and their impact on our communities, as well as how best to combat these blights on society.

Thank you for your attention to this critical matter. Please do not hesitate to reach out if we can be of assistance to you.

THE SIKHCOALITION

Statement for the Record from
The Sikh Coalition

United States Senate Committee on the Judiciary Hearing

A Threat to Justice Everywhere: Stemming the Tide of Hate Crimes in America

September 17, 2024

The Sikh Coalition respectfully submits this statement for the record in connection with the above-referenced hearing before the United States Senate Judiciary Committee.

By way of background, the Sikh Coalition is the largest Sikh American civil rights organization in the United States. We were founded in the immediate aftermath of September 11, 2001, in response to a torrent of hate crimes against Sikhs throughout the United States. In the first two months after 9/11 alone, there were over 300 documented cases of violence and discrimination against Sikh Americans nationwide.[1] **Since 2014, the FBI's annual hate crime report has consistently categorized anti-Sikh hate crimes and bias incidents among the most common hate crimes and incidents motivated by religious bias.** The Sikh Coalition continues to provide free, expert legal aid to Sikhs who experience hate crimes while also advocating for sound policies that aim to address the systemic issues that perpetuate bias, hate, and discrimination.

We respectfully request that members of Congress support pending legislation to address the ongoing threat of hate crimes and hate violence against Sikhs and other marginalized communities, including but not limited to the Improving Reporting to Prevent Hate Act, the Gun Violence Prevention Research Act of 2023, and the Safe Workplaces Act. We also urge members of Congress to consider additional policy initiatives to help end hate violence in the United States.

[1] *See* Fact Sheet on Post-9/11 Discrimination and Violence Against Sikh Americans, The Sikh Coalition, 2012, available at https://www.sikhcoalition.org/images/documents/fact%20sheet%20on%20hate%20against%20sikhs%20in%20america%20post%209-11%201.pdf.

More than 100 Years of Anti-Sikh Hate Violence

While modern geopolitical events have exacerbated trends in anti-Sikh hate crimes, Sikhs have been experiencing violence in the United States for more than 100 years.[2] In 1907, lumberjacks in Bellingham, WA, attacked hundreds of Sikh mill workers in their homes, with the goal of "'scar[ing] them so badly that they will not crowd white labor out of the mills.'"[3] The mobs broke windows, threw rocks, and kidnapped Sikh immigrant workers while overpowering police officers. Within ten days, the entire Sikh population was forced out of town.

Sikhs today recall 9/11 as the beginning of a wave of violence against our community that continues today,[4] exacerbated by resurgent and flagrant white nationalism, toxic political discourse, and xenophobic sentiments. One of the first deadly hate crimes in America after 9/11 targeted a Sikh American named Balbir Singh Sodhi, who was murdered outside his gas station on September 15, 2011. Yet more than 20 years later, these issues persist. In April of 2022, a rash of anti-Sikh assaults and robberies targeted three Sikh men in the Richmond Hill neighborhood of Queens, NY;[5] in October of 2023, a 19-year-old Sikh on a New York City bus was attacked by a suspect who punched him and tried to remove his turban in the same month that a 66-year-old Sikh motorist was killed in an assault that escalated from a car accident.

The threat that Sikhs face from violent hate has also foreshadowed systemic problems for our nation. One of the worst attacks on an American house of worship in history occurred on August 5, 2012, when a white supremacist gunman murdered seven Sikhs—Satwant Singh Kaleka, Suveg Singh Khattra, Ranjit Singh, Sita Singh, Prakash Singh, Paramjit Kaur, and Baba Punjab Singh—inside a gurdwara in Oak Creek, Wisconsin. Between the time of this shooting and 2022, there were at least eight other mass shootings by white supremacists.[6]

---

[2] David Cahn, The 1907 Bellingham Riots in Historical Context, The Seattle Civil Rights & Labor History Project, 2008, available at https://depts.washington.edu/civilr/ bham_history.htm.
[3] Id.
[4] In an effort to show the scope of different anti-Sikh hate crimes in this country since 2001, the Sikh Coalition worked with survivors, families, and community members to submit several letters for the congressional record detailing several such instances
[5] Liam Stack and Samira Asma-Sadeque, "Within 10 Days, Three Sikhs Were Attacked on the Same N.Y.C. Block, N.Y. Times, April 15, 2022, https://www.nytimes.com/2022/04/15/nyregion/sikh-attacks-nyc.html.
[6] Sandhya Dirks, "Remembering the Oak Creek killings, a harbinger of white supremacist violence," NPR, Aug. 5, 2022, https://www.npr.org/2022/08/05/1115931555/remembering-the-oak-creek-killings-a-harbinger-of-white-supremacist-violence.

The FBI's annual hate crime report has consistently categorized anti-Sikh hate crimes and bias incidents among the most common hate crimes and incidents motivated by religious bias. Despite the systemic problems with underreporting all forms of hate crimes, this data validates the Sikh Coalition's conclusion that Sikhs remain more likely to be targeted for hate crimes than any other minority in America once population size is accounted for. According to the FBI's most recently released data reports, 2022 saw the highest-ever reported number of anti-Sikh victimizations, and Sikhs were the second-most targeted group in the nation for religiously-motivated hate crime incidents.

.

Closing Policy Gaps to Prevent and Address Hate Violence

Working with Sikhs who have experienced hate has provided the Sikh Coalition with a clear look at the policy changes that are needed to best serve impacted communities and prevent future acts of violence. To be sure, we have already made significant progress; in 2013, after the mass shooting in Oak Creek and a successful three-year campaign by the Sikh Coalition, the FBI agreed to track anti-Sikh hate crimes, giving policymakers official data about anti-Sikh hate violence for the first time in our nation's history. However, glaring policy gaps remain. For example, local law enforcement organizations (LEOs) are not required to report anti-Sikh hate crimes—or any hate crimes—to the FBI, and hundreds of LEOs across the country do not report any hate crimes to the federal government, despite public reporting that indicates hate crimes have in fact been prosecuted in their jurisdictions.

Additionally, it is undeniable that guns have often been employed as tools to specifically target Sikhs and other minorities in deadly acts of mass casualty violence. In 2023, a gunman launched an attack on a FedEx ground facility in Indiana, which was widely known for employing a high concentration of Punjabi and Sikh workers.[7] Four members of the Indianapolis Sikh community were among those killed in the violence. Numerous other mass shootings (like the above mentioned assault on the gurdwara in Oak Creek) have seen individuals specifically targeted for their race, religion, gender identity, sexual orientation, or other characteristics; aside from these mass shootings, too many individuals have been hurt or killed with guns in acts of hate. So long as all kinds of gun

[7] In July 2021, the Indianapolis Metropolitan Police Department (IMPD) and the Federal Bureau of Investigation (FBI) concluded that the shooter's violent actions were "an act of suicidal murder," and that there was "no indication of racial bias." This announcement was made despite the fact that the attack was planned on a place with a majority-Punjabi workforce, and the shooter had white nationalist content on his computer. The IMPD and FBI never explained how they ruled out bias as a possible motive in their investigation.

violence remain virtually unchecked in this country, our community's fundamental rights to life, liberty, and the pursuit of happiness will be in peril.

Over more than two decades of doing this work, we have also come to understand that a purely reactive posture, while sometimes necessary, will never be sufficient. Prevention, rather than just punishment, must be a core part of our government's response to hate crimes; accordingly, we support investments in public education, inclusion, and awareness programs that promote understanding, empathy, and respect through increased awareness and tolerance, as well as evidence-based social programs and interventions aimed at addressing underlying factors contributing to hate violence. We also recognize that those who experience hate need and deserve direct support, leading us to embrace policies that provide resources for survivors and communities impacted by hate.

Finally, we also believe that we have a responsibility to consider the effects of our imperfect criminal justice system—specifically, an overreliance on solely carceral solutions to address the policy problem of hate. Sentencing enhancements and other such punitive measures may play well in certain political environments, but research suggests that they do not address the root causes driving crime—including crimes with a bias component. Any meaningful efforts to address hate violence must be coupled with the development of options rooted in restorative justice for individual offenses as well as meaningful reforms to policing that reduce profiling, prioritize de-escalation, and prohibit any and all abuses of other marginalized communities.

Policy Recommendations

In order to tackle the challenge of hate crimes and bias incidents, **we urge that members of this committee support the Improving Reporting to Prevent Hate Act (IRPHA) (H.R.7648).** This bipartisan legislation would address one of the biggest barriers to understanding and addressing the issue of hate violence in the United States: underreporting by local law enforcement. As mentioned above, the FBI's 2022 data shows a fifth consecutive year of declines in LEO participation in the FBI's hate crime statistics program. Federal-level estimates from the Bureau of Justice Statistics put annual hate crime victimizations at 246,900,[8] but shockingly, this most recent data only captures 4 percent of that number. Without accurate data, government initiatives and advocacy organizations cannot begin to accurately assess and address community

[8] Grace Kena and Alexandra Thompson, "Hate Crime Victimization, 2005–2019," Bureau of Justice Statistics, Sept. 2021, https://bjs.ojp.gov/sites/g/files/xyckuh236/files/media/document/hcv0519_1.pdf.

needs. The IRPHA would require certain local governments to report credible hate crime data to the FBI's Uniform Crime Reporting Program, or conduct community hate crime public education and awareness initiatives.

We also recommend that members of Congress take the following additional actions:

- **Correct a loophole in federal hate crime legislation that currently requires an act of bigotry to be the singular motivating factor to prosecute offenders for federal hate crime charges**, given that bias is often only one of many factors in the targeting of an individual for a hate crime. The Justice for Victims of Hate Crimes Act, last proposed during the 116th Congress, would have provided a legislative fix for this issue; unfortunately, the legislation has not been re-introduced or moved forward since.
- **Establish a permanent commission that will work with key community stakeholders to address gaps in federal hate crime legislation and swiftly implement preventative measures.** The commission must include community advocates and routinely meet with the White House's Domestic Policy Council to further collaborate after the 2021 DOJ interagency review on hate crimes.
- **Support the Domestic Terrorism Prevention Act (S. 1591)**, which will create better federal standards for appropriate investigation of white nationalist and supremacist groups and implement several common sense processes to combat white supremacy—while not falling into tropes of racial and religious groups who may become unintentional targets of national security responses.
- **Increase programs that promote greater understanding between communities and reduce misconceptions of Sikhs through greater funding to the DOJ Community Relations Service.** The agency must also work to update their training content to be applicable to policing reforms and the real-world needs of the community.
- **Support legislation like the George Floyd Justice in Policing Act (H.R. 8525)** to set in place standards to reform policing and increase transparency and accountability, all of which serves the goal of increasing trust between communities who report hate crimes and law enforcement.
- **Support initiatives to research and study gun violence and prevention by passing bills like the Gun Violence Prevention Research Act of 2023 (H.R.2390 / S.1026) and the Safe Workplaces Act (H.R.8669).**
- **Support initiatives for responsible gun ownership by enhancing background checks, training, and licensing.** Concrete steps must also be taken to reduce gun accessibility to dangerous individuals, including by

addressing gaps in red flag laws. Additionally, passing the **Disarm Hate Act (H.R.5435 / S.2776)** will restrict access to guns for hate crime offenders; passing the **End Gun Violence Act of 2023 (H.R. 2897/S.2732)** will do the same for misdemeanor offenders.

It is imperative that the federal government take a strong stand against hate violence, and we applaud the Committee for convening this hearing for the same purpose. Congress' leadership in this matter is crucial to safeguarding not only the Sikh community, but the many other communities impacted by hate in our country. We thank you for your attention to this matter, and welcome any questions or follow-up requests you may have.

CONGRESSIONAL TESTIMONY

"From Rhetoric to Violence: Addressing the Growing Wave of Anti-Muslim, Arab and Palestinian Hate Crimes"

Testimony Submission for the Full Committee Hearing

A Threat to Justice Everywhere: Stemming the Tide of Hate Crimes in America

Senate Judiciary Committee
United States Senate

Submitted: September 16, 2024

Wa'el Alzayat
Chief Executive Officer
Iman Awad
Deputy Director
Hanna Dasoo
Senior Policy & Research Analyst

EMGAGE ACTION

Overview

The rise of anti-Muslim, Arab, and Palestinian hate crimes has become a grave concern in the wake of increasing anti-Muslim, anti-Arab, and anti-Palestinian sentiment, particularly following the October 2023 violence between Israel and Gaza. This testimony, submitted to the Senate Judiciary Committee, outlines the dangerous intersection of hate rhetoric, inadequate legal frameworks, and the erosion of civil liberties, most notably freedom of speech and expression, for these targeted communities. While hate crimes in the U.S. have seen a marked increase, inconsistencies in hate crime reporting and systemic failures in recognizing such crimes highlight the urgent need for change. This testimony seeks to address these shortcomings while emphasizing the broader societal and institutional impact of hate-driven violence.

Rising Hate, Failing Systems

FBI data shows that 11,634 hate crimes were reported in 2022[1], marking a 10% increase from 2021. While this rise is alarming, it highlights a deeper issue: the systemic failure of the hate crime reporting mechanism. Under the Hate Crime Statistics Act of 1990 (HCSA), the FBI oversees a voluntary hate crime reporting system.[2] And, according to the Southern Poverty Law Center (SPLC), "the voluntary nature of the program has resulted in reporting that has been consistently inconsistent. For example, about 3,500 agencies did not report any data to the FBI in the 2020 report – including 10 cities with populations over 100,000. And another 60 police departments in cities with populations over 100,000 affirmatively reported zero hate crimes."[3] The lack of consistent local tracking not only skews national data but also limits law enforcement's ability to assess the scope of hate-based violence accurately. Without reliable local data, many incidents go unreported or misclassified, allowing hate crimes to persist in the shadows and hindering efforts to address the root causes of such violence.

---

[1] *2022 FBI hate crimes statistics*. (2023, October 30). Justice.gov. https://www.justice.gov/crs/highlights/2022-hate-crime-statistics.

[2] *Crime/Law Enforcement Stats (Uniform Crime Reporting Program)*. Fbi.gov. Retrieved September 16, 2024, from https://www.fbi.gov/how-we-can-help-you/more-fbi-services-and-information/ucr.

[3] December. (n.d.). *'Consistently Inconsistent': Thousands of law enforcement agencies fail to provide hate crime data to the FBI*. Southern Poverty Law Center. Retrieved September 16, 2024, from https://www.splcenter.org/news/2022/12/13/2021-fbi-hate-crime-data-incomplete.

Victims of hate crimes often hesitate to report[4] their experiences due to fears of retaliation, a lack of trust in law enforcement, or doubts about the effectiveness of the reporting process. These concerns can lead to a reluctance to come forward, especially among Muslim, Arab, and Palestinian communities, who are experiencing increased bias and discrimination. When reports are made, they are frequently misclassified by law enforcement, which not only diminishes their visibility but also fails to reflect their severity accurately.

This underreporting and misclassification contribute to a significant gap between the actual incidence of hate crimes and what is captured in official statistics. For these communities, the reality of hate-driven violence is likely far more severe than government data suggests. Addressing this discrepancy requires more effective and empathetic reporting mechanisms to ensure that all incidents of hate crimes are accurately recorded and addressed.

Challenges in Addressing Anti-Muslim Hate Crimes: A Call for Justice

The 2015 murders of three Muslim students in Chapel Hill[5], North Carolina, brought global attention to the surge of anti-Muslim violence in the U.S., yet the legal system failed to prosecute the crime as a hate crime. Craig Hicks, who killed his neighbors - Deah Shaddy Barakat, Yusor Mohammad Abu-Salha, and Razan Mohammad Abu-Salha - claimed the murders stemmed from a parking dispute. However, the victims' families, and many in the community, saw the killings as motivated by deep-seated bias, given Hicks' history of hostility toward people of color and his targeting of the victims, who were visibly Muslim. Despite this, the lack of a hate crime designation reflects the limitations of current legal frameworks, which often struggle to recognize or prosecute crimes driven by implicit bias or mixed motives. This failure underscores the systemic challenges in achieving justice for communities targeted by hate, leaving entire groups feeling vulnerable and unprotected.

Following the Chapel Hill case, where the legal system fell short in designating the murders as hate crimes despite clear indications of bias, the most recent prosecution of Wadea Al-Fayoume's murder as a hate crime becomes even more crucial. This case is a stark reminder of the need for the justice system to address hate crimes with the gravity they deserve. Wadea's tragic death, driven by anti-Muslim animus, demanded a legal response that recognizes and condemns the underlying prejudice. On

---

[4] Devine, C., & Byington, L. (2018, August 16). *Millions are victims of hate crimes, though many never report them*. Center for Public Integrity.
https://publicintegrity.org/politics/millions-are-victims-of-hate-crimes-though-many-never-report-them/.

[5] And, J. N., & Dewan, S. (2019, June 12). Nytimes.com.
https://www.nytimes.com/2019/06/12/us/hate-crime-muslim-students.html.

October 15, 2023, Attorney General Merrick B. Garland announced a federal hate crimes investigation[6] into the tragic killing of Wadea Al-Fayoume and the severe wounding of his mother, Hanaan Shahin, emphasizing the Department of Justice's (DOJ) commitment to addressing hate-fueled violence. The DOJ must apply all its legal powers to uphold the civil rights of all individuals, reinforcing that such acts of bigotry have no place in the United States.

The federal prosecution of Wadea Al-Fayoume's murder as a hate crime is critical in addressing the rise of anti-Muslim violence in the U.S., particularly in light of the failures in cases like the 2015 Chapel Hill murders, where bias was not formally acknowledged. Similarly, the recent hate crime charges regarding vandalism at the Center for Islamic Life at Rutgers University[7] again underscores the urgent need to combat bigotry targeting Muslim, Arab, and Palestinian communities. These incidents, coupled with an uptick in attacks on houses of worship, reveal a troubling pattern that demands a robust response. By prosecuting these crimes as hate-driven, the DOJ sends a clear message that such acts of prejudice will not be tolerated. The DOJ's swift action not only seeks justice for victims but also works to safeguard the civil rights of all individuals, reaffirming that hatred and violence have no place here.

Free Speech at Schools and Universities

The impact of this climate of fear extends far beyond physical violence. University campuses, historically bastions of free speech, have become hostile environments for students voicing support for Palestinians. In Michigan, Attorney General Dana Nessel pressed charges[8] against students peacefully protesting the University of Michigan's ties to weapons manufacturers. These students were standing in opposition to the ongoing atrocities and violence faced by Palestinians, yet instead of engaging with their concerns, the state chose to criminalize their dissent.

---

[6] *Attorney general statement on the killing of six-year-old child Wadea Al-Fayoume and severe wounding of his mother Hanaan Shahin in Illinois*. (2023, October 15). Justice.gov. https://www.justice.gov/opa/pr/attorney-general-statement-killing-six-year-old-child-wadea-al-fayoume-and-severe-wounding.

[7] Loyer, S., & Arshad, M. (2024, April 23). New Jersey man charged with federal hate crime in Rutgers Islamic center vandalism. *USA Today*. https://www.usatoday.com/story/news/nation/2024/04/22/new-jersey-rutgers-islamic-center-vandalism-eid-al-fitr-holiday/73419079007/.

[8] Wimmer, D. (2024, September 12). *Attorney General Nessel Concludes Review of University of Michigan Protest Incidents, Charges 11*. Michigan.gov. https://www.michigan.gov/ag/news/press-releases/2024/09/12/attorney-general-nessel-concludes-review-of-university-of-michigan-protest-incidents-charges-11.

This trend is not isolated. Across the country, universities have shut down[9] student organizations such as Students for Justice in Palestine (SJP)[10], expelled student protestors, and turned a blind eye to doxxing campaigns. At Harvard, a conservative group even displayed a truck on campus with the names and faces of student protestors, labeling them as "Harvard's Leading Anti-Semites." These actions reflect a disturbing erosion of free speech and a broader societal shift that punishes dissent while ignoring rising hate speech targeting marginalized communities.

Political Leadership and the Fueling of Islamophobia and Xenophobia

The election of former President Donald Trump saw an unusually overt Islamophobic and xenophobic administration exemplified by numerous incidents of White House officials, Congressional members, and the president's advisors targeting Muslims and Arabs through policy and rhetoric. His campaign, both former and current, is defined by his hostility towards immigrants, Muslims, and non-Americans, bolstered by decades of baseless disinformation and racism against minorities.[11] The combination of hateful rhetoric coupled with discriminatory policies is used to justify prejudice and sometimes even violence against Muslims and those who are perceived as "other." As a result, marginalized and vulnerable communities do not expect protection from the government or law enforcement, causing a severe breakdown in institutional trust and integrity.

Within a week of taking office, Trump issued an executive order prohibiting entry to the US by individuals and refugees from seven Muslim-majority countries.[12] His administration also shifted the focus of the Countering Violent Extremism program solely toward Islamic extremism,

---

[9] Oshin, O. (2023, November 6). *Private university bans Students for Justice in Palestine as Middle East fallout spreads*. Thehill.com. https://thehill.com/homenews/4296741-first-private-university-bans-students-for-justice-in-palestine-as-middle-east-fallout-spreads/.

[10] Alonso, J. (2023, October 26). *Florida bans some Students for Justice in Palestine chapters*. Inside Higher Ed | Higher Education News, Events and Jobs. https://www.insidehighered.com/news/students/free-speech/2023/10/26/florida-bans-some-students-justice-palestine-chapters.

[11] Weissert, W., & Colvin, J. (2024, April 1). *Trump's anti-immigrant rhetoric makes inroads with some Democrats*. AP News. https://apnews.com/article/border-immigration-trump-biden-rhetoric-2024-election-327c08045edcc200f850d893de6a79d6.

[12] BBC News. (2017, January 28). Trump's executive order: Who does travel ban affect? *BBC*. https://www.bbc.com/news/world-us-canada-38781302.

disproportionately targeting Muslims.[13] Even before assuming office, Trump had a long history of scapegoating and vilifying Muslims. In an interview with Fox News and again, later, with CBN, he argued that there is "a Muslim problem in the world," remarking that the Quran "teaches some very negative vibe[....]there's a lot of hatred there someplace," a sentiment that he expressed quite often. Following the November 2015 Paris attacks, Trump declared that the US should "watch and study the mosques" because "some of the ideas and[...] absolute hatred is coming from these areas." Multiple times, he argued for the use of more surveillance, watch lists, registries, and databases of Syrian refugees and Muslims. He repeated over and over again that New Jersey Muslims celebrated 9/11. Time and time again, Trump referred to Muslims as a problem that requires a solution, creating an environment of distrust and hostility against them.

He was not alone. Key figures in his administration, including Chief Strategist Steve Bannon, National Security Advisor Michael Flynn, Deputy Assistant Sebastian Gorka, and CIA Director Mike Pompeo, consistently promoted anti-Muslim and anti-refugee views. Bannon, the former executive chairman of Breitbart News, a media website that often spreads anti-Muslim content, previously claimed that the "Judeo-Christian West" was engaged in a "global war" against "jihadist Islamic fascism." General Flynn, labeled Islam as a "cancer" and argued that a "fear of Muslims is rational."[14] Gorka inaccurately claimed that 98% of terrorists are Muslims,[15] argued that "profiling is actually a synonym for common sense,[16] accused the Washington Post and New York Times of "shilling for the Jihadis,"[17] and suggested that the 2017 bombing of a Minnesota masjid was a "fake hate crime."[18] And Pompeo labeled U.S. Muslim leaders as "potentially complicit" in terrorism following the 2013 Boston Marathon attack, arguing that Muslims had a continuous obligation to publicly reaffirm that Islam is a religion of peace.

---

[13] Ainsley, J. E., Volz, D., & Cooke, K. (2017, February 2). *Exclusive: Trump to focus counter-extremism program solely on Islam - sources*. Reuters.com. https://www.reuters.com/article/world/exclusive-trump-to-focus-counter-extremism-program-solely-on-islam-sources-idUSKBN15G5VN/.

[14] Kaczynski, Andrew. "Michael Flynn in August: Islamism is a 'vicious cancer' in body of all Muslims that 'has to be excised'," CNN, November 22, 2016, http://www.cnn.com/2016/11/22/politics/kfile-michael-flynn-august-speech/.

[15] Jilani, Zain; Emmons, Alex. "Former Donald Trump Adviser Calls Racial Profiling "Common Sense." *The Intercept.* June 30, 2016. https://theintercept.com/2016/06/30/former-donald-trump-adviser-calls-racial-profiling-common-sense/.

[16] Ibid.

[17] Gorka, Sebastian. "Shilling for the Jihadis: NYT and WaPo Stand with the Muslim Brotherhood" July 13, 2014. https://www.breitbart.com/national-security/2014/07/13/shilling-for-the-jihadis-nyt-and-wapo-stands-with-the-muslim-brotherhood/.

[18] CNN Staff. "Gorka: Mosque bombing may be 'fake hate crime.'" *CNN.* August 9, 2017. https://www.cnn.com/videos/politics/2017/08/09/trump-aide-sebastian-gorka-mosque-attack-may-be-fake-hate-crime-ath.cnn.

It is not hard to see how the rise in hate crimes against Muslims and immigrants not only coincided with the Trump campaign for office and subsequent presidency but was also encouraged by the administration's erroneous argument that the country's issues stemmed from these communities. Many perpetrators have openly noted that Trump was their inspiration.[19] In one such case, a man attacked a Delta employee who wore a hijab, saying that the victim did nothing but "F— Islam. F— ISIS. Trump is here now. He will get rid of all of you."[20]

Trump's presidency is not an aberration that occurred in a vacuum; it is a continuation of unfettered and unchecked Islamophobia, xenophobia, and consistent negligence in strengthening hate crime reporting mechanisms. Recently, Florida Republican Rep. Randy Fine accused Vice President Kamala Harris' stepdaughter of supporting "Muslim terror"[21] for raising money for the United Nations Relief and Works Agency. Fine has used this term before, equating recognition of Palestine with "Muslim terror"[22] and accusing a Florida Islamic school, Reviver Academy, of promoting violence. He claimed that funding the school was "literally funding the training of future terrorists" and alleged the school taught students to kill Jews as part of their accountability to Allah.[23] The inflammatory rhetoric that was pervasive during the Trump administration did not end when he left office. Instead, it continues to fuel these dangerous stereotypes, deepening the ever-growing climate of fear and hatred of the "other" that encourages violence against Muslim and minority communities. From the legacy of former president George W. Bush's Global War on Terror to even the policies of the Biden Administration, public sentiment on Muslims, Arabs, and Palestinians remains abysmal and dangerous.

Conclusion: Strategic Actions Against Hate Crimes

To effectively address the rising wave of anti-Muslim, Arab, and Palestinian hate crimes, it is essential to implement comprehensive and systemic reforms. First, mandating that all law enforcement agencies report hate crimes and submit complete data to the FBI will ensure that incidents are accurately

[19] Mike Levine. "'No Blame?' ABC News finds 54 cases invoking 'Trump' in connection with violence, threats, alleged assaults." *ABC News*. May 30, 2020. https://abcnews.go.com/Politics/blame-abc-news-finds-17-cases-invoking-trump/story?id=58912889.

[20] Ibid.

[21] Fine, Randy [@VoteRandyFine]. "Jews need to understand that Kamala Harris' daughter actively raised money and supports #MuslimTerror." Twitter. July 22, 2024. https://x.com/VoteRandyFine/status/1815361412719419845.

[22] Fine, Randy [@VoteRandyFine]. "In Florida, if you support Muslim terror, you will be treated like a Muslim terrorist. Next session, I will introduce legislation that adds any country that recognizes "Palestine" to Florida's list of scrutinized countries, with severe limitations on entities from those countries doing business with and in Florida. Spain, Ireland, and Norway will join Iran, North Korea, Cuba, and Syria, among others, on that list. Govern yourselves accordingly." Twitter. May 22, 2024. https://x.com/VoteRandyFine/status/1793270652918432115.

[23] Venegas, Natalie. "Florida Muslim School Accused of Training 'Future Terrorists." *Newsweek*. May 15, 2024. https://www.newsweek.com/florida-muslim-school-accused-randy-fine-1901103.

tracked and responded to, providing a clearer picture of the scope and impact of hate crimes. Establishing independent victim reporting systems, not tied to law enforcement, will offer communities a safer avenue to report hate crimes without fear of retaliation or mistrust. Additionally, funding programs aimed at rebuilding trust between law enforcement and affected communities is crucial, particularly for Muslim, Arab, and Palestinian populations. Finally, passing legislation to criminalize doxxing, especially when targeting individuals based on political beliefs, race, or religion, will protect individuals from harassment and intimidation, particularly in the context of recent university protests.

These recommendations are designed to close the gap between reported and actual incidents of hate crimes and to restore confidence in the justice system's ability to protect all communities. By implementing these measures, we can ensure a more accurate understanding of hate crimes, foster a safer environment for vulnerable populations, and uphold the principles of justice and equality. Congress must take stronger, more proactive measures to address the rise in hate crimes, ensuring that communities targeted by violence receive the protection and justice they deserve. Lawmakers have a responsibility to enact comprehensive legislation that not only condemns hate but also implements policies that hold perpetrators accountable.

MUSLIM ADVOCATES

Written Testimony of
Sumayyah Waheed, Senior Policy Counsel

Muslim Advocates

Submitted to the United States Senate
Committee on the Judiciary
Hearing on

A Threat to Justice Everywhere: Stemming the Tide of Hate Crimes in America

September 24, 2024

On behalf of Muslim Advocates, I submit this testimony with pain and resolve. My pain comes from watching a Senate Judiciary Committee hearing open with the horrific story of six-year-old Palestinian American Wadee Alfayoumi, who was murdered in an alleged hate crime, but then devolved into the same racist tropes, dehumanization, and erasure of Palestinians that led to his murder in the first place. My resolve is to challenge the governmental policies, practices and systems that enable and perpetuate hate and discrimination. Muslim Advocates is a national social justice organization that uses litigation and policy advocacy to promote justice and equity while protecting the diverse spectrum of Black, Arab, Middle Eastern, Muslim, and South Asian ("BAMEMSA") communities from discrimination in all its forms.

Last week's hearing was promoted as an opportunity to acknowledge the experiences of Palestinians, Arabs and Muslims who have faced a spike in bigotry domestically since October 7, resulting from a campaign to silence dissent about and demands for accountability for the Israeli government's atrocities in Gaza and the West Bank. Prior to the hearing, Muslim Advocates urged Committee members to uplift Palestinian voices, name anti-Palestinian racism, and address U.S. governmental policies and practices that promote hate and discrimination against Palestinian, Black, Arab, Muslim, Middle Eastern and South Asian communities.

Instead, the loudest voices on the committee refused to acknowledge Alfayoumi's grieving mother Hanan Shaheen or any other Palestinian victims of hate crimes, and refused even to

name anti-Palestinian, anti-Muslim or anti-Arab bias. Shamefully, the hearing operated to further the erasure of Palestinians at a time when they are facing genocide.

Recommendations:

1. Senators must denounce anti-Palestinian racism and other forms of bias.

At the hearing and in the past year, many members of Congress, including the Ranking Member, have blatantly displayed anti-Palestinian racism in an attempt to whitewash Israel's atrocities against Palestinians in Gaza and the West Bank. Senator Kennedy subjected Maya Berry, the only Arab, Muslim, or female witness at the hearing, to bigoted questioning and verbal abuse.

Evidence shows that these kinds of actions by Congressmembers have real-world consequences. Hateful comments from elected officials have been found to directly connect to incidents of hate speech,[1] and the normalization of hate leads to hate violence. When members of Congress use their platforms to weaponize hate and fear of a faith, racial or ethnic group, their supporters listen. It is disgraceful that at a hearing to discuss hate crimes, committee members chose to display unvarnished hate, deploying racist and anti-Muslim tropes to delegitimize and dehumanize Ms. Berry and signal to everyone watching that Palestinians, Arabs and Muslims are fair targets for hate.

2. Identify and address the systems upholding anti-Palestinian, anti-Muslim and other forms of hate.

As documented in a recent report from Palestine Legal, law enforcement, news and social media, colleges, universities and schools, private and foreign agents, as well as elected officials including Judiciary Committee members, have all contributed to the erasure, dehumanization, repression and criminalization of Palestinian people and those supporting Palestinian human rights. As noted above, this serves to normalize the ongoing genocide in Palestine and silence efforts to stop it.

This racist targeting of Palestinians also harms Black, Arab, Muslim, Middle Eastern and/or South Asian ("BAMEMSA") communities due to both legitimate overlap in, as well as racist conflation of, our identities. Indeed, anti-Muslim bias complaints are at the highest level on record, as politicians and other public figures stoke hatred for political and financial gain.

[1] See Liz Zhou, "There need to be consequences for Rep. Lauren Boebert's Islamophobic comments," December 4, 2021, https://www.vox.com/22814386/lauren-boebert-islamophobic-comments-omar-house-republicans.

The inextricable link between and systemic nature of white supremacy and white Christian nationalism are reflected in a long history of abuses which simultaneously rest on and promote dehumanizing and wrongful stereotypes of BAMEMSA communities.

In addition, Muslim Advocates has long demanded that the government address its own anti-Muslim policies and practices.[2] One of the lasting legacies of the post-9/11 policy landscape is the systematic targeting and criminalization of BAMEMSA communities. While our communities, particularly Palestinians and Black Muslims, were targeted by law enforcement long before 9/11, the extensive policy shifts post-9/11 caused a dramatic increase in massive, dragnet surveillance and large-scale spying operations on Muslim communities based specifically on their religious affiliation. Muslims all over the country have been targeted by law enforcement—not based on wrongdoing—but because their religion, race, ethnicity and/or national origin have been used as a proxy for criminal activity.[3] The FBI's own training materials, exposed in 2011 in response to Freedom of Information Act requests, demonstrate that its actions were guided by stereotypes rather than sound policing: counterterrorism training materials about Muslims and Islam were rife with grossly inaccurate and inflammatory assertions.[4]

Any attempt to address hate and bias against BAMEMSA communities must start with the post-9/11 powers granted by Congress to law enforcement and other agencies to surveil, profile, and target our communities. Congress should conduct a full, public and independent accounting of this legal landscape and do everything in its power to end all such laws, policies and practices.

3. Stop supporting genocide.

Prior to the hearing, Muslim Advocates urged members to support **an arms embargo on Israel and a permanent ceasefire in Palestine** as the most effective way to stop deadly hate violence: stem the appalling litany of Israeli war crimes against Palestinians, which enable and fuel hate violence against Palestinians as well as actual and perceived supporters of Palestinian human rights and freedom. We noted that while the scope of the hearing may not encompass foreign policy matters, the domestic reverberations—from

[2] See, e.g., Muslim Advocates, "Losing Liberty: The State of Freedom 10 Years After the Patriot Act," October 2011 https://muslimadvocates.org/wp-content/uploads/2019/06/Losing_Liberty_The_State_of_Freedom_10_Years_After_the_PATRIOT_Act.pdf.

[3] Muslim Advocates, "Losing Liberty," *supra* note 2; see also https://theintercept.com/2020/06/25/defund-police-dhs-cve-program/.

[4] See Muslim Advocates, "Letter to DOJ Inspector General on Use of FBI Training Materials," September 15, 2011, https://muslimadvocates.org/2011/09/letter-to-doj-inspector-general-on-use-of-fbi-training-materials/.

the crackdown to the protest movement to the devastating impact of hate violence—are so extensive and deeply felt that they cannot be discussed in isolation.

At the hearing, some members did raise foreign policy issues—in a tired and transparent move to weaponize vicious stereotypes about Palestinians, Arabs and Muslims to delegitimize their presence in the room and their demands of political leaders.

As Israel expands its onslaught into Lebanon and a regional war looms, and the death tolls in Gaza, the West Bank and now Lebanon continue to rise, those demands will only become more urgent. The U.S. must cease its financial and diplomatic support for Israel's genocide.

Thank you for the opportunity to submit this statement for the record. If you have any questions, please contact me at sumayyah@muslimadvocates.org.

Audrey N. Glickman
Pittsburgh, Pennsylvania
September 16, 2024

The Honorable Dick Durbin
United States Senator
By email: durbin_testimony@judiciary-dem.senate.gov

Re: **Testimony in Support of the Domestic Terrorism Prevention Act**

Dear Senator Durbin:

Thank you very much for continuing to put forth the bill for the Domestic Terrorism Prevention Act.

As a survivor of and witness to the Pittsburgh Synagogue shooting in 2018, and also having worked against many kinds of hate and discrimination over my lifetime, I think such a bill is long overdue.

The trial of the shooter was held in the summer of 2023, and we have learned quite a bit about the shooter and his motivations. Thank goodness the U.S. did not accept the shooter's plea deal not to have the trial, and simply to put him into prison for life. During the trial we learned just how motivated he was in his hatred and belief in conspiracies. (Were he put into ADX prison, he might even now be spreading his hatred and conspiracy theories to others. Aside from this instant bill, we need legislation to create the final total separation that a death sentence creates rather than simply providing free room and board with computers and televisions and pinochle games for those filled with so much hate or evil.)

We also learned just how brutally he murdered each individual, many of them with the AR-15 pressed against their head or neck, blowing them to kingdom come. Testimony from therapists showed that his only regret was that he had not killed more of us. Fueled by hatred of Jews, and sparked by the notion that Jews were causing caravans of immigrants to invade our country, he planned for a long time, interacted extensively on line, and then he acted upon his hatred.

We here in Pittsburgh watched the expertise of federal, state, and local investigators, law enforcement professionals, and the U.S. Attorneys come into play to put together for the jury exactly what happened on the day of the shooting, what led up to it, and the various motivations that fed into the perpetrator's thoughts and actions.

How does this relate to the bill at hand? We do need to monitor what is going on, not just after the fact (which is extremely important, especially in terms of trends) but also we must develop ways to become aware before bad things take place. We should have a handle on what people are reading on line, what the latest conspiracy theories are. We should have a sense of who might take broader action upon those theories.

Even before that fateful day in 2018, the broader Jewish community was working toward greater security in light of known threats. Many of us had been trained in responding to an active threat, and we acted upon that training. Why do I mention that?

The nonprofit Secure Community Network (SCN), which trained us, is an example of monitoring, documenting, and working with official law enforcement against specific threats, wherever they originate. The SCN is the official safety and security organization of the Jewish community in North America. They are actively involved in watching and sharing information, and they also get involved with assessments of facilities, creation of security systems, and training and education. I mention the SCN because they specifically focus on threats and potential threats regardless of the source. They understand that it is not only White Supremacists and Neo-Nazis who may pose a threat, and that new conspiracy theories continue to arise.

I hope that any threat posed by any actors who seek to gain power or influence by force, coercion, or terror will be considered the subject of this legislation, without limiting the scope to White Supremacists and Neo-Nazis. There are other supremacist groups that may wish to gain a foothold.

Any purveyors of hatred and/or desire for power of one brand of people over others, any who follow a cult-like existence and propaganda campaigns toward acting upon such hatred must be considered dangerous. Counter propaganda also should be monitored, such that it seeks to remove blame from the terrorists.

Certainly in the case of propaganda put forth during the October 7, 2023, raid of Israel by Hamas-led terrorists, the terrorists were live-streaming their invasion, their murders, their rapes, their kidnappings. During the successive days and weeks, however, the propaganda being fed to the United States and other countries sought to remove the blame for the terror from the Hamas terrorists and place it on the Israelis. This action endangered not only Israelis (who are already under attack constantly, and who are Jews and non-Jews) but we Jews around the world began receiving threats and attacks.

I understand that it is difficult to ascertain which country is the source of propaganda. In that case it may be impossible to know whether it is foreign or domestic in origin. Even if the original propaganda was from foreign sources, later propaganda may come from domestic actors.

I hope that this legislation will be applied to all of these threats. Toward that end, please permit me to suggest an addition to the section which delineates the contents of reports to be made.

Where the bill says under Section 3(b):

> (2) CONTENTS.—Each report submitted under paragraph (1) shall include—
>
> (A) an assessment of the domestic terrorism threat posed by White supremacists and neo-Nazis, including White supremacist and neo-Nazi infiltration of Federal, State, and local law enforcement agencies and the uniformed services;

please consider amending it to include in such reports:

> (A) an assessment of the domestic terrorism threat posed by White supremacists and neo-Nazis, and any other supremacist group, including White

> supremacist and neo-Nazi infiltration of Federal, State, and local law enforcement agencies and the uniformed services;

It should not matter the targets of the terror. Thus the reports and the subsequent enforcement would be less likely to be limited to the White Supremacists and neo-Nazis, and could search for such acts of hate from all supremacists.

Again, thank you for putting forth this bill yet again. Please let us know how we might help you see it through to enactment.

Sincerely,

Audrey N. Glickman

TESTIMONY TO THE U.S. SENATE JUDICIARY COMMITTEE
A Threat to Justice Everywhere: Stemming the Tide of Hate Crimes in America
September 17, 2024
Submitted by:
James L. Bennett, Director, Illinois Department of Human Rights, and
Chair, Illinois Commission on Discrimination and Hate Crimes
Elana Kahn, Executive Director, Illinois Commission on Discrimination and Hate Crimes

Under the leadership of Governor JB Pritzker, Illinois leads nationally among states in developing a State-level and statewide approach to hate crimes, both hate crime response (such as policing and prosecution) and hate crime prevention (such as education, community engagement, and peacebuilding).

Recent years and events have seen rising social division, conflict, targeted violence, and hate crime. While hate crime law, policy, and prevention cannot solve all the social challenges we have as a society, it is a key forum where we (government, communities, and citizens) come together to work out the boundaries and rules for how we get along and manage conflict and disagreement. Hate crimes have outsized, amplified resonance and impact on the individuals and communities that are affected. One of the most important ways we as a society and as a government can demonstrate to all people that they are protected and that we care for them is to prevent and properly respond to hate crimes.

The core and key vehicle for Illinois's statewide approach has been the Illinois Commission on Discrimination and Hate Crimes, a Governor-appointed advisory commission that began its work in 2021 and has helped establish Illinois as a leader and innovator among states. This Commission allows the State to create a central repository of expertise, information sharing, policy development, advocacy, education, outreach, and community input. We strongly urge other states to adopt this model, with adaptations for each state's particular circumstances.

The Commission's most powerful impact has been to activate, convene, and assist the rising, disparate, and multi-faceted movement to combat hate and bias, social conflict, targeted violence, political violence, frayed social trust, and to create better relationships and trust with government and law enforcement for all citizens. Hate crime and this space broadly are emerging and developing, and states need a well-comprised and well-resourced body to help drive and coordinate all the energy and activity we are now seeing.

A key feature of the Commission has been being well-resourced, and receiving much support from the Governor, the Illinois Department of Human Rights, and the administration broadly, including substantial special appropriations from the State.

This Commission is comprised of a diverse set of 21 community leaders representing diverse backgrounds, cultures and communities, advocacy groups, educators, subject-matter experts such as law professors, and government officials, among them the Illinois State Police, Attorney General, and Illinois Department of Human Rights. Our work has included public discussions with a wide variety of subject-matter experst and individual community members, holding an all-day retreat, educational and listening sessions around the state, and planning a statewide summit.

The Commission has issued recommendations to the state, and begun implementing them, including:

1. Establish a statewide hate crime and bias incident helpline, separate from law enforcement, Help Stop Hate Illinois (now funded by a DOJ grant).
2. Require hate crime training for all law enforcement in the state.
3. Establish a grant program for capacity-building for community organizations of various kinds working to prevent hate and strengthen public safety.
4. Conduct a statewide research study to quantify and capture a picture of hate crime, hate and bias, and social conflict across many dimensions – criminal justice response, community support services, impact on communities and survivors, and more – while establishing norms for data collection.
5. Conduct outreach, both listening and education, to affected communities around the state.

Two other key recommendations we are considering are:

1. Establishing a program of hate crime victim advocates for the state, to help victims navigate the laws, system, and other resources.
2. Creating specialized hate-crime units for law enforcement, rather than expecting all law enforcement to investigate hate crime.

Illinois is not the only State that has established such a body; other parallels exist in California (Commission on the State of Hate), Maryland (Commission on Hate Crime Response and Prevention), New York City (Office for the Prevention of Hate Crime), and certainly there is much to learn from those efforts as well in developing such a commission.

Lastly, we note our support for the creation of standing national commission on hate crimes, as well as federal resources to support states and other localities in setting up such bodies.

Illinois, and indeed the United States of America, are stronger than hate, and we are capable of and committed to creating a better, more unified, future.

Thank you for allowing us to submit our thoughts on this important issue. We stand ready to assist in developing and implementing strategies to combat hate crimes across our country.

Name: Watfae Zayed

Occupation: Nurse

Location of the incident: Damen CTA Station, Chicago, IL.

My name is Watfae Zayed. While attending a demonstration during the Democratic National Convention in Chicago, I was met with aggressive force from Chicago police. While I stood on a train platform to take videos of the march, like many other protestors and journalists, I was told I was "under arrest" and a Chicago police officer aggressively twisted my arm and held it so tight my hand went numb. The difference between me and the others on the platform was very evident: I was one of 2 people in hijab, and the other was my best friend who also faced aggression. Despite me visibly in pain and distress, the officer only increased his efforts and called in extra officers for help, to the point where I had 3 officers trying to arrest me and drag me, without reading my Miranda rights. Following the incident, I found a bruise on my knee and my arm did not have full range of motion for about 5 days. Emotionally, seeing a police officer overwhelms me with anxiety. While they are supposed to "serve and protect," I no longer feel safe seeing law enforcement in the streets of Chicago. There are biases held by law enforcement that need to be unlearned. This resolution would show Americans that incidents like these are not just coincidences, they are targeted hate crimes. Muslims in America have been under attack for years, and this past year has only shown how much further individuals will go to make us feel unsafe and unwelcome. We must remember and honor all the victims of hate crimes and strive to protect all individuals, not just those that fit the "American image."

UNION OF ORTHODOX JEWISH CONGREGATIONS OF AMERICA

OU ADVOCACY CENTER

MITCHEL R. AEDER
President

RABBI MOSHE HAUER
Executive Vice President

RABBI JOSH JOSEPH, ED.D.
Executive Vice President
& Chief Operating Officer

NATHAN J. DIAMENT
Executive Director

ISAAC PRETTER
Chairman, Advocacy

YEHUDA NEUBERGER
Chairman, Board of Directors

September 16, 2024

Hon. Richard Durbin, Chairman
Hon. Lindsey Graham, Ranking Member
U.S. Senate Committee on the Judiciary
Washington, DC
by electronic mail

Dear Chairman Durbin, Ranking Member Graham
and Senators of the Judiciary Committee,

We write to you on behalf of the Union of Orthodox Jewish Congregations of America – the nation's largest Orthodox Jewish umbrella organization – regarding your September 17 hearing: "*A Threat to Justice Everywhere; Stemming the Tide of Hate Crimes in America*".

We appreciate that the Committee is holding this hearing and that, we expect, it will include an extensive examination of the unprecedented surge in antisemitism in the United States that has occurred since the October 7, 2023 Hamas attack upon Israel. However, we would be remiss if we did not say that our appreciation is mixed with disappointment.

In 1790, President George Washington wrote to the Jewish community of Newport, RI and famously said that Jews would enjoy unprecedented freedom in the United States because the newly founded nation would "give to bigotry no sanction, to persecution no assistance."

Since October 7, American Jews have been subjected to physical assaults on sidewalks, slander and harassment in subways, raucous protests outside our synagogues and array of attacks – physical and verbal – on school campuses. This has been going on for months. It's made headlines. President Biden and other senior officials of his Administration have spoken out and taken various actions to address the crisis (but surely more must be done because the crisis has not abated). The surge of antisemitism in the U.S. has been the subject of multiple hearings by congressional committees -- but only committees in the House of Representatives. Until today, nearly a year into this crisis, the Senate Judiciary Committee (not to mention the Senate HELP Committee) has been missing in action. This has been dispiriting to our community.

Yet, there is much this Committee and the U.S. Senate can do, even now, to respond to the wave of unprecedented antisemitism in

America and thereby uphold the basic civil rights of American Jews – and recommit to fulfill George Washington's promise to the American Jewish community. In that constructive spirit, we offer the following.

1. There are several federal laws which should be actively utilized to better protect American Jews from antisemitic attacks. These include 18 U.S.C. § 241 (prohibiting conspiracies to interfere with citizens' civil rights) and 18 U.S.C. § 248 (the "FACE Act", which prohibits obstruction, injury and intimidation of citizens seeking to exercise their free exercise of religion at a place of worship).

   In addition to the much reported incidents that have occurred on American university campuses over the past year, antisemites have targeted Jewish synagogues and sought to obstruct and intimidate Jews accessing our synagogues. Two prominent examples of this occurred in Los Angeles[1] and in New Jersey[2]. We have urged the Department of Justice to use the federal statutes cited above to prosecute those who have sought to intimidate our community and interfere with our fundamental rights. We have yet to see such charges brought.

2. Federal authorities could – and should – give better guidance to campus administrators and police about First Amendment law. As Senators on this Committee are well aware, "freedom of speech" is not a right without any limitations. Content neutral – time, place and manner restrictions are constitutional as are other limitations when speech can be inciteful and lead to harassment and violence. Yet, we have seen over the past year that antisemites, especially on university campuses, hide behind invocations of "free speech" and too many administrators and campus police seem to know how to respond appropriately. The Department of Justice should offer detailed guidance with illustrative examples – in parallel to guidance issued by the Department of Education[3] – to both inform and hold accountable university officials who are responsible for protecting the rights of their Jewish students to be free from harassment.

3. The Senate should pass new legislation that will concretely address and combat the crisis of antisemitism. Several bills have already passed the House on a bipartisan basis and await Senate action. These bills include the following:

   a. Antisemitism Awareness Act (H.R.6090, S.4127)
      The AAA will codify the IHRA definition of antisemitism and expand its usage across the Federal government. It is currently utilized by the Dept. of State and the Dept. of Education. The IHRA definition has been endorsed by more than 40 countries and is recognized as the gold standard and a critical tool in combatting antisemitism.[4]

---

1 https://www.cnn.com/2024/06/24/us/los-angeles-synagogue-palestinian-israeli-protest-violence/index.html

2 https://www.northjersey.com/story/news/bergen/teaneck/2024/04/01/demonstrations-outside-teaneck-nj-synagogue-over-israel-gaza-war/73173689007/

3 https://www2.ed.gov/about/offices/list/ocr/letters/colleague-202405-shared-ancestry.pdf

4 https://forward.com/fast-forward/642348/deborah-lipstadt-antisemitism-jerusalem-declaration-nexus-ihra/

b. Deterrent Act (H.R.5933)
The Defending Education Transparency and Ending Rogue Regimes Engaging in Nefarious Transactions Act is a bill about transparency. The bill requires an institution of higher education to annually disclose to the Department of Education (ED) any year in which the IHE: receives a gift from a foreign country of concern (e.g., China or Russia) or foreign entity of concern of any dollar amount; receives a gift or contract from a foreign source (other than a foreign country of concern or foreign entity of concern) that is valued at $50,000 or more, considered alone or in combination with all other gifts or contracts within a calendar year (current disclosure threshold is $250,000 or more), or which has an undetermined monetary value; enters into a contract with a foreign country of concern or foreign entity of concern after receiving a waiver for such contract; or is substantially controlled by a foreign source. The bill passed the House on a broad bipartisan vote.

c. H.R. 6408
This bill suspends the tax-exempt status of terrorist supporting organizations. The bill defines *terrorist supporting organization* as any organization designated as having provided (during the three-year period prior to its designation) material support or resources to a terrorist organization in excess of a *de minimis* amount. The Department of the Treasury must provide notice to such organizations of the impending designation and an opportunity to cure. Treasury must rescind a designation that it determines was erroneous or if the organization did not receive notice of designation. The bill provides for administrative review by the Internal Revenue Service Independent Office of Appeals of any dispute regarding a designation of an organization as a terrorist supporting organization. The U.S. district courts shall have exclusive jurisdiction to review any such designation. The bill passed the House on a broad bipartisan vote.

d. Domestic Terrorism Prevention Act (S.1591)
This bill establishes new requirements to expand the availability of information on domestic terrorism, as well as the relationship between domestic terrorism and hate crimes. It authorizes domestic terrorism components within the Department of Homeland Security (DHS), the Department of Justice (DOJ), and the Federal Bureau of Investigation (FBI) to monitor, analyze, investigate, and prosecute domestic terrorism. DHS, DOJ, and the FBI must review the anti-terrorism training and resource programs of their agencies that are provided to federal, state, local, and tribal law enforcement agencies. It creates an interagency task force to analyze and combat white supremacist and neo-Nazi infiltration of the uniformed services and federal law enforcement agencies.

Since October 7, the American Jewish community has endured a wave of antisemitism that is unprecedented in our history in the U.S. Since the founding of this nation, Jews have experienced freedom and liberty of a kind our ancestors never experienced in any nation outside Israel in which Jews lived. That is because religious liberty and equality was built into the foundational 'DNA' of this country.

The events we have experienced these past months – and the inability of national leaders and institutions to act effectively and reverse this tide of antisemitism – has caused too many Jews to question whether the promise of liberty and equality for Jews in America will continue for future

generations. We are wondering whether George Washington's words to the Jews of Newport remain true.

Today, we look to this Committee and you – Senators – of the United States to give this crisis its due attention and plan to take action in the U.S. Senate to defend the civil rights of American Jews and ensure the continuity of America's promise to its Jewish citizens.

Sincerely,

Nathan J. Diament
Executive Director

United States Senate
COMMITTEE ON THE JUDICIARY
WASHINGTON, DC 20510–6275

May 2, 2024

The Honorable Richard J. Durbin
Chairman, Committee on the Judiciary
United States Senate
Washington, D.C. 202510

Dear Chairman Durbin,

We implore you to promptly hold a Judiciary Committee hearing to confront the flagrant civil rights violations targeting Jewish students on college campuses across America, and to expose the radical Islamist ideology infiltrating our universities.

The right to protest peacefully and the right to freely express ones views—no matter how controversial—are enshrined in the First Amendment of the U.S. Constitution. These rights are proud American traditions. Violent mobs and the intimidation of individuals because of their faith, however, are not.

Since Hamas barbarically attacked Israel on October 7, 2023, anti-Israel activists have threatened the safety and rights of Jewish university students. This hostile antisemitism has reached an inflection point over the past two weeks at several prominent, and federally funded, universities.

As one telling example of this hostile climate, in the days leading up to Passover, a rabbi affiliated with Columbia University messaged roughly three-hundred Jewish students "strongly" urging them to return home, since recent events "have made it clear that Columbia University's Public Safety and the New York Police Department cannot guarantee Jewish students' safety." Columbia seemingly confirmed the rabbi's fears by moving classes online shortly thereafter. In other incidents, Jewish students were denied a right to pass through their own campuses, forced to cancel religious celebrations, and violently attacked. Jewish students are being actively targeted, harassed, intimidated, threatened, and in some cases assaulted for one reason: their heritage and religion. This is fundamentally un-American. It is also a federal crime.

Equally disturbing are the prominent displays of symbols, flags, and slogans of terrorist groups at these campuses. According to several reports, a Hezbollah flag was seen last week at an encampment at Princeton University. At Stanford University, an individual was photographed wearing a Hamas headband. Lest their motives be mistaken, anti-Israel activists have also been chanting "death to America" and "globalize the intifada" at several campuses. Who is funding these activists and what agenda do they have?

We are witnessing in real-time the radicalization and indoctrination of people across the country by terrorist organizations who wish to end America as we know it. This has been simmering

below the surface for some time. There are several university-sanctioned centers, curricula, and other events that are anti-Semitic and espouse radical terrorist-aligned beliefs. Recent events have emboldened these radicals to now show their true colors. Our national security is at risk.

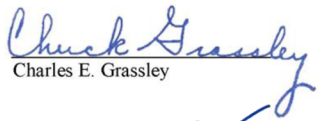
All the while, the Biden Administration is woefully inadequate in its response, and university leadership on many campuses is doing little or nothing to protect students. With this current state of inaction, it is incumbent upon this Committee to shed light on these civil rights violations. This Committee owes it to Jewish students, and all students who attend universities with the modest hope of having a safe learning environment, to examine these civil rights violations.

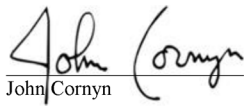
Since October 7, 2023, the Committee has held hearings on "Accountability for Corporate Criminals," on "Five Years of the First Step Act," and on "the Effects of Forced Arbitration." We have yet to hold a single hearing on the civil rights violations of Jewish students, or the proliferation of terrorist ideology—two issues that fall squarely within this Committee's purview.

Accordingly, our Committee should examine why more is not being done to protect the civil rights of innocent students across America. We must also examine the threat to national security posed by the proliferation of radical Islamist ideology in the academy. These pressing issues demand our immediate attention.

Sincerely,

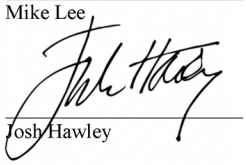

Lindsey O. Graham


Charles E. Grassley

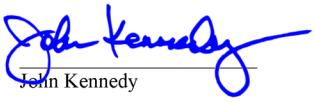

John Cornyn


Mike Lee


Ted Cruz


Josh Hawley


Tom Cotton


John Kennedy


Thom Tillis


Marsha Blackburn

From: The Hill

https://thehill.com/policy/defense/4762331-iran-linked-actors-exploit-protests-dni/

DEFENSE

‘Actors tied to Iran’s government’ helping finance anti-Israel protesters: US intel

BY NICK ROBERTSON - 07/09/24 3:15 PM ET



Pro-Palestinian supporters gather for a protest at Columbia University in New York over the ongoing Israel-Hamas war. College protests across the state — and country — have roiled the U.S. over the last several months. (AP Photo/Yuki Iwamura, File)

The director of national intelligence warned Tuesday that “actors tied to Iran’s government” have “opportunistically” co-opted some anti-Israel protests in the U.S., supporting and financing some work.

"In recent weeks, Iranian government actors have sought to opportunistically take advantage of ongoing protests regarding the war in Gaza, using a playbook we've seen other actors use over the years," she wrote. "We have observed actors tied to Iran's government posing as activists online, seeking to encourage protests, and even providing financial support to protesters."

Haines made clear that the anti-Israel protest movement is not created by Iran-linked actors, and much of the speech is authentic from Americans.

Protests against the Israeli government and the Biden administration response to the Israel-Hamas have become commonplace across the country in recent months. The movement has been most visible on college campuses, where thousands of students and activists took over campus areas to protest the war.

"I want to be clear that I know Americans who participate in protests are, in good faith, expressing their views on the conflict in Gaza — this intelligence does not indicate otherwise," Haines said. "Moreover, the freedom to express diverse views, when done peacefully, is essential to our democracy, but it is also important to warn of foreign actors who seek to exploit our debate for their own purposes."

"Furthermore, Americans who are being targeted by this Iranian campaign may not be aware that they are interacting with or receiving support from a foreign government," she continued. "We urge all Americans to remain vigilant as they engage online with accounts and actors they do not personally know."

The protests have mostly demanded Biden back a permanent cease-fire in the conflict and cease sending military aid to Israel. Negotiations between Israel and Hamas on a Biden-backed cease-fire proposal have restarted in recent days, though Israeli Prime Minister Benjamin Netanyahu has shown reluctance to embrace a long-term pause in fighting.

TAGS AVRIL HAINES BENJAMIN NETANYAHU GAZA CEASE-FIRE GAZA PROTESTS IRAN ISRAEL ISRAEL PROTESTS ISRAEL-HAMAS WAR JOE BIDEN

Copyright 2024 Nexstar Media Inc. All rights reserved. This material may not be published, broadcast, rewritten, or redistributed.

From: NBC News

https://www.nbcnews.com/news/investigations/russia-trying-exploit-americas-divisions-war-gaza-rcna149759

INVESTIGATIONS

Russia is trying to exploit America's divisions over the war in Gaza

The effort includes artificial intelligence, fake social media accounts and a spike in state-sponsored Russian propaganda.

New phase in Russia's misinformation campaign against U.S., sources say

01:28

00:02 / 01:28

Get more news LIVE on NBC NEWS NOW

April 30, 2024, 5:53 PM EDT

By Dan De Luce

Russia is seeking to exploit America's divisive debate over Israel's offensive in Gaza through overt and covert propaganda, with the aim of aggravating political tensions in the U.S. and tarnishing Washington's global image, according to two sources familiar with U.S. intelligence on the matter.

In its ongoing information war against the United States, Russia has shifted its focus in recent months to the Israel-Hamas conflict, seeking to inflame existing divisions in the West and to portray Washington as fueling the violence, the sources said.

The effort includes artificial intelligence, fake social media accounts, a long-standing tactic used by Moscow, as well as a spike in propaganda from Russian state media. The sources declined to share examples of Russian-generated bots on social media to avoid revealing U.S. intelligence-gathering methods.

Russia has repeatedly denied accusations it spreads disinformation abroad. A spokesperson for the Russian Embassy did not immediately respond to a request for comment.

The campaign is the latest example of Russia's bid to seize on existing political rifts in America and other NATO countries, according to the sources and independent researchers.

"It's an opportunity, again, to undermine the West," said Bret Schafer, who tracks Russian and other propaganda at the German Marshall Fund of the United States' Alliance for Securing Democracy.

The information offensive is also a way for Russia to divert attention from its invasion of Ukraine and portray itself as a champion of the Palestinians, Schafer said. "They have pivoted away from trying to message around their own war to focusing on this one," he said.

Writing about pro-Palestinian protests at American college campuses, the Russian-state run Sputnik recently suggested "the threat of deadly police violence against demonstrators looms over the current protests" and reminded readers that four students were killed during the Vietnam era in an anti-war protest at Ohio's Kent State University.

Another headline from Sputnik's Facebook account questioned how politicians were responding to the campus protests: "'Land of the Free'? How US Lawmakers Restrict Students' Right to Peaceful Protest: US lawmakers have once again demonstrated where their sympathies lie in the Israeli-Palestinian conflict by cracking down on student protests against the bloodbath in the Gaza Strip."

In the first seven weeks after Hamas' Oct. 7 attack on Israel, posts on Facebook from Russian state media, pro-Russian commentators and Russian diplomats increased dramatically – by 400 percent, according to the Alliance for Securing Democracy.

Some of the posts describe dark conspiracies involving Ukraine. Russia's RT outlet, in an Arabic language post, alleged that Ukrainian mercenaries were fighting with Israeli forces in

Gaza. Pravda quoted Dmitry Medvedev, a former Russian president and prime minister, alleging that Hamas militants were using NATO weapons that had been provided to Ukraine.

Moscow is targeting Europe as well in this effort. In November, France accused a Russian-linked network of bots of stoking antisemitism by amplifying images of Stars of David graffiti on buildings in Paris with 2,589 posts on the X social media platform.

“This new operation of Russian digital interference against France testifies to the persistence of an opportunistic and irresponsible strategy aimed at exploiting international crises," the French foreign ministry said, "to sow confusion and create tensions in the public debate in France and in Europe."

Discrediting American democracy

A favorite theme of Russian information operations is to paint America as a failing democratic state, according to U.S. officials and researchers.

At an event last week in Washington, Director of National Intelligence Avril Haines said Russia works to denigrate America’s standing in the world, to undermine democratic institutions and processes and to exploit social, political and economic divisions “in our culture and in our society.”

Haines added that the Russians “are quite sophisticated” and are using artificial intelligence tools in their information operations.

U.S. officials and experts say it’s important not to overstate the effect of the propaganda effort on the intense debate over Israel’s campaign in Gaza, or to imply that demonstrations in the U.S. on either side of the issue are being orchestrated in any way by Moscow.

“I think it would be entirely inaccurate to say that the protests that are happening on college campuses, the divisiveness of the debate in Congress and among the public is a result of anything that Russians have done or could do,” Schafer said. “I think it would all be there regardless of whether there were Russian bots and Russian state media messaging.”

Emerson Brooking, a senior fellow at the Digital Forensic Research Lab of the Atlantic Council, a think tank, said reports on propaganda efforts by foreign actors over protest movements needed to be treated with caution.

Allegations of foreign influence “can often be used to delegitimize large and authentic democratic movements in the United States,” Brooking said, adding that some critics of the Black

Lives Matter protests tried that tactic citing foreign adversaries' information operations.

Russia's bid to amplify divisions over Gaza is also designed to attract more readers to other pro-Russian propaganda content on social media, with the aim of shaping attitudes on the war in Ukraine, experts said.

Russia is also spreading disinformation to damage President Joe Biden and his fellow Democrats in advance of the U.S. election, using fake online accounts and bots, NBC News has reported.

The attacks on Biden are part of a continuing effort by Moscow to undercut American military aid to Ukraine and U.S. support for NATO, experts said.

Russia is also waging a similar campaign in Europe to undermine support for Ukraine. France, Germany and Poland have accused Russia of launching a barrage of propaganda to try to shape the outcome of the European parliamentary elections in June.

Dan De Luce
Dan De Luce is a reporter for the NBC News Investigative Unit.

Codifying Antisemitism

Mark Goldfeder*

ABSTRACT

Antisemitic harassment and discrimination are unlawful in many contexts, but without a standard definition of what 'antisemitism' includes, that idea is almost meaningless. This has led to an equal protection problem for members of the Jewish community, which is why states across the country have started to pass laws adopting the International Holocaust Remembrance Alliance ("IHRA") Definition of antisemitism for use in clarifying the application of existing legal protections for Jewish people from crime and discrimination. Thus far, the bills that have passed have for the most part been overwhelmingly bipartisan, but there have been minor pockets of pushback in a number of states. While a handful of the questions raised reflect honest concerns that deserve to be fully addressed for the benefit of legislators, unfortunately, the majority of the 'opposition' has been led by a small corps of disingenuous lobbying groups that as a matter of self-interest continue to purposefully lie about what these bills actually do—and by the same token could never do—in an apparent attempt to give greater cover to antisemitism and antisemites. This Article will answer some of the most common questions that lawmakers, citizens, and other interested stakeholders might have about statutes that utilize the IHRA Definition for the narrow purpose of assessing motivation when analyzing discriminatory conduct claims, so that critics can no longer hide behind the vague and erroneous assertion that such policies are somehow unfair to other groups or would in any way offend the First Amendment.

* Dr. Mark Goldfeder, Esq. is the Director of the National Jewish Advocacy Center, a Member of the United States Holocaust Memorial Council, counsel for Hillels of Georgia, and served as the founding Editor of the Cambridge University Press Series on Law and Judaism. The author would like to thank Danielle Park, Gadi Dotz, Marc Greendorfer, Jordan Cope, Yael Lerman, Carly Gammill, Jake Bennett, Joanne Bregman, Miles Terry, Kenneth Marcus, Alyza Lewin, Lesley Klaff, Harry Hutchison, and Wayne Keil for their thoughtful comments and review. Special thanks to Joseph Sabag for his edits on this piece and for his continued leadership in working with members of the legislatures in both parties, in each state, to try and help protect the Jewish people.

Table of Contents

I. INTRODUCTION 406
II. BACKGROUND: THE INTERNATIONAL HOLOCAUST REMEMBRANCE ALLIANCE ("IHRA") DEFINITION OF ANTISEMITISM 411
A. *Development of the IHRA Definition* 411
B. *Debunking Criticisms* 417
1. IHRA's Israel Examples 417
2. The Impermissibility of Speech Codes and Why IHRA Definition Bills Avoid Regulating Speech 429
C. *The Permissibility (and Even Necessity) of Regulating Unlawful Discriminatory Conduct* 435
III. ANALYSIS 437
A. *The Need to Codify a Definition of Antisemitism* 437
1. Is It Necessary and/or Important for States to Pass This Bill? 438
2. Why is Jewish Suffering Worthy of Exceptional Treatment? 439
3. Can You Incorporate a Definition into a Law by Reference and Why Would You Want to Do So? 446
B. *A Case Study in Bad Faith Argumentation* 449
IV. CONCLUSION: WHAT DOES IT MEAN FOR A STATE TO ADOPT IHRA AS PART OF AN ANTISEMITISM BILL? 452

I. INTRODUCTION

"I went to Boston College. It's a Catholic college, yeah I had a nickname there: Jew."

—Gary Gulman

During the 2022 legislative session, data showed antisemitic attacks across the United States were at an all-time high.[1] In response, Iowa became the first state to pass a law[2] adopting the International Holocaust Remembrance Alliance ("IHRA") definition of antisemitism ("IHRA Definition").[3] The IHRA Definition is, to date, the only consensus-driven and internationally accepted definition of antisemitism. The law[4] requires

1. *See* Paul Caine, *Anti-Defamation League Reports Record Number of Antisemitic Incidents Across U.S. in 2021*, WTTW: NEWS (Apr. 26, 2022, 7:30 PM), https://bit.ly/3CckKwD.

2. *See* IOWA CODE § 216F.1 (2022). South Carolina had previously adopted an appropriations restriction based on an earlier version of the Working Definition. *See* H.B. 4950, 122d Gen. Assemb., 2d Reg. Sess. (S.C. 2018).

3. *See The Working Definition of Antisemitism*, INT'L HOLOCAUST REMEMBRANCE ALL., https://bit.ly/3rxsuV2 (last visited Oct. 5, 2022).

4. The laws being discussed are based on a model bill I drafted in consultation with a number of major Jewish and non-Jewish organizations that focus on both free speech

authorities to make use of the IHRA Definition when assessing the motivation behind illegal discriminatory conduct.

Shortly after Iowa signed the bill into law, the Tennessee[5] and Arizona[6] Legislatures passed versions of the model bill, and a number of other states (including Georgia[7] and New Jersey)[8] also considered similar legislation. Additionally, South Carolina[9] and Florida[10] adopted the IHRA Definition for much the same use in their education systems. In total, more than half of the states in this country[11] have endorsed the definition in some official fashion, whether by proclamation,[12] executive order,[13] or resolution.[14] In so doing, they have joined the over 870 separate governments, Non-Governmental Organizations (NGOs), universities, and other key institutions that have adopted the IHRA Definition,[15] demonstrating an indisputable worldwide consensus.

It is significant that the IHRA Definition is being embraced both nation-wide and world-wide, sparking a number of articles that encourage the adoption and use of the IHRA Definition in other contexts, including when monitoring and tracking anti-Jewish sentiment in traditional[16] and on social media,[17] and when assessing the records of so-called human rights organizations.[18] Still, statewide bills addressing antisemitic discrimination in regulatory contexts represent a crucially

---

and civil rights. *See generally* Mark Goldfeder, *Defining Antisemitism*, 52 SETON HALL L. REV. 119 (2021). This current piece elaborates on the 2021 article, with a focus on the practical application of the theory discussed therein.

5. *See* 2022 Tenn. Pub. Acts 1075.

6. *See* H.B. 2675, 55th Leg., 2d Reg. Sess. (Ariz. 2022).

7. *See* H.B. 1274, 2022 Gen. Assemb., Reg. Sess. (Ga. 2022).

8. *See* S. 2434, 220th Leg. (N.J. 2022).

9. *See* H.B. 4000, 123d Gen. Assemb., 1st Reg. Sess. (S.C. 2019).

10. *See* FLA. STAT. §1000.05(8) (2022).

11. *See Half of All US States Now Using IHRA Definition of Antisemitism*, I24 NEWS (Apr. 28, 2022, 11:44 AM), https://bit.ly/3ykZhk0.

12. *See Kansas Legislature Adopts IHRA Working Definition of Anti-Semitism*, CLEV. JEWISH NEWS (Mar. 25, 2022, 6:00 AM), https://bit.ly/3fOgITK; Aaron Bandler, *NY Gov Issues Proclamation Embracing IHRA Definition of Antisemitism*, JEWISH J. (June 14, 2022), https://bit.ly/3V7p8Ww.

13. *See* Exec. Order No. 2022-06D (Ohio 2022).

14. *See* H.C.R. 5030, 2021–2022 Leg., 2022 Reg. Sess. (Kan. 2022).

15. *See* Zvika Klein, *865 Entities Have Adopted or Endorsed IHRA Definition of Antisemitism*, THE JERUSALEM POST (Mar. 16, 2022), https://bit.ly/3RFoix2.

16. *See National Religious Broadcasters Adopt IHRA Antisemitism Definition*, THE MEDIA LINE (Mar. 9, 2022), http:/bit.ly/3j4w4Fp.

17. *See* Letter from 180 Nonprofit and Civil Rights Organizations to Elon R. Musk, Twitter CEO (Nov. 16, 2022), https://bit.ly/3j6z305.

18. *See generally, e.g.*, Michael B. Atkins & Miriam F. Elman, *BDS as a Threat to Academic Freedom and Campus Free Speech in the United States*, 29 MICH. ST. INT'L. L. REV. 213 (2021); Gerald Steinberg, *Applying the IHRA Working Definition to the UN and Human Rights NGOs*, *in* CONTENDING WITH ANTISEMITISM IN A RAPIDLY CHANGING POLITICAL CLIMATE 44 (Ind. Univ. Press 2021).

important new development in the fight against antisemitism, the merits of which are worthy of their own respective analysis. This is particularly important in light of the small, yet vocal, number of groups bent on preventing accurate identification and correction of antisemitic activity (often, unfortunately, the sort of antisemitism that they engage in directly)[19] by mounting a disinformation campaign to foment suspicion and misconceptions about what these bills do.[20]

One reason that state legislatures are finally stepping up and adopting the IHRA Definition is that despite a demonstrable rise in antisemitic activity across the country[21] and the fact that over 90% of American Jews are concerned about antisemitism,[22] recent surveys have shown that roughly half of the U.S. population *does not even know what antisemitism is*.[23] Practically speaking, one cannot educate about antisemitism, combat antisemitic activity, or for that matter, fight back *against* an unfair antisemitic accusation if one cannot first define the term clearly. In fact, as described below, at least some of the rise in

19. This is particularly true of the Council on American-Islamic Relations (CAIR). Opposition from CAIR should not be interpreted as representing the united view of the Muslim community. In fact, the IHRA Definition was unanimously adopted, along with all its examples, including the ones related to the State of Israel, by the Global Imams Council, the largest international non-governmental body of Muslim religious leaders. *See* Memorandum from Imam Budari, President of Senior Imams Comm. on Adoption of the IHRA Working Definition of Antisemitism, to the Global Imams Council (Oct. 29, 2020), https://bit.ly/3SZg44h. It is also critical to note that CAIR was named by the U.S. Department of Justice as an unindicted co-conspirator in the *United States v. Holyland Foundation* case, the largest terror finance case in American history, which resulted in a conviction on all 108 counts. *See* Sean Durns, *CAIR Isn't Credible*, THE JERUSALEM POST (June 3, 2019, 10:10 PM), https://bit.ly/3fMsuxS. That case involved the provision of support for the Hamas terror organization, whose charter calls for the genocide of all Jewish persons everywhere. Last November, shortly before a terrorist targeted a synagogue in Colleyville, Texas, one of CAIR's executive directors gave a speech calling synagogues and other Jewish organizations "enemies" that are part of a massive conspiracy behind Islamophobia. The speech by Zahra Billoo, one of CAIR's Executive Directors, showcased classic antisemitism in attacking the mainstream U.S. Jewish community. Despite near-universal condemnation of her remarks, including from within the Muslim community, CAIR stood proudly behind her and defended them as merely expressing "an opinion about Palestinian human rights." *See* Hen Mazzig, *Don't Let CAIR off the Hook for Its Role in the Colleyville Hostage Crisis*, NEWSWEEK (Jan. 18, 2022, 6:30 AM), https://bit.ly/3ykMP3T.

20. *See, e.g.*, Jill Nolin, *State Senate Next Stop for Bill that Aims to Define Antisemitism in State Law*, ACLU GA. (Feb. 28, 2022), https://bit.ly/3SSZ8fG.

21. *See ADL Audit Finds Antisemitic Incidents in United States Reached All-Time High in 2021*, ANTI-DEFAMATION LEAGUE (Apr. 25, 2022), https://bit.ly/3yiT5c4. For some anecdotal examples of the mainstreaming of antisemitism, see Gabriel Groisman, *Anti-Semitism is Back. Will You Stand by or Stand Up?*, HUFFPOST (June 23, 2016, 11:16 AM), https://bit.ly/3T1W1Sm.

22. *See Over 90% of American Jews Concerned About Antisemitism – Survey*, THE JERUSALEM POST (Jan. 21, 2022), https://bit.ly/3LZbtg5.

23. Ben Sales, *Surveys: Half of Americans Don't Know What Anti-Semitism Means*, S. FLA. SUN SENTINEL: JEWISH J. (Oct. 27, 2020, 4:04 PM), https://bit.ly/3xTlq8U.

antisemitic incidents can be attributed to an equal protection deficit first created and then exacerbated by the continued absence of a uniform definition.[24] Until now, there has been a material void in most of our civil rights laws: Antisemitic discrimination is unlawful,[25] but no one knows exactly what this means or even how to go about determining if an action was motivated by antisemitism.[26] These new bills, however, give authorities the tools they need to fill that lacuna in the text and make those required determinations.

Freedom of speech is an important right, and bills incorporating the IHRA Definition do not implicate or infringe upon it. Any person or institution can think and say whatever they want to about Jewish people, the Jewish religion, or the Jewish State. But when it comes to illegal conduct—i.e., the commission of discrimination, harassment, and criminal activity, the nature of which these laws actually help clarify—an

---

24. As Assistant Secretary of Education for Civil Rights, Kenneth Marcus explained on the Tikvah Podcast:

> Protecting the rights of Jewish students has always been more difficult than other groups, and of course I've worked to protect the rights of virtually every racial and ethnic minority, as well as women, the disabled, the aged, and other groups, and yet there's always more controversy attached to any issue involving anti-Semitism. In fact, even the very basic notion that we should protect Jewish students from anti-Semitism at all had enormous pushback, and it should be surprising I think to your listeners that it was only in 2004 that we provided basic protections to Jewish students, and that even then this policy was largely disregarded for a significant part of the period between 2004 and 2010. This is very recent, and yet I had pushback along a number of different lines. There were conservatives who thought that I was interpreting the statue too broadly and that we should have a narrower interpretation of the statute. I considered that to be wrong. I think that there's simply no reasonable interpretation of the statute under which Jews lack protections, it's simply a straightforward interpretation. There were liberals who thought that the resources of the civil-rights apparatus should be focused on under-represented or non-privileged groups, and that American Jews by and large had sufficient privilege and resources and should not be the beneficiaries of civil-rights investigations. There were bureaucrats who tended to be change-averse, and who are reluctant to change the way things were going. There were some on the left who were suspicious of any effort within a Republican administration to do anything that would protect a religious group, since that looked like some sort of, perhaps, dubious use of the law to protect a religion. Everybody it seems, left, right, and center, had some reason to be suspicious of efforts to protect Jewish students, whether they had anything to do with anti-Zionism or not, so even the most basic efforts to protect Jewish students have faced far greater pushback than what I've seen with every other group.

Podcast: Kenneth Marcus on How the IHRA Definition of Anti-Semitism Helps the Government Protect Civil Rights, MOSAIC (July 30, 2021), https://bit.ly/3SB9OPA.

25. *See, e.g.*, Civil Rights Act of 1964, 42 U.S.C. § 2000d ("Title VI"); *id.* § 2000e ("Title VII"). For a chart of bias categories included in state law, see *Federal Bias Categories Included by State Laws*, U.S. DEP'T OF JUST., https://bit.ly/3RYlnQ7 (last visited Oct. 13, 2022).

26. *See* 162 CONG. REC. S6649–50 (2016) (statements of Reps. Scott and Casey).

objective way must exist to determine if, and when, an action constitutes unlawful discrimination.

In theory, cracking down on unlawful discrimination should not be controversial. Antidiscrimination laws always require officials to "deduce . . . that the protected trait was the reason for the adverse treatment at issue."[27] When, as in this case, a term needs some additional clarification, then the government should obviously be able to clarify what exactly the term means.[28] Yet, even though the rate of antisemitic incidents continues to rise across the country,[29] and even as more states move to pass these 'antisemitism laws' with wide bipartisan support, a small number of groups have vocally opposed these efforts, falsely claiming that the bills that add the clarifying definition could theoretically impinge on free speech.[30] While this writer's contention is that many of these groups are acting in bad faith,[31] there are still hundreds of well-meaning lawmakers who unfortunately might have been confused or even misled by the deliberate obfuscation of these actors. It is therefore important for the record to be clear about what the

---

27. Suzanne B. Goldberg, *Discrimination by Comparison*, 120 YALE L.J. 728, 731 (2011). Goldberg also states:

> The causation determination is necessary because one of the central inquiries in a discrimination case is whether the challenged acts were "because of" a protected characteristic. Title VII of the Civil Rights Act of 1964 provides, for example, that "[i]t shall be an unlawful employment practice for an employer . . . to fail or refuse to hire or to discharge any individual, or otherwise to discriminate against any individual with respect to his compensation, terms, conditions, or privileges of employment, *because of such individual's race, color, religion, sex, or national origin*."

Id. at 731 n.3 (quoting 42 U.S.C. § 2000e-2(a)(1)).

28. *See, e.g.*, Alex Reed, *The Title VII Amendments Act: A Proposal*, 59 AM. BUS. L. J. 339, 383-385 (2022) (proposing new legislation confirming various protections for the LGBT community under Title VII, even after the Supreme Court's ruling in *Bostock v. Clayton County*); *see also* Bostock v. Clayton Cnty., 140 S. Ct. 1731, 1754 (2020) (holding that Title VII protects employees against discrimination because they are gay or transgender); Preventing and Combatting Discrimination on the Basis of Gender Identity or Sexual Orientation, 86 Fed. Reg. 7,023 (Jan. 20, 2021) (President Biden's executive order further clarifying that gender identity and sexual orientation are to be treated as sex-based classes protected under Title VII).

29. *See* Luke X. Martin, *Kansas City's Young Jews Worry About Their Safety as Antisemitic Incidents Hit Historic Highs*, NPR: KCUR (Apr. 7, 2022, 3:00 AM), https://bit.ly/3RfNt9d; *Fight Antisemitism*, ADL, https://bit.ly/3fm7IES (last visited Oct. 14, 2022); *Anti-Semitism and Jewish Views on Discrimination*, PEW RSCH. CTR. (May 11, 2021), https://pewrsr.ch/3Rd7qNZ.

30. *See, e.g.*, Tyler Coward, *Biden Administration Commits to Anti-Semitism Definition That Could Stifle Campus Speech*, FIRE (Mar. 19, 2021), https://bit.ly/3SCa7cS.

31. *See* Ismail Allison, *CAIR Welcomes Maryland County Council's Shelving of Resolution to Adopt IHRA's Anti-Free Speech Framework of Antisemitism*, CAIR (July 25, 2022, 2:27 PM), https://bit.ly/3LMb2p3; *but see* Dmitriy Shapiro, *CAIR Backs Leader After 'Virulently Anti-Semitic' Speech Attacking Mainstream Jewish Entities*, JEWISH NEWS SYNDICATE (Dec. 14, 2021), https://bit.ly/3xQgqBO.

IHRA Definition is; why these laws make use of it; and how this type of legislation can and should be used to better provide the Jewish community with equal protections under the law—*without* infringing at all on the protected rights of any other group.

Other books and articles have addressed the various reasons why the IHRA Definition is the constitutionally appropriate tool for legislatures to assess unlawful discriminatory conduct.[32] This Article, however, addresses some of the common points and questions that have been raised on the ground during the legislative processes thus far, in the hope that proper clarification can lead to successful adoption of IHRA Definition bills in additional jurisdictions.

II. BACKGROUND: THE INTERNATIONAL HOLOCAUST REMEMBRANCE ALLIANCE ("IHRA") DEFINITION OF ANTISEMITISM

A. Development of the IHRA Definition

The IHRA is an intergovernmental organization whose purpose is to work with governments and experts in a united front "to strengthen, advance and promote Holocaust education, research and remembrance worldwide and to uphold the commitments of the 2000 Stockholm Declaration and the 2020 Ministerial Declaration."[33] In the early 2000s, a resurgence of antisemitic activity on the international stage[34] prompted the Organization for Security and Cooperation in Europe ("OSCE") to organize its first conference on antisemitism in 2003. The resurgence also prompted the European Monitoring Centre on Racism and Xenophobia ("EUMC") to commission its first-ever study of antisemitism that same year.[35] A second OSCE conference and another EUMC study followed the year after, and as part of its own internal review, the EUMC acknowledged that it was hampered by the lack of a common and comprehensive definition of antisemitism, as well as

32. *See generally, e.g.*, KENNETH L. MARCUS, THE DEFINITION OF ANTI-SEMITISM (2015); Goldfeder, *supra* note 4, at 126.

33. INT'L HOLOCAUST REMEMBRANCE ALL., https://bit.ly/3r5d625 (last visited Oct. 14, 2022). For information about the 2000 Stockholm Declaration, see *Stockholm Declaration*, INT'L HOLOCAUST REMEMBRANCE ALL., https://bit.ly/3Rd7Aoz (last visited Oct. 14, 2022). For information about the 2020 Ministerial Declaration, see *2020 IHRA Ministerial Declaration*, INT'L HOLOCAUST REMEMBRANCE ALL., https://bit.ly/3Rb9V3j (last visited Oct. 14, 2022).

34. *See Antisemitism*, INT'L HOLOCAUST REMEMBRANCE ALL., https://bit.ly/3BNNhZ4 (last visited Oct. 14, 2022); *see also* Andrew Baker et al., *The Origins of the Working Definition*, *in* IN DEFENCE OF THE IHRA WORKING DEFINITION OF ANTISEMITISM 8, 9 (Alan Johnson ed., 2021), https://bit.ly/3fkiRGm.

35. *See* Baker et al., *supra* note 34, at 9.

challenged by a lack of clarity in understanding "new forms and manifestations" of antisemitism as they relate to the Jewish State.[36]

EUMC Director, Beate Winkler, and American Jewish Committee's Director of International Jewish Affairs, Rabbi Andrew Baker, agreed to develop such a definition. The Committee on Antisemitism and Holocaust Denial spent several months working to develop one,[37] and they concluded the drafting in January 2005. The definition was formally released as a "Working Definition" two months later.[38]

The Working Definition was adopted as a guide by the U.S. Commission on Civil Rights in 2006[39] and by the U.S. State Department as early as 2007.[40] It later served as the bases for the State Department's official working definition, published in 2010.[41] The State Department formally adopted the definition in 2016,[42] after it was officially accepted by a plenary meeting of the then 31 countries in the IHRA.[43] The Working Definition later became known as the IHRA Definition. Since that time, over 870 governments, universities, NGOs, and other key institutions have also adopted the definition, demonstrating a substantial and clear worldwide consensus. The IHRA Definition has been endorsed by a growing number of world leaders, including the UN Secretary-General[44] and U.S. presidents of both parties,[45] and it is used by several departments within the U.S. federal government, including the Departments of Education and Justice.[46]

---

36. *Id.* (internal quotation marks omitted); *see also* KENNETH L. MARCUS, THE DEFINITION OF ANTI-SEMITISM 159–160 (2015) (noting that after the EUMC report, the Organization for Security and Co-operation in Europe (OSCE)'s Berlin Declaration recognized that post WW2 antisemitism had changed and was now at times directed against Jews as a collective and Israel as an embodiment of the Jew).

37. *See* Manfred Gerstenfeld, *To Fight Anti-Semitism, You Have to Define It,* ISRAEL NAT'L NEWS (May 3, 2018, 3:50 PM), https://bit.ly/3dJULo5.

38. *Id.*

39. *See generally* U.S. COMM'N ON C.R., FINDINGS AND RECOMMENDATIONS OF THE UNITED STATES COMMISSION ON CIVIL RIGHTS REGARDING CAMPUS ANTI-SEMITISM (2006), http://bit.ly/3TKbnew.

40. *See* "Working Definition" of Anti-Semitism, U.S. DEP'T OF STATE, OFF. TO MONITOR & COMBAT ANTI-SEMITISM (Feb. 8, 2007), http://bit.ly/3UURRg7.

41. *See Defining Antisemitism*, U.S. DEP'T OF STATE, https://bit.ly/3Eb9vqM (last visited Oct. 2, 2022).

42. *See id.*

43. *See 31 Countries Adopt New Definition of Antisemitism That Includes Anti-Zionism,* THE TOWER (June 3, 2016, 3:34 PM), https://bit.ly/3UWwvQd.

44. *See* Press Release, United Nations, Anti-Semitism Rising Even in Countries with No Jews at All Secretary-General Tells Event on Power of Education to Counter Racism, Discrimination (Sept. 26, 2018), https://bit.ly/3y9WvOk.

45. *See Biden Administration 'Embraces and Champions' IHRA Definition of Anti-Semitism*, I24NEWS (Feb. 2, 2021, 4:44 PM), https://bit.ly/3RwwIXD.

46. *See* Combating Anti-Semitism, Exec. Order No. 13899, 84 Fed. Reg. 68779 (Dec. 11, 2019) (directing the Department of Education's Office of Civil Rights, which handles Title VI complaints, and the Civil Rights Division of the Department of Justice,

While there can be no single exclusive or exhaustive definition of antisemitism, which can and does assume many forms, the IHRA Definition provides an objective baseline standard for what is and is not antisemitic and has proven to be an essential tool for identifying contemporary manifestations of anti-Jewish bigotry or hate.[47] The definition, including its accompanying illustrations, reads as follows:

> Antisemitism 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.
>
> To guide IHRA in its work, the following examples may serve as illustrations:
>
> Manifestations might include the targeting of the state of Israel, conceived as a Jewish collectivity. However, criticism of Israel similar to that leveled against any other country cannot be regarded as antisemitic. Antisemitism frequently charges Jews with conspiring to harm humanity, and it is often used to blame Jews for "why things go wrong." It is expressed in speech, writing, visual forms and action, and employs sinister stereotypes and negative character traits.
>
> Contemporary examples of antisemitism in public life, the media, schools, the workplace, and in the religious sphere could, taking into account the overall context, include, but are not limited to:
>
> - Calling for, aiding, or justifying the killing or harming of Jews in the name of a radical ideology or an extremist view of religion.
> - Making mendacious, dehumanizing, demonizing, or stereotypical allegations about Jews as such or the power of Jews as collective —such as, especially but not exclusively, the myth about a world Jewish conspiracy or of Jews controlling the media, economy, government or other societal institutions.
> - Accusing Jews as a people of being responsible for real or imagined wrongdoing committed by a single Jewish person or group, or even for acts committed by non-Jews.
> - Denying the fact, scope, mechanisms (e.g., gas chambers) or intentionality of the genocide of the Jewish people at the hands of National Socialist Germany and its supporters and accomplices during World War II (the Holocaust).

---

which is responsible for coordinating Title VI implementation and the federal agencies' enforcement efforts, to use the IHRA Definition).

47. *See* Ira Forman, *Combatting Antisemitism: Why the World Needs to Adopt the IHRA Definition*, THE JERUSALEM POST (Oct. 10, 2020, 9:48 PM), https://bit.ly/3dza2wy.

- Accusing the Jews as a people, or Israel as a state, of inventing or exaggerating the Holocaust.
- Accusing Jewish citizens of being more loyal to Israel, or to the alleged priorities of Jews worldwide, than to the interests of their own nations.
- 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.
- Applying double standards by requiring of it a behavior not expected or demanded of any other democratic nation.
- Using the symbols and images associated with classic antisemitism (e.g., claims of Jews killing Jesus or blood libel) to characterize Israel or Israelis.
- Drawing comparisons of contemporary Israeli policy to that of the Nazis.
- Holding Jews collectively responsible for actions of the state of Israel.

> Antisemitic acts are criminal when they are so defined by law (for example, denial of the Holocaust or distribution of antisemitic materials in some countries). Criminal acts are antisemitic when the targets of attacks, whether they are people or property – such as buildings, schools, places of worship and cemeteries – are selected because they are, or are perceived to be, Jewish or linked to Jews. Antisemitic discrimination is the denial to Jews of opportunities or services available to others and is illegal in many countries.[48]

In 2017, the European Commission published the *Handbook for the Practical Use of the IHRA Working Definition of Antisemitism*. The *Handbook* is an excellent resource that goes through all aspects of the definition—including every single one of the illustrative examples—and explains why each is a manifestation of antisemitism. It also gives real-life examples of actual antisemitic incidents that fit each of the descriptions.[49]

The guiding examples are an integral part of the definition, not an afterthought or an addition. Those who claim that the definition section

48. *What is Antisemitism?*, INT'L HOLOCAUST REMEMBRANCE ALL., https://bit.ly/3S3MgSI (last visited Oct. 5, 2022).

49. *See* BENJAMIN STEINITZ ET AL., EUR. COMM'N, HANDBOOK FOR THE PRACTICAL USE OF THE IHRA WORKING DEFINITION OF ANTISEMITISM 11–16 (2021), https://bit.ly/3EievtJ.

does not implicitly include all of the examples,[50] or who argue that the listed examples are somehow more controversial than the definition section itself,[51] simply misunderstand both its structure and content. Having explained what antisemitism is, the definition itself offers both classic and contemporary examples of things which could, considering the overall context, be antisemitic. An illustrative example of a particular class or style is just "something that has many of the typical features of such a class or style, and that you consider clearly represents it."[52] By the same token, "[i]f you use something as an illustrative example, or for illustrative purposes, you use it to show that what you are saying is true or to make your meaning clearer."[53] Illustrative examples do not change or add to a definition; they illuminate what is already there.[54] The definition is obviously not limited to those examples, but it should *always* be interpreted *in light of* those authoritative guiding illustrations, even in those contexts where the definition is written in its truncated form and the examples are not explicitly enumerated.

In recent years Dr. Kenneth Stern, one of the Committee on Antisemitism and Holocaust Denial members who worked on the definition,[55] has gained notoriety for claiming that the IHRA Definition was never meant to do anything but help data collectors "know what to include and exclude."[56] But as Rabbi Andrew Baker, Deidre Berger, and Michael Whine, three of the central Committee members and original IHRA authors, have clarified,[57] this oft-cited claim is nothing more than historical revisionism. In their words, the definition "was called a working definition for a reason. This was not meant to be a tool for

50. *See generally, e.g.*, JAMIE STERN-WEINER, THE POLITICS OF A DEFINITION: HOW THE IHRA WORKING DEFINITION OF ANTISEMITISM IS BEING MISREPRESENTED (2021), https://bit.ly/3SFgxZp.

51. *See, e.g.*, *IJV Urges the Canadian Government to Reconsider its Use of the IHRA Definition of Antisemitism*, IJV CAN. (June 26, 2019), https://bit.ly/3rEuw5C.

52. *Example*, COLLINS, https://bit.ly/3CLcMMF (last visited Oct. 5, 2022).

53. *Illustrative*, COLLINS, https://bit.ly/3SI6ToX (last visited Oct. 5, 2022).

54. For those familiar with the legal world, this is somewhat akin to how the American Law Institute's Restatements of the Law contain Illustrations, which are examples of how particular provisions would apply to specific sets of facts, and how many jurisdictions have adopted Restatement sections verbatim. *Cf.* Suzanne Ehrenberg & Susan Valentine, *Lecture Notes for Restatements of the Law*, CHI.-KENT COLL. OF L. (1999), http://bit.ly/3j6BK1H.

55. *See* Bayla Zohn, *Who Wrote the IHRA Working Definition of Anti-Semitism?*, THE LOUIS D. BRANDEIS CTR FOR HUM. RTS. UNDER L., https://bit.ly/3rfqBMp (last visited Oct. 14, 2022).

56. Kenneth Stern, *I Drafted the Definition of Antisemitism. Rightwing Jews Are Weaponizing It*, THE GUARDIAN (Jan. 6, 2021, 6:57 PM), https://bit.ly/3y8XEG0.

57. *See* Letter from Rabbi Andrew Baker, Deidre Berger & Michael Whine to Kathrin Meyer, Secretary General, IHRA, and Katharina von Schnurbein, Eur. Comm'n Coordinator on Combating Antisemitism and Fostering Jewish Life (Jan. 20, 2021), http://bit.ly/3TAYK5h.

academic researchers, but for those . . . who would put it to use."[58] From the very beginning, this included "those in authority who are responsible for identifying and responding to antisemitic hate crimes and other antisemitic events, such as police, prosecutors, and judges, among others."[59] In addition, assuming that the definition is objectively valid, which Stern does, it is not at all clear why it would be less valid or reliable for use in some contexts than in others.

Notably, the practical regulatory usage of the IHRA Definition has already been used in other parts of the world for years.[60] For instance, as the *Handbook* describes, the definition has been used in Europe, among other things

> to train police officers, prosecutors, judges, educators, state employees and human rights monitoring bodies to identify and track various manifestations of antisemitism; . . . to support decision-making processes by states, human rights monitoring organisations, law enforcement agencies, the judiciary, municipal governments, educators, civil society organisations and Jewish communities; [and] to identify aspects of antisemitism in court hearings, prosecutor actions, police recording, investigations and hate crime statistics[.][61]

The *Handbook* also explains that "[l]aw enforcement and the judiciary – including the police, public prosecutors, and judges – regularly face the reality of antisemitic crimes . . . and discriminatory behaviour"[62] and proceeds to demonstrate how the IHRA Definition can specifically help prosecutors and judges "determine the bias motivation of a crime[.]"[63] In recent years, further contrary to Dr Stern's assertion, a number of other guides,[64] fact sheets,[65] and policy papers[66] have also been published in the United States defending the use of the IHRA Definition to combat antisemitism in these and other important contexts.

---

58. Baker et al., *supra* note 34, at 10.

59. *Id.*

60. For a discussion of how Canada has done this as part of its national "Anti-Racism Strategy," see generally THE INT'L LEGAL F. & CTR. FOR ISR. AND JEWISH AFFS., THE IHRA WORKING DEFINITION OF ANTISEMITISM- LEGAL ANALYSIS (2020), https://bit.ly/3EjEcdo.

61. STEINITZ ET AL., *supra* note 49, at 7.

62. *Id.* at 18.

63. *Id.* at 24.

64. *See generally, e.g.*, INT'L HOLOCAUST REMEMBRANCE ALL., A GUIDE TO UNDERSTANDING AND ADOPTING IHRA WORKING DEFINITION OF ANTISEMITISM (2021), https://bit.ly/3SErw5o.

65. *See generally, e.g.*, THE LOUIS D. BRANDEIS CENTER FOR HUM. RTS. UNDER L., FAQS ABOUT DEFINING ANTI-SEMITISM (2022), https://bit.ly/3RxbJnn.

66. *See generally, e.g.*, NGO MONITOR, RECOMMENDATIONS: IMPLEMENTING THE IHRA DEFINITION OF ANTISEMITISM FOR NGO FUNDING (2021), https://bit.ly/3C92HHB.

B. Debunking Criticisms

1. IHRA's Israel Examples

Critics of the IHRA Definition tend to focus on the seven specific examples that illustrate how anti-Zionism can sometimes cross the line into antisemitism.[67] At the outset it must be noted that according to the IHRA Definition, "criticism of Israel similar to that leveled against any other country cannot be regarded as antisemitic."[68] This is "a fact so important, yet so routinely ignored by the critics of the definition as to suggest a deliberate repression on their part."[69] Sadly, that clear component of the definition has not deterred hostile 'activists' in their campaign to derail efforts that promote acceptance of the IHRA Definition—and as many have noticed, the most vocal groups are often the ones who themselves have a history of problematic antisemitism, with an accompanying vested interest in making sure that it is not defined.[70]

Perhaps, theoretically, antisemites would be more willing to accept the IHRA Definition if it did not mention the Jewish State.[71] However, for many Jews, their ethnicity and religious beliefs intersect in Zionism—broadly speaking, the movement for the re-establishment, and now the development and protection, of a sovereign Jewish nation in its ancestral homeland.[72] Thus, for a large segment of the Jewish world, it

---

67. *See, e.g.*, *Background on Efforts to Redefine Antisemitism as a Means of Censoring Criticism of Israel*, PALESTINE LEGAL (Jan. 2020), http://bit.ly/3kDAALJ.

68. *What is Antisemitism?*, *supra* note 48.

69. Alan Johnson, *Introduction: Seeing the IHRA Plain*, *in* IN DEFENCE OF THE IHRA WORKING DEFINITION OF ANTISEMITISM 4, 4 (Alan Johnson ed., 2021), https://bit.ly/3fkiRGm.

70. *See* @StopAntisemitism, Twitter (Aug. 3, 2020, 8:46 PM), https://bit.ly/3j1vgkE.

71. In recent years at least two groups have tried to 'rectify' the situation by creating new definitions. The problem with those definitions is threefold: 1) they do not add anything new to the IHRA Definition, *see* Mark Goldfeder, *The IHRA Definition Isn't Perfect. But Its Critics Aren't Making Things Better.*, FORWARD (Apr. 6, 2021), https://bit.ly/3V51JEX; 2) they do not actually solve the problems they were theoretically intended to, and antisemites still see them as being overly broad especially when it comes to Israel, *see* M. Muhannad Ayyash, *The Jerusalem Declaration on Antisemitism is an Orientalist Text*, ALJAZEERA (Apr. 21, 2021), https://bit.ly/3fDDoG1; and 3) their acceptance would only dull the IHRA consensus and be a feather in the antisemites' cap, *see* Mark Goldfeder, *New Definitions of Anti-Semitism Are Dangerous*, JEWISH NEWS SYNDICATE (Apr. 1, 2021), https://bit.ly/3EAsX0D.

72. *See* Mark Goldfeder, *A Yom Ha'atzmaut Reflection and Response*, JEWISH J. (May 6, 2022), https://bit.ly/3SzQvGS, briefly describing the religiously well-documented history of the Jewish people's Zionistic yearnings:

> Jews were Zionists before there were Muslims, and even before there were Christians. In multiple places throughout the New Testament, for example, the yearning for redemption is expressed in terms of the familiar and by-then-already-classic formulation of Jewish Zionism (see Matthew 21:5 and John

would be impossible to categorically separate Israel from the question of Jewish ethnic identity and religion.[73] Identifying with Israel in this way, as part of the Jewish religion/ethnic background/culture, is also not synonymous with 'political Zionism,' or with support for any or all particular policies of the Israeli government.[74]

It is also true that *antisemites* do not distinguish Israel from their antisemitism. Commonly, antisemites attack visibly Jewish people for their 'Zionism' because they are allegedly 'angry' about Israel.[75] Yet, many people being attacked are themselves members of communities that are not openly supportive of the State of Israel.[76]

Thus, to 'separate' Zionism from antisemitism would, as David Hirsh has succinctly explained, be unfair to the many innocent Jewish victims around the world who are regularly, actually (not theoretically), sometimes even physically, targeted and attacked 'because' of their real or imagined—but at the very least *perceived*—connection to the State of Israel:

> [Th]e fault does not lie with the drafters of the definition, the fault lies with the actual phenomenon of antisemitism which the drafters are trying to encapsulate and describe. Antisemites come for Jews, accusing them of being agents of Israel and Zionism. This kind of

---

12:15, paraphrasing Zechariah 9:9). The Quran itself is also quite clear about the long history of Jews in the Holy Land—and especially in Jerusalem. (See, for example, Surah Bani Isra'il, verses 1–7; *see also* Sheikh Abdul Hadi Palazzi, *Allah is a Zionist*, TABLET (Mar. 18, 2010), https://bit.ly/3fyAbaG]). While it is true that the Jews were twice expelled from their ancient kingdom of Israel, it is also true that they never fully left; since biblical times there has *always* been a Jewish community living in the eternal Jewish homeland. In the late-19th and early-20th centuries, Jews from around the world came to buy and cultivate land to further expand those *existing* Jewish communities that had remained in Israel as a continuous presence throughout all of the exiles.

Id.

73. *See* Alyza D. Lewin, *Recognizing Anti-Zionism as an Attack on Jewish Identity*, 68 CATH. U. L. REV. 643, 643–645 (2019).

74. *See id.*

75. *See, e.g.*, *Antisemitic Incidents at Anti-Israel Events and Actions Around the World*, ANTI-DEFAMATION LEAGUE (June 1, 2021), http://bit.ly/3EyBW1y (describing that whenever there is conflict in the Middle East, antisemitic attacks against domestic Jewish people and institutions skyrocket); Simon Ostrovsky, *Latest Israel-Gaza Conflict Sent Waves of Antisemitism Across the U.S.*, PBS (June 26, 2021, 4:30 PM), http://bit.ly/3Tygoqd (same).

76. *See* Nicole Chavez et al., *Anti-Semitic Attacks Are Being Reported in US Cities as Tensions Flare over the Israeli-Palestinian Conflict,* CNN (May 21, 2021, 5:30 PM), https://cnn.it/3SV7KCi; Luke Tress, *New York Police's Hate Crimes Unit Investigating 3 Alleged Antisemitic Attacks*, THE TIMES OF ISR. (Feb. 6, 2022, 10:35 PM), https://bit.ly/3yjWLdH; Sam Sokol, *Hasidic Man Assaulted in Antisemitic Attack in Brooklyn*, HAREETZ (July 11, 2021), https://bit.ly/3EeBBBE. This impulsive lashing out is in and of itself a manifestation of the classic antisemitic impulse to find a scapegoat in the Jew, whichever Jews happens to be closest.

> antisemitism defines 'Zionism' as racism, apartheid, imperialism and Nazism. In this context, the plurality of the ways in which Jews define their own identities and how they define their own relationships to Zionism and Israel are not relevant. What matters is the identity which is thrust upon them, in a hostile way from outside and without their consent, by antisemitism. Racism constructs race. Anti-Zionism constructs this kind of antisemitism.[77]

The problem of course, is that antizionists apply *their* definition of Zionism to people and institutions without the participation or consent of those they designate as 'Zionist.'[78] And they do so in a way that does not accurately reflect the perspectives of those they are labelling. People can be held accountable for ideas, identities, or viewpoints that they affirmatively embrace for themselves, but that is not how antisemitic antizionism works.[79] Instead, it attempts to hold people accountable for

---

77. David Hirsh, *It Was the New Phenomenon of Israel-Focused Antisemitism That Required the New* Definition *of Antisemitism*, *in* IN DEFENCE OF THE IHRA WORKING DEFINITION OF ANTISEMITISM 15, 19 (Alan Johnson ed., 2021), https://bit.ly/3fkiRGm.

78. It is possible to be politically anti-Zionist without it bleeding into antisemitism. The difference between political anti-Zionism and antisemitism can sometimes be reflected legally in the difference between primary boycotts and secondary or tertiary boycotts as follows:

> A primary boycott is usually defined as a boycott in which the boycotter is acting against the entity that it has a grievance with (for example, retail clerks picketing their employer over wages or working conditions). A secondary boycott is one in which the party boycotting an entity has a goal of affecting a third party, rather than the boycotted entity. A tertiary boycott is one in which the goal is to affect a fourth party, who supports the third party supporting the boycotted entity. BDS Movement activists [who often hide their antisemitism behind 'anti-Zionism,' for the most part, are engaging in something of a hybrid of a secondary-tertiary boycott. Their issue appears to be with the State of Israel, but they are not just engaging in a boycott of the government of Israel. The bulk of the individual companies, academics, institutions, and others who are targeted by BDS are not representing the government of Israel, and the bulk of the boycott activity is directed against them (a secondary boycott) and the people that support them (a tertiary boycott). Secondary-tertiary boycotts have very little protection under the First Amendment. The BDS supporters are not trying to protect their own constitutional rights; they are trying to use commerce to inflict harm on a foreign nation (and to discriminate against Americans who are of Jewish descent or who support Israel).

Mark Goldfeder, *Stop Defending Discrimination: Anti-Boycott, Divestment, and Sanctions Statutes Are Fully Constitutional*, 50 TEX. TECH L. REV. 207, 223–24 (2018).

79. As David Hirsh has so eloquently explained:

> [I]t is antizionism that defines most Jews as Zionist. [Not only that,] the Zionism thus ascribed to Jews is understood as a form of racism. Antizionism does not allow Jews, individuals or communities, to define their own identities. It defines their Zionism for them, against their will, and without consultation. It defines Zionism as racism and as support for apartheid. In so doing it defines most Jews as alien to any decent community of human beings.

David Hirsh, *How the Word "Zionist" Functions in Antisemitic Vocabulary*, J. CONTEMP. ANTISEMITISM, Jan. 2021, at 1, 6.

an identity created, defined, and erroneously applied to them by someone else. Antisemites should not get to define all Jews as Zionists, all Zionists as racists, and then all antisemitism as excluding all forms of anti-Zionism.

The consensus around the IHRA Definition, on the other hand, gives a good sense of how Jewish people actually define themselves, and the anti-Zionism that crosses the line into anti-Jewish sentiment. The IHRA Definition is not *just* academic. "Any definition does not come first out of thought but out of an understanding of, and an effort to describe, a thing which exists."[80] The plain fact is that the IHRA Definition should be adopted simply because it is a true and accurate description that captures the essence of antisemitism in many of its various forms, regardless of the ideological source. But even aside from its textbook correctness, the definition draws additional strength from the unprecedented reality that there exists a strong consensus of tens if not hundreds of thousands of people across nearly every sub-demographic in the Jewish world who agree that this explanation best encapsulates their shared identity and lived experiences on how antisemitism manifests, including as it relates to Israel.[81] For example, in the United States, the truly consensual nature of the definition as reflecting mainstream U.S. Jewish sentiments can be seen by the fact that the Conference of Presidents of Major American Jewish Organizations, an umbrella group that represents most of the Jewish community, recently announced that 51 of its 53 member organizations have adopted the IHRA Definition.[82] Additionally, the Jewish Federations of North America has made the adoption of IHRA one of its priorities.[83] Because the Jewish community is not monolithic, there are of course still dissenting voices within it, as there would be on any issue. But the overall degree of agreement is immense and remarkable, and while there have been some ill-intentioned efforts to create the misimpression of division within the Jewish community itself, this is easily and demonstrably debunked.

Digging a little deeper, the Jewish consensus behind IHRA is born out of the fact that while antisemites across time and space may conceal

80. David Hirsh, *It Was the New Phenomenon of Israel-Focused Antisemitism That Required the New* Definition *of Antisemitism*, *in* IN DEFENCE OF THE IHRA WORKING DEFINITION OF ANTISEMITISM 15, 19 (Alan Johnson ed., 2021), https://bit.ly/3fkiRGm.

81. *See* Goldfeder, *supra* note 4, at 141.

82. *See Conference of Presidents Member Organizations Adopt IHRA Definition*, CONF. OF PRESIDENTS OF MAJOR AM. JEWISH ORGS. (Jan. 26, 2021), https://bit.ly/3fKf3OY.

83. *See* THE JEWISH FED'NS OF N. AM., THE JEWISH FEDERATIONS OF NORTH AMERICA'S RECOMMENDATIONS TO PRESIDENT-ELECT JOSEPH R. BIDEN, VICE PRESIDENT-ELECT KAMALA HARRIS AND THE BIDEN-HARRIS TRANSITION COMMITTEE 5–6 (2020), https://bit.ly/3CAER98.

or deny their bigotry through different justifications, their feelings tend to manifest in similar thematic patterns, and their pretenses tend to reiterate common, conspiracy-driven theories.[84] As the IHRA bills underscore, antisemitism often holds Jews as a collective,[85] the idea being that while individual Jews might be tolerable, Jews as a separate collective identity should not be allowed to exist with the same rights as other groups.[86] That is why even as antisemitism has historically evolved, each iteration in any given era tends to focus on the primary form and expression of collective Jewish identity at that point in time.[87] In the Middle Ages, Jews were mostly a religious-identity community and were therefore hated for their religious affiliation, even if they were not religiously observant.[88] In the nineteenth and twentieth centuries, when many Jews had secularized, Jews were collectively brutalized for their ethnicity, and later for their race, regardless of the actual extent of their Jewish ancestry.[89] Today, when the primary collective expression of Jewish identity is through Jewish self-determination in their nation state, Jews around the world are hated and held accountable for 'their' country—regardless of their actual connection or lack thereof to the State of Israel.[90]

---

84. *See* Kenneth Waltzer, *Contending with Antisemitism in Its Many Forms*, *in* CONTENDING WITH ANTISEMITISM IN A RAPIDLY CHANGING POLITICAL CLIMATE 137, 140 (Alvin H. Rosenfeld, ed. 2021) ("It is worth stating here that antisemitism is above all a hatred rooted in an idea or portrait of the Jew as a negative being, an extraordinarily malevolent and powerful being, a threat, or a danger. Antisemitic thought at its core is shaped by conspiratorial presumptions; is accompanied by related beliefs about the Jews as powerful, influential, and dangerous; and is Manichean—drawing a world sharply divided between good and evil, in which the Jew is the opposite of the good and constitutes the malevolent, deformed, and threatening Other.").

85. *See* Goldfeder, *supra* note 4, at 128.

86. *See* The Rabbi Sacks Legacy, *Rabbi Sacks on the Connection Between Judaism and Israel*, YOUTUBE (Apr. 30, 2019), http://bit.ly/3Oawl54. Per Ahlmark, the former leader of the Swedish Liberal Party and Deputy Prime Minister of Sweden, remarked that while antisemitism begins primarily by attacking the collective Jews, "such attacks start a chain reaction of assaults on individual Jews and Jewish institutions." Irwin Cotler, *Global Antisemitism: Assault on Human Rights* 5 (Inst. for the Study of Glob. Antisemitism and Pol'y, Working Paper Cotler 2009), https://bit.ly/3TaZfDQ (quoting Per Ahlmark, Speech at The International Conference on "The Legacy of Holocaust Survivors": Combating Old – New Antisemitism (Apr. 11, 2002)).

87. *See* James Wald, *The New Replacement Theory: Anti-Zionism, Antisemitism, and the Denial of History*, *in* ANTI-ZIONISM AND ANTISEMITISM: THE DYNAMICS OF DELEGITIMIZATION 3, at 3 (Alvin H. Rosenfeld, ed. 2019).

88. *See* Thomas F. Madden, *The Truth About the Spanish Inquisition*, CATH. CULTURE (2003), https://bit.ly/3ErKF62.

89. *The Nuremberg Laws: Background & Overview*, JEWISH VIRTUAL LIBR., https://bit.ly/3SFGoQK (last visited Jan. 23, 2021).

90. *See* The Rabbi Sacks Legacy, *The Mutating Virus: Understanding Antisemitism | Rabbi Jonathan Sacks*, YOUTUBE (Sept. 28, 2016), https://bit.ly/3UCgoas; *see also* Goldfeder, *supra* note 4, at 131 (discussing same).

Put differently, one way that antisemitism classically manifests itself is "political antisemitism," a term coined by Lesley Klaff and Bernard Harrison and defined as "a delusive explanatory theory concerning the supposedly central role played not by this or that individual Jew but by a supposedly all-powerful and malign Jewish collectivity in controlling non-Jewish life and history."[91] As they describe it, while the specific accusations leveled against Jews might change across time and depending on location, the main tenets of the theory remain roughly the same in all its iterations:

> PA1. The Jewish community is organized to pursue goals of its own at what-ever cost to the lives and interests of non-Jewish groups. In consequence, it is directly and solely responsible for human suffering on a scale far exceeding anything that can be alleged against any other human group.
>
> PA2. The Jewish community is conspiratorially organized in the pursuit of its self-seeking and heinous goals to an extent that endows it with demonic powers not to be suspected from the weak and harmless appearance of its individual members.
>
> PA3. Through the efficacy of its conspiratorial organization and through its quasi-miraculous ability to acquire and manage money, the Jewish community has been able to acquire secret control over most of the main social, commercial, political, and governmental institutions of non- Jewish society.
>
> PA4. Given the secret control exercised by world Jewry over (only apparently) non-Jewish institutions and given the obsessive concern of the Jewish community with its own interests to the exclusion of those of non-Jews, it is simply not feasible to remedy the evils occasioned by the presence of the Jews in non-Jewish society by any means short of the total elimination of the Jews.
>
> PA5. Since the evils that the Jews do in the world owe their existence solely to Jewish wickedness, the elimination of the Jews will cause those evils to cease, without the need for any further action on the part of non-Jews, whose world will, in the nature of things, return forthwith to the perfect state of order natural to it, from which it would never have lapsed had it not been for the mischievous interventions of the Jews.[92]

If you just replace the word "Jew" with "Israel" in any or all of those paragraphs, it becomes immediately clear that the examples in the

91. Harrison Bernard & Lesley Klaff, *The IHRA Definition and Its Critics, in* CONTENDING WITH ANTISEMITISM IN A RAPIDLY CHANGING POLITICAL CLIMATE 9, 21 (Alvin H. Rosenfield ed., 2021).

92. *Id.* at 21–22.

IHRA Definition that are related to the State of Israel are not there to proscribe any legitimate criticism of Israel as a state. Instead, the purpose is to describe to someone unfamiliar with the history of antisemitism how earlier versions of an age-old hatred are recycled, repackaged, and revived. The historical progression of antisemitism is often simplified by advocates into these three stages: (1) "You cannot live among us *as Jews*," which has led to forced conversions; (2) "You cannot live among us," which has resulted in mass deportations and exile; and finally, (3) "You cannot live," which culminated in the Holocaust.[93] In the new version of antisemitism, Jews are constantly told that you cannot live among us as a state. They are told that you must stop being Jewish (as a state) or go somewhere else (as a state), or you must die (as a state).

For the antisemitic 'critic,' Israel, the only Jewish state, is also the only nation that essentializes and epitomizes evil.[94] To the antisemite, Israel is inherently synonymous with the worst thing one can be affiliated with at a given moment.[95] That is why, in their minds and in their papers, Zionism is therefore tantamount to Nazism, racism, colonialism, etc., and it remains the primary obstacle to societal progress or decency. *If only the Jewish state could be successfully eliminated, everything else would be better.*

The antisemites' hatred of Israel thus "follows a pattern made familiar by earlier versions. . . . That is to say, it offers an 'explanation' of certain disturbing features of modern life . . . in terms of the putative centrality to these disquieting events of 'the Jew,' as represented for present purposes by the state of Israel."[96] When is criticism of Israel

93. Felice Gaer, *"If Not Now, When?": Jewish Advocacy for Freedom of Religion*, THE REV. OF FAITH & INT'L AFFS., Aug. 2012, at 73, 74 (2012) (emphasis added). This idea has been attributed to the Jewish philosopher Emil Fackenheim. *See, e.g.*, Rabbi Stephen Lewis Fuchs, *Antisemitism Can Spread Like Wildfire … Will It?*, FINDING OURSELVES IN THE BIBLE (Jan. 8, 2023), http://bit.ly/3wq0LIo.

94. *See e.g.*, G.A. Res. 3379 (XXX), at 84 (Nov. 10, 1975) (defining Zionism as "a form of racism").

95. Yossi Klein Halevi, described what antisemitism does:

> What antisemitism does is turn . . . 'the Jew' into the symbol of whatever it is that a given civilization defines as its most loathsome qualities. . . . Under Christianity, before the Holocaust and Vatican II, 'the Jew' was the Christ Killer. . . . Under communism, 'the Jew' was the capitalist. Under Nazism, 'the Jew' was the race-polluter. . . . Now we live in the civilization where the most loathsome qualities are racism, colonialism, apartheid—and lo and behold, the greatest offender in the world today, with all of the beautiful countries in the world, is the Jewish state.

Yossi Klein Halevi, *The Latest Incarnation of Anti-Semitism*, YOUTUBE (Nov. 15, 2018), http://bit.ly/3EfDKeS.

96. Bernard & Klaff, *supra* note 91, at 26.

antisemitic?[97] As the IHRA Definition makes clear, criticism of Israel becomes antisemitic when people use classic antisemitic tropes or frameworks to treat the "collective Jew among the nations" as a proxy for how antisemites historically would talk about Jews[98] or the Jewish community.[99]

If Zion is essentially evil, then anyone who is 'Zionistic' must be essentially evil as well. Sadly, people on both the right[100] and the left[101] have expressed such hatred. As David Hirsh best put it:

> Attacking, denigrating, and threatening 'Zionists' has become the norm, with the crystal-clear understanding that 'Zionist' is now merely an epithet for 'Jew' the same way 'banker,' 'cabal,' 'globalist,' 'cosmopolitan,' 'Christ-killer,' and numerous other such dog-whistles [and dark metonymies] have been used over the centuries to target, demonize, and incite against Jews.[102]

Martin Luther King, Jr. also famously declared, "[w]hen people criticize Zionists, they mean Jews. You're talking anti-Semitism!"[103]

---

97. Guides on how to criticize Israel without being antisemitic have been created. *See e.g.*, Emanuel Miller & Soshanna Keats Jaskoll, *How to Criticize Israel Without Being Antisemitic,* HONEST REPORTING (Feb. 14, 2019, 12:00 AM), https://bit.ly/3dIt7Ys.

98. *See* Judea Pearl, *Is Anti-Zionism Hate?*, L.A. TIMES (Sept. 16, 2014, 12:05 PM), https://lat.ms/3LF8h9b ("Anti-Semitism rejects Jews as equal members of the human race; anti-Zionism rejects Israel as an equal member in the family of nations.").

99. *See generally* IRWIN COTLER, THE JEWISH PEOPLE POL'Y PLAN. INST., NEW ANTI-JEWISHNESS (2002), https://bit.ly/3xQSCO2.

100. *See, e.g.*, *Zio-Watch News Round-Up*, DAVID DUKE, https://bit.ly/3r3sJqK (last visited Oct. 16, 2022); JEWS FOR RACIAL & ECON. JUST., UNDERSTANDING ANTISEMITISM: AN OFFERING TO OUR MOVEMENT 21 (n.d.), https://bit.ly/3dFsCyC.

101. *See* David Hirsh, *How the Word "Zionist" Functions in Antisemitic Vocabulary*, J. OF CONTEMP. ANTISEMITISM, Jan. 2021, at 1, 2.

102. Letter from Mark Goldfeder, Special Couns. Am. Ctr. for L. & Just. & Jeff Ballabon, Senior Couns. Am. Ctr. for L. & Just., to Catherine E. Lhamon, Assistant Sec'y for Civ. Rts. (July 19, 2022), https://bit.ly/3UEiYg7; *see also* Andrew Pessin, *Irwin Cotler: Laundering Antisemitism Corrupts Our Common Humanity*, THE ALGEMEINER (Apr. 4, 2016, 1:31 PM), https://bit.ly/3r7r17z (discussing "remarks by Iranian leaders, and the charters of groups such as Hamas and Hezbollah, explicitly calling for the destruction of Israel and the murder not of 'Zionists,' but of Jews.").

103. Martin Kramer, *In the Words of Martin Luther King . . .* , MARTIN KRAMER ON THE MIDDLE E. (Mar. 12, 2012), https://bit.ly/3BGzjbD; *see also* Hirsh, *supra* note 101, at 3:

> [I]n our day the word "Zionism" itself often functions as an antisemitic curse word, which hurts and discredits Jews. When Jews are denounced as "Zionist," they are being accused of thinking they are better than everyone else and of supporting racism. It is a repackaging of old antisemitic understandings of the term "Chosen people," a term that was already in Christian traditions a repackaging of nuanced, complex, and developing ways in which Jews thought about themselves. The word "Zionism" frequently constructs Jews as participating in dishonest global networks, conspiracies of lies and propaganda, in their own selfish interest. It positions most Jews as though they are in alliance with a formidable global system of oppression, sometimes called

As it relates to the IHRA Definition, because modern antisemitism often manifests under the guise of anti-Zionism,[104] the definition includes several helpful examples of when criticism of Israel *can*, considering the overall context, cross the line into antisemitism. And as it relates to these bills, which make use of the IHRA Definition when assessing the motivation behind potentially discriminatory conduct, the examples provide added clarity and definitive guidelines to the material benefit of those officials tasked with determining the presence of anti-Jewish bias.

The IHRA Definition does not provide examples about Israel in order to shut down legitimate criticism of Israel, as the definition explicitly clarifies twice. It does so because of the false belief that *no* expression related to Israel can ever cross the line from political disagreement to drawing on and perpetuating antisemitic tropes,[105] and to prevent people from pretending that the line between politics and

---

> "modernity," or "capitalism," or "imperialism." The word "Zionism" in antizionist usage conveys a familiar mixture of contempt and fear, as have previous words that have been used against Jews. It does this in a world in which the old words and languages of Jew-hatred have appeared discredited.

Id.

104. *See* Mark Goldfeder, *Anti-Semitism's True Nature Reveals Itself*, N.Y. DAILY NEWS: OP. (May 25, 2021, 7:30 AM), https://bit.ly/3BLPvbx.

105. *See* Goldfeder, *supra* note 4, at 136; *see also* Eve Garrard, *The IHRA Definition, Institutional Antisemitism, and Wittgenstein*, *in* IN DEFENCE OF THE IHRA WORKING DEFINITION OF ANTISEMITISM 46 (Alan Johnson ed., 2021), https://bit.ly/3BMmsVf:

> [T]he other (putatively moral) objection – the claim that IHRA underpins an attack on the freedom of speech of critics of Israel – is not even true. Here's why: the IHRA definition is peppered with conditional verbs, saying that this or that 'may' be antisemitic, or 'could' or 'might' be antisemitic. Its list of examples is prefaced by the remark that they 'could' provide cases of contemporary antisemitism, but that such antisemitism is 'not limited' to just those examples. But to say that a practice may be antisemitic is to allow that it may not be. To say that applying double standards to Israel could in some cases be antisemitic leaves room for the possibility that in some cases it isn't antisemitic. That's how these conditional verbs work. And the reason that we need words that work in this cautious way is that racism of any kind occurs in the complicated contexts of our moral lives, and good moral judgements are highly context-sensitive. So the charge that the IHRA definition threatens our freedom of speech simply isn't true; what the definition does do is alert us to the fact that some ways of talking about Israel are antisemitic. The only view which this definition threatens is the view that criticism of Israel can never, ever, in any circumstances, be antisemitic. But this is not a view which is even remotely plausible (although some critics of the IHRA definition do seem to find it attractive). It is, of course, always possible that the IHRA text could be misused to assert the mistaken claim that criticism of Israel is always antisemitic. Misuse is a possibility with any text, but here the IHRA definition itself, with its cautious conditional claims, protects us all from accepting either of these implausible views.

Id. With regard to the bills in question, it is worth reiterating that, of course, even outright antisemitic speech would still be protected.

discriminatory hatred is somehow murkier when it comes to antisemitism than the line between sexist and non-sexist or racist and non-racist or homophobic and non-homophobic speech.[106] It is not.

As former Assistant Secretary of Education for Civil Rights Kenneth Marcus explained:

> [T]he ideology of the new anti-Semitism consists of negative stereotypes describing the Jewish state and its members, supporters, and coreligionists as threatening, immoral, and categorically different from other people, and it favors the use of restriction, exclusion, and suppression to solve the 'Israel problem.' This substitution is endemic of the new anti-Semitism.[107]

And in practice, as noted Holocaust historian Kenneth Waltzer has explained, examples of the type of line crossing described in the IHRA Definition are not that difficult to discern:

> When anti-Zionism continuously treats Israel as a caricature of extreme evil, offering cartoon versions of Zionism as inherently racist and colonialist, removed from real history, this is antisemitic anti-Zionism. When adherents of anti-Zionism insist that, even though all other nations enjoy a right to self-determination and sovereignty, Jews are not similarly eligible, this is antisemitic anti-Zionism. When anti-Zionism absorbs mystical claims or tropes about Jewish evil and power into discussion of the Jewish state and attributes claims made about Jews as part of the long history of antisemitism to the Jewish collective today, this too is antisemitic anti-Zionism. When anti-Zionism absorbs representations, images, and depictions of the physical Jew clearly derived from the long history of antisemitism into its standard discourse, we are witnessing antisemitic anti-Zionism. . . . When magical powers able to hypnotize the world are attributed to Jews, this is antisemitic anti-Zionism. When anti-Zionists raise questions about the fitness for student office of students of Jewish background or affiliated with Jewish community institutions, because they will not be able to act objectively in representing other students, this is also antisemitic anti-Zionism. When anti-Zionists accuse Jews who call out antisemitism of raising the issue in bad faith in order to silence anti-Zionism, this too is antisemitic anti-Zionism. . . . Finally, when anti-Zionists argue that European or American Jews far removed from Israel or Palestine

106. In general, no one who calls sexist speech sexist, racist speech racist, or homophobic speech homophobic, is accused of chilling speech. *See* Jonathan Friedman & Cynthia Miller-Idriss, *When Hate Speech and Free Speech Collide*, DIVERSE: OP. (Dec. 5, 2018), http://bit.ly/3TDXWfZ. And yet when it comes to calling antisemitic speech antisemitic, people suddenly have reservations. *See, e.g.*, Stern, *supra* note 56.

107. Kenneth L. Marcus, *Jurisprudence of the New Anti-Semitism*, 44 WAKE FOREST L. REV. 371, 376 (2009).

> (such as the Jews in the Paris kosher grocery Hypercacher, shot after the Charlie Hebdo attack) are fair game for attack as part of the broad anticolonial "resistance" because all Jews everywhere are allies of Israel, this too is antisemitic anti-Zionism.[108]

As Waltzer notes, it is ironic and idiosyncratically true of antisemitism—as opposed to other forms of discrimination—that even attempts to describe or define the phenomenon are often themselves rejected by antisemites *using classic antisemitic tropes about Jewish power*. Instead of believing or acknowledging the experiences of Jewish people who have been targeted and subject to abuse, and dispensing with any notion of good faith,[109] the antisemitic rejectionists instead blame and smear the victims themselves, accusing the Jews/Zionists[110] of once again organizing their secret cabal to act maliciously and manipulate others into doing their bidding and silencing others.[111] If it were not so

---

108. *See* Waltzer, *supra* note 84, at 148.

109. S*ee* Howard Jacobson, *Let's Be Clear – Antisemitism is a Hate Apart*, THE GUARDIAN (Oct. 22, 2016, 7:04 PM), https://bit.ly/3C8T5gf:

> The mantra bedevilling reasonable conversation about Israel is that the Jews have only one motive in labelling anti-Zionism antisemitic and that is to stifle legitimate criticism of Israel. This assertion defames Jews, the majority of whom, in my experience, take issue not with the idea of legitimate criticism, but with what in any given instance "legitimacy" amounts to. Criticism is not an inviolable concept. It can be moderate or extreme, truthful or mendacious, well-intentioned or malign. To complain when it is unjust is not to shut down debate .... The effect of a libel is to exhaust trust. It should not be automatically assumed that, when it comes to Israel, Jews are incapable of arguing honestly, an assumption that itself edges dangerously close to the racism that is being denied.

Id.

110. On the far right, David Duke, former grand wizard of the Klu Klux Klan, "has been trying to popularize the term 'Zio' (short for Zionist) as a stand-in for [the word] Jew," so as to be able to criticize Jewish people without being immediately called antisemitic. JEWS FOR RACIAL & ECON. JUST., *supra* note 100, at 21; *see also Zio-Watch News Round-Up*, DAVID DUKE, https://bit.ly/3TvzspD (last visited Oct. 16, 2022).

111. An example of this is seen in the difference between the Macpherson Principle, which says that if a person says they have been victimized, "then authorities and institutions should conduct their investigation on the same initial assumption, that the complaint is made in good faith," and the Livingstone Formulation, which is the standard articulation of the opposite assumption:

> The Livingstone Formulation says that that when people raise the issue of antisemitism, they are probably doing so in bad faith in a dishonest effort to silence legitimate criticism of Israel. It warns us to be suspicious of Jewish claims to have experienced antisemitism. It warns us to begin with the skeptical assumption that such claims are often sneaky tricks to gain the upper hand for Israel in debates with supporters of the Palestinians. And this is the substantial position of the 'call to reject' the IHRA definition of antisemitism. The Livingstone Formulation does not allege that Jews often misjudge what has happened to them, it alleges that they lie about what has happened to them. It is not an allegation of error, or over-zealousness, perhaps explicable by reference to the antisemitism of the past. It is an allegation of conspiracy.

sad,[112] the absurdity and hypocrisy of those who push these views would be comical.[113]

The late great Chief Rabbi Lord Jonathan Sacks once observed that one reason why antisemitism is so hard to define is because it is a "mutating virus."[114] Jews are criticized for being whatever a society, or a part of a society, hates at that particular moment.[115] Jews have been, sometimes simultaneously, targeted for being radicals *and* fundamentalists; capitalists *and* socialists; too liberal *and* too conservative; elitist *and* impoverished. It matters little that the reasons are entirely contradictory and inconsistent. Sadly, hating Jews has been one of the few things that has managed to unite people across every aisle.[116] This is why a consensus-driven definition is so critically needed.

A definition that can properly encompass all these possibilities and many more must be able to cut through any of the excuses that might be offered to justify this timeless hatred and focus instead on the *actions* taken by those who harbor hate and engage in bigotry. A praxeological, or conduct-based definition like the IHRA's, fills that void.[117] The examples in the IHRA Definition highlight the *manifestations* of antisemitism, i.e., what antisemites *do,* as opposed to *why* they do it. That is why the IHRA Definition, along with its examples, is especially helpful in assessing the motivation behind potentially antisemitic actions.

Hirsh, *supra* note 80, at 16. *See also* David Hirsh, *Accusations of Malicious Intent in Debates About the Palestine-Israel Conflict and About Antisemitism*, 11 TRANSVERSAL 47, 47 (2010); Steinberg, *supra* note 18, at 48–49 ("To the degree that the reference to a 'hidden agenda' is an echo of Jewish conspiracy theories, it is itself an example of antisemitism, in which classical antisemitic themes are attributed to Jewish and non-Jewish supporters of Israel.").

112. One common motif is to accuse anyone who calls out anti-Semitic or anti-Zionism of Islamaphobia. *See* Asaf Romirowsky & Richard Cravatts, *Blaming the Victim for Anti-Semitism*, THE JERUSALEM POST: OP. (Apr. 20, 2013, 10:56 PM), https://bit.ly/3rfkoAe; *see also* Mark Goldfelder, *Have the Democrats Finally Had It with Ilhan Omar*, NEWSWEEK: OP. (June 10, 2021, 6:13 PM), https://bit.ly/3rkVIq9; David Harris, *Ilhan Omar Has a Problem with Jews*, NEWSWEEK: OP. (July 1, 2021, 12:45 PM), https://bit.ly/3BYj2ie.

113. This is also similar to the phenomenon of declaring that every time the Jews or the Jewish State do something good, they must only be doing it for nefarious reasons. *See* Alan Dershowitz, *The Pinkwashing Campaign Against Israel: Another Conspiracy* Theory, HUFFPOST: THE BLOG (May 1, 2013), https://bit.ly/3UJL5L7.

114. The Rabbi Sacks Legacy, *The Mutating Virus: Understanding Antisemitism | Rabbi Jonathan Sacks*, YOUTUBE (Sep. 28, 2016), https://bit.ly/3ftG7lw.

115. *See* Manfred Gerstenfeld, *Anti-Israelism and Anti-Semitism: Common Characteristics and Motifs*, JEWISH POL. STUD. REV., Spring 2007, at 83, 85.

116. *See Israel Hatred: The Common Denominator between the American Far-Left and Far-Right*, THE MEDIALINE (July 30, 2020), https://bit.ly/3riBYUc.

117. *See* Mark Goldfeder, *Ga. Legislature Should Act on New Antisemitism Bill*, THE ATLANTA J.-CONST.: OP. (Feb. 11, 2022), https://bit.ly/3SKeW4g.

2. The Impermissibility of Speech Codes and Why IHRA Definition Bills Avoid Regulating Speech

Before discussing the use of the IHRA Definition in a regulatory context, we must first differentiate between what a definition itself *does*, and how that definition might then be used to regulate behavior, because certain disingenuous opponents purposefully conflate the two in an effort to keep 'antisemitism' vague in theory and in practice.

A definition is nothing more than "the formal statement of the meaning or significance of a word, phrase, idiom, etc., as found in dictionaries."[118] The IHRA Definition does not, and by definition, *could* not do *anything at all* to regulate behavior or to silence speech, including even outright antisemitic speech. The definition is simply a tool used to label antisemitism correctly.

Indeed, the IHRA Definition does not criminalize anything. Instead, it clarifies what discriminatory antisemitism looks like. This clarification is particularly important for authorities that investigate discriminatory antisemitism, including acts which have notably been made illegal by prior law. The definition does not say that anything definitively does, or does not, constitute antisemitism; "[w]hat it does do is draw attention to the kinds of things that we know, from experience, are sometimes antisemitic."[119] The IHRA Definition says that if you see these hallmarks, then you should make an objective judgment about whether the elements of the case, taken together in their full context, indicate the presence of antisemitism. "The alarm bells tell you where to look, they do not make final or fixed judgments."[120] In other words, the definition and the accompanying examples can help an official assess whether the conduct in question was motivated by illegally discriminatory intent, which is exactly the assessment they are *supposed* to make when applying anti-discrimination laws.[121]

---

118. *Definition*, DICTIONARY.COM, https://bit.ly/2so3dyc (last visited Oct. 17, 2022).

119. Hirsh, *supra* note 80, at 20.

120. *Id.*

121. Otherwise, anti-discrimination laws simply could not work. *See* Wisconsin v. Mitchell, 508 U.S. 476, 487 (1993) ("Mitchell argues that the Wisconsin penalty-enhancement statute is invalid because it punishes the defendant's discriminatory motive, or reason, for acting. But motive plays the same role under the Wisconsin statute as it does under federal and state antidiscrimination laws, which we have previously upheld against constitutional challenge."); Roberts v. U.S. Jaycees, 468 U.S. 609, 628 (1984); Hishon v. King & Spalding, 467 U.S. 69, 78 (1984); Runyon v. McCrary, 427 U.S. 160, 176 (1976). Title VII of the Civil Rights Act of 1964, for example, makes it unlawful for an employer to discriminate against an employee "*because of* such individual's race, color, religion, sex, or national origin." 42 U.S.C. § 2000e-2(a)(1) (emphasis added). In *Hishon,* the Supreme Court rejected the argument that Title VII infringed employers' First Amendment rights. *See Hishon*, 467 U.S. at 78.

Some might argue that using a definition to label something as problematic can create an effective norm, which might then end up silencing some antisemitic speech by making it socially unacceptable. Making something socially unacceptable, however, is neither unconstitutional, nor a regulation of speech, or even out of the ordinary. Indeed, the free exchange of ideas, whether hate speech or a counter thereto, is how we are *meant* to ascertain the truth.[122] Norms represent society's acceptance of the correctness of a position. The use of counter speech, in the form of applying a well-accepted definition in order to expose open or latent antisemitism, is precisely the right response to antisemitic rhetoric.

As Justice Brandeis famously explained in his concurrence in *Whitney v. California*, "[i]f there be time to expose through discussion, the falsehoods and fallacies, to avert the evil by the processes of education, the remedy to be applied is more speech, not enforced silence."[123] Applying the IHRA Definition to call out antisemitism is the "more speech" that Justice Brandeis was prescribing; indeed, the very "processes of education" that is required to respond to the falsehoods and fallacies that antisemites generate. Normally, anyone is free to call out racist or sexist or homophobic speech without being accused of silencing racists or being criticized for creating norms in which sexism or homophobia is unacceptable.[124] In this sense antisemitism is, or at least should be, no different than any other bigotry.

Using the IHRA Definition to determine whether a given statement or position is antisemitic does not change the fact that anyone anywhere can say whatever they want, whenever they want, and however abhorrent they want, about Judaism, the Jewish people, or the Jewish State. Freedom of speech, even offensive hateful speech, is an important cornerstone of a free society and part of what makes our democracy great.[125] But the fact that hate speech is constitutionally protected does not mean that we cannot use a definition to illustrate and explain why it

---

And more recently, in *R.A.V. v. City of St. Paul,* 505 U.S. 377, 389–390 (1992), the Supreme Court cited Title VII (as well as 18 U.S.C. § 242 and 42 U.S.C. §§ 1981 and 1982) as an example of a permissible content-neutral regulation of conduct.

As Kenneth Stern, one of the IHRA drafters, has explained: "The US Supreme Court case of Wisconsin v. Mitchell was the model for the language in the working definition." Kenneth S. Stern, *Antisemitism Rests on Intent Not Motive. It's Clear from the IHRA Definition*, THE TIMES OF ISR. (Jan. 25, 2022, 9:08 PM), https://bit.ly/3Clgufw.

122. *See* Garrison v. Louisiana, 379 U.S. 64, 73 (1964).

123. Whitney v. California, 274 U.S. 357, 377 (1927).

124. *See* Friedman & Miller-Idriss, *supra* note 106.

125. Of course, there are policies, like certain university speech codes, that are problematic. *See, e.g.*, *What are Speech Codes?*, FIRE, https://bit.ly/3UMWM3A (last visited Oct. 17, 2022). But these bills are explicitly not like that.

is hateful,[126] and the fact that this makes antisemites uncomfortable—as it leads people to weigh the competing viewpoints and hopefully *stop* engaging in antisemitism—is exactly what the counter-speech doctrine suggests and expects to happen.[127]

In short, it is unequivocally true that as a general matter, the government may *not* regulate speech "because of its message, its ideas, its subject matter, or its content."[128] That means people can say absolutely antisemitic things, and that other people can label those statements or positions as problematic. There is no serious debate on this issue, leading to the conclusion that *none* of the antisemitism bills which incorporate the IHRA Definition in any way attempt to regulate, limit, or chill speech. For example, look at the narrowly tailored actual text of the Iowa State antisemitism bill as codified in 2022:

> **HF 2220 (LSB 5469HV (4) 89)**
>
> RELATING TO ANTISEMITISM IN THE STATE OF IOWA.
>
> BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:
>
> Section 1. NEW SECTION. 216F.1 Definition.
>
> For purposes of this chapter, "antisemitism" means the working definition of antisemitism adopted by the international holocaust remembrance alliance on May 26, 2016, and includes the contemporary examples of antisemitism identified by the international holocaust remembrance alliance.
>
> Sec. 2. NEW SECTION. 216F.2 Rules of construction.
>
> This chapter shall not be construed to diminish or infringe upon any right protected under the first amendment to the United States Constitution, or the Constitution of the State of Iowa. This chapter shall not be construed to conflict with local, federal, or state discrimination laws.

---

126. *See* Moshe Goldfeder, *Hate Speech*, MISHPACHA (Apr. 25, 2022), https://bit.ly/3UHHsoK. Moshe Goldfeder another name used by the author of this piece.

127. *See* David L. Hudson Jr., *Counterspeech Doctrine*, THE FIRST AMEND. ENCYC. (Dec. 2017), https://bit.ly/3E1CVYv. ("The counterspeech doctrine posits that the proper response to negative speech is to counter it with positive expression. It derives from the theory that audiences, or recipients of the expression, can weigh for themselves the values of competing ideas and, hopefully, follow the better approach . . . . Justice Louis D. Brandeis established it in his classic concurring opinion in Whitney v. California (1927), when he wrote: 'If there be time to expose through discussion, the falsehoods and fallacies, to avert the evil by the processes of education, the remedy to be applied is more speech, not enforced silence.'").

128. Police Dep't of Chi. v. Mosle, 408 U.S. 92, 95 (1972).

> Sec. 3. NEW SECTION. 216F.3 Determination of discriminatory acts —— consideration of antisemitism.
>
> 1. In reviewing, investigating, or deciding whether there has been a violation of any relevant policy, law, or regulation prohibiting discriminatory acts, the state shall take into consideration the definition of antisemitism set forth in this chapter for purposes of determining whether the alleged act was motivated by discriminatory antisemitic intent. 2. A court or other relevant authority shall apply the same legal standard as applicable to like claims of discrimination arising under laws of this state protecting civil rights including chapter 216.
>
> Sec. 4. NEW SECTION. 216F.4 State personnel discrimination training.
>
> For the purposes of training of state personnel related to discrimination and anti-bias training, the definition of antisemitism shall be used as an educational tool to familiarize staff and officials with antisemitism.

Practically speaking, the Iowa bill is narrowly tailored. The bill does not limit or chill anyone's freedom of speech or expression. In fact, the bill emphatically employs a savings clause, doubling down on First Amendment protections.

The Supreme Court has unanimously ruled that that the First Amendment allows for the evidentiary use of speech to rebuttably assess motive without there being any concern of impermissibly chilling speech.[129] The First Amendment *does not*, however, protect harassing or discriminatory or criminal *conduct*,[130] i.e., the only areas that these bills actually address.

Antisemitic speech, without more, is constitutionally protected, and bills incorporating the IHRA Definition do not in any way attempt to alter or undermine that protection. While some various lobbying groups have made the claim that these bills could prohibit constitutionally

---

129. "[T]he First Amendment . . . does not prohibit the evidentiary use of speech . . . to prove motive or intent." Wisconsin v. Mitchell, 508 U.S. 476, 489 (1993).

130. Discriminatory conduct, for example, can include physical, verbal, graphic, or written conduct if that behavior "is sufficiently severe, pervasive, or persistent so as to interfere with or limit a student's ability to participate in or benefit from the services, activities or opportunities offered by a school." Letter from Russlynn Ali, Ass't Sec'y for C.R., Off. for C.R., U.S. Dep't of Educ., to Colleague (Oct. 26, 2010), http://bit.ly/3E3QODG. According to the OCR, "[h]arassing conduct may take many forms, including verbal acts." *Id.*; *see also Is Your Speech Protected by the First Amendment?*, FREEDOM F. INST., http://bit.ly/3GjAYrh (last visited Nov. 15, 2022).

protected speech,[131] no support has been given to identify even a single provision that would hinder the ability to criticize Israel or to engage in more classic blatant and virulent antisemitic speech.[132]

That is why, after all of the academic works,[133] public debates,[134] legislative sessions,[135] and informational conferences[136] that have been dedicated to thoroughly debunking this notion, arguments to the effect that these bills somehow nefariously limit constitutionally protected speech are more than just red herrings. At this point they are bad faith lies being spread in a purposeful disinformation campaign. Of course, it is true that someone could theoretically draft a *different* bill incorporating the IHRA Definition to limit speech, but that is not the case with any of the bills already established. The time has come to stop these bad faith actors[137] from tilting at windmills.

Nevertheless, because many organizations and publications continue to try and misinform the public by sowing seeds of confusion that are disingenuous at best,[138] we can quickly address their 'concerns' head on. One prominent scholar, for example, recently provided an illustration for why he does not support these bills by offering the following hypothetical: "Is it antisemitic for a Palestinian student to say that they don't think Israel should exist? . . . [A]re you going to require that this be looked at as a possible violation of the law?"[139]

According to the IHRA Definition, the answer to the first question—whether such a statement is antisemitic—depends upon further contextual information. In some instances, considering the overall context, it might very well be antisemitic for a person, Palestinian or otherwise, to say that the State of Israel should not exist. But the answer to the second question—is this a possible violation of the law—is an

131. *See, e.g.*, *Opinion: As Jewish Georgians, We Oppose HB1274's Problematic Definition of Antisemitism*, THE ATLANTA J.-CONST.: OP. (Feb. 25, 2022), http://bit.ly/3XT02Ly.

132. See, for example, the testimony of the ACLU below, which raises the specter of the First Amendment but can identify no instance of how the bill would actually infringe upon it.

133. *See, e.g.*, Goldfeder, *supra* note 4, at 126.

134. *See, e.g.*, Steven H. Resnicoff et al., Speech at the DePaul Univ. Symposium: Defining Antisemitism and Why it Matters: An In-Depth Exploration (Apr. 26, 2022).

135. *See, e.g.*, Joe Sabag, *Florida H741 Testimony – 3/28/19*, YOUTUBE (Mar. 28, 2019), https://bit.ly/3ENNAWZ.

136. *See, e.g.*, U.S. Department of State, *DOS Anti-Semitism Conference: "IHRA Working Definition,"* YOUTUBE (Nov. 3, 2020), https://bit.ly/3Tatfzv.

137. *See* Press Release, CAIR, CAIR Condemns Anti-Free Speech Bills Signed into Law by Iowa Governor as 'Doomed and Unconstitutional' (Mar. 25, 2022, 10:48 AM), https://bit.ly/3g8pN9X.

138. *See supra* note 19 and accompanying text.

139. Isaac Scher, *Three States Push to Curb Pro-Palestine Activism*, JEWISH CURRENTS (Apr. 26, 2022), http://bit.ly/3XT0dqc.

obvious and emphatic 'of course not.' It is not illegal for *anyone*, Palestinian or otherwise, to say that they do not think the State of Israel should exist, and nothing in the bills indicate otherwise. This is definitionally free speech.

To be clear, it *would* be a violation of the law for *anyone*, Palestinian or otherwise, to commit a hate crime against an innocent Jewish person or institution simply *because* they think that the State of Israel should not exist. I would hope that this scholar would agree. The latter scenario, not the former, is what the bills regulate with the helpful aid of the IHRA Definition.

It should be reiterated that one can fully support the Palestinian right to self-determination, and any other aspect of the 'Palestinian cause,' *without* doing anything that would be considered antisemitic. The anti-Zionist antisemites we are discussing are no friends of the Palestinians either. I am making strict reference to the self-righteous, reflexive notion that being pro-Palestinian means being anti-everything-Israel as it ignores the reality of studies that consistently show how the vast majority of Arabs in the region would prefer to live under Israeli rule rather than under the Palestinian Authority,[140] and how efforts to harm the State of Israel actually harm the Palestinians more than they harm the Israelis.[141] But even if a particular person's beliefs about the 'Palestinian cause' *are* antisemitic, the person has every right to think and say antisemitic things. What the person *cannot* do is use their understanding of the Palestinian cause as the basis for harmful or unlawfully discriminatory *treatment* of Jews. There should be nothing controversial about that.

In sum, all these bills do is use the IHRA Definition to analyze intent *after* there has already been an act that is alleged to have been discriminatorily or criminally unlawful. All they do is ensure that when assessing the motivation behind illegal discriminatory *actions* (not speech) that target Jewish people, *when* there is an allegation that the (already committed) action was *motivated* by anti-Jewish sentiment, authorities *consider* (as rebuttable evidence in determining whether such motivation was actually present) the world's most well-accepted definition of antisemitism—a definition that has already been officially adopted by over 870 separate governments, NGOs and other key

140. *See 93% of East Jerusalem Arabs Prefer Israeli Rule, Poll Shows*, ISR. HAYOM (Dec. 15, 2021, 7:33 AM), https://bit.ly/3D3KmNL.

141. *See* Carrie Sheffield, *Boycott Israel Movement Stunts the Palestinian Economy*, FORBES (Feb. 22, 2015, 4:20 PM), https://bit.ly/3D1Gn4s.

institutions, including several departments of our own federal government.[142]

C. *The Permissibility (and Even Necessity) of Regulating Unlawful Discriminatory Conduct*

While it is true that the government cannot generally regulate speech or expression,[143] it can, should, and does regularly regulate certain kinds of destructive behavior.[144] Such regulation is at the core of all criminal and many civil laws, including the federal and state statutes that regulate illegal discriminatory conduct on the bases of race, religion, national origin, gender, or ethnicity.[145] "The Supreme Court has consistently found that state and federal anti-discrimination laws that relate to race, religion, color, and national origin do not violate the highest level of First Amendment protections."[146] Crime and illegal discrimination are *not* forms of expression protected by the First Amendment.

In some instances, it is easy to establish the type of discriminatory behavior that could potentially violate the law. For example, the very act of illegally hiring, firing, or refusing to house a person based on a protected characteristic is itself the operative factor. But other cases, like discriminatory harassment, can be more difficult to pin down.

In general, "[u]nlawful harassment is defined as unwelcome conduct directed at an individual based on a characteristic that is protected by antidiscrimination law" and has a negative effect on the person to whom the conduct is directed.[147] For example, the U.S. Equal Employment Opportunity Commission defines harassment under Title VII of the Civil Rights Act of 1964 as:

---

142. *See 865 Entities Worldwide Have Adopted IHRA Antisemitism Definition Since 2016, Comprehensive CAM and Kantor Center Study Reveals*, COMBAT ANTI-SEMITISM (Mar. 22, 2022), https://bit.ly/3EP6LzN.

143. With certain obvious and limited exceptions including, for example, speech likely to incite imminent lawless action. *See* John R. Vile, *Incitement to Imminent Lawless Action*, THE FIRST AMEND. ENCYC., https://bit.ly/3eE5eli (last visited Oct. 17, 2022).

144. *See* Lily Wu, *Attorneys: First Amendment Protects Hate Speech, Not Hate Crimes*, KWCH 12 NEWS (Apr. 16, 2021, 7:38 PM), https://bit.ly/3eyhVON.

145. *See Civil Rights Act (1964)*, NAT'L ARCHIVES, https://bit.ly/3EO02WU (last visited Oct. 17, 2022).

146. Marc A. Greendorfer, *Boycotting the Boycotters: Turnabout Is Fair Play Under the Commerce Clause and the Unconstitutional Conditions Doctrine*, 40 CAMPBELL L. REV. 29, 61 (2018) (citing Bd. of Dirs. of Rotary Int'l v. Rotary Club of Duarte, 481 U.S. 537, 549 (1987); Holder v. Humanitarian L. Project, 561 U.S. 1, 39 (2015); Christian Legal Soc'y v. Martinez, 561 U.S. 661, 697–98 (2010)).

147. *What is Unlawful Harassment?*, SKILLSOFT COMPLIANCE, https://bit.ly/3gemBtA (last visited Oct. 17, 2022).

> unwelcome conduct that is based on race, color, religion, sex (including sexual orientation, gender identity, or pregnancy), national origin, older age (beginning at age 40), disability, or genetic information (including family medical history). Harassment becomes unlawful where 1) enduring the offensive conduct becomes a condition of continued employment, or 2) the conduct is severe or pervasive enough to create a work environment that a reasonable person would consider intimidating, hostile, or abusive . . . . Petty slights, annoyances, and isolated incidents (unless extremely serious) will not rise to the level of illegality. To be unlawful, the conduct must create a work environment that would be intimidating, hostile, or offensive to reasonable people.[148]

Well-established Supreme Court precedent requires behavior to be "objectively offensive" in order to fall under the category of discriminatory harassment,[149] a type of destructive conduct that, unlike speech, can and should be regulated.[150] Behavior that is merely offensive to some would *not* be included.[151] As the Court has noted, "the objective severity of harassment should be judged from the perspective of a reasonable person in the plaintiff's position, considering 'all the circumstances[.]'"[152]

It is also important to remember that even under anti-discrimination laws, not all forms of harassing behavior are illegal. For example, in the school context, generic bullying behavior, even if it is severe and pervasive, does not run afoul of Title VI of the federal Civil Rights Act of 1964, which requires recipients of federal funding to ensure their programs and activities are free from harassment, intimidation, and discrimination on the basis of race, color and national origin.[153] Bullying is only illegal, and therefore subject to regulation, if it is done with an illegal discriminatory intent, i.e., if the bullying behavior is based on the

148. *Harassment*, EEOC, http://bit.ly/3hJOomi (last visited Nov. 15, 2022).

149. Davis v. Monroe Cnty. Bd. of Educ., 526 U.S. 629, 652 (1999).

150. *See* Erwin Chemerinsky & Howard Gillman, *A Bill to Police Campus Speech*, WALL ST. J. (Dec. 15, 2016, 7:31 PM), http://bit.ly/3X6qYYn.

151. *See Davis*, 526 U.S. at 651 (stating that for behavior be considered harassment in the educational context, it must be "so severe, pervasive, and objectively offensive, and that so undermines and detracts from the victims' educational experience, that the victim-students are effectively denied equal access to an institution's resources and opportunities"); *see also* Saxe v. State Coll. Area Sch. Dist., 240 F.3d 200, 205–10 (3d Cir. 2001) (detailing analogous standards for Title VI, which prohibits racial discrimination in education; Title VII, which prohibits workplace harassment; and Title IX, which prohibits sexual harassment in education).

152. Oncale v. Sundowner Offshore Servs., Inc., 523 U.S. 75, 81 (1998) (quoting Harris v. Forklift Sys., Inc., 510 U.S. 17, 23 (1993)).

153. *See Civil Rights Requirements- A. Title VI of the Civil Rights Act of 1964, 42 U.S.C. 2000d et seq. ("Title VI")*, U.S. DEP'T OF HEALTH & HUM. SERVS. (July 26, 2013), https://bit.ly/3TrNVCL.

race, color, or national origin of the intended target, and had a tangible negative impact on the victim.

The idea that an official might be confused as to what constitutes an antisemitic act and what is merely speech or expression is untenable for the simple reason that authorities do not seem to be troubled by the fact that they sometimes need to draw a line and define what constitutes sexual harassment or even harassment based on a person's color, race, nationality, or sexual orientation. If you believe that it is possible to identify the difference between speech and conduct in every discriminatory context *except* when it comes to the Jews, i.e., if you cannot recognize that you are in fact applying a different standard for dealing with anti-Jewish discrimination,[154] then there might be an even deeper problem at play.

The reason that states need to adopt a definition of antisemitism has nothing to do with establishing new laws or creating new categories, and everything to do with defining a term to ensure equal protection by clarifying the application of existing laws. It is also true that from a First Amendment perspective, you do not want each state to decide what is and is not problematic—that might lead to First Amendment vagueness problems. In order to meet the 'objectively offensive' standard required by the law, the definition used in the discriminatory antisemitism motivational analysis must be an objectively valid one. To that end, it is obvious that the definition that should be used is the conduct-based, consensus-driven IHRA Definition—the *only* internationally recognized definition of antisemitism that is, or ever has been, ubiquitously accepted.

III. ANALYSIS

A. The Need to Codify a Definition of Antisemitism

Before we can discuss the need to codify a definition of antisemitism, we must first reiterate what codifying the definition does *not* mean. Codifying the IHRA Definition *does not* mean criminalizing anything that is antisemitic within the meaning of the IHRA Definition. Rather, codifying the IHRA Definition seeks to legislatively affirm that the IHRA Definition is the appropriate tool for use in the regulatory context, for the limited purpose of assessing motive behind already unlawful discriminatory conduct.

Throughout the months of legislative hearings accompanying the passage of the first statewide antisemitism bills, many lawmakers and other stakeholders have raised issues or concerns. The three most

154. *See* Natan Sharansky, *Foreword*, JEWISH POL. STUD. REV., Fall 2004, at 5, 5.

commonly asked questions are addressed in this section. They include the necessity and importance of passing statewide bills, why antisemitism in particular needs a clarifying definition, and what it means to incorporate a definition by reference.

1. Is It Necessary and/or Important for States to Pass This Bill?

Many lawmakers have wondered why these bills are necessary and/or important given that discrimination is by definition already unlawful.

First, there is an urgency to change something in response to what the data can show policymakers about the increasing frequency and severity of antisemitic attacks.[155] Beyond that, the bills are *necessary* because Jewish identity and corresponding manifestations of antisemitism are so multifaceted, incorporating aspects of religion, race, culture, national origin,[156] and ethnicity, that without a standard definition, it is easy for antisemites to hide behind this ambiguity, commit horrible antisemitic acts, and then claim their actions do not constitute antisemitism because the act was not based on a particular characteristic.[157] This vagueness is at the very core of an equal protection deficit that, as will be more fully described in the next section, has partially contributed to the increasing rates of antisemitic incidents presently being observed.[158] To that end, the bills do not revise *any* existing anti-discrimination policies. Rather, they simply define a term that was *supposed* to have been easily understood but in practice is not, and thereby ensure that the rules are *not* applied arbitrarily. This brings us to the second point.

The bills are *important* because people genuinely seem to be unaware of what antisemitism is and how systematically prevalent and

155. *See* JACOB BLAUSTEIN INST. FOR THE ADVANCEMENT OF HUM. RTS., ANTISEMITISM IN THE UNITED STATES 6 (2019), https://bit.ly/3D5Bjvh.

156. For an example of national origin antisemitism, see Jonathan S. Tobin, *The Left Slides into Acceptance of Anti-Semitism*, JEWISH NEWS SYNDICATE (June 22, 2021), https://bit.ly/3Tuh54h. In the words of Peter Beinart, no fan of the Jewish State, "[w]hatever your politics on Israel-Palestine, discriminating against a food truck owner because he's an American of Israeli descent is anti-Semitism, pure and simple." *Id.* (quoting @PeterBeinart, TWITTER (June 21, 2021, 9:51 PM), https://bit.ly/3TrNSai).

157. For discussion of a similar problem, see generally, e.g., Mark Goldfeder, *Why Arkansas Act 710 Was Upheld, and Will Be Again*, 74 ARK. L. REV. 607 (2022) (analyzing ongoing anti-Boycott, Divestment, and Sanctions litigation, wherein plaintiffs continuously allege that their discriminatory actions are nothing more than protected political expression). Without clear definitions, existing laws simply will be unenforceable when those engaging in discrimination are free to claim it's only politics.

158. *See* Mark Goldfeder, *Universities Must Shift Their Conception of Jewish Students as a Group*, JEWISH J. (Aug. 6, 2021), https://bit.ly/3giyMpn.

insidiously deep it has sadly become in this country.[159] Jews make up only 2% of the U.S. population, yet they are the victims of more than half of all hate crimes directed at a specific religious group and 13% of hate crimes overall.[160] A 2021 report found that one in every four American Jews had been a victim of antisemitism over the past year.[161] Even with those numbers rising,[162] nearly half of all Americans still say they have either never *heard* the word antisemitism, or at the very least, do not know what it means.[163] An official charged with determining the intent behind discrimination claims simply cannot assess the context of alleged antisemitism if the person does not know what the term means—which is also why some laws, like Iowa's, also include a call for additional education and training on the subject.[164]

2. Why is Jewish Suffering Worthy of Exceptional Treatment?

Others have asked why it is so important (and whether it is somehow 'unfair') for there to be a definition of antisemitism when other persecuted minorities do not (or do not yet) have similar definitions of racial or ethnic discrimination related to their group experience that a person charged with assessing intent can use as a guiding reference.

To be clear, these bills are *not* in any way about establishing Jewish exceptionalism; they are about ensuring Jewish equality. In fact, the claim that the Jews are somehow trying to seek an unfair advantage over other groups is itself a fairly common antisemitic claim.[165] While it is true that some academics like David Feldman have argued against 'privileging' the Jews over other minority groups by adopting clear and specific protections against antisemitism,[166] the response, especially in light of the Black Lives Matter/All Lives Matter debate, has been swift and powerful. As David Hirsch explained: "Jews go to their institutions

159. *See* Robert Shrimsley, *An Unheard Hatred: How Anti-Semitism is Dangerously Ignored*, FIN. TIMES (Feb. 4, 2021), https://on.ft.com/3VBScFw.

160. *See 2019 Hate Crime Statistics*, FBI: UCR, https://bit.ly/3yMvIIe (last visited Oct. 17, 2022).

161. *See* Avi Mayer, *The State of Antisemitism in America 2021: Insights and Analysis*, AM. JEWISH COMM. (Oct. 25, 2021), https://bit.ly/3VAxl5B.

162. *See ADL Tracker of Antisemitic Incidents*, ANTI-DEFAMATION LEAGUE, https://bit.ly/3TbttGz (last visited Oct. 17, 2022).

163. *See* AM. JEWISH COMM., THE STATE OF ANTISEMITISM IN AMERICA 2020 29 (2020), https://bit.ly/3yNexq5.

164. Several states are also including IHRA as a pedagogical standard in Holocaust Education mandates. *See, e.g.*, Nicole Raz, *Arizona Passes Long-Delayed Holocaust Education Bill After Sidelining Debate over Antisemitism Definitions*, JEWISH TELEGRAPHIC AGENCY (July 6, 2021, 9:16 AM), https://bit.ly/3MC4k5A.

165. *See, e.g.*, UNIV. OF TORONTO, REPORT OF THE UNIVERSITY OF TORONTO ANTI-SEMITISM WORKING GROUP 20 (2021), https://bit.ly/3MFu3Km.

166. *See* David Feldman, *The Government Should Not Impose a Faulty Definition of Antisemitism on Universities*, THE GUARDIAN (Dec. 2, 2020), https://bit.ly/3VyMJPQ.

and ask for protection against antisemitism. Feldman answers that all students and staff should be protected from all racism. He responds to 'Jewish Lives Matter' in a rather 'All lives matter' way."[167] There must be pushback on this line of questioning because "[t]o say that antisemitism matters[,] is not to say that other issues don't matter."[168] In other words, combating illegal antisemitism does not come at the expense of any other group but antisemites.[169]

The starting question for codifying antisemitism should never be about equivocating the needs of other affinity groups, it should be: "Do the Jewish people we are supposed to be protecting have a unique need that requires a distinct response?" And the answer to *that* question is clearly yes. Jewish people need this because history has shown that anti-Jewish hatred has been consistent, rampant, venomous, amorphous, evolving, and hard to define, and therefore even harder to educate about and combat.[170] Throughout the centuries, antisemites have abused this ambiguity to operate with impunity, exploiting the absence of a standard to escape any kind of culpability. Today, perpetrators of horrific, unlawful acts of antisemitic crime and discrimination often later claim that they were merely expressing 'anti-Israel' political sentiments by

---

167. David Hirsh, *Jews Are Asking for Protection from Their Universities from Antisemitism. David Feldman's 'All Lives Matter' Response is Not Helpful*, FATHOM J. (Dec. 2020), https://bit.ly/3CB5Gdd.

168. David Hirsh, *It Was the New Phenomenon of Israel-Focused Antisemitism that Required the New Definition. David Hirsh Responds to a 'Recent Call to Reject' the IHRA*, FATHOM J. (Jan. 2021), https://bit.ly/3EOyH6M; *see also* Jacobson, *supra* note 109:

> To assert that antisemitism is unlike other racisms is not to claim a privilege for it. Hating a Jew is no worse than hating anyone else. But while many a prejudice is set off by particular circumstance – the rise in an immigrant population or a locally perceived threat – antisemitism is, as often as not, unprompted, exists outside time and place and doesn't even require the presence of Jews to explain it. When Marlowe and Shakespeare responded to an appetite for anti-Jewish feeling in Elizabethan England, there had been no Jews in the country for 300 years. Jewishness, for its enemies, is as much an idea as it is anything else.

Id.

169. It is also sadly true that at least within many popular social justice movements, "anti-Semitism has been forgotten as a human rights cause by the generation that claims to be so invested in human rights." Leora Eisenberg, *When Your Liberal Values Need Not Apply*, THE TIMES OF ISR. (May 26, 2016, 10:22 PM), https://bit.ly/3McQF4B. This is true for movements that focus on issues ranging from climate change to racism. *See* Jonathan A. Greenblatt, *Antisemitism on the Left is Subtler than on the Right. But it's Getting Worse.*, WASH. POST (Oct. 27, 2021, 2:56 PM), https://wapo.st/3TbAnf8. This uncaring exclusion has last left many Jews, who have shown up consistently for all these movements, "wondering where their allies have gone." Melissa Block & Jerome Socolovsky, *Antisemitism Spikes, and Many Jews Wonder: Where Are Our Allies?*, NPR (June 7, 2021, 5:00 AM), https://n.pr/3SHixjS.

170. *See* The Rabbi Sacks Legacy, *The Mutating Virus: Understanding Antisemitism | Rabbi Jonathan Sacks*, YOUTUBE (Sept. 28, 2016), https://bit.ly/3gdfPUP.

attacking Jewish institutions, individuals, or points of Jewish collective identity.[171]

These bills also correct a longstanding equal protection issue. Antisemitism remains a major issue on college campuses, where most minority groups have long received protection under Title VI.[172] *Unlike* those groups, however, for a long time the federal government did not consider the Jewish community to be protected under Title VI because the law does not apply to *religious* groups. The government simply ignored the facts that (a) Jewish identity is not merely religious in nature, and (b) antisemitic bias is often based on Jewish characteristics other than religion. They also ignored longstanding Supreme Court precedent, holding that "Jewish people are permitted to seek redress for racial discrimination as a distinct race for the purposes of federal civil rights statutes."[173]

Data shows that over time, the lack of proper legal recognition of Jewish identity and antisemitism has led to a severe equal protection deficit for the Jewish community, and has taken a toll on the ability of Jewish people to, for example, participate fully in university life or exercise their own civil liberties in support of their Jewish or pro-Israel

171. *See, e.g.*, Goldfeder, *supra* note 104.

172. *See Civil Rights Requirements*, *supra* note 153.

173. Simon v. Par. of Jefferson, Civil Action No. 09-300, 2010 WL 745035, at *1 (E.D. La. Mar. 1, 2010) (citing Shaare Tefila Congregation v. Cobb, 481 U.S. 615, 617–18 (1987)); *see also* Proa v. NRT Mid Atl., Inc., 618 F. Supp. 2d 447, 460–61 (D. Md. 2009), *aff'd*, 398 F. App'x 882 (4th Cir. 2010) ("The Supreme Court has held that § 1981 applies exclusively to racial discrimination, but that a 'race' encompasses 'any identifiable class of persons who are subjected to intentional discrimination solely because of their ancestry or ethnic characteristics.' This includes Jewish people. *Cf.* Runyon v. McCrary, 427 U.S. 160, 168, 174–175 (1976) [(Section 1981, like the Civil Rights Act of 1866, reaches private acts of racial discrimination)]; Saint Francis College v. Al–Khazraji, 481 U.S. 604 (1987) [(Congress intended § 1981 to protect from discrimination identifiable classes of persons who are subjected to intentional discrimination solely because of their ancestry or ethnic characteristics)]; Shaare Tefila Congregation v. Cobb, 481 U.S. 615 (1987) [(same for § 1982)]."); *see also* Ortiz v. Bank of Am., 547 F. Supp. 550, 567 (E.D. Cal. 1982) (noting that the history of racial discrimination against *Jews* is "so well known as almost not to require documentation"); United States v. Nelson, 277 F.3d 164, 176–78 (2d Cir. 2002) (explaining that the framers of the Thirteenth Amendment understood *Jews* to be a "race"); T.E. v. Pine Bush Cent. Sch. Dist., 58 F. Supp. 3d 332, 354–55 (S.D.N.Y. 2014) (describing how "courts have regularly found that anti-Semitic harassment and discrimination amount to racial discrimination" (citing Bachman v. St. Monica's Congregation, 902 F.2d 1259, 1261 (7th Cir. 1990) (finding that *Jews* constitute a race within the meaning of federal civil rights statutes); Lenoble v. Best Temps, Inc., 352 F. Supp. 2d 237, 247 (D. Conn. 2005) (noting that "*Jews* are a distinct race for § 1981 purposes"); Powell v. Indep. Blue Cross, Inc., Civil Action No. 95-2509, 1997 WL 137198, at *6 (E.D. Pa. Mar. 26, 1997) (finding that § "1981 must be read to encompass discrimination against a plaintiff because of his Jewish ancestry or ethnicity"); Singer v. Denver Sch. Dist. No. 1, 959 F. Supp. 1325, 1331 (D. Colo. 1997) (noting that *Jews* are "a distinct racial group for the purposes of § 1981")).

identity.[174] Even today,[175] at colleges and universities across the country, institutional offices of Diversity, Equity, and Inclusion (DEI) that focus on historically marginalized populations, including racial and ethnic groups that have traditionally experienced discrimination, rarely include Jews and antisemitism in their programmatic missions or educational materials.[176] And a recent study found that an overwhelming number of DEI staff are openly antisemitic.[177]

Thankfully, federal officials have finally recognized this error and corrected their own institutional definitional (mis)understanding for how to properly protect Jewish students. In 2004, the Department of Education's Office for Civil Rights, which is responsible for enforcing Title VI, issued a series of policy statements announcing that they would henceforth investigate antisemitism complaints, to the extent that they implicate ethnic or ancestral bias. As the policy directive explained, "[g]roups that face discrimination on the basis of shared ethnic characteristics may not be denied the protection of our civil rights laws on the ground that they also share a common faith."[178]

---

174. *See, e.g.*, *Examining Anti-Semitism on College Campuses: Hearing Before the H. Comm. On the Judiciary,* 115th Cong. (2017) (statement of Rabbi Abraham Cooper).

175. *See* Jay P. Greene & James D. Paul, *Antisemitism is a Growing Problem Among College Diversity Administrators*, NEWSWEEK: OP. (Dec. 22, 2021, 6:00 AM), https://bit.ly/3CemEN8; *see also* Michelle Cordero, *New Study: Diversity Officers at U.S. Colleges Are Anti-Israel*, THE HERITAGE FOUND.: HERITAGE EXPLAINS (Dec. 19, 2021), https://herit.ag/3e94AMq.

176. *See, e.g.*, Ira Bedzow, *DEI Training Needs to Take Antisemitism Seriously*, FORBES (Nov. 24, 2021, 3:41 PM), https://bit.ly/3ElHnRP, which states:

> Stanford's DEI committee's justification—i.e. that Jews possess privilege and power—is a theme that comes right out of the *Protocols of the Elders of Zion* and Henry Ford's *The International Jew: The World's Foremost Problem*. The only difference is that Ford claimed that Jews are "dispersed among the nations, but never merging themselves with nations and never losing a very distinctive identity," while the DEI committee said that Jews could at least "pass" for white people. Or, as James Baldwin once described antisemitism, the committee was "really condemning the Jew for having become an American white man."

Id.

177. Jay Greene & James Paul, *Inclusion Delusion: The Antisemitism of Diversity Equity and Inclusion Staff at Universities*, THE HERITAGE FOUND. (Dec. 8, 2021), https://herit.ag/3SYRhNA. It is not just on campus either:

> The most prominent example of this from the corporate world was when Kamau Bobb, the head of diversity at Google, wrote that Jews have an "insatiable appetite for war" and an "insensitivity to the suffering [of] others." Amazingly, Bobb was only reassigned to work on STEM education efforts for Google. Bobb let the mask slip by accusing "Jews" of these crimes rather than simply saying "Israelis" or "Zionists."

Id.

178. *See* Letter from Kenneth L. Marcus, Deputy Assistant Sec'y for Enf't, Off. of C.R., U.S. Dep't of Educ., to Colleague (Sept. 13, 2004), https://bit.ly/3V7vZ1T.

This broader understanding of antisemitism has encompassed more than just a hatred based on religion or religious practices. It has also been confirmed in the context of Title VII cases. As Judge Mark Hornsby wrote in *Bonadona v. Louisiana Coll.*:

> America is no stranger to anti-Semitism, which is often rooted in prejudice against a person based on his heritage/ethnicity without regard to the person's particular religious beliefs. Jewish citizens have been excluded from certain clubs or neighborhoods, and they have been denied jobs and other opportunities based on the fact that they were Jewish, with no particular concern as to a given individual's religious leanings. Thus, they have been treated like a racial or ethnic group that Title VII was designed to protect from employment discrimination based on membership in that group.[179]

While federal law has steadily been coming around to the notion that Jewish identity (and anti-Jewish bias) can be multifaceted, modern antisemites have continued to push for a limited notion of antisemitism that allows them to attack Jews indiscriminately so long as they can credibly claim that they did not target Jews because of their religion, but rather for some other aspect of their identity. Nowadays, the most common example of this behavior is when Jewish people and institutions are attacked because antisemites hold them collectively responsible for the actions of the Jewish State. For example, in 2017, a German court decided that the firebombing of a synagogue in Wuppertal was not antisemitic because the criminals claimed that it was just the way they chose to express their anti-Israel politics.[180] Later that same year, and

---

179. *See* Bonadona v. La. Coll., No. 18-CV-0224, 2018 WL 4353979, at *4 (W.D. La. July 13, 2018).

180. Benjamin Näegele, *Judge Rules Wuppertal Synagogue Firebombing Was Not Anti-Semitic, so What Happened?*, B'NAI B'RITH INT'L (Jan. 17, 2017), https://bit.ly/3yggpaD. This was also not an isolated incident. From an antisemite's perspective, Jews across the world are consistently viewed as understandable targets because they are surrogates of Israel. *See* David Harris, *Antisemitism and Four Travesties of Justice*, THE TIMES OF ISR. (Apr. 22, 2021, 7:21 PM), https://bit.ly/3yldHQZ; Rivka Bond, *On Becoming Un-assimilated*, THE TIMES OF ISR. (May 6, 2016, 12:03 PM), https://bit.ly/3T2EF7W. *See also* Efraim Karsh, *The War Against the Jews*, MIDDLE E. F. (July 2012), https://bit.ly/3CdfrNw describing how:

> The 2006 Lebanon war has once more underlined just how widely Jews and Israelis are perceived as one and the same. During the crisis, there was a doubling of anti-Semitic attacks and incidents in the UK compared with July 2005 and a threefold increase in these events in Canada over the same period in the previous year. At the same time, the Jewish Memorial for Holocaust victims in Brussels and Berlin's Holocaust memorial have been desecrated and daubed with swastikas as have two synagogues in Sydney, Australia, and one in the Brazilian town of Campinas; twenty Jewish shops in Rome were also vandalized and daubed with swastikas, and a Pakistani-American walked into the Jewish Community center in Seattle in July 2006 and opened fire on innocent Jewish civilians, killing one and wounding five.

largely in response to this incident, Germany adopted the IHRA Definition.[181]

The above type of conflation occurs in the United States too. In 2008, during a period of increased fighting in the Middle East, a Molotov cocktail was thrown at a synagogue in Chicago.[182] In December 2019, during the Jewish holiday of Hanukkah, a man broke into a Hasidic Rabbi's home in Monsey, New York, and brutally stabbed five people with a giant sword.[183] According to court records filed by federal prosecutors, his recent search history included looking for "Zionist temples."[184] The Rabbi whose house was attacked is a member of the Kosov Hasidic sect, which is not actually Zionistic. In fact, one of his Hasidic followers, the man who managed to first slow down the attacker by throwing a table and then followed him outside to get his license plate number which ultimately led to his arrest, *turned down* a $20,000 prize for his heroism offered by the Jewish Federation of Rockland County and the Anti-Defamation League—in light of the 'Zionist' values embodied by those organizations. He did not want to even be associated with anything remotely Zionistic, and later told reporters: "I was not willing to offer my soul for $20,000. . . . My identity for $20,000 was not for sale." This man, an open and determined anti-Zionist, was attacked with a sword for his 'Zionism.' There is no clearer demonstration that these bills are not meant to protect Israel—they are meant to protect *Jews* from being attacked by antisemites 'because' of Israel.[185]

Unfortunately, these attacks are common. In May of 2021, while Israel was defending itself against the terrorist group Hamas, antisemitic attacks shot up by over 400%.[186] Across the United States, hundreds of random synagogues, Jewish community centers, kosher restaurants, Jewish-owned businesses, and individual Jews were targeted and

---

Id.

181. *See Germany Endorses Working Definition of Antisemitism*, INT'L HOLOCAUST REMEMBRANCE ALL. (Sept. 20, 2017), https://bit.ly/3fBTBvm.

182. *See* Ofelia Casillas, *Arsonist Hits N. Side Synagogue*, CHI. TRIB. (Dec. 30, 2008, 12:00 AM), https://bit.ly/3rB4n88.

183. *See* Kevin Armstrong et al., *Knife-wielding Man Shattered Night of Celebration, Witnesses Say, Renewing Fears of Violence Against Jews*, THE WASH. POST (Dec. 29, 2019, 10:18 PM), https://wapo.st/3geikX0.

184. Joseph Ostapiuk, *Feds: Hanukkah Stabbing Suspect Searched for 'Zionist Temples of Staten Island'*, SILIVE (Dec. 31, 2019, 8:34 AM), https://bit.ly/3fP9wXd.

185. Rossella Tercatin, *A Gesture to Honor Monsey Hero Ended up in Controversy; Here is Why*, THE JERUSALEM POST (Feb. 18, 2020, 7:30 PM), https://bit.ly/3yIuoGz.

186. *See* Jemima McEvoy, *Synagogue Attacks and Slurs: Jewish Community Rocked by Rise in Anti-Semitism Amid Israel-Gaza Fighting*, FORBES (May 20, 2021, 2:30 PM), https://bit.ly/3rATvXz; *see also* Shahar Eilam & Tom Eshed, *Increased Antisemitism in the United States Following Operation Guardian of the Walls: Permanent or Short Lived?*, THE INST. FOR NAT'L SEC. STUD. (Nov. 10, 2021), https://bit.ly/3ynBpMB.

attacked, beaten and bullied, all because they were Jewish.[187] Many of those who were targeted were not religious, and some were not even Zionists. Their only 'crime' was being visibly Jewish at a time when antisemites were angry at Israel.[188] And of course none of this was surprising; the same things happened in 2014 during the last Gaza war[189] with the same 400% increase in antisemitic incidents.[190]

When anti-Zionist ideology crosses over into antisemitic acts, they can and should be legally remedied. These bills will help the government to do that by codifying a definition that affords Jewish persons proper recognition, and therefore *equal* governmental protection from crime and discrimination, by correctly defining antisemitism as more than just attacking Jews for their religious identity or observance. Such bills will help ensure that when people discriminate against Jews for any aspect of their Jewish identity, whether religious, ethnic, or beyond, such bigotry is addressed accurately and with the same care, procedures, and processes in place, as discrimination against any other member of a minority group targeted for their racial or ethnic identity.

However, and notwithstanding all of the above, the importance of clarity and standards when defining forms of bigotry is *not* entirely unique to antisemitism. If any other group feels that it is being routinely and systemically discriminated against, and believes that there is a need for a uniform consensus definition to clarify what is and is not bias-motivated illegal conduct, that group's concerns *should* likewise be heeded in a legislative manner and would more than likely receive the in-kind support of much of the mainstream Jewish community.[191] Indeed, in 2018, the All-Party Parliamentary Group on British Muslims published a "Call for Evidence" asking for assistance "to facilitate the adoption of a working definition of Islamophobia that can be widely accepted by Muslim communities, political parties, and the Government,"[192] and in

187. *See* Andrew Pessin, *Remarks at the No Fear Rally Against Antisemitism*, THE TIMES OF ISR. (July 13, 2021, 5:44 PM), https://bit.ly/3RK2oZw ("Just last week, within one week, in Boston, a gunman arrested en route to a synagogue, a rabbi stabbed, an anti-Israel rally targeting not the Israeli consulate but the ADL.").

188. *See* Goldfeder, *supra* note 104.

189. *See* Benjamin Weinthal, *Why Anti-Zionism is Modern Anti-Semitism*, NAT'L REV. (July 29, 2014, 4:18 PM), https://bit.ly/3Ckz86e.

190. *See* Itamar Eichner, *Report: 400% Rise in Anti-Semitic Incidents During Gaza War*, YNET NEWS (Jan. 25, 2015, 12:53 PM), https://bit.ly/3CbAtMA.

191. Several Jewish organizations, including StandWithUs and the National Jewish Advocacy Center, have already been working with other minority communities to help them learn from the IHRA Definitions' success.

192. @APPGBritMuslims, TWITTER (Apr. 23, 2018, 12:29 PM), https://bit.ly/3M8VvA1.

2021 a group of Hindu scholars published a working definition of Hinduphobia.[193]

3. Can You Incorporate a Definition into a Law by Reference and Why Would You Want to Do So?

Many lawmakers have asked why the antisemitism bills, like Iowa's, incorporate the IHRA Definition by reference,[194] rather than laying out the definition as part of the text of the bill itself. Some have even assumed or implied that it might be an unlawful delegation of legislative authority to do so. There are really two parts to this question: (1) is it legal for a bill to incorporate a standard by reference; and (2) if so, why is it important for these bills to do so? Each deserves an answer.

In response to the first question, it is not in any way illegal or problematic for state or federal legislation to incorporate a standard by reference in the way that these antisemitism bills incorporate the IHRA Definition. In order for legislation to incorporate material by reference, without having to spell out the information as part of the legislative text, "the host document must identify with detailed particularity what specific material it incorporates and clearly indicate where that material is found in the various documents."[195] The sufficient particularity standard is an objective standard. It ensures that the determination is based on "whether one reasonably skilled in the art would understand the application as describing with sufficient particularity the material to be incorporated."[196] When a legislature incorporates an existing standard, the legislature is presumed to be familiar with the standard in its entirety and to approve of it,[197] and "'[w]hen a document incorporates outside material by reference, the subject matter to which it refers becomes a part of the incorporating document just as if it were set out in full.'"[198]

It *can* be an impermissible delegation of a legislature's power if a statute were to try and adopt a *fluid*, as opposed to a static, definite standard into law by reference—i.e., if a bill incorporated a standard *plus* any modifications it might undergo in the future. If that were to happen,

193. *See Hinduphobia*, HINDU AM. FOUND., https://bit.ly/3ykAvjZ (last visited Oct. 6, 2022).

194. *See* John Mark Keyes, *Incorporation by Reference in Legislation*, 25 STATUTE L. REV. 180, 180 (2004) ("Incorporation by reference is a drafting technique for providing that a legislative text . . . includes material . . . expressed elsewhere . . . . [w]ithout reproducing it word-for-word . . . .").

195. Zenon Env't, Inc. v. U.S. Filter Corp., 506 F.3d 1370, 1378 (Fed. Cir. 2007) (citing Cook Biotech Inc. v. Acell, Inc., 460 F.3d 1365, 1376 (Fed. Cir. 2006)).

196. Harari v. Lee, 656 F.3d 1331, 1334 (Fed. Cir. 2011).

197. *See* Repass v. Workers' Comp. Div., 569 S.E.2d 162, 177 (W. Va. 2002).

198. Diamond Resort Haw. Corp. v. Bay W. Kailua Bay, LLC, CV. NO. 10-00117, 2011 U.S. Dist. LEXIS 19544, at *19 (D. Haw. Feb. 25, 2011) (quoting Cunha v. Ward Foods, Inc., 804 F.2d 1418, 1428 (9th Cir. 1986)).

then a legislature could be said to be delegating its authority to the non-elected experts/authors of the standard, who could then change the standard in some way not currently contemplated by the legislature.[199] This concern is precisely why the antisemitism bills are careful and clear to establish definiteness by incorporating "the working definition of antisemitism adopted by the International Holocaust Remembrance Alliance *on May 26, 2016*."[200] That is a static, unchanging definition, tied to a specific date. If, for example, the IHRA itself were to update their definition, the definition in the *statute* would *not* change, unless and until the legislature specifically addressed and approved of the changes, and then voted to amend the definition in the bill to a new (and static) definition.

It is also worth noting that the bills incorporating the IHRA Definition are not in any way unconstitutionally vague or overbroad. A law is considered vague when people "of common intelligence must necessarily guess at its meaning[,]"[201] i.e., when it does not give sufficiently clear notice to a reasonable person of what it demands or prohibits. As the Supreme Court explained in *Kolender v. Lawson*, "the void-for-vagueness doctrine requires . . . sufficient definiteness that ordinary people can understand what conduct is prohibited and in a manner that does not encourage arbitrary and discriminatory enforcement."[202] A policy using the IHRA Definition to contextually assess the motivation behind potentially illegal discriminatory conduct before assuming it did or did not involve antisemitism provides such definiteness and clarity. Such a policy applies the well-accepted, and constitutionally upheld, definitions of discriminatory conduct, which are used in all similar circumstances, to reiterate that discriminatory antisemitic conduct is unacceptable. Furthermore, such a policy ensures that the application of the law will *not* be handled arbitrarily by providing an objective and clear definition of what antisemitism is, specifically for the purpose of discouraging the possibility of subjective enforcement. The IHRA Definition is fairly self-explanatory, such that a person of common intelligence would not be confused as to its meaning. In addition, for all of those concerned that Jews are 'weaponizing' criticism of Israel and will try and label everyone antisemites, the IHRA Definition repeatedly affirms that criticism of Israel, like that of any other nation, is not antisemitic and is the absolute best defenses available to an unfounded or politically motivated charge of antisemitism.

---

199. *See Repass*, 569 S.E.2d at 177; *see also* Mich. Mfrs. Ass'n v. Dir. of Workers' Disability Comp. Bureau, 352 N.W.2d 712, 715 (Mich. Ct. App. 1984).

200. IOWA CODE § 216F.1 (2022) (emphasis added).

201. Connally v. Gen. Constr. Co., 269 U.S. 385, 391 (1926).

202. Kolender v. Lawson, 461 U.S. 352, 357 (1983).

As it relates to overbreadth, the Supreme Court has emphasized in *Broadrick v. Oklahoma* that declaring a regulation overbroad is "manifestly strong medicine," to be employed "sparingly and only as a last resort," and not in situations in which "a limiting construction has been or could be placed on the challenged statute." The bills in question are explicitly limited to assessing intent for discriminatory conduct, not speech. They contain a clear savings clause with an explicit, limiting construction. Even if there were still any grey areas, they are to be construed in a limited fashion, consistent with constitutional law, and with those additional savings clauses thrown on top for good measure.

The answer to the second question—why it is *important* to incorporate the IHRA Definition by reference, instead of pushing for each individual state to simply adopt the same definition and call it their own—is fourfold.

First, from a First Amendment perspective, adopting a well-accepted and well-understood definition with a history of application is what we need to decide if behavior meets the 'objectively offensive' standard required by the law. Adopting such a definition also ensures against accusations of vagueness or of subjective enforcement. The definition comes with almost two decades worth of explanation and experience.

Second, adopting a static definition, rather than including the whole text in the bill, ensures that the IHRA Definition is what is *actually* adopted and utilized. Incorporating the definition lessens the likelihood that antisemitic lobbies will try and stall the legislative process by offering endless amendments designed to weaken the definition—or at the very least to weaken the consensus around it by having multiple different versions in the ether such that it would no longer be possible to say that yet *another* institution has adopted the same IHRA Definition.

Which brings us to the third and inter-connected aspect of why it is important to adopt the definition by reference: uniformity. Even if all states would adopt the identical definition, the strength of the IHRA Definition's consensus, and its undeniable validity, would be somewhat diminished if everyone agreed to adopt their own state-specific versions.[203]

Finally, codifying a well-accepted uniform standard, which can easily be plugged in to any other state's code, lowers the costs for legislators and makes it more likely that additional states and jurisdictions will move to fill the gap in their own antidiscrimination

203. *See Defining Antisemitism*, *supra* note 41 (explaining how the State Department has adopted this same May 26, 2016, IHRA definition "and has encouraged other governments and international organizations to use it as well").

statutes. As Dru Stevenson has explained, among the benefits of codification are that:

> Once a state's statutes are in codified form—sorted topically, with numbered and subordinated sections, indexed, and so forth—it becomes much easier to plug in a code or section, borrowed either from a sister jurisdiction or a model act, to fill a gap or to replace an existing hodgepodge section with a systematic treatment of a legal subject. Codified law makes interjurisdictional comparisons easier, replacement or gapfilling more precise, and the advantages of harmonization more apparent to lawmakers . . . The topical and systematic form of codes highlights the appeal of harmonization, rather than competition, with neighboring jurisdictions.[204]

B. A Case Study in Bad Faith Argumentation

The most prominent group to come out against the adoption of the IHRA Definition has been the American Civil Liberties Union (ACLU). In recent years, the ACLU has been battling a well-earned reputation for fostering and protecting antisemitism and antisemites,[205] and its position on this issue speaks volumes. While other less learned organizations might be excused for their ignorance, the ACLU should not be, and their strident opposition, based on claims that finds no basis in the bills' text or practical effect, deserves condemnation.[206] Here then, reproduced in full, are the remarks made by the ACLU of Georgia's Policy Counsel in his testimony opposing a version of the bill that was almost identical to Iowa's.[207] The bolded insertions are this author's annotated refutations:[208]

> Today I would like to share the ACLU of Georgia's grave concerns about HB 1274 as currently drafted. Our primary concern with HB 1274 is that this bill would prohibit constitutionally protected speech

204. Dru Stevenson, *Costs of Codification*, 2014 U. ILL. L. REV. 1129, 1157 (2014).

205. The American Civil Liberties Union (ACLU) is also not impartial in this matter. Many of its senior policymakers have been criticized for their open affiliations with groups that actively promote anti-Jewish discrimination and crime. *See* Alana Goodman, *ACLU Becomes Top Legal Defender of Anti-Semitic BDS Campaign*, THE WASH. FREE BEACON (Sept. 15, 2021, 5:00 AM), https://bit.ly/3MKtyik. The ACLU has also been called out by leading First Amendment experts for repeatedly lying about and mischaracterizing laws to protect antisemites and promote anti-Jewish bias. *See* David Bernstein, *The ACLU's Shameful Role in Promoting Antisemitism*, REASON (Mar. 11, 2019, 9:32 AM), https://bit.ly/3D5xOFE.

206. This seems to be part of a larger identity crisis the ACLU is now experiencing. *See, e.g.*, @RealTimers, TWITTER (Jan. 28, 2022, 11:14 PM), https://bit.ly/3s3jSFU; Michael Powell, *Once a Bastion of Free Speech, the ACLU Faces an Identity Crisis*, N.Y. TIMES (Sept. 28, 2021), http://bit.ly/3VhgK67.

207. *Hearing on H.B. 1274 Before the H. Judiciary Comm.*, 2022 Leg., Reg. Sess. (Ga. 2022) (statement of David Goldman, Pol'y Couns., ACLU of Ga.).

208. To be clear, this is not a personal attack on the individual who delivered the testimony, but rather on the institution that provided these talking points.

[The bill does not deal with speech, but rather with conduct. If that was not clear from the words of the bill itself, which it undoubtedly is, there is even a First Amendment savings clause that literally spells it out.] and risk criminalizing the expression of criticism of the state of Israel. **[The bill does not criminalize anything, even actions, and certainly not speech or expression. Note the complete lack of evidence, and the glaring inability to point to a single provision in the bill that would do any of these things.]**

The International Holocaust Remembrance Alliance's definition adopted by this bill is overly broad. **[These are parroted talking points of antisemites, with no explanation of why or how it is too broad.]** While the definition goes to some lengths to exclude criticism of Israel, the line between criticism of Israel and discriminatory animus remains too blurred to function as a law that ultimately punishes people for their speech. **[This is correct—which is why the bill *does not punish people for their speech*. The line between speech and illegal discriminatory conduct, which is what these bills deal with, is not blurry at all.]** One such note in the IHRA's definition is that "criticism of Israel similar to that level against any other country cannot be regarded as anti-Semitic." This language is unclear and unenforceable. **[First, the definition gives actual examples of the kinds of "criticism" that could constitute antisemitism, but regardless, no part of the bill attempts to "enforce" that language. That would be a speech code, and those who support the adoption of the IHRA Definition do not claim that would be lawful. Again, the IHRA Definition is merely intended to be an aid in determining whether certain content is substantively antisemitic, not whether the government may permissibly punish such speech—of course it could not.]** The State of Georgia is not a ministry of information that decides whether certain criticism of Israel is "similar to that leveled against any other country." **[Of course not, nor does this bill ever ask the State of Georgia to do that.]** For example, as a Jewish American, **[Note the use of tokenism, which is unacceptable in almost all other contexts.]** who is frequently critical of recent Israeli administrations, I wonder whether my speech could be construed to run afoul of these restrictions. **[Nowhere in the bill is there any restriction on speech of any kind, even outright antisemitic speech.]** Or more likely, would a non-Jewish person making the exact same criticisms as me be considered anti-Semitic while I am not. **[First, note the assumption of bad faith on the part of these imaginary accusers. Second, both Jews and non-Jews are capable of engaging in antisemitism. Neither the IHRA Definition nor the bill in question is concerned with this aspect of a perpetrator of antisemitism. If we are dealing with speech, then depending on**

what the Jewish or non-Jewish person said, the IHRA Definition might label either both or neither of the statements antisemitic. But that has nothing to do with the bill the ACLU counsel was testifying against. Note the conflation, as we have described, of the definition and the bill.] That is the determination we are leaving to the State of Georgia to make, **[No, it is not.]** and that is problematic. **[Or would be, if it were at all true.]** This definition remains useful as a moral or sociological definition, but not as a legal one. **[Note the lack of consistency—is it overly broad or not? If so, why is it useful there? If not, why should antisemites be allowed to commit discriminatorily antisemitic acts? If the IHRA Definition is useful for identifying antisemitism ("as a moral or sociological definition"), it is appropriate for the purposes of these bills.]** Even the Office of the United Nations High Commissioner for Human Rights (OHCHR), which has adopted the IHRA's language as a working definition, has clearly stated that this definition is a "'non-legally binding' definition intended to guide and educate. **[The definition itself is just a definition; it is not legally binding, and it is intended to guide. A bill, such as this one, uses it in a regulatory framework to guide officials who are charged with protecting real people against antisemitism. The High Commissioner actually encouraged states to do just that, noting that "[w]here public bodies use the definition in any regulatory context, due diligence must be exercised to ensure that freedom of expression within the law is protected for all." These bills demonstrate all such due diligence.]** It is not a means to squelch debate or free speech, **[On this we completely agree—because no one said that it was. Certainly, nowhere in the bill is this even suggested as a remote possibility.]** and those who misuse it in this way should be opposed." **[Of course they should—but that has nothing to do with this bill, which does not misuse it in this way.]**

The ACLU of Georgia also believes that this legislation is unnecessary. **[See above for why it is necessary. Antisemitism is surging around the country, and the Peach State has not been immune. Over the last five years Georgia has had 188 reported incidents of antisemitism, and in 2018 it had the highest number of incidents in the Southeast.[209]]** Importantly, Jewish Georgians are already protected by the Georgia code and the Civil Rights Act of 1964, under which numerous courts have held that Jews, whether actively religious or not, are protected from discrimination under the "race" and "national origin" language. **[Unfortunately, however, without a definition explaining what antisemitic discrimination looks like, these protections are clearly**

209. *See* ADL H.E.A.T. MAP™ (HATE, EXTREMISM, ANTISEMITISM, TERRORISM), ANTI-DEFAMATION LEAGUE, https://bit.ly/3yUGY5p (last visited Oct. 18, 2022).

> **and demonstrably insufficient. See the rising national rates of reported incidents for proof.]** Ultimately, HB 1274 would have a chilling effect on constitutionally protected political speech. **[A return to an unsubstantiated assertion already debunked. Still not one shred of evidence, not one explanation of how this bill would ever have an effect on speech of any kind, not one indication that counsel is aware of unanimous Supreme Court precedent declaring that the evidentiary use of speech to assess motivation behind illegal discriminatory acts does not chill speech, and not one provision counsel could point to as indicative of the problem they are 'gravely concerned' about.]** This committee should not pass this legislation as drafted and at the very least, this committee must reconsider incorporating the IHRA's definition of anti-Semitism into Georgia law. **[Note the quiet implication that there might be something problematic about incorporating a definition by reference.]** Thank you.[210]

Case study closed. This is not a game. There are real people here who are facing real and often violent attacks by perpetrators who then hide behind the lack of a definition to walk away free from accountability. The ACLU should be nothing less than ashamed to give 'testimony' of this nature and poor legal caliber.

IV. CONCLUSION: WHAT DOES IT MEAN FOR A STATE TO ADOPT IHRA AS PART OF AN ANTISEMITISM BILL?

One cannot fight a problem if one cannot even identify when it has occurred. Rectifying that problem when it comes to antisemitism begins with the ability to properly define its parameters. When antisemitic ideas, including antisemitic anti-Zionism, form the basis for, or provide the intent behind, or motivate illegal antisemitic *acts*, then authorities must be in a position to respond in a way that protects the Jewish community. God willing, these bills will help the government to do that.

Because Jewish identify is so multifaceted, in the absence of a standard definition for authorities to reference, antisemites have learned that it is easy to hide behind this ambiguity. Antisemites can, and do, commit heinous acts with impunity, then claim it was not antisemitism but rather some other more socially acceptable bias (e.g., anti-Zionism) that the victim deserves to be confronted with. The predator in turn pretends to be the prey. Practically speaking, the bills that some states have passed, and the bills many more states are considering, are actually quite narrow. All they do is ensure that when analyzing the intent behind illegal discriminatory actions (not speech) that target Jewish people,

210. *Hearing on H.B. 1274 Before the H. Judiciary Comm.*, 2022 Leg., Reg. Sess. (Ga. 2022) (statement of David Goldman, Pol'y Couns., ACLU of Ga.).

when there is an allegation that the action was motivated by anti-Jewish sentiment, authorities consider (as rebuttable, contextual evidence of whether antisemitism was involved) the world's most well-accepted definition of antisemitism.

Despite what some have tried to claim, if a person wishes to criticize Israel, even harshly, then these laws should not worry that person *at all*. In fact, even if a person was spewing more traditional antisemitic hatred, say about specific religious practices, they would still have nothing to fear because these laws, demonstrably, have nothing to do with silencing *anyone* about *anything*. If, however, people are actually engaging in the kind of destructive *conduct* that would be illegal if done for discriminatory purposes, *and* their motive seems to be based on targeting Jewish people, then the person investigating and charged with assessing whether or not there was antisemitic intent involved *should* be using the gold-standard definition of antisemitism as a measure to compensate or correct for any potential ignorance or implicit bias. Anyone opposing these bills must be called upon to substantiate why they disagree with that statement.

Once again, these bills categorically do *not* criminalize or make *anything* illegal. Nor do they create any new protected class, enhance any punishment, or regulate and restrict academic freedom. Unlawful discriminatory actions, harassment, and crimes, that are motivated by antisemitic intent, are already unlawful by definition. But without a standard definition of what antisemitism includes, it is too easy for officials to either willfully or accidentally fail to see the problem and therefore fail to enforce existing laws and regulations about bigotry and discrimination. These bills fill in that missing gap in the text.

One final reason to pass these bills is because of what antisemitism is *not.* It is *not* just about the Jews, and it is not just a Jewish problem. As the late Chief Rabbi Jonathan Sacks famously explained, at the root of antisemitic hatred is a society's unhealthy inability to tolerate difference. "[T]he hate that begins with Jews never ends with Jews. . . . Antisemitism is the world's most reliable early warning sign of a major threat to freedom. . . . It matters to all of us. Which is why we must fight it together."[211] As Ahmed Shaheed, the United Nations Special Rapporteur on freedom of religion or belief, noted in his recent Human Rights Council report on antisemitism,[212] the same report in which he

211. The Rabbi Sacks Legacy, *Rabbi Sacks on the Mutation of Antisemitism | Animation | Rabbi Jonathan Sacks*, YOUTUBE (Sept. 9, 2015), https://bit.ly/3gkMdVt. *See generally* RABBI JONATHAN SACKS, THE DIGNITY OF DIFFERENCE: HOW TO AVOID THE CLASH OF CIVILIZATIONS (2002).

212. *See generally* Ahmed Shaheed (Special Rapporteur on Freedom of Religion or Belief), *Elimination of All Forms of Religious Intolerance*, U.N. DOC. A/74/358 (Sept. 20, 2019). *See infra* note 213 and accompanying text for reasons why this might be the case.

recommended that governments around the world use the IHRA Definition,[213] "antisemitism, if left unchecked by governments, poses risks not only to Jews, but also to members of other minority communities. Antisemitism is toxic to democracy and mutual respect of citizens and threatens all societies in which it goes unchallenged."[214]

Let us challenge it together; country by country and state by state.

213. The Special Rapporteur included a thorough discussion of the IHRA as well as critics of the definition who claimed that it would restrict political expression about Israel. He noted, however, that

> [T]he IHRA definition does not designate these as examples of speech that are ipso facto antisemitic and further observes that a contextual assessment is required under the definition to determine if they are antisemitic. Nevertheless, the potential chilling effects of the use of these examples by public bodies on speech that is critical of Israeli government policies and practices must be taken seriously as should the concern that criticism of Israel sometimes has been used to incite hatred towards Jews in general such as through expression that feed on traditional antisemitic stereotypes of Jews. Therefore, the use of the definition, as a non-legal educational tool, could minimize such chilling effects and contribute usefully to efforts to combat antisemitism. *Where public bodies use the definition in any regulatory context, due diligence must be exercised to ensure that freedom of expression within the law is protected for all.*

Shaheed, *supra* note 212, at 13 (emphasis added). As this article has once again demonstrated, that due diligence has been taken.

214. *Id.* at 1.

Defining Antisemitism

*Mark Goldfeder**

"Some people hate Jews. Fine, alright it's been done.
I mean, that's part of my problem with it.
Could you hate somebody new?"
-Gary Gulman

Antisemitic harassment is illegal, but without a standard definition of what 'antisemitism' includes, that idea is almost meaningless. That is why state legislatures and university administrators across the country are debating enacting policies that adopt the International Holocaust Remembrance Alliance ("IHRA") definition of antisemitism. This Article will illustrate precisely how a state bill or a university policy utilizing the IHRA definition for assessing motivation when analyzing discriminatory conduct claims would actually function, so that critics can no longer vaguely claim that such policies would somehow offend the First Amendment. It will also explain the difference between protected political speech and thinly-veiled antisemitism, and provide a case study to illustrate the very real danger of what can happen when perpetrators are allowed to confuse speech with acts and conflate politics with demonizing and discriminatory hatred.

* Dr. Mark Goldfeder, Esq. is the Director of the National Jewish Advocacy Center, a Member of the United States Holocaust Memorial Council, counsel for Hillels of Georgia, and served as the founding Editor of the Cambridge University Press Series on Law and Judaism. The author wishes to thank Kenneth L. Marcus and Alyza Lewin for their thoughtful and helpful comments, Marc Greendorfer, Gadi Dotz, Eugene Kontorovich, Harry Hutchison, Jay Schaefer, Jeremy Rabkin, Sasha Volokh, Miles Terry, Danielle Park, Jonathan Fiebelkorn, Andrew Pessin, Mark Rotenberg, and Courtney Kramer for their insightful reviews, and Elliot Karp, CEO of Hillels of Georgia, for his leadership and investment on this issue.

I. INTRODUCTION 121
II. THE IHRA DEFINITION OF ANTISEMITISM 127
III. TITLE VI AND THE EXECUTIVE ORDER ON COMBATING ANTISEMITISM 143
IV. THE NEXT STEP FOR STATES AND UNIVERSITIES: PROACTIVELY ADOPTING THE IHRA DEFINITION 150
V. THE MODEL POLICY DOES NOT RESTRICT OR SUPPRESS SPEECH 154
A. What the Policy Does Not Do 154
1. The Model Policy Does Not Restrict or Prohibit Speech 154
2. The Model Policy Does Not Create Any Gray Area of Speech/Act Non-Distinction 155
3. Finally, Such a Policy Will Not Impermissibly Chill Speech 158
VI. ADOPTING THE DEFINITION HELPS STATES AND SCHOOLS MONITOR, PREVENT, AND EDUCATE ABOUT ANTISEMITISM 164
A. Adopting a Definition Would Help States and Schools Monitor and Report on Antisemitism 164
B. Adopting a Definition Would Help States and Schools Educate Their Constituencies About Antisemitism 168
VII. CRITICISM OF ISRAEL AND ANTISEMITISM 169
VIII. A CASE STUDY IN THE NECESSITY OF CLEARLY DEFINING TERMS 184
A. What Happened "Over There" 184
B. Could That Happen Here? 186
IX. CONCLUSION 195

I. INTRODUCTION

Antisemitism, loosely defined (we shall soon see why) as the prejudice against and hatred of the Jewish people, is often called the oldest form of hatred in the history of man.[1] Unfortunately, it is also perhaps the most persistent.[2] And, despite the fact that we are still within living memory of the Holocaust,[3] for the past several years antisemitism has been making a public comeback,[4] even in these United States,[5] and even during a pandemic.[6]

Each year since 1979, the Anti-Defamation League has published a report that measures the number of antisemitic acts in the United States.[7] In 2017, there were 1,986 reported antisemitic incidents, a 57 percent increase over the previous year, and the biggest annual jump

---

[1] Hillel Halkin, *The Persistence of the Oldest Hatred*, N.Y. TIMES (Sept. 10, 2019), https://www.nytimes.com/2019/09/10/books/review/how-to-fight-anti-semitism-bari-weiss.html; *see generally* Ildikó Barna et al., *Contemporary Forms of the Oldest Hatred: Modern Antisemitism in the Visegrád Countries*, *in* THE NOBLE BANNER OF HUMAN RIGHTS: ESSAYS IN MEMORY OF TOM LANTOS, 303–38 (Katrina Lantos Swett, Anna-Mária Biró & Máté Fischer eds., 2018).

[2] *Introduction*, *in* ANTISEMITISM: A HISTORY 8 (Albert S. Lindemann & Richard S. Levy eds., 2010).

[3] *See generally* FACING HISTORY AND OURSELVES, HOLOCAUST AND HUMAN BEHAVIOR, 606–11, 662 (2017).

[4] Ahmed Shaheed (Special Rapporteur on Freedom of Religion or Belief), *The Elimination of All Forms of Religious Intolerance*, U.N. Doc. A/74/358 (Sept. 20, 2019); Eva Cossé, *The Alarming Rise of Antisemitism in Europe: European Governments and Public Should Stand Up Against Hate*, HUM. RTS. WATCH (June 4, 2019, 10:12 AM), https://www.hrw.org/news/2019/06/04/alarming-rise-anti-semitism-europe.

[5] *See generally* AUDIT OF ANTI-SEMITIC INCIDENTS: YEAR IN REVIEW 2018, ANTI-DEFAMATION LEAGUE (2019), https://www.adl.org/media/13144/download [hereinafter 2018 REVIEW]; LEONARD SAXE ET AL., BRANDEIS UNIV.: MAURICE & MARILYN COHEN CTR. FOR MODERN JEWISH STUDIES, HOTSPOTS OF ANTISEMITISM AND ANTI-ISRAEL SENTIMENT ON US CAMPUSES (2016), https://bir.brandeis.edu/bitstream/handle/10192/33070/AntisemitismCampuses102016.pdf?sequence=1&isAllowed=y.

[6] Dina Porat, Position Paper, *Blaming the Jews and Israel for the Coronavirus Pandemic: Historical Background and Current-Day Reactions*, TEL AVIV UNIV.: KANTOR CTR., July 6, 2020; *see also* Walter Russell Mead, *Amid the Pandemic, Anti-Semitism Flares Up*, WALL ST. J. (Apr. 15, 2020, 6:53 PM), https://www.wsj.com/articles/amid-the-pandemic-anti-semitism-flares-up-11586991224; Samantha Mandeles, *Investigation: How Anti-Israel Activists Are Hijacking The Coronavirus Crisis And Turning It Against Israel*, LEGAL INSURRECTION (Apr. 9, 2020, 9:00 PM), https://legalinsurrection.com/2020/04/investigation-how-anti-israel-activists-are-hijacking-the-coronavirus-crisis-and-turning-it-against-israel/#more-312987.

[7] 2018 REVIEW, *supra* note 5; *Anti-Semitic Incidents Remained at Near-Historic Levels in 2019; Assaults Against Jews More Than Doubled*, ANTI-DEFAMATION LEAGUE (Apr. 30, 2019), https://www.adl.org/news/press-releases/anti-semitic-incidents-remained-at-near-historic-levels-in-2018-assaults.

since the organization started tracking these numbers.[8] In 2018, there was a 105 percent increase in the number of recorded physical assaults on Jewish people, including the deadliest attack on Jews in the history of the United States at the Tree of Life Synagogue in Pittsburgh.[9] On university campuses around the country, antisemitism has become entrenched, systemic, broad, and deep, with recent studies showing that the number of Jewish students experiencing antisemitism on campuses across the United States spiked to nearly 75 percent.[10] In 2017 alone there were more than 204 reports of antisemitic incidents of harassment, vandalism, or assault against Jewish students on campus—an 89 percent increase from the previous year.[11] The numbers continued to rise in 2018,[12] and the student organization, Hillel International, "reported that antisemitic incidents reached an all-time high . . . during the 2019–2020 academic year at the 550 U.S. colleges and universities that it serves."[13]

These statistics ought to raise serious concerns for American society and prompt further investment in identifying and dealing with the underlying illnesses[14] that fuel this never-ending hatred. This is true not only because it is simply wrong to be antisemitic, but also because history has shown that antisemitism is often a form of gateway racism;[15] the proverbial "canary in the coal mine of intolerance."[16]

---

[8] 2018 REVIEW, *supra* note 5, at 7.

[9] *Id.* at 8.

[10] LEONARD SAXE ET AL., BRANDEIS UNIV.: MAURICE & MARILYN COHEN CTR. FOR MODERN JEWISH STUDIES, ANTISEMITISM AND THE COLLEGE CAMPUS: PERCEPTIONS AND REALITIES 1, 13 (2015), https://bir.brandeis.edu/bitstream/handle/10192/30810/AntisemitismCampus072715.pdf.

[11] 2018 REVIEW, *supra* note 5, at 29.

[12] *See* Jeremy Bauer-Wolf, *A Surge of Anti-Semitism*, INSIDE HIGHER ED (Dec. 5, 2018), https://www.insidehighered.com/news/2018/12/05/anti-semitic-incidents-surge-college-campuses-after-pittsburgh-synagogue-shooting.

[13] Greta Anderson, *Responding to Rise in Campus Anti-Semitism*, INSIDE HIGHER ED (Sept. 9, 2020), https://www.insidehighered.com/news/2020/09/09/anti-semitism-rise-new-semester-starts.

[14] *See, e.g.*, NATHAN W. ACKERMAN & MARIE JOHODA, ANTI–SEMITISM AND EMOTIONAL DISORDER; A PSYCHOANALYTICAL INTERPRETATION (Max Horkheimer & Samuel H. Flowerman eds., 1950) (discussing the social and psychological roots of prejudice, with a focus on the research highlighting the close correlation between a number of deep-rooted personality disturbances and antisemitism).

[15] DENNIS PRAGER & JOSEPH TELUSHKIN, WHY THE JEWS?: THE REASON FOR ANTISEMITISM, THE MOST ACCURATE PREDICTOR OF HUMAN EVIL 201 (2003); Jerry Klinger, *The Canary in the Coal Mine? American Jewry 1654-1770*, JEWISH AM. SOC. FOR HISTORIC PRESERVATION, http://www.jewish-american-society-for-historic-preservation.org/images/The_Canary_in_the_Coal_Mine.pdf (last visited Oct. 6, 2019).

[16] Bill Rinehart, *Rising Antisemitism Is 'Canary in a Coal Mine' For Other Communities*, CIN. PUB. RADIO (Apr. 9, 2019), https://www.wvxu.org/local-news/2019-04-09/rising-anti-semitism-is-canary-in-a-coal-mine-for-other-communities; Jonathan Freedland,

It is impossible to fully answer the question of *why* antisemitism persists, but former Chief Rabbi Lord Jonathan Sacks believed that "one root cause is the cognitive failure called scapegoating. When bad things happen to a group, its members can ask one of two questions: 'What did we do wrong?' or 'Who did this to us?'"[17] A group that asks what they can do differently in the future will move forward, but a group that asks who else they can blame will begin to persecute the ones who look most different.[18] Historically, this has often been the Jews,[19] but Rabbi Sacks posits that the underlying problem is a society's unhealthy inability to tolerate difference. "And because we are all different, the hate that begins with Jews never ends with Jews .... Antisemitism is the world's most reliable early warning sign of a major threat to freedom .... It matters to all of us. Which is why we must fight it together."[20]

As Ahmed Shaheed, the United Nations Special Rapporteur on freedom of religion or belief, noted in his recent Human Rights Council report on antisemitism, "antisemitism, if left unchecked by Governments, poses risks not only to Jews, but also to members of other minority communities. Antisemitism is toxic to democracy and mutual respect of citizens and threatens all societies in which it goes unchallenged."[21]

There are multiple opinions[22] and best practices guides[23] on how to best combat antisemitism in a variety of different contexts.[24] For

Opinion, *Antisemitism Matters: Jews Are the Canary in the Coalmine*, GUARDIAN (Mar. 30, 2018, 12:04 PM), https://www.theguardian.com/commentisfree/2018/mar/30/antisemitism-jews-canary-coalmine-fake-news; *Antisemitism May Be Canary in the Coal Mine of Intolerance*, JEWISH NEWS OF N. CAL. (Dec. 19, 2014), https://www.jweekly.com/2014/12/19/anti-semitism-may-be-canary-in-the-coal-mine-of-intolerance/.

17 *The Mutation of Antisemitism*, OFF. OF RABBI SACKS (Apr. 19, 2017), https://rabbisacks.org/the-mutation-of-antisemitism/ [hereinafter *Mutation of Antisemitism*].

18 *Id.*

19 As Rabbi Sacks notes, "for a thousand years [the Jews] were the most conspicuous non-Christian minority in Europe and today because Israel is the most conspicuous non-Muslim country in the Middle East." *Id.*

20 *Id. See generally* RABBI JONATHAN SACKS, THE DIGNITY OF DIFFERENCE: HOW TO AVOID THE CLASH OF CIVILIZATIONS (2002).

21 *See* Ahmed Shaheed (Special Rapporteur on Freedom of Religion or Belief), *The Elimination of All Forms of Religious Intolerance 2/23*, U.N. Doc. A/74/358 (Sept. 20, 2019). See below for reasons why this might be the case.

22 *See* BARI WEISS, HOW TO FIGHT ANTISEMITISM (2019).

23 *See* Kenneth L. Marcus, *Best Practices Guide for Combating Campus Antisemitism and Anti-Israelism*, LOUIS D. BRANDEIS CTR. FOR HUMAN RIGHTS UNDER LAW, https://brandeiscenter.com/wp-content/uploads/2017/10/guide_01.pdf (last visited July 30, 2021).

24 *See, e.g.*, ONLINE ANTISEMITISM TASK FORCE (2019), https://www.antisemitismtaskforce.org/ (last visited Aug. 28, 2020) ("[D]edicated solely to proactively seeking out, monitoring, and actively reporting online antisemitic content to remove it from the web.").

example, while many organizations push for more nuanced general education about religion[25] or programming about the benefits of diversity,[26] former New York Times editor Bari Weiss urges Jews to take control by taking pride in their heritage.[27] In the meantime, however, from a policy perspective, the government must take steps to stem a quantifiable and incontrovertible antisemitic tide. State officials and institutions, including educational institutions, have a responsibility to protect citizens and students from hate and bigotry. They must be given the necessary tools to both educate their constituencies about what contemporary antisemitism looks like and stem those criminal and discriminatory acts that are motivated by antisemitism.

One major problem is the lack of an accepted definition of antisemitism. A recent survey found that "*more than half* of Americans 18 to 29 years old—the cohort most widely represented among college students and recent graduates—said they didn't know the meaning of the word 'anti-Semitism.'"[28] The same report found that nearly *half of the general American population* is unfamiliar with the term.[29]

Antisemitic harassment is illegal,[30] but without a standard definition of what antisemitism includes, that idea is almost

---

[25] Joshua M. Z. Stanton & Benjamin P. Marcus, *The Key to Fighting Antisemitism? Children*, FORWARD (Feb. 26, 2019), https://forward.com/opinion/419961/the-key-to-fighting-antisemitism-children/.

[26] *Confront Hate and Antisemitism*: *Teaching About Antisemitism*, U.S. HOLOCAUST MEM'L MUSEUM (2019), https://www.ushmm.org/confront-antisemitism/teaching-about-antisemitism (providing resources and guides to teach about fighting all kinds of prejudice); RABBI EVAN MOFFIC, FIRST THE JEWS: COMBATING THE WORLD'S LONGEST-RUNNING HATE CAMPAIGN (2019) (urging people to respond to antisemitism by learning to appreciate the other and focus on common ground).

[27] *See, e.g.*, WEISS, *supra* note 22.

[28] Seffi Kogen, *It's Time We Taught Anti-Semitism*, INSIDE HIGHER ED (Feb. 2, 2021), https://www.insidehighered.com/views/2021/02/02/anti-semitism-major-problem-campuses-and-students-must-be-educated-about-it-opinion (citing AVI MAYER, AM. JEWISH COMM., THE STATE OF ANTISEMITISM IN AMERICA 2020 (2020), https://www.ajc.org/sites/default/files/pdf/2020-11/The_State_of_Antisemitism_in_America_2020.pdf).

[29] "While just over half (53%) of the general public has heard of antisemitism and knows what it means, a quarter of respondents (25%) said they had heard the term but aren't sure what it means and fully a fifth—21%—said they had never heard the term before." AVI MAYER, AM. JEWISH COMM., THE STATE OF ANTISEMITISM IN AMERICA 2020, at 7 (2020), https://www.ajc.org/sites/default/files/pdf/2020-11/The_State_of_Antisemitism_in_America_2020.pdf.

[30] Aside from a variety of more explicit state anti-discrimination laws (*see* JEROME HUNT, CTR. FOR AM. PROGRESS ACTION FUND, A STATE-BY-STATE EXAMINATION OF NONDISCRIMINATION LAWS AND POLICIES 5–6 (2012), https://www.americanprogress.org/wp-content/uploads/issues/2012/06/pdf/state_nondiscrimination.pdf), Title VII of the Civil Rights Act of 1964 protects employees against many forms of discrimination, including race, gender, national origin, sex, and religion, while Title VI protects Jewish

meaningless.[31] That is why numerous state legislatures[32] are considering enacting specific statutes that not only address antisemitic behavior, but adopt a definition of antisemitism to better protect against discriminatory antisemitic harassment. State laws would affect state schools, but to their credit many university systems—both public and private—are not waiting to be told that they have to care more about, and do more for, their Jewish students. The clear rise in antisemitic feeling and behavior,[33] especially on campuses,[34] led several universities[35] to proactively embrace a definition of antisemitism to better educate their campus communities about what antisemitism is[36] and to better protect against illegal antisemitic harassment.

This Article is addressed to the remainder of state legislatures and university officials who have not yet clarified their existing anti-

students from discrimination based on their race or national origin. *See* Civil Rights Act of 1964 §§ 6–7, 42 U.S.C. § 2000e (1964).

[31] Some have asked why antisemitism needs defining more than other discriminatory behaviors, and as discussed in various sections throughout this article, the answer is threefold: 1) throughout the generations no other hatred has been this amorphous and shifting, and therefore defying of definition; 2) related to that, modern antisemitism is unique because people can and do commit horrible acts of antisemitic discrimination and then claim that they were merely being "anti-Israel," and the lack of a definition allows them to get away with it; and 3) notwithstanding all of the above, the importance of clarity in such definitions is not unique to antisemitism—to the extent that any other group feels it is routinely and systemically discriminated against, and that there is a need for a definition to clarify what is and is not hate speech—that group's concerns should be addressed in a similar manner. In a somewhat related vein, the Black Lives Matter movement *has* argued that many states and universities do not understand structural racism, and students at dozens of schools have published their lists of demands for change. *See, e.g.*, THE DEMANDS, https://www.thedemands.org/ (last visited Jan. 17, 2020).

[32] As of the time of this writing, at least thirteen states are considering legislation to adopt the IHRA definition of anti-Semitism, not including Florida, which already adopted the definition.

[33] *Antisemitic Incidents Hit All-Time High in 2019*, ANTI-DEFAMATION LEAGUE (May 12, 2020), https://www.adl.org/news/press-releases/antisemitic-incidents-hit-all-time-high-in-2019.

[34] *See* Anderson, *supra* note 13.

[35] *See, e.g.*, *Arizona State University Student Government Adopted SR 05 in Support of the Jewish Students and the Pro Israel Community with a 15-1-3 Vote*, STUDENTS SUPPORTING ISRAEL (2019), https://www.ssimovement.org/asu.html; *Pace University Student Government Adopts Universal Definition of Anti-Semitism*, JEWISH NEWS SYNDICATE (Oct. 29, 2020), https://www.jns.org/pace-university-student-government-adopts-universal-definition-of-anti-semitism/; *Florida State University Adopts IHRA's Definition of Antisemitism*, JERUSALEM POST (Aug. 17, 2020), https://www.jpost.com/diaspora/florida-state-university-adopts-ihras-definition-of-antisemitism-638706.

[36] John Thrasher, *A Message from President John Thrasher: An Update on Antisemitism and Religious Discrimination*, FLA. ST. U. NEWS (Aug. 12, 2020, 3:50 PM), https://news.fsu.edu/news/university-news/2020/08/12/a-message-from-president-john-thrasher-an-update-on-antisemitism-and-religious-discrimination/.

discrimination provisions by defining antisemitism. It proposes two somewhat interrelated policy actions: (a) the passing of state-level legislation, and (b) the adoption of university policies, to define antisemitism using the internationally accepted International Holocaust Remembrance Alliance ("IHRA") definition of antisemitism.[37] These actions would not create any new laws or regulations, but would only ensure that existing laws and regulations protecting Jewish people are enforced.

These proposals build on the work of many others, including the groundbreaking work of former U.S. Department of Education Assistant Secretary for Civil Rights Kenneth Marcus,[38] Professor Eugene Kontorovich, the intellectual force behind state anti-Boycott Divestment and Sanctions ("BDS") bills,[39] and Senators Tim Scott and Bob Casey, sponsors of a similar act undertaken at the federal level.[40] This Article will illustrate how and why the efforts to have states and universities adopt the IHRA definition of antisemitism are proceeding[41] and are likely to succeed. Most importantly, it will also delineate precisely what a state bill or a university policy utilizing the IHRA definition to assess the motivation behind discriminatory conduct claims would *not* do, so that future critics cannot vaguely raise First Amendment or constitutional concerns.[42] Next, the Article will explain the difference

---

[37] *Working Definition of Antisemitism*, INT'L HOLOCAUST REMEMBRANCE ALLIANCE, https://www.holocaustremembrance.com/resources/working-definitions-charters/working-definition-antisemitism (last visited Jan. 22, 2021).

[38] *See* Kenneth L. Marcus, *The New OCR Anti-Semitism Policy*, 2 J. FOR STUDY OF ANTISEMITISM 479 (2011), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=1813192. Marcus was instrumental in ensuring that Title VI would also be used to protect students of faith. *See also* Kenneth L. Marcus, *Anti-Zionism as Racism: Campus Anti-Semitism and the Civil Rights Act of 1964*, 15 WM. & MARY BILL RTS J. 837, 839 (2007) (arguing "anti-Semitic harassment at [institutions receiving federal assistance], constitutes racial discrimination prohibited by Title VI when sufficiently severe, pervasive, and objectively offensive as to deny equal educational opportunities to Jewish students").

[39] *See Podcast: Eugene Kontorovich on the Legalities and Controversies of Anti-BDS Law*, MOSAIC MAG. (Mar. 7, 2019), https://mosaicmagazine.com/observation/history-ideas/2019/03/podcast-eugene-kontorovich-on-the-legalities-and-controversies-of-anti-bds-law/; *see also* Eugene Kontorovich, Opinion, *Israel Anti-Boycott Bill Does Not Violate Free Speech*, WASH. POST (July 27, 2017), https://www.washingtonpost.com/news/volokh-conspiracy/wp/2017/07/27/israel-anti-boycott-bill-does-not-violate-free-speech/.

[40] *See* Anti-Semitism Awareness Act of 2019, S. 852, 116th Cong. (2019).

[41] This gradual adoption is proceeding domestically and around the world. *See* Chris Parr, *More Universities Adopt IHRA Antisemitism Definition*, RES. PROF. NEWS (Dec. 9, 2020), https://www.researchprofessionalnews.com/rr-news-uk-universities-2020-12-more-universities-adopt-ihra-antisemitism-definition/.

[42] For a discussion of similar concerns raised in the context of state BDS legislation, see Mark Goldfeder, *Stop Defending Discrimination: Anti-Boycott, Divestment, and*

between criticism of Israel and thinly veiled antisemitism. Finally, the Article will provide a case study to illustrate the very real danger of what can happen when perpetrators are allowed to obfuscate their intentions by confusing speech with acts and conflating politics with demonizing and discriminatory hatred.

II. THE IHRA DEFINITION OF ANTISEMITISM

The International Holocaust Remembrance Alliance (originally the Task Force for International Cooperation on Holocaust Education, Remembrance, and Research) is an intergovernmental organization that "unites governments and experts to strengthen, advance and promote Holocaust education, research and remembrance and to uphold the commitments to [the 2000 Declaration of the Stockholm International Forum on the Holocaust]."[43] As "the only intergovernmental organization mandated to focus solely on Holocaust-related issues," and "with evidence that the scourge of antisemitism is once again on the rise," IHRA experts resolved to take a leading role in combatting antisemitism, and "determined that in order to begin to address the problem of antisemitism, there must be clarity about what antisemitism is."[44] The Committee on Antisemitism and Holocaust Denial first developed their definition in 2003–2004,[45] and published it as a Working Definition in January 2005.[46] The U.S. State Department endorsed the definition as a guide in 2007,[47] started using it in 2010,[48] and in 2016,[49] when the Working Definition was formally adopted by a

Sanctions Statutes are Fully Constitutional, 50 TEX. TECH. L. REV. 207, 218–38 (2018) [hereinafter Goldfeder, *Stop Defending Discrimination*].

[43] *About Us*, INT'L HOLOCAUST REMEMBRANCE ALLIANCE, https://www.holocaustremembrance.com/about-us (last visited Jan. 17, 2020); *Stockholm Declaration*, INT'L HOLOCAUST REMEMBRANCE ALLIANCE, https://holocaustremembrance.com/about-us/stockholm-declaration (last visited Jan. 17, 2020).

[44] *Antisemitism*, INT'L HOLOCAUST REMEMBRANCE ALLIANCE, https://www.holocaustremembrance.com/antisemitism (last visited Jan. 17, 2020).

[45] *See Anti-Semitism Across Borders*: *Hearing Before the Subcomm. on Afr., Glob. Health, Glob. Human Rights., & Int'l Orgs. of the H. Comm. on Foreign Affairs*, 115th Cong. (2017), https://www.govinfo.gov/content/pkg/CHRG-115hhrg24753/html/CHRG-115hhrg24753.htm.

[46] Manfred Gerstenfeld, *To Fight Antisemitism, You Have to Define It,* ARUTZ SHEVA, http://www.israelnationalnews.com/Articles/Article.aspx/22096 (last visited Aug. 1, 2020).

[47] https://2001-2009.state.gov/g/drl/rls/56589.htm

[48] *Id.*; *Defining Antisemitism*, U.S. DEP'T OF STATE, https://www.state.gov/defining-anti-semitism/ (last visited Oct. 19, 2021).

[49] *Defining Antisemitism*, *supra* note 48.

plenary meeting of the then thirty-one countries in the IHRA,[50] officially adopted it.[51] The definition (along with its accompanying illustrations) reads as follows:

> "Antisemitism 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."
>
> To guide IHRA in its work, the following examples may serve as illustrations:
>
> Manifestations might include the targeting of the state of Israel, conceived as a Jewish collectivity. However, criticism of Israel similar to that leveled against any other country cannot be regarded as antisemitic. Antisemitism frequently charges Jews with conspiring to harm humanity, and it is often used to blame Jews for "why things go wrong." It is expressed in speech, writing, visual forms and action, and employs sinister stereotypes and negative character traits.
>
> Contemporary examples of antisemitism in public life, the media, schools, the workplace, and in the religious sphere could, taking into account the overall context, include, but are not limited to:
>
> - Calling for, aiding, or justifying the killing or harming of Jews in the name of a radical ideology or an extremist view of religion.
> - Making mendacious, dehumanizing, demonizing, or stereotypical allegations about Jews as such or the power of Jews as collective—such as, especially but not exclusively, the myth about a world Jewish conspiracy or of Jews controlling the media, economy, government or other societal institutions.

[50] *31 Countries Adopt New Definition of Anti-Semitism that Includes Anti-Zionism,* TOWER (June 3, 2016, 3:24 PM), http://www.thetower.org/3462-31-countries-adopt-new-definition-of-anti-semitism-that-includes-anti-zionism/.

[51] *Defining Antisemitism*, *supra* note 48.

- Accusing Jews as a people of being responsible for real or imagined wrongdoing committed by a single Jewish person or group, or even for acts committed by non-Jews.
- Denying the fact, scope, mechanisms (e.g.[,] gas chambers) or intentionality of the genocide of the Jewish people at the hands of National Socialist Germany and its supporters and accomplices during World War II (the Holocaust[).]
- Accusing the Jews as a people, or Israel as a state, of inventing or exaggerating the Holocaust.
- Accusing Jewish citizens of being more loyal to Israel, or to the alleged priorities of Jews worldwide, than to the interests of their own nations.
- 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.
- Applying double standards by requiring of it a behavior not expected or demanded of any other democratic nation.
- Using the symbols and images associated with classic antisemitism (e.g., claims of Jews killing Jesus or blood libel) to characterize Israel or Israelis.
- Drawing comparisons of contemporary Israeli policy to that of the Nazis.
- Holding Jews collectively responsible for actions of the state of Israel.

Antisemitic acts are criminal when they are so defined by law (for example, denial of the Holocaust or distribution of antisemitic materials in some countries).

Criminal acts are antisemitic when the targets of attacks, whether they are people or property—such as buildings, schools, places of worship and cemeteries—are selected because they are, or are perceived to be, Jewish or linked to Jews.

Antisemitic discrimination is the denial to Jews of opportunities or services available to others and is illegal in many countries.[52]

[52] *Defining Antisemitism*, *supra* note 48 (quoting *Working Definition of Antisemitism*, INT'L HOLOCAUST REMEMBRANCE ALLIANCE, https://www.holocaustremembrance.com/

There are two reasons why this definition is appropriate to use when assessing motivation behind discriminatory acts. The first relates to the practical difficulty of defining antisemitism, and the second relates to the legal standard of objectivity required when assessing discriminatory intent.

While the term antisemitism is relatively modern—it was first popularized by German journalist Wilhelm Marr in 1879[53]—the history of hating Jews goes back much further.[54] There is nowhere near enough space in this article for even a brief history of antisemitism,[55] but it is worth noting that some patterns consistently emerge, in particular when it comes to antisemitism's focus; the form if not the content of its justifications; and the effective process by which it allows otherwise decent people to do horrible things.

In terms of its focus, antisemitism often looks at Jews as a collective,[56] the idea that while individual Jews might be tolerable, Jews as a separate collective identity should not be allowed to exist with the same rights as other groups.[57] That is why the majority of antisemitism

resources/working-definitions-charters/working-definition-antisemitism (last visited Jan. 22, 2021).

[53] FACING HISTORY AND OURSELVES, *supra* note 3. Why not the term anti-Jewish? According to Marr's biographer, Moshe Zimmerman, the term antisemitism itself, as opposed to anti-Jewish, "became popular . . . because of its scientific pretentions. The term was also somewhat vague and thus 'good cover' against 'legal suits,' casting 'a cloak of uncertainty over the intent of the hatred against the Jews.'" Thorsten Fuchshuber, *From Wilhelm Marr to Mavi Marmama: Antisemitism and Anti-Zionism as Forms of Anti-Jewish Action*, *in* ANTI-ZIONISM AND ANTISEMITISM: THE DYNAMICS OF DELEGITIMIZATION 30, 31–32 (2019) (citing MOSHE ZIMMERMANN, WILHELM MARR THE PATRIARCH OF ANTI-SEMITISM 90, 94 (1986)). In short, "the term *antisemitism* served the same 'purpose which the term "anti-Zionism" serves today—evading the accusation of engaging in something improper.'" *Id.* at 32.

[54] *Anti-Semitism*, HIST. (last updated June 10, 2019), https://www.history.com/topics/holocaust/anti-semitism.

[55] *See, e.g.*, LÉON POLIAKOV, THE HISTORY OF ANTISEMITISM: FROM THE TIME OF CHRIST TO THE COURT JEWS (Richard Howard trans., Univ. Penn. Press 2003) (1955); ROBERT S. WISTRICH, ANTISEMITISM: THE LONGEST HATRED (1991); HADASSA BEN-ITTO, THE LIE THAT WOULDN'T DIE: THE PROTOCOLS OF THE ELDERS OF ZION (2005); MICHAEL BURLEIGH, THE RACIAL STATE: GERMANY 1933–1945 (1991); ANTISEMITISM: A HISTORICAL ENCYCLOPEDIA OF PREJUDICE AND PERSECUTION (Richard S. Levy ed., 2005); JAMES W. PARKES, ANTISEMITISM (1963).

[56] When Marr founded the 'League of Antisemites,' for example, he wrote that "[n]ot individual Jews, but the Jewish spirit and Jewish consciousness have overpowered the world." Wilhem Marr, *Der Sieg des Judenthums ueber das Germanenthum vom nicht confessionellen Standpunkt ausbetrachtet*, (Paul Mendes-Flohr & Jehuda Reinharz trans., 1879) *in* THE JEW IN THE MODERN WORLD: A DOCUMENTARY HISTORY 331, 332 (Paul Mendes-Flohr & Jehuda Reinharz eds., 2d ed. 1995).

[57] *See, e.g.*, *Rabbi Sacks on the Connection Between Judaism and Israel*, OFF. OF RABBI SACKS (Apr. 29, 2019), https://rabbisacks.org/rabbi-sacks-on-the-connection-between-judaism-and-israel/. See also Per Ahlmark, former leader of the Swedish Liberal Party

in any given era tends to focus on the primary form of collective Jewish identity at that point in time.[58] Throughout the Middle Ages Jews were mostly a religious community and so they were hated for their religion—even if the particular Jews being oppressed were not religiously Jewish.[59] In the nineteenth and twentieth centuries, when many Jews became secularized, the primary unifying collective identity of Jews was their ethnicity, and so the hatred mutated to focus on race—even when the assimilated Jews being murdered had only a trace amount of Jewish blood.[60] Today, when the primary collective embodiment of Jewish people on the world stage is the people of Israel in their nation state, Jews around the world are hated and held accountable for 'their' state—even if they are not Israeli.[61]

In each instance the essence of antisemitism remains the same—even if the focus somewhat shifts. Antisemitism, or anti-Jewishness, is

> anchored in the denial of the very legitimacy of the Jews as a people .... [It is] an assault upon whatever is the core of Jewish self-definition at any given moment in time—be it the Jewish religion, or Israel as the 'civil religion' or juridical expression of the Jewish people.[62]

While antisemitism's focus can shift over time, in every generation those manifesting such bigotry use some variant of the same refrain: "we don't hate Jews, we just can't stand __."[63] To justify their hatred in a

---

and Deputy Prime Minister of Sweden, remarking that while antisemitism may begin by primarily attacking the collective Jews, "[s]uch attacks ... [start] a chain reaction of assaults ... on individual Jews and Jewish institutions." Per Ahlmark, *The Old in the New Anti-Semitism*, PROJECT SYNDICATE, https://www.project-syndicate.org/commentary/the-old-in-the-new-anti-semitism; Per Ahlmark, Yad Vashem, *Speech at International Conference on the Legacy of Holocaust Survivors*, *in* VIDAL SASSOON INTERNATIONAL CENTER FOR THE STUDY OF ANTISEMITISM, ANNUAL REPORT 8 (2002).

[58] James Wald, *The New Replacement Theory: Anti-Zionism, Antisemitism, and the Denial of History*, *in* ANTI-ZIONISM AND ANTISEMITISM: THE DYNAMICS OF DELEGITIMIZATION 2, 2–3 (2019).

[59] *See, e.g.*, Thomas F. Madden, *The Truth About the Spanish Inquisition*, CRISIS (Oct. 1, 2003), https://www.crisismagazine.com/2003/the-truth-about-the-spanish-inquisition-2.

[60] *See, e.g.*, *The Nuremberg Laws: Background & Overview*, JEWISH VIRTUAL LIBR., https://www.jewishvirtuallibrary.org/background-and-overview-of-the-nuremberg-laws (last visited Jan. 23, 2021).

[61] *See, e.g.*, *The Mutating Virus: Understanding Antisemitism*, OFF. OF RABBI SACKS (Sept. 27, 2016), https://rabbisacks.org/mutating-virus-understanding-antisemitism/ [hereinafter *The Mutating Virus*].

[62] Irwin Cotler, *Global Antisemitism: Assault on Human Rights* (Yale Initiative for the Interdisc. Study of Antisemitism, Working Paper No. 3, 2009), https://isgap.org/wp-content/uploads/2011/10/irwin-cotler-online-final1.pdf.

[63] Students Supporting Israel at Columbia University - SSI Columbia (@SSIcolumbia), FACEBOOK (Sept. 14, 2018), https://www.facebook.com/

socially acceptable way, antisemites need a rationale that can pass in polite society—ideally one that appeals directly to the highest source of authority currently in vogue. As Rabbi Sacks notes, sometimes the justification maps directly onto the target.[64] For example, in the Middle Ages, the highest source of authority was religion;[65] in post-Enlightenment Europe, it was science;[66] and today, it involves using (or abusing) the language of human rights with selective claims of social justice that see only Jews,[67] or the Jewish state,[68] as worthy of condemnation.[69]

watch/?v=300860790706207. In the enduring words of Rabbi Sacks, "We don't hate Jews, they said in the Middle Ages, just their religion. We don't hate Jews, they said in the 19th century, just their race. We don't hate Jews, they say now, just their nation state." *Antisemitism, or any Hate, Become Dangerous When Three Things Happen*, OFF. OF RABBI SACKS (Sept. 13, 2018), https://rabbisacks.org/antisemitism-hate-become-dangerous-three-things-happen-rabbi-sacks-speaks-house-lords/.

[64] Rabbi Jonathan Sacks, Keynote Address of The Future of the Jewish Communities in Europe Conference Before The European Parliament in Brussels (Sept. 27, 2016) [hereinafter The Future of Jewish Communities in Europe], https://www.ohchr.org/Documents/Issues/Religion/Submissions/OfficeofRabbiSacks.pdf.

[65] During the medieval crusades and the pogroms of the nineteenth and twentieth centuries, in which Jews were massacred and maimed, the persecutors focused more on Christian themes for their religious justifications, including charges of deicide and blood libels. *See* MARVIN PERRY & FREDERICK M. SCHWEITZER, ANTISEMITISM: MYTH AND HATE FROM ANTIQUITY TO THE PRESENT 73–117 (2002). Throughout the Biblical period, though, the people of Israel also experienced various forms of overtly religious persecution, largely because they refused to accept the pagan and idolatrous practices of their surrounding communities. *See A Brief History on Anti-Semitism*, ANTI-DEFAMATION LEAGUE (2013), https://www.adl.org/sites/default/files/documents/assets/pdf/education-out-reach/Brief-History-on-Anti-Semitism-A.pdf.

[66] Hence the reliance on pseudoscientific studies about racial eugenics. *See Antisemitism in History: Racial Antisemitism, 1875–1945*, U.S. HOLOCAUST MEM'L MUSEUM, https://encyclopedia.ushmm.org/content/en/article/antisemitism-in-history-racial-antisemitism-18751945 (last visited Jan. 30, 2021).

[67] *See, e.g.*, Channah Newman, *Pursuit of 'Social Justice' Gives Strength to Anti-Semitism*, JEWISH CHRON. (Dec. 2, 2018, 7:26 PM), https://jewishchronicle.timesofisrael.com/pursuit-of-social-justice-gives-strength-to-anti-semitism/.

[68] Sina Arnold & Blair Taylor, *Antisemitism and the Left: Confronting an Invisible Racism*, 9 J. OF SOC. JUST. 2, 20 (2019).

[69] The Future of Jewish Communities In Europe, *supra* note 64. As Rabbi Sacks explains,

> Today the highest source of authority worldwide is human rights. That is why Israel—the only fully functioning democracy in the Middle East with a free press and independent judiciary—is regularly accused of the five cardinal sins against human rights: racism, apartheid, crimes against humanity, ethnic cleansing and attempted genocide. The new antisemitism has mutated so that any practitioner of it can deny that he or she is an antisemite. After all, they'll say, I'm not a racist. I have no problem with Jews or Judaism. I only have a problem with the State of Israel. But in a world of 56 Muslim nations and 103 Christian ones, there is only one Jewish state, Israel, which constitutes one-quarter of one per cent of the land mass of the Middle East. Israel is the only one of the 193

Finally, in terms of its insidious process, one of the rare unifying themes that emerges from the history of antisemitism is the consistent to dehumanize the Jewish people. Whether they portray Jews as malevolently superhuman, as in the Protocols of the Elders of Zion,[70] or as worthlessly subhuman, as in the Nazi ideology,[71] antisemites throughout history have found that it is easier to despise and eventually kill that which they do not consider human. Jews have also been 'othered' in more subtle ways; for example, in America, Jews are regularly considered non-white when whites are privileged,[72] then told that they are privileged whites when they demand recognition of their struggles.[73] "In the past, Jews were rendered alien to the West by being

> member nations of the United Nations that has its right to exist regularly challenged, with one state, Iran, and many, many other groups, committed to its destruction.

That is why, as he has explained elsewhere, "[w]henever you hear human rights invoked to deny Israel's right to exist, you are hearing the new antisemitism." *See Mutation of Antisemitism*, *supra* note 17. At other times, the justification for antisemitism latches on to whatever concrete policy aim is likely to stir up popular support. For example, the Jewish people were enslaved in Egypt for reasons that were eerily foreboding of the kind of thing that would routinely happen to this nation. The Biblical Pharaoh rationalized his actions in the beginning to oppress his Jewish population by blaming the soon-to-be victims, saying: "Come, let us deal shrewdly with them. Otherwise, lest they multiply, and if a war breaks out, they join our enemies and fight against us and escape from the land." *Exodus* 1:10. As Jeff Jacoby keenly noted, Pharaoh's notion of dealing wisely with this national security threat entailed "slave labor, followed by mass murder." Jeff Jacoby, *Hitler, Pharaoh, and the Anti-Semitic Culture of Victimhood*, BOS. GLOBE (Apr. 18, 2012), https://www.bostonglobe.com/opinion/2012/04/18/hitler-pharaoh-and-anti-semitic-culture-victimhood-victims-who-persecute/Hph5XM6IfgWN7VkObPAasI/story.html. "Then Pharaoh commanded all his people, 'Every boy that is born to the Hebrews, you shall throw into the Nile.'" *Id.* (quoting *Exodus* 1:22). Thirty centuries later, when the Nazis came to power, their crimes against the Jews were also described as self-defense. "'The Jews of the whole world are trying to destroy Germany,' screamed government posters as the Nazis unleashed a boycott of Jewish-owned businesses. 'German people, defend yourselves!'" Jacoby, *supra* note 69.

[70] *See* KENNETH L. MARCUS, THE DEFINITION OF ANTI-SEMITISM 44 (2015).

[71] *See generally* Johannes Steizinger, *The Significance of Dehumanization: Nazi Ideology and Its Psychological Consequences,* 19 POL., RELIGION & IDEOLOGY 139 (2018).

[72] *See* KAREN BRODKIN, HOW JEWS BECAME WHITE FOLKS & WHAT THAT SAYS ABOUT RACE IN AMERICA 2 (1998).

[73] *See* ERIC L. GOLDSTEIN, THE PRICE OF WHITENESS: JEWS, RACE, AND AMERICAN IDENTITY 224 (2006). In a recent example of this phenomenon, the widely criticized latest draft of California's new proposed ethnic studies curriculum was condemned as antisemitic for a number of reasons, including that it both fails to discuss antisemitism and that it reinforces negative stereotypes about Jews. For example, it uses the word "privileged" to describe only one ethnic group—the Jews—and recommends that students discuss how Jews "sometimes have experienced conditional whiteness and privilege." *See* Matthew Foldi & Adam Kredo *Describing Jews as 'Privileged,' Ethnic Studies Curriculum Sparks Backlash*, WASH. FREE BEACON (Jan. 20, 2021, 3:17 PM), https://freebeacon.com/issues/describing-jews-as-privileged-ethnic-studies-curriculum-sparks-backlash/.

orientalized. Today, Jews are rendered alien to the Middle East by being redefined as European . . . ."[74]

The practical problem with defining antisemitism is that it is a mutating virus; Jews are criticized for being whatever society, or a particular part of society, hates at that moment. The right will call them radicals,[75] while the left will label them fundamentalists.[76] They are simultaneously too liberal or too conservative, both too rich and a drain on the society. They are variously too strong or too weak, at once too influential[77] and too parasitical.[78]

In the words of Robert Williams, Deputy Director for International Affairs at the United States Holocaust Memorial Museum: "Antisemitism has many influences, including religious discrimination, racism, white nationalism, identitarianism, anti-Zionism, anti-Globalism, Soviet legacies, extreme Islamism, post-colonialism, anti-Americanism, conspiracy thinking, populism, and other currents."[79] Or, as Eugene Kontorovich recently told Congress: "The most effective anti-Semites have always sought to justify their bigotry by what the Jews do . . . . In every age, the oldest hatred clothes itself in the justifications that appeal to contemporary values and public policy considerations."[80] It does not

---

[74] Wald, *supra* note 58, at 19.

[75] Fahima Kattani-Ghanayem, *The Jewish Fundamentalist Roots of Trump's "Peace Deal,"* PALESTINE-ISRAEL J. POL., ECON. & CULTURE, https://pij.org/articles/2004/the-jewish-fundamentalist-roots-of-trumps-peace-deal ("[T]he roots of violence in the Middle East belong to 'Jewish fundamentalism . . . .'").

[76] *Why is Billionaire George Soros a Bogeyman for the Hard Right?*, BRIT. BROAD. CORP. (Sept. 7, 2019), https://www.bbc.com/news/stories-49584157 ("[Arthur Finkelstein] suggested Soros, and it was a perfect choice, Grassegger says. 'The very right hated him because he was Jewish, people at the very left hated him because he was a capitalist.'").

[77] David Duke spoke at a neo-Nazi rally in Charlottesville, Virginia, declaring that "[t]he truth is, the American media, and the American political system, and the American Federal Reserve, is dominated by a tiny minority: the Jewish Zionist cause." *See* Mirah Curzer, *Does Your Progressivism Include Jews?*, HUFFINGTON POST (Aug. 18, 2017, 11:26 AM), https://www.huffpost.com/entry/does-your-progressivism-include-jews_b_599704e1e4b02eb2fda31f41.

[78] Travis Patron, the leader of the Canadian Nationalist Party, describes Jews as "swindlers," "snakes," "inside manipulators," and a "parasitic tribe." *See* Canadian Nationalist Party, *Beware the Parasitic Tribe*, FACEBOOK (July 11, 2020, 3:44 AM), https://web.archive.org/web/20200714201357/https://www.facebook.com/NationalistCA/videos/681224405758300/

[79] Bonjuk Center, *Today's Antisemitism & Its Relationship to Holocaust Denial and Distortion with Dr. Robert Williams*, YOUTUBE, at 2:49–3:14 (Oct. 29, 2020), https://www.youtube.com/watch?v=80yu42Y-vNQ&t=2607s&ab_channel=BoniukCenter.

[80] *Confronting the Rise in Anti-Semitic Domestic Terrorism: Hearing Before the H. Comm. on Homeland Sec. and the Subcomm. on Intelligence & Terrorism*, 116th Cong. (2020) (statement of Prof. Eugene Kontorovich), https://homeland.house.gov/download/011520-kontorovich-testimony.

matter if the reasons are contradictory—in the span of one generation, the main theory of antisemitism shifted from Jews being an inferior race worthy of destruction (by the Nazis in the Holocaust) to Jews being a powerful race that tries to destroy others (like the Nazis, in Holocaust inversion).[81]

A definition of antisemitism that encompasses all of these possibilities and more must be able to cut through the various timely rationales given for a hatred of and hostility towards Jews, and focus rather on the actions taken by those expressing or harboring the hate; a praxeological definition, if you will.[82] For our purposes, (i.e., for the limited purpose of finding the right definition for states and universities to adopt to better understand antisemitic intent in discriminatory conduct claims, and to better educate their constituencies about what antisemitism is) the IHRA definition serves this goal best. The examples it gives focus on the *manifestations* of antisemitism, (i.e., what antisemites *do,* as opposed to *why* they do it).

Over the last decade and a half, the IHRA definition has become the internationally accepted standard definition of antisemitism.[83] While there can be no one exclusive or exhaustive definition of antisemitism—as it can and does take many forms—the IHRA definition provides an objective baseline standard for what is and is not acceptable.

The IHRA definition comes as close to a world consensus as we are ever likely to get and is therefore the obvious choice for an objective standard for analysis. Per the recently published European Commission Handbook for the practical use of the IHRA Working Definition of Antisemitism, "[e]ntities that have adopted, endorsed, applied or taken note of the IHRA Working Definition of Antisemitism include parliaments, governments, federal and state ministries, municipalities, city councils, law enforcement agencies, the judiciary, educational institutions, universities, civil society organisations and Jewish community security organisations."[84] The Handbook also notes that it has been used

---

[81] Balázs Berkovits, *Social Criticism and the "Jewish Problem", in* ANTI-ZIONISM AND ANTISEMITISM: THE DYNAMICS OF DELEGITIMIZATION 53–54 (Alvin H. Rosenfeld ed., 2019).

[82] For a masterful work on the history and complexity of defining antisemitism, see MARCUS, *supra* note 70.

[83] Ahmed Shaheed (Special Rapporteur on Freedom of Religion or Belief), *The Elimination of All Forms of Religious Intolerance*, U.N. Doc. A/74/358 (Sept. 20, 2019).

[84] FED. ASS'N DEP'TS FOR RSCH. & INFO. ON ANTISEMITISM E.V., EUR. COMM'N, HANDBOOK FOR THE PRACTICAL USE OF THE IHRA WORKING DEFINITION OF ANTISEMITISM, DS-03-21-002-EN-N (Jan. 7, 2021), https://op.europa.eu/en/publication-detail/-/publication/d3006107-519b-11eb-b59f-01aa75ed71a1/language-en.

> to train police officers, prosecutors, judges, educators, state employees and human rights monitoring bodies to identify and track various manifestations of antisemitism; to categorize antisemitic incidents, as collected by police officers, interior and justice ministries, civil society organisations, hate crime monitoring bodies and academics; to support decision-making processes by states, human rights monitoring organisations, law enforcement agencies, the judiciary, municipal governments, educators, civil society organisations and Jewish communities; to identify aspects of antisemitism in court hearings, prosecutor actions, police recording, investigations and hate crime statistics and to help direct funding to civil society organisations and human rights organisations.[85]

The definition has been an essential tool used to determine contemporary manifestations of antisemitism. The pushback on broader adoption comes from the fact that among the list of potentially antisemitic behavior provided, the definition includes useful examples of discriminatory anti-Israel acts that *can* sometimes cross the line into antisemitism.

Critics challenge the use of the IHRA definition in policymaking on two main grounds. First, they claim that the safe harbor provision for "criticism for Israel similar to that leveled against any other country" is insufficient.[86] For example, a person may hold Israel to a higher standard than other countries because they are (for any number of reasons why) more invested in that state, and *not* because they are antisemitic. Or they may criticize Israel just because the context of what they are discussing at the particular time is Israel-related and has nothing to do with other countries. Critics claim that under the IHRA definition all such criticism would be considered antisemitic. But that argument is a red herring because that is precisely why the definition

---

[85] *Id.* at 7.

[86] *Working Definition of Antisemitism*, *supra* note 37. *See, e.g.*, Zach Greenberg, *OCR's Use of Overly Broad Anti-Semitism Definition Threatens Student and Faculty Speech*, FOUND. FOR INDIVIDUAL RTS. IN EDUC. (Sept. 14, 2018), https://www.thefire.org/ocrs-use-of-overly-broad-anti-semitism-definition-threatens-student-and-faculty-speech/; Letter from Dima Khalidi, Director, Palestine Legal, et al., to Rep. Bob Goodlatte and Rep. John Conyers, Jr., (Dec. 5, 2016), https://ccrjustice.org/sites/default/files/attach/2017/02/AntiSemitism%20Awareness%20Act%20Opposition%20Letter%20final.pdf ; *The BCCLA Opposes the International Campaign to Adopt the International Holocaust Remembrance Association (IHRA) Definition of Antisemitism*, B.C. CIV. LIBR. ASS'N (June 18, 2019), https://bccla.org/our_work/the-bccla-opposes-the-international-campaign-to-adopt-the-international-holocaust-remembrance-association-ihra-definition-of-antisemitism/.

includes the explicit caveat that the examples given, "*could, taking into account the overall context*," be antisemitic.[87]

Context is crucial here, as it is in all instances of alleged discrimination. For example, in the context of employment discrimination, the Supreme Court has been clear that

> the objective severity of harassment should be judged from the perspective of a reasonable person in the plaintiff's position, considering "all the circumstances." In same-sex (as in all) harassment cases, that inquiry requires careful consideration of the social context in which particular behavior occurs and is experienced by its target.[88]

Antisemitism is no different than racism or sexism in that context matters and no two cases are ever exactly the same.[89] The reason the specific examples are provided in the IHRA definition (and are important) is explicitly *not* because all forms of criticism about Israel are antisemitic—as the definition takes pains to point out—but precisely because some people claim that *no* criticism of Israel can *ever* cross the line.[90]

The second objection to using the IHRA definition in a policy context (famously made by one of its original main drafters, Dr. Kenneth Stern),[91] is that in the wrong hands, it could theoretically be used to stifle

---

[87] *Working Definition of Antisemitism*, *supra* note 37 (emphasis added).

[88] Oncale v. Sundowner Offshore Servs., Inc., 523 U.S. 75, 81 (1998) (citing Harris v. Forklift Sys., Inc., 510 U.S. 17, 23) (internal citations omitted).

[89] Of course, it is also true that context can belie pretext in these situations as well. "Pretext can be shown by such weaknesses, implausibilities, inconsistencies, incoherencies, or contradictions in the employer's proffered legitimate reasons for its action that a reasonable factfinder could rationally find them unworthy of credence and hence infer that the employer did not act for the asserted non-discriminatory reasons." Gómez-González v. Rural Opportunities, 626 F.3d 654, 662–663 (1st Cir. 2010) (citing Morgan v. Hilti, Inc., 108 F.3d 1319, 1323 (10th Cir. 1997)), *quoted in* Lugo v. Avon Prod., Inc., 777 F. Supp. 2d 275, 290 (D.P.R. 2011), *on reconsideration in part* (May 10, 2011).

[90] The same is true of the other examples, i.e., they may not be antisemitic in any given circumstance, but they certainly *can* be, contextually. For instance, while it may be true that any particular Jewish person is loyal to the State of Israel, the charge that *Jews* have dual loyalty is an old antisemitic canard straight out of the Protocols of the Elders of Zion, and tied to the even older (at least Middle Ages, arguably even Biblical) antisemitic canard that Jews are all incapable of real loyalty and part of a worldwide conspiracy that threatens their home countries and justifies acts of discrimination or violence. *See* Julie Hirschfield Davis, *The Toxic Back Story to the Charge That Jews Have a Dual Loyalty*, N.Y. TIMES (Aug. 21, 2019), https://www.nytimes.com/2019/08/21/us/politics/jews-disloyal-trump.html.

[91] *See, e.g.*, Kenneth S. Stern, Opinion, *Will Campus Criticism of Israel Violate Federal Law?*, N.Y. TIMES (Dec. 12, 2016), https://www.nytimes.com/2016/12/12/opinion/will-campus-criticism-of-israel-violate-federal-law.html.

speech.[92] To quote an oft-cited piece on the subject, noted scholars Erwin Chemerinsky and Howard Gillman came out against legislating the IHRA definition because, they argued, "[s]chools can prevent and punish threats, harassment and destruction of property, but never the expression of views."[93] Their argument is completely valid but ultimately misleading; the correct conclusion to be drawn from their concerns is that any policy using the IHRA definition must be crafted properly to avoid censuring speech—not that the IHRA definition cannot be used in a policy about discriminatory harassment.[94] Of course, this kind of policy making needs to be done carefully, because free speech is a core aspect of democracy, and there is no general hate speech exception for antisemitism or any other kind of hatred.[95] That is *precisely* why the state bills and the school policies *cannot* take the form of any kind of speech code.[96] But discriminatory harassment and criminal conduct are not just speech, even if words are sometimes used.[97] Unlike speech, such conduct is absolutely subject to government

[92] *See, e.g.*, *ACLU Statement on Senate Introduction of 'Anti-Semitism Awareness Act,'* ACLU (May 23, 2018), https://www.aclu.org/press-releases/aclu-statement-senate-introduction-anti-semitism-awareness-act?redirect=news/aclu-statement-senate-introduction-anti-semitism-awareness-act; Will Creeley, *State Department's Anti-Semitism Definition Would Likely Violate First Amendment on Public Campuses*, FOUND. FOR INDIVIDUAL RTS. IN EDUC. (May 22, 2015), https://www.thefire.org/state-departments-anti-semitism-definition-would-likely-violate-first-amendment-on-public-campuses/.

[93] Erwin Chemerinsky & Howard Gillman, *A Bill to Police Campus Speech*, WALL ST. J. (Dec. 15, 2016, 6:31 PM), https://www.wsj.com/articles/a-bill-to-police-campus-speech-1481846338.

[94] Thankfully, even some progressive groups have come to recognize this distinction. *See, e.g.*, Jordan Devon & Karen Mock, *Why We Support the IHRA Definition of Antisemitism…Cautiously*, CANADIAN JEWISH REC., (Nov. 5, 2020), https://canadianjewishrecord.ca/2020/11/05/why-we-support-the-ihra-definition-of-antisemitism-cautiously/.

[95] *Is Hate Speech Legal?*, FOUND. FOR INDIVIDUAL RTS. IN EDUC. (Mar. 28, 2019), https://www.thefire.org/issues/hate-speech/.

[96] See Sara L. Zeigler, *Anti-Discrimination Laws*, THE FIRST AMEND. ENCYC. (2009), https://www.mtsu.edu/first-amendment/article/1207/anti-discrimination-laws (noting how lower courts have struck down university regulations deemed overbroad in their attempts to minimize offensive speech on campus or that prohibited "offensive" speech "in such a way that limited the ability of students or faculty to discuss the effects of biological sex differences or competing views on whether homosexuality could be 'cured' through psychological counseling").

[97] Discriminatory conduct, for example, can include physical, verbal, graphic, or written conduct if that behavior "is sufficiently severe, pervasive, or persistent so as to interfere with or limit a student's ability to participate in or benefit from the services, activities or opportunities offered by a school." According to the OCR, "[h]arassing conduct may take many forms, including verbal acts." Office of the Assistant Sec'y of Civil Rights, OFFICE OF CIVIL RIGHTS, U.S. DEP'T OF EDUC., *Dear Colleague Letter* (Oct. 26, 2010), https://www2.ed.gov/about/offices/list/ocr/letters/colleague-201010_pg2.html. Here is an easy example of how this works: if a student is told she cannot serve on a leadership board because she is Jewish, that includes a verbal act which will be

regulation.[98] To paraphrase the Jewish Supreme Court Justice Louis Brandeis,[99] the proper response to hate speech is more speech, counter-speech, so that bad ideas can be publicly confronted and constructively dealt with in broad daylight. There can be no counter speech, however, when one side is intimidated into silence. At its core, the main purpose of an anti-discrimination bill or policy that adopts a definition of antisemitism is to provide for equality in the free speech arena by removing illegal harassing conduct motivated by definitional antisemitism.[100] This is not about establishing Jewish exceptionalism, but rather about ensuring equality. This is not a major revision of anti-discrimination policy; this is a simple clarification of a term.

Well-established Supreme Court precedent requires behavior to be "objectively offensive" to fall under the category of discriminatory harassment,[101] a type of behavior that even Chemerinsky and Gillman admit can and should be regulated.[102] Behavior that is merely offensive to some would not be included.[103] To meet this 'objectively offensive'

treated as discriminatory conduct. The question really is not about the form the behavior takes but rather whether or not it "creates a pervasively hostile environment for vulnerable students." *Speech on Campus*, ACLU, https://www.aclu.org/other/speech-campus (last visited Aug, 16, 2020).

98 Brett A. Sokolow et al., *The Intersection of Free Speech and Harassment Rules*, 38 HUM. RTS. 19, 19–20 (2011).

99 Whitney v. California, 274 U.S. 357, 377 (1927) (Brandeis, J., concurring) ("If there be time to expose through discussion the falsehoods and fallacies, to avert the evil by the processes of education, the remedy to be applied is more speech, not enforced silence.").

100 *See* Harry G. Hutchison, *Campus Free Speech in the Mirror of Rising Anti-Semitism*, 52 ST. MARY'S L. J. 419, 452 (2021) (noting that "[s]peech rights are subordinate to the judgment that the ultimate liberty is not speech but the right to live in peace").

101 Davis *ex rel.* Lashonda D. v. Monroe Cnty. Bd. of Educ., 526 U.S. 629, 652 (1999).

102 Chemerinsky & Gillman, *supra* note 93.

103 In the context of an OCR investigation,

> A violation of Title VI may be found if a recipient has created or is responsible for a racially hostile environment i.e., harassing conduct (e.g., physical, verbal, graphic, or written) that is *sufficiently severe, pervasive or persistent* so as to interfere with or limit the ability of an individual to participate in or benefit from the services, activities or privileges provided by a recipient. A recipient has subjected an individual to different treatment on the basis of race if it has effectively caused, encouraged accepted, tolerated or failed to correct a racially hostile environment of which it has actual or constructive notice.

Letter from Kelli Douglas, Supervisory Attorney, U.S. Dep't of Educ., to Dr. Matthew Seebaum (Mar. 27, 2018) (emphasis added), https://www2.ed.gov/about/offices/list/ocr/docs/investigations/more/07171262-a.pdf. The standard is even easier for complainants to prove than it is in money damages cases and Title IX cases. To be considered harassment in the educational context, the behavior must be "so severe, pervasive, and objectively offensive, and that so undermines and detracts from the victims' educational experience, that the victim-students are effectively denied equal

standard, the definition used in the discriminatory antisemitism motivational analysis must be an objectively well-accepted one. To that end, it is once again clear that the IHRA's definition should be used. As noted above, the IHRA definition is used by the federal government, the thirty-one member countries of the International Holocaust Remembrance Alliance, almost all fifty countries (except Russia) that comprise the Organization for Security and Cooperation in Europe ("OSCE"), the European Commission, the European Parliament, and all EU Member states, as well as Serbia, Bahrain, and Albania. It has been endorsed by a growing number of world leaders (including UN Secretary-General António Guterres),[104] and adopted by a growing number of universities at home (including New York University)[105] and abroad (including Oxford University and Cambridge University).[106] It is utilized by a variety of intergovernmental agencies (including the European Commission against Racism and Intolerance)[107] and non-governmental agencies (including the Iraq-based Global Imams

access to an institution's resources and opportunities" *See Davis ex rel.*, 526 U.S. at 652; *see also* Saxe v. State Coll. Area Sch. Dist., 240 F.3d 200, 205–10 (3rd Cir. 2001) (detailing analogous standards for Title VI, which prohibits racial discrimination in education; Title VII, which prohibits workplace harassment; and Title IX, which prohibits sexual harassment in education).

104 Press Release, António Guterres, U.N. Secretary General, Anti-Semitism Rising Even in Countries with No Jews at All, Secretary-General Tells Event on Power of Education to Counter Racism, Discrimination, U.N. Press Release SG/SM/19252-RD/1022 (Sept. 26, 2018), https://www.un.org/press/en/2018/sgsm19252.doc.htm.

105 *See* Rachel Wolf, *NYU Adopts IHRA Definition of Antisemitism*, JERUSALEM POST (Oct. 3, 2020, 11:59 AM), https://www.jpost.com/diaspora/antisemitism/nyu-dept-of-education-settle-antisemitism-lawsuit-with-student-644315. Other universities where IHRA has been adopted (often by student government resolution) include the University of Minnesota, University of Georgia, Indiana University, Texas A&M, Capital University, Kent State University, Chapman University, Ryerson University (Canada), Wake Forest University, Texas A&M, St. Thomas University, Arizona State University, Buenos Aires University, Foothill College, Pace University, City College of New York, St. Lawrence University, University of Manitoba, Florida State University, California State University Northridge, and the Georgia Institute of Technology.

106 *Antisemitism: IHRA Definition of Antisemitism*, UNIV. OF OXFORD: EQUALITY & DIVERSITY UNIT, https://edu.admin.ox.ac.uk/antisemitism (last visited Jan. 17, 2020). More than one in five British Universities already adopted the IHRA definition. *See* Aaron Bandler, *1 in 5 British Universities Have Adopted IHRA Definition of Anti-Semitism, Survey Says*, JEWISH J. (Sept. 30, 2020), https://jewishjournal.com/news/worldwide/322348/1-in-5-british-universities-have-adopted-ihra-definition-of-anti-semitism-survey-says/; *see also Three More UK Universities Adopt IHRA Definition of Antisemitism*, EUR. JEWISH CONG. (Nov. 25, 2020), https://eurojewcong.org/news/communities-news/united-kingdom/three-more-uk-universities-adopt-ihra-definition-of-antisemitism/.

107 *ECRI's Opinion on the IHRA Working Definition of Antisemitism*, EUR. COMM'N AGAINST RACISM & INTOLERANCE (Dec. 2, 2020), https://rm.coe.int/opinion-ecri-on-ihra-wd-on-antisemitism-2755-7610-7522-1/1680a091dd.

Council).[108] Perhaps most importantly, hundreds of major Jewish organizations across the world,[109] and across the political and religious spectrums, representing people of all ages and backgrounds that are affected by antisemitism, including several major student organizations,[110] banded together to adopt the IHRA definition and urge others to adopt it as well,[111] because they all agree that it best reflects their shared lived experience and the realities of how antisemitism manifests itself today. This conduct-based, consensus-driven international definition of what constitutes problematic and offensive antisemitism is the only internationally recognized definition of antisemitism that there is, or ever has been.

The IHRA definition is also the definition against which educational institutions are already evaluated by the federal government when it investigates claims of discriminatory conduct—so schools do not lose anything by officially embracing it.[112] And it is the definition that schools are affirmatively required to *proactively* consider when

---

[108] *GIC Adopts IHRA Definition of Antisemitism*, GLOBAL IMAMS COUNCIL: NEWS (Oct. 30, 2020), https://imams.org/news/gic-adopts-ihra-definition-of-antisemitism/.

[109] *See, e.g.*, *Jewish Students Are Protected by the IHRA Definition of Antisemitism*, GUARDIAN (Jan. 22, 2021, 12:28 PM), https://www.theguardian.com/news/2021/jan/22/jewish-students-are-protected-by-the-ihra-definition-of-antisemitism.

[110] Including, in America, Alpha Epsilon Pi; Ameinu; American Friends of Likud; America-Israel Friendship League; American Israel Public Affairs Committee; American Jewish Committee; American Jewish Congress; American Jewish Joint Distribution Committee; American Sephardi Federation; American Zionist Movement; AMIT; Anti-Defamation League; ARZA; B'nai B'rith International; Bnai Zion; CAMERA; Central Conference of American Rabbis; Emunah of America; Friends of the Israel Defense Forces; Greater Miami Jewish Federation; Hadassah, Women's Zionist Organization of America; HIAS; Hillel International; Israel Bonds/Development Corporation for Israel; JCC Association of North America; Jewish Council for Public Affairs; Jewish Federations of North America; Jewish Institute for National Security of America; Jewish Labor Committee; Jewish National Fund; Jewish United Fund of Metropolitan Chicago; Jewish Women International; Mercaz USA, Zionist Organization of the Conservative Movement; NA'AMAT USA; NCSEJ: National Coalition Supporting Eurasian Jewry; National Council of Jewish Women; National Council of Young Israel; ORT America, Inc.; Rabbinical Assembly; Rabbinical Council of America; Religious Zionists of America; UJA-Federation of New York; Union for Reform Judaism; Union of Orthodox Jewish Congregations of America; United Synagogue of Conservative Judaism; WIZO; Women's League for Conservative Judaism; Women of Reform Judaism; World ORT USA; World Zionist Executive USA; and the Zionist Organization of America.

[111] Aaron Bandler, *More Than 120 Jewish and Pro-Israel Organizations Call on Facebook to Adopt IHRA Definition of Anti-Semitism*, JEWISH J. (Aug. 10, 2020), https://jewishjournal.com/featured/320140/more-than-120-jewish-and-pro-israel-organizations-call-on-facebook-to-adopt-ihra-definition-of-anti-semitism/.

[112] See L. Rachlem Lerman & Janilyn Brouwer Daub, *What Do Colleges and Universities Need to Know About the Executive Order and Title VI?*, NAT'L L. REV. (Jan. 3, 2020), https://www.natlawreview.com/article/what-do-colleges-and-universities-need-to-know-about-executive-order-and-title-vi.

formulating policies to create a safe environment on campus.[113] Therefore, universities should make use of this definition to better protect students from discriminatory conduct *before* there are any complaints. Likewise, states should use this definition when enacting or clarifying anti-discrimination statutes to protect their citizens from discriminatory harassment.

There is yet another reason for adopting the IHRA definition of antisemitism, namely for its considerable importance as an educational tool; that at least should be entirely uncontroversial.[114] When the Florida legislature passed an antisemitism bill in 2019, the signing statements made clear why the legislators felt it was important. Governor Ron DeSantis proclaimed that he was "proud to sign this bill to make clear through a bipartisan effort that anti-Semitism has no place in our state and our educational institutions will not tolerate discrimination against the Jewish people."[115] Representative Randy Fine, who was instrumental in the bill's passage, also noted that "[b]y requiring that Florida's public education systems treat anti-Semitism the same way as they treat racism, we send an unambiguous message that Jewish children will be protected from those who would discriminate against or maliciously target them."[116] Laws like this do two things: first, they remove any ambiguity as to the State's definition of problematic discrimination, and put everyone on notice by demarcating the limits of acceptable behavior.[117] Second, laws also serve a channeling function by reinforcing social norms.[118] Antisemitism is wrong (and antisemitic discrimination is illegal) whether or not the legislature takes the time to restate that clearly, and

---

113 "As a condition of receiving federal financial assistance, a school corporation gives the DOE 'an assurance that the program will be conducted . . . in compliance with all requirements imposed by or pursuant to this part.'" This imposes an affirmative obligation to provide an equal opportunity. Ivan E. Bodensteiner, *Peer Harassment—Interference with an Equal Educational Opportunity in Elementary and Secondary Schools*, 79 NEB. L. REV. 1, 24 (2000) (quoting 34 C.F.R. § 100.4(a) (1999)).

114 Ira Forman, *Combatting Antisemitism: Why the World Needs to Adopt the IHRA Definition*, JERUSALEM POST (Oct. 10, 2020), https://www.jpost.com/opinion/combatting-antisemitism-why-the-world-needs-to-adopt-the-ihra-definition-645275.

115 Staff, *Governor Ron DeSantis Signs Anti-Semitism Protections Bill CS/CS/HB 741*, RON DESANTIS 46TH GOVERNOR OF FLA. (May 31, 2019), https://www.flgov.com/2019/05/31/governor-ron-desantis-signs-anti-semitism-protections-bill-cs-cs-hb-741/.

116 *Id.*

117 This Article does not take any position on the specific language choices in the Florida State bill, nor on any other state bills or school policies that are not derived from the model bill and model policy contained herein.

118 Carl E. Schneider, *The Channeling Function in Family Law*, 20 HOFSTRA L. REV. 495, 506 (1991).

with an explicit definition. But when they *do* take the time to make the point, people notice and reflect.

Like states, universities can and should use the IHRA definition outside of the disciplinary context to better understand antisemitism in all its current manifestations, and to teach the university community how to recognize antisemitism in its many different forms.[119] As will be discussed in the next section, universities have an affirmative obligation under federal law to maintain a discrimination-free environment and must take prompt and effective steps to ensure that a targeted community is not deprived of educational opportunities. That process may involve training programs for staff, faculty, and students; forums for antisemitism victims to share their experiences; or even just the adoption of a barometer for when the university will use its own speech to call out and label antisemitic rhetoric without censoring it—and in doing so explain to the university community how and why such rhetoric runs counter to the university's values of mutual respect and inclusion. In all of these instances, the IHRA definition will be helpful. Using the definition in this way does not ban or remove hate speech—it just acknowledges its existence, no different than calling racist speech racist or sexist speech sexist. Universities can and should embrace the IHRA definition for educational (and ethical) reasons, but again, that part is easy. The real crux of the problem, and therefore the crux of this Article, is what happens when things move beyond rhetoric to discriminatory conduct.

III. TITLE VI AND THE EXECUTIVE ORDER ON COMBATING ANTISEMITISM

While this Article proposes two somewhat interrelated actions for officials to take, namely (a) the passing of state-level legislation and (b) the adoption of university policies that define antisemitism, one of those initiatives has already been partly effected in practice because all

---

119 See, for example, the recent statement of FSU President John Thrasher embracing IHRA for its educational importance:

> As a minority group, the Jewish people have faced bias and discrimination and have been marginalized for centuries. It is one of the oldest forms of bigotry and is as intolerable as all forms of hate. The United States, the State of Florida, and Florida State University recognize the International Holocaust Remembrance Alliance (IHRA) working definition of Antisemitism and its contemporary examples. I encourage everyone to educate themselves on the IHRA definition and examples of Antisemitism, as I have done myself.

A Message from President John Thrasher: An Update on Antisemitism and Religious Discrimination, FLA. ST. UNIV. (Aug. 12, 2020), https://news.fsu.edu/news/university-news/2020/08/12/a-message-from-president-john-thrasher-an-update-on-antisemitism-and-religious-discrimination/.

schools that accept federal funds (which is almost all schools) are *already* required to consider the IHRA definition when assessing the motivation behind discriminatory conduct.

In the United States, Title VI of the federal Civil Rights Act of 1964[120] requires recipients of federal funding to ensure their programs and activities are free from harassment, intimidation, and discrimination on the basis of race, color, and national origin. Notably, the Act does not give the Department of Education's Office for Civil Rights ("OCR") jurisdiction to investigate religious bias, and so until 2004, OCR typically refused to investigate antisemitism complaints on the ground that Jews are a religious group, and not a race or national origin. In a September 13, 2004, Dear Colleague letter,[121] then Deputy Assistant Secretary of Education for enforcement, Kenneth L. Marcus, issued a series of policy statements announcing that OCR would henceforth investigate antisemitism complaints to the extent that they implicate ethnic or ancestral bias. The logic behind the clarification is simple: much of the hatred embodied in antisemitism (and the same is true for Islamophobia) has nothing to do with specific religious practices, and everything to do with ethnicity or ancestral bias.[122] As the OCR policy directive explained, "[g]roups that face discrimination on the basis of shared ethnic characteristics may not be denied the protection of our civil rights laws on the ground that they also share a common faith."[123] This reasoning has been confirmed in court, both in regard to Title VI cases[124] and in the Title VII context as well.[125] While the

120 *Civil Rights Requirements- A. Title VI of the Civil Rights Act of 1964, 42 U.S.C. 2000d et seq. ("Title VI")*, U.S. DEP'T OF HEALTH & HUM. RES., https://www.hhs.gov/civil-rights/for-individuals/special-topics/needy-families/civil-rights-requirements/index.html (last updated July 26, 2013).

121 Kenneth L. Marcus, *Dear Colleague Letter: Title VI and Title IX Religious Discrimination in Schools and Colleges*, U.S. DEP'T OF EDUC.: OFFICE FOR CIVIL RIGHTS (Sept. 13, 2004), https://www2.ed.gov/about/offices/list/ocr/religious-rights2004.html.

122 People don't often hate Jews because, for instance, they wear phylacteries during morning prayer or light Shabbat candles on Friday evenings. They do, however, even today, sometimes hate them for their 'race,' i.e., their ethnicity or national origin. For a recent example of this phenomenon, see Aaron Bandler, *Wilshire Boulevard Temple Vandalized With "I Hate Your Race" Graffiti*, JEWISH J. (Jan. 18, 2021), https://jewishjournal.com/news/327594/wilshire-boulevard-temple-vandalized-with-i-hate-your-race-graffiti/.

123 Marcus, *supra* note 121.

124 T.E. v. Pine Bush Cent. Sch. Dist., 58 F. Supp. 3d 332, 354 (S.D.N.Y. 2014).

125 In the words of Judge Mark Hornsby:

> America is no stranger to anti-Semitism, which is often rooted in prejudice against a person based on his heritage/ethnicity without regard to the person's particular religious beliefs .... Jewish citizens have been excluded from certain clubs or neighborhoods, and they have been denied

Supreme Court has not yet weighed in on the issue, the Court *has* twice held that other statutes similarly intended to protect identifiable classes of persons subject to intentional discrimination "because of their ancestry or ethnic characteristics" included Jewish people—whether or not they would be classified as a race in terms of modern scientific theory.[126] On October 26, 2010, the Obama Justice Department released an opinion letter confirming the legal correctness of the 2004 Policy.[127]

> jobs and other opportunities based on the fact that they were Jewish, with no particular concern as to a given individual's religious leanings.

Michael Kunzelman, *Judge: Jewish Heritage Can be Basis for Race Discrimination*, ASSOCIATED PRESS (July 16, 2018), https://apnews.com/article/82c5075c54ce4f179e6517f0e4f07824. Thus, they have been treated like a racial or ethnic group that Title VII was designed to protect from employment discrimination based on membership in that group. *See* Bonadona v. La. Coll., No. 18-CV-0224, 2018 WL 4353979, at *4 (W.D. La. July 13, 2018).

[126] See T.E. v. Pine Bush Cent. Sch. Dist., 58 F. Supp. 3d 332, 354–55 (S.D.N.Y. 2014) for a broad overview of federal courts that have included Jewish people in this identifiable class:

> Regardless of whether religious bias alone can form the basis of a Title VI claim or anti-Semitism can provide a basis for national origin discrimination, courts have regularly found that anti-Semitic harassment and discrimination amount to racial discrimination. *See Shaare Tefila Congregation v. Cobb*, 481 U.S. 615, 617-18, 107 S. Ct. 2019, 95 L. Ed. 2d 594 (1987) (explaining "that the Court of Appeals erred in holding that Jews cannot state a § 1982 claim against other white defendants"); *Sherman v. Town of Chester*, 752 F.3d 554, 567 (2d Cir. 2014) (holding that "Jews are considered a race for the purposes of §§ 1981 and 1982"); *United States v. Nelson*, 277 F.3d 164, 177 (2d Cir. 2002) (holding that "Jews count as a 'race' under certain civil rights statutes enacted pursuant to Congress's power under the Thirteenth Amendment"); *Bachman v. St. Monica's Congregation*, 902 F.2d 1259, 1261 (7th Cir. 1990) (finding that Jews constitute a race within the meaning of federal civil rights statutes); *Lenoble v. Best Temps, Inc.*, 352 F. Supp. 2d 237, 247 (D. Conn. 2005) (noting that "Jews are a distinct race for § 1981 purposes"); *Powell v. Independence Blue Cross, Inc.*, No. 95-CV-2509, 1997 U.S. Dist. LEXIS 3866, 1997 WL 137198, at *6 (E.D. Pa. Mar. 26, 1997) (finding that "[§] 1981 must be read to encompass discrimination against a plaintiff because of his Jewish ancestry or ethnicity"); *Singer v. Denver Sch. Dist. No. 1*, 959 F. Supp. 1325, 1331 (D. Colo. 1997) (noting that Jews are "a distinct racial group for the purposes of § 1981").

[127] Kenneth L. Marcus, *The New OCR Antisemitism Policy*, 2 J. FOR STUDY OF ANTISEMITISM 479, 480 (2011); *see also* Mark Joseph Stern, *No, the Trump Administration is Not Redefining Judaism as a Nationality*, SLATE (Dec. 11, 2019, 12:29 PM), https://slate.com/news-and-politics/2019/12/trump-antisemitism-executive-order-israel-judaism.html. Debunking claims that the policy somehow redefined Jews as a race or nationality:

> The Obama administration reaffirmed this position in a 2010 letter written by Assistant Attorney General Thomas E. Perez, who is now the chair of the Democratic National Committee. "We agree," Perez wrote, with Marcus' analysis. "Although Title VI does not prohibit discrimination on the basis of religion, discrimination against Jews, Muslims, Sikhs, and

It is important to remember that even under Title VI, not all forms of harassing behavior are illegal.[128] For example, typical school bullying behavior does not run afoul of Title VI, so long as the bullying is not based on race, color, or national origin.[129] It is only illegal, and therefore subject to regulation, if it is based on an illegal discriminatory intent.[130] The problem for OCR was that without a definition of antisemitism to use as a reference, the unanswered question of how to determine illegal antisemitic intent meant that Jewish students were always vulnerable to attack and then obfuscation.

That is why on December 11, 2019, the federal government did two things. First, they announced an executive order codifying the now longstanding OCR policy that, for the purposes of Title VI discrimination claims, Jewish students are protected against antisemitism. Second, the order also stated that when evaluating these claims, the Department should consider the IHRA's definition of antisemitism.[131] This type of executive order is not at all uncommon; for example, on his very first day in office, President Biden issued an executive order clarifying that gender identity and sexual orientation should be treated as sex-based classes protected under Title VII.[132] Like his predecessor, he was not creating new laws; he was just clarifying how the federal government understands and applies the definitions in existing anti-discrimination law.

> members of other religious groups violates Title VI when that discrimination is based on the group's actual or perceived shared ancestry or ethnic characteristics, rather than its members' religious practice." . . . On Wednesday, I asked Perez's former principal deputy, Sam Bagenstos—now a professor at University of Michigan Law School—whether he felt this reasoning equated any religious group of a nationality or race. "The key point we were making," he told me, "is that sometimes discrimination against Jews, Muslims, and others is based on a perception of shared race, ethnicity, or national origin, and in those cases it's appropriate to think of that discrimination as race or national origin discrimination as well as religious discrimination. It doesn't mean that the government is saying that the group is a racial or national group. The government is saying that the discrimination is based on the discriminator's perception of race or national origin . . . ."

Id.

128 *Race and National Origin Discrimination Frequently Asked Questions*, U.S. DEP'T OF EDUC.: OFFICE FOR CIVIL RIGHTS, https://www2.ed.gov/about/offices/list/ocr/frontpage/faq/race-origin.html.

129 *Id.*

130 U.S. DEP'T OF JUST. CIVIL RIGHTS DIV., *Section VI: Proving Discrimination—Intentional Discrimination*, *in* TITLE VI LEGAL MANUAL, https://www.justice.gov/crt/fcs/T6Manual6.

131 Exec. Order No. 13899, 84 Fed. Reg. 68,779 (Dec. 11, 2019), https://www.govinfo.gov/content/pkg/FR-2019-12-16/pdf/2019-27217.pdf.

132 Exec. Order No. 13988, 86 Fed. Reg. 7023 (Jan. 20, 2021), https://www.govinfo.gov/content/pkg/FR-2021-01-25/pdf/2021-01761.pdf.

Critics, however, claimed that by formally adopting the IHRA definition the order was somehow an attack on free speech.[133] Properly translated into legal terminology, they based their critiques on either First Amendment overbreadth doctrine concerns, vagueness concerns, or both.[134] A law or regulation is overbroad when it can prohibit protected as well as non-protected speech,[135] and a law is vague when people "of common intelligence must necessarily guess at its meaning,"[136] (i.e., when it does not give sufficiently clear notice to a reasonable person of what it demands or prohibits). These arguments, as applied to the Executive Order and similar policies, are wrong, for the following six reasons.[137]

First, the order simply did not restrict or prohibit speech. Every person remains perfectly free to say what they want, however abhorrent, about Jews and/or the Jewish state. As the Supreme Court in *Tinker v. Des Moines* explained, "[t]he vigilant protection of constitutional freedoms is nowhere more vital than in the community of American schools."[138] Hate speech is protected, obviously, but that does not mean that we cannot call it what it is: hateful.[139] If that speech should cross the line and reach the level of discriminatory harassment, with or without accompanying acts,[140] "then and only then is regulation

---

133 *See, e.g.*, David Jackson, *Trump Signs Executive Order on Anti-Semitism that Critics Say Attacks Free Speech*, USA TODAY (Dec. 11, 2019, 8:03 PM), https://www.usatoday.com/story/news/2019/12/11/trump-sign-anti-semitism-order-critics-say-stifles-free-speech/4396213002/.

134 *See, e.g.*, *Submission by the Foundation for Individual Rights in Education to the Special Rapporteur on the Promotion and Protection of the Right to Freedom of Opinion and Expression Regarding Academic Freedom on College Campuses*, FOUND. FOR INDIVIDUAL RTS. IN EDUC. (Apr. 28, 2020), https://www.ohchr.org/Documents/Issues/Opinion/Submissions/NGOs/Foundation_for_Individual_Rights_in_Education_FIRE.pdf.

135 Richard Parker, *Overbreadth*, FIRST AMEND. ENCYC., https://www.mtsu.edu/first-amendment/article/1005/overbreadth (last updated Sept. 2017).

136 Connally v. Gen. Constr. Co., 269 U.S. 385, 391 (1926).

137 *See* Mark Goldfeder, *Why We Should Applaud Trump's Executive Order on Anti-Semitism*, HILL (Dec. 16, 2019, 2:00 PM), https://thehill.com/opinion/civil-rights/474271-why-we-should-applaud-trumps-executive-order-on-anti-semitism [hereinafter Goldfeder, *Why We Should Applaud*].

138 Tinker v. Des Moines Indep. Cmty. Sch. Dist., 393 U.S. 503, 512 (1969) (quoting Keyishian v. Bd. of Regents, 385 U.S. 589, 603 (1967)).

139 Phil Ciciora, *How Should Universities Handle Controversial Speech?*, ILL. NEW BUREAU: CAMPUS NEWS (Aug. 30, 2017, 8:30 AM), https://news.illinois.edu/view/6367/549565.

140 Office of the Assistant Sec'y of Civil Rights, *Dear Colleague Letter*, U.S. DEP'T OF EDUC.: OFFICE FOR CIVIL RIGHTS (Oct. 26, 2010) https://www2.ed.gov/about/offices/list/ocr/letters/colleague-201010_pg2.html (emphasis added).

> Harassing conduct may take many forms, including verbal acts . . . when the conduct is sufficiently severe, pervasive, or persistent so as to interfere with or limit a student's ability to participate in or benefit from

appropriate. Speech codes are constitutionally problematic; regulating discriminatory *conduct* is not."[141] The order only addresses harassment, not speech, and harassing actions (or verbal acts that rise to the level of harassment) are already impermissible.[142]

Second, "for there to be a violation of free speech, the order would have to be about regulating private speech, not government speech."[143] All the Executive Order does (and, for that matter, all that similar school policies and state bills would do) is explain how the government defines antisemitism when it is deciding where to allocate its money. The Supreme Court, in *Walker v. Texas Division, Sons of Confederate Veterans, Inc.*, held that "[w]hen government speaks, it is not barred by the Free Speech Clause from determining the content of what it says."[144] Without this exemption, the Court explained, government "would not work."[145]

Third, for those who complain that the government was somehow taking sides by adopting a well-accepted definition of antisemitism, thereby raising the specter of viewpoint discrimination, the answer to that question is once again right there in *Walker*: "[w]e have . . . refused '[t]o hold that the Government unconstitutionally discriminates on the basis of viewpoint when it chooses to fund a program dedicated to advance certain permissible goals, because the program in advancing those goals necessarily discourages alternative goals.'"[146] The government is free to advance its own permissible goals, including opposition to antisemitic discrimination, as defined by a well-accepted standard, and doing so is not impermissible viewpoint discrimination.[147]

Fourth, the order does not chill speech because there is no threat that the government will ever even investigate, let alone bar, any permissible speech of any kind. The order directs those charged with enforcing Title VI to consider the IHRA definition *only* to help ascertain the motivation for discriminatory conduct, and *not,* as some would contend, as a substitute for either the applicable harassment standard

> the services, activities, or opportunities offered by a school. When such harassment is based on race, color, national origin, sex, or disability, it violates the civil rights laws that OCR enforces.

Id. (emphasis added).

141 Goldfeder, *Why We Should Applaud*, *supra* note 137 (emphasis added).

142 *Id.*

143 *Id.*

144 Walker v. Sons of Confederate Veterans, Inc., 135 S. Ct. 2239, 2245 (2015).

145 *Id.* at 2246.

146 *Id.* (quoting Rust v. Sullivan, 500 U.S. 173, 194 (1991)).

147 *See* Goldfeder, *Stop Defending Discrimination*, *supra* note 42, at 219.

(i.e., what counts as discriminatory conduct in the first place) or the applicable First Amendment speech analysis.

Fifth, for those who argue that it is hard to distinguish acts from speech, the order does not create any new gray areas of overly broad speech/act non-distinction. It simply uses the longstanding definition of harassing conduct in Title IX and Title VI cases, a definition that has been upheld numerous times in a variety of cases and contexts. The standard, and therefore the order, only affects conduct that is so "severe, pervasive, or persistent so as to interfere with or limit a student's ability to participate in or benefit from the services, activities, or opportunities offered by a school."[148] To the extent that speech is at all implicated, it is only for evidentiary purposes, i.e., to clarify what is considered discriminatory towards Jewish people where the law has declared discrimination unacceptable.

And finally, the Order does have a savings clause, which specifically limits the use of the IHRA definition to fall within constitutional parameters.[149]

To summarize, the Order is clearly not overbroad or vague. Regarding overbreadth, as the Supreme Court emphasized in *Broadrick v. Oklahoma*,[150] declaring a regulation overbroad is "manifestly[] strong medicine[,]" to be employed "sparingly and only as a last resort[,]" and not in situations in which "a limiting construction has been or could be placed on the challenged statute."[151] The Order (like all similar policies) is limited to assessing intent for discriminatory conduct, not speech, and is to be constructed in a limited fashion, consistent with constitutional law. As it relates to vagueness, as the Court explained in *Kolender v. Lawson*, "the void-for-vagueness doctrine requires . . . sufficient definiteness that ordinary people can understand what conduct is prohibited and in a manner that does not encourage arbitrary and discriminatory enforcement."[152] A policy using the IHRA definition to contextually assess the motivation behind potentially illegal discriminatory conduct before assuming it did or did not involve antisemitism provides such definiteness and clarity. It uses the well-

---

148 Office of the Assistant Sec'y of Civil Rights, *Dear Colleague*, U.S. DEP'T OF EDUC.: OFFICE FOR CIVIL RIGHTS, https://www2.ed.gov/about/offices/list/ocr/letters/colleague-201010_pg2.html (last visited Sept. 20, 2021).

149 Exec. Order No. 13899, 84 Fed. Reg. 68,779 (Dec. 11, 2019), https://www.govinfo.gov/content/pkg/FR-2019-12-16/pdf/2019-27217.pdf.

150 *See generally* Broadrick v. Oklahoma, 413 U.S. 601 (1973).

151 *Id.* at 613; *see also* Parker, *supra* note 135 (describing other cases in which the Court refused to invalidate statutes for overbreadth, and instead applied limiting constructions).

152 Kolender v. Lawson, 461 U. S. 352, 357 (1983).

accepted and constitutionally upheld definition of discriminatory conduct used in all similar circumstances to reiterate that discriminatory antisemitic conduct is unacceptable. And it ensures that the application of the law will *not* be applied arbitrarily, by providing an objective and clear definition of what antisemitism is, specifically for the purpose of *discouraging* the possibility of subjective enforcement.

Critics were also wrong that the passage of the Order would create a huge number of cases or spur overreaching on the part of people or organizations hoping to abuse the Order and actually suppress speech.[153] Instead, for the most part, universities have settled the few complaints that have been brought and agreed to adopt the IHRA definition pro-actively moving forward.[154]

IV. THE NEXT STEP FOR STATES AND UNIVERSITIES: PROACTIVELY ADOPTING THE IHRA DEFINITION

After the President's Executive Order, *all* universities that accept federal money (which in practice is almost all universities) are required to use the IHRA definition when evaluating discrimination claims that appear to be antisemitic.[155] The problem, though, is that most universities only become aware of the necessity of having a definition, and the reasons why the IHRA definition is the right one, after someone files a complaint against them for getting it horribly wrong.

Instead of waiting for an antisemitic incident followed by a complaint that forces them to defensively evaluate their current standards in light of the federal government's approach, all universities should immediately and proactively embrace the IHRA definition of antisemitism for use in evaluating motivation in discriminatory conduct claims. Again, universities should also be using the IHRA definition proactively as an educational tool, outside of the disciplinary context entirely, in their staff training, student orientation, anti-discrimination materials, and other contexts. And, again, because the Executive Order is already in place, making the policy change in the limited context of evaluating the motivation behind discriminatory conduct will cost universities nothing. But doing so *would* send a strong signal to their Jewish populations that their presence is valued, their experiences are

153 *See* Kenneth Stern, *I Drafted the Definition of Antisemitism. Rightwing Jews Are Weaponizing It*, GUARDIAN (Dec. 13, 2019 6:25 AM), https://www.theguardian.com/commentisfree/2019/dec/13/antisemitism-executive-order-trump-chilling-effect.

154 *See, e.g.*, 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-antisemitism-case-education-department.

155 *See supra* pp. 24–25.

real, and their voices are heard. It would show Jewish students that the university cares about them and is not waiting to be forced to make the change. Here is what such a model policy change might look like:

> The University will revise its non-discrimination and anti-harassment policies to include a statement that the University prohibits discrimination on the basis of shared ancestry and ethnic characteristics, including antisemitism (as defined in Section 2(1)(i) of the Executive Order on Combatting Antisemitism (Exec. Order No. 13899)). The policy will not affect or regulate speech; the definition will only be considered in the context of analyzing the motivation behind the discriminatory conduct in a discriminatory conduct claim. It is only to be used after a person has been credibly accused of engaging in discriminatory acts toward Jewish people—acts that are so severe, pervasive, or persistent that they interfere with or limit the ability of the victim to participate in or benefit from an educational service, activity, opportunity, or privilege. Then and only then will the University use this definition as contextual, rebuttable evidence of a discriminatory motive, to the extent that any examples might be useful as evidence of discriminatory intent, and with the additional caveat that whether a particular act constitutes discrimination prohibited by Title VI will require a detailed analysis of the specific allegations.

When it comes to passing state legislation on antisemitism, the arguments in favor are equally pressing. The primary sponsor of a draft antisemitism bill in Arizona,[156] Rep. Alma Hernandez, D-Tucson, explained that she sponsored it to fight back against the antisemitic tide that her community and the nation are seeing, and to send a message of support for the Jewish victims.[157] "We know that [antisemitism] is on the rise—not only in my community, which is a Jewish community. We feel this is extremely important because of everything we're seeing around the country and around the world."[158] Sen. Joe Gruters, R-Sarasota, who sponsored the Florida version, put it simply:

---

156 H.R. 2683, 54 Leg., 2d Reg. Sess. (Ariz. 2020).

157 Wissam Melhem, *Bill to Define Anti-Semitism Passes State House*, ARIZ. MIRROR (Mar. 9, 2020, 7:00 AM), https://www.azmirror.com/2020/03/09/bill-to-define-anti-semitism-passes-state-house/.

158 *Id.*

"[a]ntisemitism is on the rise, and we have the ability to do something about it."[159]

The purpose of a state antisemitism bill is simple: provide state officials with a definition of antisemitism to consider when reviewing, investigating, or determining whether there has been a violation of any law, or any policy prohibiting discriminatory acts or practices on the basis of race, religion, or national origin. Here is what a model bill might look like:

A bill to be entitled: An act relating to Antisemitism in the State of XXX

> SO AS TO PROVIDE STATE OFFICIALS WITH A DEFINITION OF ANTISEMITISM TO CONSIDER WHEN REVIEWING, INVESTIGATING, OR DETERMINING WHETHER THERE HAS BEEN A VIOLATION OF ANY LAW OR ANY POLICY PROHIBITING DISCRIMINATORY ACTS OR PRACTICES ON THE BASES OF RACE, RELIGION, OR NATIONAL ORIGIN, AND TO PROVIDE THAT NOTHING IN THIS ACT MAY BE CONSTRUED TO DIMINISH OR INFRINGE UPON ANY RIGHTS AFFORDED BY THE FIRST AMENDMENT TO THE UNITED STATES CONSTITUTION OR ARTICLE XXX SECTION XXX OF THE CONSTITUTION OF THIS STATE.
>
> Findings:
>
> 1) Antisemitism, including harassment on the basis of actual or perceived Jewish origin, ancestry, ethnicity, identity, affiliation, or faith, remains a persistent, pervasive, and disturbing problem in contemporary American society;
>
> 2) Jewish people continue to be a targeted minority in the United States. Data shows, for instance, that Jews are consistently the most likely of all religious groups to be victimized by incidents of hate, and that such incidents are increasing at an alarming rate;
>
> 3) State officials and institutions have a responsibility to protect citizens from acts of hate and bigotry motivated by

[159] Samantha J. Gross, *Two Days After Deadly Synagogue Shooting, Florida Senate Passes Anti-Semitism Bill*, MIA. HERALD (Apr. 29, 2019), https://www.miamiherald.com/news/politics-government/state-politics/article229800129.html.

discriminatory animus, including antisemitism, and must be given the tools to do so;

4) Valid monitoring, informed analysis and investigation, and effective policy-making all require uniform definitions;

5) While there can be no exhaustive definition of antisemitism, as it can take many forms, the International Holocaust Remembrance Alliance ("IHRA") Working Definition has been an essential definitional tool used to determine contemporary manifestations of antisemitism, and includes useful examples of discriminatory anti-Israel acts that cross the line into antisemitism.

6) The IHRA definition is used by various agencies of the federal government and the thirty-one governments that are members of IHRA; recommended for use by the European Council and the European Parliament, endorsed by the UN Secretary General and the Secretary General of the OAS, included in policy guides prepared by the Organization for Security and Cooperation in Europe, and formally adopted by a growing number of European and Middle Eastern nations.

7) Use of this definition of antisemitism, although it is not to be taken as an exhaustive definition, will increase the awareness and understanding of the parameters of contemporary anti-Jewish discrimination in certain circumscribed areas.

Be it enacted by the General Assembly of the State of XXX:

A) For purposes of this Act, the term "definition of antisemitism" refers to the International Holocaust Remembrance Alliance Working Definition, as adopted on May 26, 2016, including the "contemporary examples of antisemitism," while noting that "criticism of Israel similar to that leveled against any other country is not antisemitic."

B) Nothing in this subsection shall be construed to diminish or infringe upon any right protected under the First Amendment to the United States Constitution, or the State Constitution.

> Nothing in this subsection shall be construed to conflict with local, federal or state discrimination laws.
>
> C) In reviewing, investigating, or deciding whether there has been a violation of any policy, law, or regulation prohibiting discriminatory acts, the State shall take into consideration the definition of antisemitism set forth in paragraph (A) above for purposes of determining whether the alleged act was motivated by discriminatory antisemitic intent.
>
> D) For the purposes of applying paragraph C, a discriminatory act includes any harassing conduct that is so severe, pervasive or persistent so as to interfere with or limit the ability of the victim to participate in or benefit from an educational service, activity, opportunity or privilege.

To alleviate any remaining concerns about protected speech, it is critically important to be abundantly clear about what the model bill and model policy do not do. They do not create any new anti-discrimination laws or regulations; they only clarify what constitutes discriminatory conduct under existing laws. For simplicity's sake, because the bill reflects a statewide policy clarification, and because the arguments for each are identical, for the purposes of the rest of this Article, all reference to the model policy in a university setting also includes the comparable provisions of the model state bill, as applicable.

V. THE MODEL POLICY DOES NOT RESTRICT OR SUPPRESS SPEECH

The following section responds to some of the most common questions about policies adopting the IHRA definition. It is important to respond thoroughly because even proponents of the IHRA definition have been openly concerned about the definition being used in the wrong way (i.e., to limit speech protected under the First Amendment). The answer, of course, is not to throw out the definition, but rather to make sure that it is only used correctly (i.e., in a way that does not restrict speech). The model policy does just that, and nothing else.

A. *What the Policy Does Not Do*

1. The Model Policy Does Not Restrict or Prohibit Speech

While it is true that the IHRA definition can and should be used in a variety of circumstances, including educational and reporting situations, when it comes to the *disciplinary* context it must be used

narrowly to avoid any First Amendment issues. That is why the recommended policy deals only with behavior, and the First Amendment protects neither criminal behavior nor discriminatory acts.[160] People are free to think, feel, and say whatever they want, however abhorrent, about Jews and about the Jewish state. All the policy update does is use a standard and widely accepted definition of antisemitism to clearly delineate what would reasonably be defined as discriminatory towards Jewish people in a praxeological sense. It does not create any new protected class or enhance any punishment, nor does it regulate or restrict academic freedom. Much antisemitic hate speech is constitutionally protected, just like racist and sexist speech, and the policy will not change that. Rather, it simply ensures that state and/or school authorities consider the federal government's well-accepted definition of antisemitism when considering and labeling *actions* as having been motivated by discriminatory intent.

2. The Model Policy Does Not Create Any Gray Area of Speech/Act Non-Distinction

The policy avoids this potentially significant trap by defining the kind of discriminatory conduct that is problematic in this context using the long-standing definition of harassment used by the Department of Education in its Title VI cases and guidance.[161] The IHRA definition is used only to help ascertain motivation for the conduct, and not as a substitute for either the applicable harassment standard or the applicable First Amendment speech analysis.

Lest there be any confusion, in theory even "just" speech *could* cross over into illegal harassment: per the OCR's Title VI Guidance, speech crosses over from protected territory into harassing verbal conduct when it is "sufficiently severe, pervasive or persistent so as to interfere with or limit the ability of an individual to participate in or benefit from the services, activities or privileges provided by a recipient."[162] To take one example that happened quite a few times in

---

[160] Lata Nott, *Is Your Speech Protected by the First Amendment?,* FREEDOM F. INST., https://www.freedomforuminstitute.org/first-amendment-center/primers/basics/ (last visited Aug. 16, 2020).

[161] *See Harassment,* U.S. EQUAL EMP. OPPORTUNITY COMM'N, https://www.eeoc.gov/harassment (last visited Aug. 16, 2020).

[162] *Racial Incidents and Harassment Against Students at Educational Institutions; Investigative Guidance*, 59 Fed. Reg. No. 47 (Mar. 10, 1994), https://www2.ed.gov/about/offices/list/ocr/docs/race394.html.

recent memory:[163] if a Jewish student is told that she cannot join a club or hold a leadership position because she is Jewish, that is not the kind of speech that the First Amendment shields. That would constitute a "verbal act" which, like all other discriminatory acts, is subject to regulation.[164] The well-established policies and practices of the Department of Education bear this out: "[t]he Civil Rights Act and Education Amendments Act mandate compliance obligations pursuant to the Department of Education's financial assistance rules,"[165] and as the Department of Education's Office For Civil Rights has made clear,[166] their "regulations and policies do not require or prescribe speech, conduct or harassment codes that impair the exercise of rights protected under the First Amendment."[167]

How then are we to make sure that the adoption of a harassment policy does not infringe on core protected speech? By following the law and being careful not to overreach. As the Third Circuit ruled in *DeJohn v. Temple University*, "there is no 'harassment exception' to the First Amendment's Free Speech Clause; that is . . . '[w]here pure expression is involved,' anti-discrimination law 'steers into the territory of the First Amendment.'"[168]

No one is disputing that.

The Court, however, continued by explaining that to be constitutionally upheld, all that is required is a bright line in the policy itself differentiating between speech that is pure expression and verbal acts that constitute objectively harassing conduct. The placement of that line comes from Supreme Court jurisprudence in the Title IX arena: "*[a]bsent any requirement akin to a showing of severity or pervasiveness—that is, a requirement that the conduct objectively and subjectively creates a hostile environment or substantially interferes with an individual's work—the policy provides no shelter for core protected speech.*"[169] Lower courts extended the Supreme Court's reasoning in

---

163 *See* Richard L. Cravatts, *Targeting Jewish Student Leaders for Banishment and Shaming*, TIMES ISRAEL (Jan. 16, 2021, 1:10 AM), https://blogs.timesofisrael.com/targeting-jewish-student-leaders-for-banishment-and-shaming/.

164 This too is not uncommon or idiosyncratic in First Amendment jurisprudence. *See, e.g.*, Gompers v. Bucks Stove & Range Co., 221 U.S. 418, 439 (1911).

165 Hutchison, *supra* note 100, at 475.

166 Gerald A. Reynolds, *First Amendment: Dear Colleague*, U.S. DEP'T OF EDUC.: OFFICE FOR CIVIL RIGHTS, https://www2.ed.gov/about/offices/list/ocr/firstamend.html (last visited Aug. 16, 2020).

167 *Id.*

168 DeJohn v. Temple Univ., 537 F.3d 301, 316 (3d Cir. 2008) (internal citations omitted).

169 *Id.* at 317–18 (internal citations omitted) (emphasis added) (quoting *Saxe,* 240 F.3d at 210–11 (referencing Davis Next Friend LaShonda D. v. Monroe County Bd. of

Davis v. Monroe County to cases brought under Title VI and Title VII of the Civil Rights Act of 1964,[170] which prohibits federally-funded programs from discriminating on the basis of race, color, and national origin.[171] When conduct (including this type of verbal conduct) rises to the level of discriminatory harassment, with or without accompanying acts, then and only then is regulation appropriate. Even free speech organizations recognize that "manifestly malicious and intimidating speech can impair equal access to the full benefits of a college education,"[172] and that "[f]or . . . harassment, and any other conduct that violates the law, an aggressive disciplinary response is warranted."[173]

Arguments that a carefully crafted policy could still lead to a slippery slope ending in a speech code are simply wrong, and more importantly they are legally invalid.[174] Speech codes are constitutionally problematic, while regulating discriminatory conduct is not. To break a slippery slope argument, provide a clear stopping point—an obvious bright line. The bright line here, we can all agree, is the First Amendment and the right to free speech. That is why the model policy includes the actual bright line articulated by the Courts for when such a policy does *not* violate the First Amendment.

The notion that state officials or university administrators will be somehow unable to differentiate between *acts* and *speech* is not an

Educ., 526 U.S. 629, 652 (1999))) ("[I]n the context of student-on-student harassment, damages are available only where the behavior is so severe, pervasive, and objectively offensive that it denies its victims the equal access to education that Title IX is designed to protect.").

170 *See* Harris v. Forklift Sys., Inc., 510 U.S. 17, 21 (1993) (quoting Meritor Sav. Bank, FSB v. Vison, 477 U.S. 57, 65–67 (1986)) ("When the workplace is permeated with 'discriminatory intimidation, ridicule, and insult' that is 'sufficiently severe or pervasive to alter the conditions of the victim's employment and create an abusive working environment,' Title VII is violated."). Note that case law in Title VII and OCR guidance in Title VI use the disjunctive standard to better protect students, while Title IX and private damages claims in Title VI use the more severe conjunctive standard.

171 *See, e.g.*, Bryant v. Indep. Sch. Dist. No. 1-38., 334 F.3d 928, 934 (10th Cir. 2003).

172 *Hateful Expression*, PEN AM.: CAMPUS FREE SPEECH GUIDE, https://campusfreespeechguide.pen.org/issue/hateful-expression/ (last visited Oct. 13, 2021).

173 *How to Respond to Expressions of Hate on Campus*, PEN AM.: CAMPUS FREE SPEECH GUIDE, https://campusfreespeechguide.pen.org/role/administrator/#hateful-expression (last visited Aug. 26, 2021).

174 Any proponents of the notion that regulating harassing speech will lead to the development of more speech codes need only to peruse the current jurisprudence on hostile work environment claims and the multiplicity of courts that refuse to enforce rules against most of what could colloquially be considered "harassing" conduct out of fear of creating "general civility code." *See* Faragher v. City of Boca Raton, 524 U.S. 775, 788 (1998); *see also* Nadine Strossen, *Regulating Workplace Sexual Harassment and Upholding the First Amendment—Avoiding A Collision*, 37 VILL. L. REV. 757, 757 (1992); Eugene Volokh, *Freedom of Speech and Workplace Harassment*, 39 UCLA L. REV. 1791, 1793 (1992).

argument for why there should not be an accepted definition of antisemitism. If, for example, a school cannot distinguish between *acts* and *speech*, then it presumably cannot distinguish between racist speech (protected) and racial harassment (not protected), between sexist speech (protected) and sexual harassment (not protected), or any other form of discrimination. If the state government or the university administration feel that they *can* distinguish between speech and acts in other contexts, but not in the context of antisemitic speech, then that is in itself profoundly and problematically antisemitic.

3. Finally, Such a Policy Will Not Impermissibly Chill Speech

Based on the above, it should be clear that the model policy does not in any way restrict protected speech. That being said, the next easy argument for critics to make is that the use of a definition in this very limited context will somehow "chill" protected speech in a different context. That argument is simply too broad; under that line of thought, state officials or university administrators would not be allowed to publicly denounce racism out of fear of 'chilling' racist speech. The more technical version of the argument, however, *is* worth addressing. As the Supreme Court made clear, in the First Amendment context, courts must "look through forms to the substance" of government conduct.[175] And as the Ninth Circuit has aptly described it, the fear of chilling speech is that "[i]nformal measures, such as 'the threat of invoking legal sanctions and other means of coercion, persuasion, and intimidation,' can violate the First Amendment also. . . . [G]overnment officials violate this provision when their acts 'would chill or silence a person of ordinary firmness from future First Amendment activities.'"[176]

In general, courts applied that standard to mean that lengthy investigations into permissible conduct could chill speech.[177] Here, however, there is no threat whatsoever that the government will ever investigate, let alone bar, permissible speech of any kind. The bill only addresses harassment, and speech that rises to the level of harassment is already impermissible. It is worth emphasizing again that the question of whether any specific speech or conduct is harassing is, and should be, a *separate inquiry* from the antisemitism inquiry, and that the definition only comes into play *after* it has been determined to be

[175] White v. Lee, 227 F.3d 1214, 1228 (9th Cir. 2000) (citing Bantam Books, Inc. v. Sullivan, 372 U.S. 58, 67 (1963)).

[176] *Id.*

[177] *Id.*; *see also* Savage v. Gee, 665 F. 3d 732 (6th Cir. 2012); Levin v. Harleston, 966 F. 2d 85 (2d Cir. 1992); Rakovich v. Wade, 850 F.2d 1180 (7th Cir. 1988), *abrogated by* Spiegla v. Hull, 371 F.3d 928 (7th Cir. 2004); Am. Civ. Liberties Union v. City of Pittsburgh, 586 F. Supp. 417, 427 (W.D. Pa. 1984).

harassing, and therefore not protected by the First Amendment. The definition does not affect which behavior is harassing. The definition is important because while some forms of harassment (i.e., typical bullying behavior) do not run afoul of Title VI, if the discriminatory behavior is motivated by the victim's race or national origin, then it *is* illegal and can be regulated.

The idea that a permissible regulation of impermissible discriminatory conduct would be unacceptable because it could theoretically lead to regulation of permissible speech turns law enforcement on its head by treating actual perpetrators as potential future victims. This is not a valid legal argument. As the Supreme Court in *Laird v. Tatum* held:

> In recent years this Court has found in a number of cases that constitutional violations may arise from the deterrent, or "chilling," effect of governmental regulations that fall short of a direct prohibition against the exercise of First Amendment rights. In none of these cases, however, did the chilling effect arise merely from the individual's knowledge that a governmental agency was engaged in certain activities or from the individual's concomitant fear that, armed with the fruits of those activities, the agency might in the future take some *other* and additional action detrimental to that individual. Rather, in each of these cases, the challenged exercise of governmental power was regulatory, proscriptive, or compulsory in nature, and the complainant was either presently or prospectively subject to the regulations, proscriptions, or compulsions that he was challenging.[178]

The court went on to note that "[a]llegations of a subjective 'chill' are not an adequate substitute for a claim of specific present objective harm or a threat of specific future harm," even if the apprehensions arise from the fear that the government may in the future "misuse the information in some way that would cause direct harm to respondents."[179] Courts have also held that in terms of the chilling of First Amendment speech, "self-censorship alone is insufficient to show injury."[180]

In *Abbott v. Pastides*, the Court held that even if the university were to launch an inquiry into student complaints *involving* speech, that would not be sufficient to argue for a chilling effect.[181] The same case

---

178 Laird v. Tatum, 408 U.S. 1, 11 (1972) (internal citations omitted).

179 *Id.* at 13–14.

180 Lopez v. Candaele, 630 F.3d 775, 792 (9th Cir. 2010).

181 Abbott v. Pastides, 900 F.3d 160, 163 (4th Cir. 2018). Even if there *were* a chilling effect, which there is not, as Hutchison notes, "[t]he Supreme Court has established that

also established that procedural meetings as a result of a complaint do not qualify as chilling speech.[182] In *Morrison v. Board of Education*, the Sixth Circuit ruled en banc in favor of the Board when a student claimed that the district policy prohibiting stigmatizing or insulting comments regarding another student's sexual orientation chilled his religious requirement to tell others that their conduct violated his understanding of Christian morality.[183] Finally, in *Lopez v. Candaele*, the Court held that advising a student via letter that other students perceived their language as "hateful propaganda" did not constitute a threat of enforcement under the college's sexual harassment policy and was not a sufficient injury-in-fact.[184] But again, the case for IHRA is even easier because we are not dealing with censuring speech, but rather with assessing motive behind impermissible conduct.

In general, no one who calls sexist speech sexist, racist speech racist, or homophobic speech homophobic, is accused of chilling speech.[185] Indeed, especially in the university context,[186] officials often receive praise for condemning this type of speech without crossing the line into censorship.[187] As the American Civil Liberties Union ("ACLU") recognized, it is fully consistent with the First Amendment that "campus administrators should … speak out loudly and clearly against expressions of racist, sexist, homophobic" and other bias, and "react promptly and firmly to counter acts of discriminatory harassment

'a university's mission is education,' depriving the First Amendment of power to preclude a university from imposing 'reasonable regulations compatible with that mission upon the use of its campus and facilities.'" Hutchinson, *supra* note 100, at 488 (citing Widmar v. Vincent, 454 U.S. 263, 267 n.5 (1981)). Hence, a university has the "right to exclude . . . First Amendment activities that . . . substantially interfere with the opportunity of other students to obtain an education." Widmar v. Vincent, 454 U.S. at 277 (citing Healy v. James 408 U.S. 169, 188–89 (1972)).

182 *See* Abbott v. Pastides, 263 F. Supp. 3d 565, 578 (D.S.C. 2017), *aff'd*, 900 F.3d 160 (4th Cir. 2018), *cert. denied*, 139 S. Ct. 1291 (2019).

183 Morrison v. Bd. of Educ., 521 F.3d 602, 605 (6th Cir. 2008).

184 *See Lopez*, 630 F.3d at 783; *see also id.* at 792 ("Under these circumstances, we must conclude that Lopez fails to meet the standard required of a pre-enforcement plaintiff to prove injury in fact, because he has not met the low threshold of clearly showing that he faces a specific, credible threat of adverse government action based on a violation of the sexual harassment policy.").

185 Cynthia Miller-Idriss & Jonathan Friedman, *When Hate Speech and Free Speech Collide*, DIVERSE (Dec. 5, 2018), https://diverseeducation.com/article/133611/.

186 *To the Point: Campus Inclusion and Freedom – Hateful Incidents on Campus*, AM. COUNCIL EDUC., https://www.acenet.edu/Documents/To-The-Point-Hateful-Incidents.pdf (last visited Aug. 30, 2020).

187 Nadine Strossen, *Counterspeech in Response to Changing Notions of Free Speech*, A.B.A.: HUM. RTS. MAG., https://www.americanbar.org/groups/crsj/publications/human_rights_magazine_home/the-ongoing-challenge-to-define-free-speech/counterspeech-in-response-to-free-speech/ (last visited Aug. 16, 2020).

. . . ."[188] All the model policy does is ask that antisemitism be treated the same way other forms of discrimination are already treated. In fact, some states have already started doing this by law.[189]

Hate speech is protected, obviously, but that does not mean that we cannot call it hateful.[190] Why then, should it be any different when it comes to antisemitism? To the extent that speech is at all affected by the adoption of a well-accepted definition, it is only to help clarify the motivation behind acts considered discriminatory towards Jewish people, where the law already declared discriminatory acts (not discriminatory speech alone) unacceptable. The actions are already impermissible; calling them what they are does not chill speech.

None of this should be controversial. The Supreme Court already firmly ruled in *Wisconsin v. Mitchell* that "[t]he First Amendment . . . does not prohibit the evidentiary use of speech . . . to prove motive or intent."[191] That case asked whether enhanced penalties for racially-motivated crimes violate a defendant's First Amendment rights. In their unanimous opinion in favor of the state, the Court also dealt with the "chilling" argument:

> Finally, there remains to be considered Mitchell's argument that the Wisconsin statute is unconstitutionally overbroad because of its "chilling effect" on free speech. Mitchell argues . . . that the statute is "overbroad" because evidence of the defendant's prior speech or associations may be used to prove that the defendant intentionally selected his victim on account of the victim's protected status. Consequently, the argument goes, the statute impermissibly chills free expression with respect to such matters by those concerned about the possibility of enhanced sentences if they should in the future commit a criminal offense covered by the statute. We find no merit in this contention.

---

[188] *Speech on Campus*, ACLU, https://www.aclu.org/other/speech-campus (last visited Aug. 16, 2020).

[189] *Florida Gov. Ron DeSantis Signs Bill Banning Anti-Semitism in Schools, Universities*, TOWER (June 4, 2019, 8:07 AM), http://www.thetower.org/7379-florida-gov-ron-desantis-signs-bill-banning-anti-semitism-in-schools-universities/ (detailing a Florida bill that applies the definition to laws already barring discrimination in the education system); *see* Ron Kampeas, *Florida Bill Would Add Protections Against Anti-Semitism to Education System*, JEWISH TELEGRAPHIC AGENCY (Jan. 24, 2019, 6:09 AM), https://www.jta.org/quick-reads/florida-state-bill-would-add-protections-against-anti-semitism-to-education-system (describing Fla. SB 471 (2019), https://www.flsenate.gov/Session/Bill/2019/741/BillText/er/PDF).

[190] *See* Miller-Idriss & Friedman, *supra* note 185.

[191] Wisconsin v. Mitchell, 508 U.S. 476, 489 (1993).

> The sort of chill envisioned here is far more attenuated and unlikely than that contemplated in traditional "overbreadth" cases. We must conjure up a vision of a Wisconsin citizen suppressing his unpopular bigoted opinions for fear that if he later commits an offense covered by the statute, these opinions will be offered at trial to establish that he selected his victim on account of the victim's protected status, thus qualifying him for penalty enhancement . . . . We are left, then, with the prospect of a citizen suppressing his bigoted beliefs for fear that evidence of such beliefs will be introduced against him at trial if he commits a more serious offense against person or property. This is simply too speculative a hypothesis to support Mitchell's overbreadth claim.[192]

In other words, the proposed policy of using a standard definition of antisemitism for evidentiary purposes when analyzing intent behind discriminatory conduct to determine the motive for the harassment is fully constitutional.[193] The First Amendment does not protect harassing conduct, but it does allow for the evidentiary use of speech to (rebuttably) assess motive without a concern of chilling speech. The policies recommended in this Article do not change the standard for harassing conduct; all they do is provide a definition to guide the evidentiary analysis.

In truth, the lack of a definition, which creates the ability for antisemites to get away with their destructive behavior and intimidate Jewish students, is actually what damages the free exchange of ideas at universities. To quote two leading scholars of antisemitism, Professors Dave Rich and Phillip Spencer, to be concerned that the definition will have a "'chilling effect' . . . is to turn things entirely on their head. It is

---

[192] *Id.* at 488–89.

[193] As Paul Clement told a Congressional hearing on campus antisemitism in 2017, discussing a proposed similar federal act, there really isn't even a debatable question:

> [S]omebody . . . can engage on campus in the most abhorrent anti-Semitic speech and the Education Department will not take action against them just for that. But, if they couple that abhorrent speech with say a physical attack on a Jewish student, then this Act and the Constitution allow the use of that anti-Semitic speech to demonstrate the motive of the person engaged in the harassment . . . . There were not that many things that Chief Justice Rehnquist and Justice Blackman agreed on, but this was one of them: no First Amendment problem.

Anti-Semitism on College Campuses: Hearing Before the H. Comm. on the Judiciary, 115th Cong. 45 (2017) (Statement of Paul Clement, Partner, Kirkland & Ellis LLP), https://www.govinfo.gov/content/pkg/CHRG-115hhrg32325/html/CHRG-115hhrg32325.htm.

antisemitic speech which has a chilling effect on Jewish students, academic and professional staff."[194]

Recall that the standard we are discussing involves behavior that denies Jewish students the ability to partake in educational opportunities. When Jewish students are targeted with verbal and physical abuse, it is not political discourse that they are experiencing.[195] As Sandra Hagee Parker once told Congress while discussing the discriminatory harassment of Jewish students on campus:

> It is harassment aimed to silence and shut down the perspective of Jewish students and those who support them. Allowing this behavior to shut down free speech is at odds with the free thinking and safe environment our Nation's colleges strive to create . . . . Providing a standard by which to judge these acts, no more chills free speech than the presence of a thermometer prevents the temperature from rising. Both sides of the argument deserve to be heard, but at present, one side is using the First Amendment as both a sword with which to inflict harm and a shield with which to protect itself from the consequences of its actions . . . . [T]he exercise of free speech is not an affirmative defense for harassment.[196]

All of the above sounds fairly simple and—being that the IHRA definition is widely accepted and consensus driven—appropriate. Which leads to the next question: What then, would the adoption of the IHRA definition do, other than explain a term? In other words, if adopting the definition in this narrow clarifying context does so little, and will only be used to help determine discriminatory intent after a discriminatory conduct complaint, then why is it so important for States and universities to take these steps? The answer to that is twofold.

---

194 Dave Rich & Phillip Spencer, *David Feldman Should Not Be Encouraging Those Who Denigrate Jews*, JEWISH CHRON. (Dec. 14, 2020), https://www.thejc.com/comment/opinion/david-feldman-should-not-be-encouraging-those-who-denigrate-jews-1.509689.

195 *See* Ilanit Chernick, *Jewish Students Allegedly Assaulted at Labour Rally in Bristol*, JERUSALEM POST (Dec. 11, 2019), https://www.jpost.com/diaspora/jewish-students-allegedly-assaulted-at-labour-rally-in-bristol-610606.

196 *Anti-Semitism on College Campuses: Hearing Before the H. Comm. on the Judiciary*, 115th Cong. 45 (2017) (statement of Sandra Hagee Parker, Chairwoman, Christians United for Israel Action Fund), https://www.govinfo.gov/content/pkg/CHRG-115hhrg32325/html/CHRG-115hhrg32325.htm.

VI. ADOPTING THE DEFINITION HELPS STATES AND SCHOOLS MONITOR, PREVENT, AND EDUCATE ABOUT ANTISEMITISM

A. *Adopting a Definition Would Help States and Schools Monitor and Report on Antisemitism*

First, do not underestimate the importance of properly defining terms.[197] It is crucial to adopt the IHRA definition because, until now, the absence of a definition of antisemitism has been an Achilles' heel for those who expect state actors, including colleges and universities, to take a stronger stand on campus antisemitism. Consider the alternative to adopting a definition; everyone agrees that antisemitic harassment is illegal, but frankly speaking, no one knows what that means. Without a definition, the status quo basically empowers whatever official is charged on any given day with determining whether any particular case involved antisemitic bias with unfettered discretion and no objective guidelines.[198] Sometimes antisemitic crimes and discrimination are undeniable. One can easily point to any of the following incidents of violence against those of Jewish descent: the shootings at the Tree of Life Synagogue in Pittsburgh, Pennsylvania in 2018 and at the Chabad of Poway in California in 2019,[199] the recent series of random physical attacks on identifiably Jewish persons in New York City,[200] and the rising number of desecrated Jewish cemeteries[201] and vandalized

---

[197] *See generally* Mark Goldfeder, *The Danger of Defining Your Own Terms: Responding to the Harvard Law Review on Anti-Discrimination Law and the Movement for Palestinian Rights*, 3 J. CONTEMP. ANTISEMITISM 141 (2020) [hereinafter Goldfeder, *The Danger of Defining Your Own Terms*] (noting the tendency amongst some legal writers to set up multiple strawman arguments by defining terms in self-serving ways). .

[198] *See Anti-Semitism on College Campuses: Hearing Before the H. Comm. on the Judiciary*, 115th Cong. 45 (2017) (statement of Paul Clement, Partner, Kirkland & Ellis LLP), https://www.govinfo.gov/content/pkg/CHRG-115hhrg32325/html/CHRG-115hhrg32325.htm

> Whatever Congress does here, if Congress does nothing it is still going to be the Education Department's position that [T]itle VI forbids harassment motivated by anti-Semitism. So, the question really boils down to whether the Education Department officials are going to make that judgment without a definition or with a definition. And I certainly think it serves First Amendment values to guide that discretion.

[199] *San Diego Synagogue Shooting: One Person Dead in Poway, California*, BRIT. BROAD. CORP. (Apr. 29, 2019), https://www.bbc.com/news/world-us-canada-48081535.

[200] *See* Liam Stack, *'Most Visible Jews' Fear Being Targets as Antisemitism Rises*, N.Y. TIMES (Feb. 17, 2020), https://www.nytimes.com/2020/02/17/nyregion/hasidic-jewish-attacks.html.

[201] *See* Adam Nossiter, *Jewish Graves Desecrated in Historic French Cemetery*, N.Y. Times (Dec. 4, 2019), https://www.nytimes.com/2019/12/04/world/europe/jewish-graves-france-desecrated.html; Deanna Paul, *Dozens of Jewish Graves Vandalized with Swastikas and Anti-Semitic Slurs*, WASH. POST (Mar. 21, 2019),

synagogues.[202] There have been numerous physical attacks on Jewish businesses,[203] and on university campuses around the country, there have been countless well-documented examples of antisemitic harassment,[204] property damage,[205] and physical attacks[206] on Jewish students.[207] The problem is that states and universities often do not report, and sometimes even hesitate to admit,[208] that there has been a major spike in people discriminating against and targeting Jewish people in their jurisdictions.[209] So long as the meaning of antisemitism is left murky and inconsistent, it will be easy for officials to look the other way and fail to enforce existing regulations regarding bigotry.[210]

https://www.washingtonpost.com/religion/2019/03/21/dozens-jewish-graves-vandalized-with-swastikas-anti-semitic-slurs/.

202 *See, e.g.*, Marcy Oster, *Florida Man to be Charged with Vandalism of 2 Synagogues*, FORWARD (July 27, 2020), https://forward.com/fast-forward/451533/florida-man-will-be-charged-with-vandalism-of-2-reform-synagogues-in/; *see also Synagogues in Los Angeles and Richmond Vandalized During Protests*, TIMES OF ISRAEL (June 1, 2020, 4:50 AM), https://www.timesofisrael.com/synagogues-in-los-angeles-and-richmond-vandalized-during-protests/.

203 *SA: 21 Arrested at Violent BDS Protest in South Africa*, CHRISTIANS UNITED FOR ISRAEL (Mar. 26, 2015), https://www.cufi.org.uk/news/sa-21-arrested-at-violent-bds-protest-in-south-africa.

204 *See* William A. Jacobson, *Dorm Storming at NYU Targets Jewish Students*, LEGAL INSURRECTION (Apr. 24, 2014, 1:32 PM), https://legalinsurrection.com/2014/04/dorm-storming-at-nyu-targets-jewish-students/. *See generally* William A. Jacobson, *Anti-Israel Student Group Suspended at Northeastern for Vandalism, Intimidation, Disruption*, LEGAL INSURRECTION (Mar. 13, 2014, 10:00 AM), https://legalinsurrection.com/2014/03/anti-israel-student-group-suspended-at-northeastern-for-vandalism-intimidation-disruption/.

205 *See* Interview by Lenny Giteck with Andrew Pessin, Professor, Conn. Coll. (Jan. 11, 2021), https://antisemitismexposed.org/andrew-pessin/?fbclid=IwAR2JL5fb908-yCrojGdwsx9Hral_u-BcE8N7dPMy1c8MhjQV5YQNNe6oSTQ.

206 *See* Frances Dinkelspiel, *Jewish Student Sues UC Berkeley Over Assault by Palestine Supporter*, BERKELEYSIDE (Mar. 7, 2011, 12:19 PM), https://www.berkeleyside.com/2011/03/07/jewish-student-sues-uc-berkeley-over-assault-by-palestine-supporter. *See generally* Edwin Black, *Temple University – Latest Anti-Semitic Hotspot Protested Amid Record Donation Drive*, HUFFINGTON POST (Oct. 25, 2014), https://www.huffpost.com/entry/temple-university-latest-_b_5707919.

207 Tori Cheifetz, *Jewish Students 'Held Hostage' in Toronto Hillel*, JERUSALEM POST (Feb. 15, 2009), https://www.jpost.com/jewish-world/jewish-news/jewish-students-held-hostage-in-toronto-hillel.

208 Some even call on the Jewish students to "get tougher skin." Greta Anderson, *Responding to Rise in Campus Anti-Semitism*, INSIDE HIGHER ED (Sept. 9, 2020), https://www.insidehighered.com/news/2020/09/09/antisemitism-rise-new-semester-starts.

209 AMCHA INITIATIVE, THE HARASSMENT OF JEWISH STUDENTS ON U.S. CAMPUSES: HOW ELIMINATIONIST ANTI-ZIONISM AND ACADEMIC BDS INCITE CAMPUS ANTISEMITISM 8–17 (2019), https://amchainitiative.org/wp-content/uploads/2019/09/Eliminationist-Anti-Zionism-and-Academic-BDS-on-Campus-Report.pdf.

210 Evan Gerstmann, *Hate Crimes Against Jewish Students Are at an All-Time High*, FORBES (Sept. 9, 2020, 5:12 PM), https://www.forbes.com/sites/evangerstmann/

Thankfully, there is an easy fix. The IHRA definition simply defines antisemitism the same way that the federal government does, and adopting it would only require states and universities to apply their own rules fairly. State anti-discrimination laws and university conduct codes that forbid student groups from engaging in discriminatory activities should be enforced across the board. If there is a definition, then administrators cannot simply shrug and say that they "don't know what antisemitism looks like."

Under the federal Clery Act,[211] universities are required to file an annual report on campus crime. The law is meant to provide transparency around policy and statistics, and one of the four categories they must disclose are hate crimes. The problem is that, "[m]any universities interpret the guidelines as narrowly as possible, leaving out antisemitic vandalism that would likely be categorized as hate crimes if they happened off-campus."[212] In 2017, for example, after someone drew a swastika on a bathroom stall in Binghamton University's library, the school condemned the incident as a "hate crime" in a public statement but then failed to report it in its annual crime report. When asked, the university spokesman said there was not enough evidence that it was motivated by bias.[213]

Binghamton University is hardly alone. Ithaca College, for example, had three swastika incidents in 2018—two classified by police as aggravated harassment, 1st degree—and one instance of a Jewish student having his *mezuzah* (religious parchment) knocked off his door, but it also reported zero hate crimes for the year. According to an in depth-analysis done by the Forward:

> [C]omparing news reports of campus antisemitism between 2016 and 2018 to the filings for those years found that fewer than half of the incidents that could have been reported as hate crimes actually were. Out of a total of 158 incidents at 64 schools, 93—including antisemitic vandalism at brand-name schools known for vibrant Jewish communities like Harvard, Princeton, MIT, UCLA and the University of Maryland—were left out of the federal filings.[214]

2020/09/09/hate-crimes-against-jewish-students-are-at-an-all-time-high/?sh=23eb23bc632f.

[211] 34 C.F.R. § 668.46(c) (2021).

[212] Aiden Pink, *Colleges Express Outrage About Anti-Semitism—But Fail to Report it as a Crime*, FORWARD (Aug. 17, 2020), https://forward.com/news/national/452483/college-antisemitic-hate-crimes/.

[213] *Id.*

[214] *Id.*

At best, this points to a lack of understanding or awareness on the part of university administrators about what antisemitism looks and feels like; multiple schools told the Forward that their lack of swastika reporting was an inadvertent error. At worst, it might point to something more sinister, with schools hiding behind the vagueness of 'antisemitism' to purposefully sweep it under the rug and avoid the bad publicity. Regardless, adopting a bright-line definition will solve either or both of those problems. In the above-mentioned incidents, if the schools adopted the IHRA definition, then going forward it should be clear to whomever files the annual reports that a swastika is an antisemitic symbol.

Similarly, state legislation adopting the IHRA definition would also fix a troubling problem in terms of the federal reporting that states are required to do. Under the 1990 Hate Crime Statistics Act[215] (modified in 2009 by The Matthew Shepard and James Byrd, Jr. Hate Crimes Prevention Act),[216] the Attorney General, through the FBI, is tasked with tracking and tabulating crimes committed because of the victim's race, religion, disability, sexual orientation, or ethnicity (i.e., crimes in which there was "manifest evidence of prejudice" against these protected groups) regardless of differences in how state laws define who is protected and regardless of whether or not the incidents in question were actually prosecuted as hate crimes.[217] The FBI relies on local law enforcement agencies to collect and submit data, but thousands of police agencies opt out of the reporting, and even "among the 15,000 that do, some 88 percent reported they had no hate crimes."[218] According to one ProPublica report, "investigators frequently did not mark down incidents as motivated by bias, even if there was evidence suggesting

215 28 U.S.C. § 534.

216 Matthew Shepard and James Byrd, Jr. Hate Crimes Prevention Act, Pub L. No. 111-84, §§ 4701-4713, 123 Stat. 2835 (2009) (codified at 18 U.S.C. § 249).

217 Ken Schwencke, *Why America Fails at Gathering Hate Crime Statistics*, PROPUBLICA (Dec. 4, 2017, 8:00 AM), https://www.propublica.org/article/why-america-fails-at-gathering-hate-crime-statistics.

218 "Local law enforcement agencies reported a total of 6,121 hate crimes in 2016 to the FBI, but estimates from the National Crime Victimization Survey, conducted by the federal government, pin the number of potential hate crimes at almost 250,000 a year—one indication of the inadequacy of the FBI's data. . . . It's true that many hate crime cases fall away before they start because about half the victims never report them to authorities. But to understand why so many cases that *are* reported to authorities still fall through the cracks, ProPublica requested incident reports or aggregate data from more than 350 law enforcement agencies in 48 states, including the 50 largest agencies nationwide, on the bias-motivated crimes they had investigated since 2010. More than 280 agencies responded, but in many cases only to say they hadn't investigated any such incidents, or had no records, or that their records were bad." *Id.*

this was so. A spray-painted swastika, for example, might be classified simply as vandalism and not also as a hate crime."[219]

In 2019, for the second straight year, the number of law enforcement agencies participating in providing statistics declined, but even with fewer agencies reporting, the number of reported hate crimes actually increased by 113 percent from the previous year.[220] In particular, as it relates to this Article, the year 2019 saw a 14 percent increase in anti-Jewish hate crimes, and all across the country 63 percent of the total reported religion-based crimes were directed against Jewish people and Jewish institutions.[221] If states adopted a standard definition of antisemitism—the IHRA definition—simply for the purpose of evaluating motive in potential bias incidents, it would be incredibly helpful in making sure that the statistics about anti-Jewish crime more accurately reflect the reality of lived experiences of Jewish people.

B. *Adopting a Definition Would Help States and Schools Educate Their Constituencies About Antisemitism*

Second, adopting the definition would have an important educational aspect. In some instances, people may not even realize that they are engaging in or supporting antisemitism when, for example, they express certain anti-Zionist views. Of course, not all criticisms of Israel are antisemitic, but there is a popular false dichotomy: since not *all* anti-Israel rhetoric is necessarily antisemitism, none of it should be included in a definition of antisemitism. "What this argument does is provide a convenient way for modern antisemites to remain in polite society while espousing incredible hate under the thinnest of anti-Zionistic veils. Antisemites should not get to decide the definition of antisemitism."[222] In this context too, the IHRA definition is important and helpful *because* it includes useful examples of discriminatory anti-Israel statements that cross the line into antisemitism. If critics claim that the adoption of such a definition would shut down criticisms of the State of Israel or its leaders, that is *patently* false. According to the definition itself, not all criticism of Israel is antisemitism, even harsh criticism, but when anti-Zionism crosses certain lines, it *can* be antisemitic. As discussed earlier,

---

[219] In most states, local law enforcement agencies are supposed to "send their hate crime data to the state, which is then supposed to submit it to the FBI," but the report also "found several instances in which this chain broke down." *Id.*

[220] *ADL Calls for Improved Hate Crime Reporting in Response to New FBI Data*, ANTI-DEFAMATION LEAGUE (Nov. 16, 2020), https://www.adl.org/news/press-releases/adl-calls-for-improved-hate-crime-reporting-in-response-to-new-fbi-data.

[221] *Id.*

[222] Goldfeder, *The Danger of Defining Your Own Terms*, *supra* note 197, at 142.

critics of the definition generally focus on the danger of governments using it to stifle free speech.[223] While those concerns are easily answered—primarily by having policies that focus only on actions and not speech[224]—that is a conversation about the contours of protecting hate speech. It is a *far* different argument to pretend that the speech itself is *not* antisemitic, but that is the argument that antisemites often try to exploit.[225]

VII. CRITICISM OF ISRAEL AND ANTISEMITISM

Legitimate criticism of Israel is fine under the IHRA definition, and if you are merely criticizing Israel, even harshly and regularly, then the definition should not affect you one iota. By now it should be clear that this entire discussion has *nothing* to do with any attempt to fight against Palestinian rights, or to silence advocates for the Palestinian cause. Here is an easy example to differentiate: Mahmoud Abbas is the President of the Palestinian Authority and arguably the world's leading advocate for Palestinian rights. To agree with his political views is *not* inherently antisemitic. To agree with his public statements at times *denying* the Holocaust and at other points *blaming* the genocide on the Jewish victims' behavior *is* inherently antisemitic.[226] Based on his public apologies, even Mahmoud Abbas would have to agree with that.[227]

When is criticism of Israel antisemitic? Sometimes the answer is clear, like when proponents use classic antisemitic tropes to discuss the "collective Jew among the Nations" as a proxy for how antisemites historically would talk about Jewish individuals.[228] These stereotypes

---

223 Elizabeth Redden, *Trump Signs Order on Campus Antisemitism,* INSIDE HIGHER ED (Dec. 12, 2019), https://www.insidehighered.com/news/2019/12/12/trump-order-antisemitism-campuses-draws-free-speech-concerns.

224 Goldfeder, *Why We Should Applaud*, *supra* note 137.

225 Mark Goldfeder, *House Should Censure Anti-Semitic Rep. Rashida Tlaib*, FOX NEWS (Dec. 3, 2020), https://www.foxnews.com/opinion/rashida-tlaib-anti-semitism-mark-goldfeder.

226 Jonathan Freedland, *It's Right to Condemn Mahmoud Abbas for His Antisemitic Remarks*, GUARDIAN (May 2, 2018, 7:14 AM), https://www.theguardian.com/commentisfree/2018/may/02/condemn-mahmoud-abbas-antisemitic-remarks-holocaust.

227 Stephen Farrell, *Palestinian Leader Abbas Offers Apology for Remarks on Jews*, REUTERS (May 4, 2018, 6:30 AM), https://www.reuters.com/article/us-israel-palestinians-abbas/palestinian-leader-abbas-offers-apology-for-remarks-on-jews-idUSKBN1I5131.

228 Irwin Cotler, *New Anti-Jewishness*, THE JEWISH PEOPLE POL'Y PLANNING INST. 7 (Nov. 2002), http://jppi.org.il/uploads/Alert%201%20New%20Anti%20Jewishness.pdf.

include, but are not limited to: "accusations of" Jewish conspiracies;[229] blood libels;[230] portraying Jews (not even actual *Israelis* but caricatures of religious *Jews*) as Satanic, demonic, and evil;[231] accusing Jews of dual loyalty;[232] and engaging in Holocaust denial[233] and Holocaust inversion.[234] When this happens, the symbols and signals used often belie the speaker's true nefarious intent.[235] Again, no one is saying this speech should be criminalized or contained, just that it should be *labeled* correctly.

Sometimes antisemitism might not be as obvious to a casual observer. That is exactly why there needs to be a definition to assess context and motivation. That is also why antisemites do not like the IHRA definition—because it takes away their freedom to push past the line. In practice, denying history to claim that Jews are not indigenous to Israel,[236] denying (only) the Jewish people their right to self-determination (as consecrated in both *the International Covenant on Civil and Political Rights* and *the International Covenant on Economic, Social and Cultural Rights*),[237] while at the same time calling for the

---

229 *What is...Anti-Israel, Anti-Semitic, Anti-Zionist?*, ANTI-DEFAMATION LEAGUE, https://www.adl.org/resources/tools-and-strategies/what-is-anti-israel-anti-semitic-anti-zionist (last visited Aug. 1, 2020).

230 *See Blood Libel: A False, Incendiary Claim Against Jews*, ANTI-DEFAMATION LEAGUE, https://www.adl.org/education/resources/glossary-terms/blood-libel (last visited Aug. 1, 2020).

231 *See generally* DAN DIKER & JAMIE BERK, JERUSALEM CTR. FOR PUB. AFFS., STUDENTS FOR JUSTICE IN PALESTINE UNMASKED: TERROR LINKS, VIOLENCE, BIGOTRY, AND INTIMIDATION ON US CAMPUSES 54–72 (2018), https://jcpa.org/pdf/SJP_unmasked_2018_web.pdf.

232 *See id.* at 29.

233 ENERSEC USA, *Yasir Qadhi Anti-Semitic Rant*, YOUTUBE (Nov. 19, 2015), https://www.youtube.com/watch?v=2bSxOmcyI18&feature=youtu.be&t=466.

234 *See* DIKER & BERK, *supra* note 231, at 54–75.

235 Goldfeder, *The Danger of Defining Your Own Terms*, *supra* note 197.

236 Roberta P. Seid, *Omar Barghouti at UCLA: A Speaker Who Brings Hate*, JEWISH J. (Jan. 16, 2014), https://jewishjournal.com/commentary/opinion/126186/. In the words of former Minister of Justice and Attorney General of Canada Irwin Cotler, "[i]f 'Holocaust Revisionism' is an assault on Jewish memory and historical experience, 'Middle East Revisionism' constitutes no less an assault on Jewish memory and historical experience. It cynically serves to invert the historical narrative so that Israel is seen an 'alien' and 'colonial implant' in the region. . . ." Cotler, *supra* note 62, at 7.

237 *See* G.A. Res. 2200A (XXI), *International Covenant on Civil and Political Rights* (Mar. 23, 1976), https://www.ohchr.org/en/professionalinterest/pages/ccpr.aspx; G.A. Res. 2200(a) (XXI), International Covenant on Economic, Social and Cultural Rights (Jan. 3, 1976), https://www.ohchr.org/en/professionalinterest/pages/cescr.aspx. "Jews are being singled-out and discriminated against when they alone are denied this right. As Martin Luther King, Jr. put it: 'this is the denial to the Jews of the same right, the right to self-determination, that we accord to African nations and all other peoples of the globe. In short, it is anti-Semitism.'" Cotler, *supra* note 62.

elimination of the world's only Jewish state,[238] ethnic cleansing of the region,[239] and/or the genocidal extermination[240] of the millions of Jewish people who live there,[241] are all examples of things that are *also* likely to be antisemitic, depending on the circumstances.[242] And when 'criticism' of Israel is done in a discriminatory manner (i.e., when Israel is singled out for disparate and disparaging treatment) "not because of what it's done, [but] because of what it is: a Jewish state,"[243] this is antisemitism, and it should not be taken lightly, for two reasons. First, because it is ethically objectionable; and second, because it is dangerous.

This modern form of antisemitism is morally indistinguishable from the historical forms of antisemitism that blamed all manner of evil on 'the Jew.' As Yossi Klein Halevi explains:

> What antisemitism does is turn 'the Jew' into the symbol of whatever it is that a given civilization defines as its most loathsome qualities .... Under Christianity, before the Holocaust and Vatican II, 'the Jew' was the Christ Killer .... [U]nder communism, 'the Jew' was the capitalist. Under Nazism 'the Jew' was the race-polluter .... Now we live in the civilization where the most loathsome qualities are racism, colonialism, apartheid—and lo and behold, the greatest offender in the world today, with all of the beautiful countries in the world, is the Jewish state. The Jewish state is the symbol

---

238 *BDS: In Their Own Words,* JEWISH VIRTUAL LIBR., https://www.jewishvirtuallibrary.org/bds-in-their-own-words (last visited Oct. 13, 2021). As a matter of reference, there are about fifty-seven Islamic nations and 159 in which Christians form the majority. *Id.* Many of these countries have established state religions, and so the idea of there being a state religion alone cannot in and of itself be the problem. *Id.* The difference, of course, and the problem, is the Jewishness. *Id.*

239 *Nada Elia,* CANARY MISSION, https://canarymission.org/professor/Nada_Elia (last visited Oct. 13, 2021).

240 Micha Danzig, *'Palestine From the River to the Sea' Has Always Been a Call for Annihilation Not Liberation,* JEWISH J. (Dec. 3, 2018), https://jewishjournal.com/commentary/blogs/242943/palestine-river-sea-always-call-annihilation-not-liberation/.

241 Jackson Richman, *'Day of Rage' Protesters in Boston Chant Anti-Israel, Pro-Hamas Slogans, Call for Intifada,* JEWISH J. (July 3, 2020), https://jewishjournal.com/israel/318428/day-of-rage-protesters-in-boston-chant-anti-israel-pro-hamas-slogans-call-for-intifada/.

242 Again, context matters. For example, a globalist who believes there should be no states is not antisemitic if they think there should be no Israel.

243 Adam Levick, *Guardian Letter by Palestinian Artists and Academics: Zionists Are Racists*, CAMERA-UK (Nov. 30, 2020), https://camera-uk.org/2020/11/30/guardian-letter-by-palestinian-artists-and-academics-zionists-are-racists/.

> of the genocidal, racist, apartheid state .... The state of the Jews has become 'the Jew' of the states.[244]

An example of this type of treatment is unfortunately often on display at the United Nations. "It is legitimate for the UN to criticize Israel, which should be held accountable like every other country. However, it is not legitimate when UN bodies do so unfairly, selectively,

---

[244] Yossi Klein Halevi, *The Latest Incarnation of Anti-Semitism*, YOUTUBE, 0:23-1:54 (Nov. 15, 2018), https://www.youtube.com/watch?v=qmRZFeyghvY&ab_channel=YossiKleinHalevi. Israel is not colonialist or settler-colonialist because the Jews are indigenous to the land and have maintained a continual presence there. Land prior to the creation of the state was purchased legally and Israel acquired more territory in clearly defensive wars, the vast majority of which it already gave back in the name of peace. *See* Dore Gold, *The Myth of Israel as a Colonialist Entity: An Instrument of Political Warfare to Delegitimize the Jewish State*, 23 JEWISH POL. STUD. REV. 84, 85 (2011). Israel is also not an apartheid state; there are actual legal definitions of apartheid, primarily G.A. Res. 2068 (XXVIII), *International Convention on the Suppression and Punishment of the Crime of Apartheid*, (July 18, 1976) https://www.un.org/en/genocideprevention/documents/atrocity-crimes/Doc.10_International%20Convention%20on%20the%20Suppression%20and%20Punishment%20of%20the%20Crime%20of%20Apartheid.pdf, which says that

> For the purpose of the present Convention, the term 'the crime of apartheid', which shall include similar policies and practices of racial segregation and discrimination as practiced in southern Africa, shall apply to the following inhumane acts committed for the purpose of establishing and maintaining domination by one racial group of persons over any other racial group of persons and systematically oppressing them ....

And also, Rome Statute of the International Criminal Court, Art. VII2(h), which states that:

> The 'crime of apartheid' means inhumane acts of a character similar to those referred to in paragraph 1, committed in the context of an institutionalised regime of systematic oppression and domination by one racial group over any other racial group or groups and committed with the intention of maintaining that regime.

In the words of Judge Richard Goldstone, "in Israel, there is no apartheid. Nothing there comes close to the definition of apartheid under the 1998 Rome Statute." Richard J. Goldstone, *Israel and the Apartheid Slander*, N.Y. TIMES (Oct. 31, 2011), https://www.nytimes.com/2011/11/01/opinion/israel-and-the-apartheid-slander.html. Israel has made over thirty attempts at peace, including some that even the leaders of the Arab world hailed as fair. *See* DENNIS ROSS, THE MISSING PEACE: THE INSIDE STORY OF THE FIGHT FOR MIDDLE EAST PEACE 1699 (2005) (quoting Saudi Prince Bandar that "[i]f Arafat does not accept what it available now, it won't be a tragedy, it will be a crime"). A state cannot be practicing apartheid if they keep on trying to make peace. In addition, the claims of disparity are demonstrably false. While Israel does make distinctions between the rights of citizens and non-citizens (as does every other country) Israeli Arabs have full and equal rights, and are represented in every branch of government. In fact, as of the time of this writing, the Arab-led Joint List is the third largest bloc in the Israeli government.

massively, sometimes exclusively, and always obsessively."[245] In other words, political anti-Israel activity is fine; discriminatory anti-Israel activity that scapegoats the Jewish state the same way that antisemites have always scapegoated the Jewish people, is *not* fine. The problem is that this happens all the time.[246] For instance, the UN Human Rights Council was established in 2006 to address human rights issues around the globe. In its first year, 100 percent of its condemnatory resolutions—all nine—targeted Israel.[247] Israel remains the only country in the entire world that has a permanent agenda item dedicated to it. From 2006 to 2016, 68 of the 135 UNHRC resolutions—over 50 percent—were targeted at Israel.[248] In the UN Commission on Human Rights, half of all the resolutions that censure states are targeted at Israel, and the General Assembly is even worse. From 2012 to 2015, the GA adopted ninety-four resolutions criticizing countries.[249] Eighty-three of those, or 86 percent, were targeted at Israel, with eleven for the rest of the globe.[250] As of the time of this writing, in the current seventy-fifth session of the UN General Assembly (2020-2021) there have been seventeen resolutions against Israel, and seven about *the rest of the world combined.*[251]

Former Secretary General Ban Ki-moon conceded that there is an anti-Israel bias within the UN that threatens the work the UN is attempting to do. As he explains, "[d]ecades of political maneuvering have created a disproportionate number of resolutions, reports and conferences criticizing Israel."[252] Of course, the most famous example

---

245 Hillel C. Neuer, *The Struggle Against Anti-Israel Bias at the UN Commission on Human Rights*, JERUSALEM CTR. FOR PUB. AFFS. (Jan. 1, 2006), https://www.jcpa.org/phas/phas-040-neuer.htm.

246 *See* Eugene Kontorovich, *Unsettled: A Global Study of Settlements in Occupied Territories*, 9 J. LEGAL ANALYSIS 285 (2017) (discussing how the *international* community treats *settlement* activity in the disputed territories in Israel differently than any other areas in the world that might be considered "*occupied territory*."

247 *See The U.N. and Israel: Key Statistics from UN Watch*, UN WATCH (Aug. 23, 2016), https://unwatch.org/un-israel-key-statistics. During this same time, there were: blatant extrajudicial killings in Bangladesh, two million displaced Ugandans—80 percent women and children—due to the Lord's Resistance Army in northern Uganda, and other such atrocities, but the Human Rights Council's sole attention during its first year was to condemn Israel.

248 *Id.*

249 *Id.*

250 *Id.*

251 For comparison sake, North Korea, Syria, and Iran each have one. *See 2020-2021 UNGA Resolutions on Countries*, UN WATCH (Dec. 16, 2020), https://unwatch.org/2020-2021-un-general-assembly-resolutions-singling-out-israel-texts-votes-analysis/.

252 Ban Ki-moon, U.N. Secretary-General, Secretary-General's Briefing to the Security Council on the Situation in the Middle East, Including the Palestinian Question (Dec. 16,

of antisemitic slander at the UN was Resolution 3379 of November 10, 1975, which declared Zionism to be a form of racism and racial discrimination.[253] Before the vote, the U.S. Ambassador to the United Nations, Daniel Patrick Moynihan, warned that, "[t]he United Nations is about to make anti-Semitism international law. . . . The United States does not acknowledge, it will not abide by, it will never acquiesce in this infamous act . . . A great evil has been loosed upon the world.[254] That resolution, which former Secretary General Kofi Annan described as a "low point" in UN history, was finally repealed on December 16, 1991.[255] Still, in 2015, Ban Ki-moon noted that the resolution was based on "hatred and ignorance," and admitted that "[t]he reputation of the United Nations was badly damaged by the adoption of resolution 3379, in and beyond Israel and the wider Jewish community."[256]

This type of discrimination does not only happen at the international macro level; it also occurs when individual students and/or student groups are singled out and discriminated against because of their stated or assumed support of 'Zionism.' And so, it is worth explaining why discrimination against 'Zionists' is problematic—with the twin caveats that not all antisemitic anti-Zionism is illegal (for

2016), https://www.un.org/sg/en/content/sg/statement/2016-12-16/secretary-generals-briefing-security-council-situation-middle-east.

253 On the day it was passed, Israeli Ambassador Chaim Herzog addressed the General Assembly and pointed out the absurdity of the claim noting that:

> You dare talk of racism when I can point with pride to the Arab ministers who have served in my government; to the Arab deputy speaker of my Parliament; to Arab officers and men serving of their own volition in our border and police defense forces, frequently commanding Jewish troops; to the hundreds of thousands of Arabs from all over the Middle East crowding the cities of Israel every year; to the thousands of Arabs from all over the Middle East coming for medical treatment to Israel; to the peaceful coexistence which has developed; to the fact that Arabic is an official language in Israel on a par with Hebrew; to the fact that it is as natural for an Arab to serve in public office in Israel as it is incongruous to think of a Jew serving in any public office in an Arab country, indeed being admitted to many of them. Is that racism? It is not! That . . . is Zionism.

Chaim Herzog, Response to 'Zionism is Racism' (Nov. 10, 1975), *in* GREAT SPEECHES OF THE TWENTIETH CENTURY 163 (Bob Blaisdell ed., 2011).

254 Daniel Patrick Moynihan, Response to United Nations Resolution 3379 (Nov. 10, 1975), *in Online Speech Bank*, AMERICAN RHETORIC, https://www.americanrhetoric.com/speeches/danielpatrickmoynihanun3379.htm.

255 *Israel at the UN: A History of Bias and Progress – September 2012*, ANTI-DEFAMATION LEAGUE (2013), https://www.adl.org/sites/default/files/documents/israel-international/un-international-organizations/c/Israel-at-the-UN-1.pdf.

256 Press Release, U.N. Secretary-General, Secretary-General Commemorates Anniversary of Chaim Herzog's Speech Condemning General Assembly Resolution Equating Zionism with Racism, U.N. Press Release SG/SM/17319 (Nov. 11, 2015), https://www.un.org/press/en/2015/sgsm17319.doc.htm.

example, when it involves free speech) and not all anti-Zionism is *inherently* antisemitic (for instance, political anti-Zionism). But anti-Zionism that allows for discrimination against Jewish people and/or their allies because of their affiliation with, affinity for, or support of the biblical/prophetic/historical/ethnic/cultural/Jewish ideal of Zionism *is* antisemitism.[257] Antisemites should not get to narrowly define what *they* think Zionism does or should mean to Jewish people, claim that it is racist, project that onto Jews, and then discriminate against them for allegedly holding that super-imposed bogeyman belief. Zionism is the movement for the re-establishment and now, development and protection, of a Jewish nation in its ancestral homeland.[258] Discriminating against a Jewish person or group just because they are Zionist is illegal because Zionism is demonstrably *not* just a political movement. "For the vast majority of Jewish people across time and space, Zionism is and always has been an integral part of their Jewish, often their religious, identities."[259] For thousands of years, Jews across the world have prayed to God at least three times a day (and often more)[260] for a safe return to Zion. The Bible itself references this ancient

[257] The difference between political anti-Zionism and antisemitism is sometimes reflected legally in the difference between primary boycotts and secondary or tertiary boycotts.

> A primary boycott is usually defined as a boycott in which the boycotter is acting against the entity that it has a grievance with (for example, retail clerks picketing their employer over wages or working conditions). A secondary boycott is one in which the party boycotting an entity has a goal of affecting a third party, rather than the boycotted entity. A tertiary boycott is one in which the goal is to affect a fourth party, who supports the third party supporting the boycotted entity. BDS Movement activists [for the most part] are engaging in something of a hybrid of a secondary-tertiary boycott. Their issue appears to be with the State of Israel, but they are not just engaging in a boycott of the government of Israel. The bulk of the individual companies, academics, institutions, and others who are targeted by BDS are not representing the government of Israel, and the bulk of the boycott activity is directed against them (a secondary boycott) and the people that support them (a tertiary boycott). Secondary—tertiary boycotts have very little protection under the First Amendment. The BDS supporters are not trying to protect their own constitutional rights; they are trying to use commerce to inflict harm on a foreign nation (and to discriminate against Americans who are of Jewish descent or who support Israel).

Goldfeder, *Stop Defending Discrimination*, *supra* note 42, at 223–24.

[258] *Frequently Asked Questions About Israel: What is Zionism?*, ISRAEL MINISTRY FOREIGN AFFS. (Nov. 1, 2001), https://mfa.gov.il/MFA/MFA-Archive/2001/Pages/Frequently%20Asked%20Questions%20About%20Israel.aspx#zionism.

[259] Goldfeder, *The Danger of Defining You Own Terms*, *supra* note 197.

[260] Briana Simon, *Zion in the Sources: Yearning for Zion*, WORLD ZIONIST ORG., https://www.wzo.org.il/index.php?dir=site&page=articles&op=item&cs=3318&langpage=heb (last visited Aug. 4, 2020).

Jewish hope,[261] while the Prophets and Writings of the Hebrew Bible repeatedly record this aspiration.[262] From a Jewish law perspective, over half of the Biblical commandments that religious Jewish people are bound to obey are specifically tied to the Jewish homeland.[263] From a doctrinal point of view, belief in and hope for the return to Zion is literally part of the Thirteen Principles of Jewish Faith.[264]

While it is not inherently antisemitic to be against political Zionism,[265] the reason that the IHRA definition includes "[d]enying the Jewish people their right to self-determination"[266] is precisely because it recognizes that for *many*, if not *most* Jewish people, Zionism is a fundamental *Jewish* belief, and discriminating against someone for their religious belief (or ethnoreligious identity) is wrong. "Denying the Jewish people the right to self-determination and a national homeland is antisemitic because it denies the *religious* and historic ties of Jews to the land of Israel."[267] As Alyza Lewin eloquently put it:

> Zionism is as integral to Judaism as observing the Jewish Sabbath or maintaining a kosher diet. Not all Jews observe Shabbat or kashrut, but those who do, do so as an expression of their Jewish identity. Similarly, not all Jews are Zionists. But for many Jews identifying with and expressing support for the Jewish homeland is also an expression of their Jewish religious and ethnic identity. Harassing, marginalizing, demonizing and excluding these Jews on the basis of the Zionist part of their identity is just as unlawful and discriminatory as attacking a person for observing Shabbat or keeping kosher. It's comparable to demanding that a Catholic student disavow the Vatican or that a Muslim student shed his/her connection to Mecca. Excluding an individual in this

---

261 *See, e.g.*, *Deuteronomy* 30:1-5.

262 *See, e.g.*, *Isaiah* 11:11-12; *Jeremiah* 29:14; 20:41-42; *Psalm* 126; *Psalm* 137.

263 *About Us,* TORAH VEHA'ARETZ INST., https://en.toraland.org.il/about/ (last visited Oct. 13, 2021).

264 *Maimonides' Introduction to Perek Helek,* MAIMONIDES HERITAGE CTR. 14, https://www.mhcny.org/qt/1005.pdf. (explaining the 12th Fundamental Principle).

265 As many are aware, there are even fringe religious Jewish groups that call themselves anti-Zionists, like the Neturei Karta group. Although it is worth noting that while they are against modern political Zionism, they *also* believe in the Jewish right to a homeland in the Land of Israel, and pray for that to happen every day. They just believe that the time of redemption must come first.

266 *Defining Antisemitism*, *supra* note 48.

267 FED. ASS'N DEP'TS FOR RSCH. & INFO. ON ANTISEMITISM E.V., EUR. COMM'N, HANDBOOK FOR THE PRACTICAL USE OF THE IHRA WORKING DEFINITION OF ANTISEMITISM, DS-03-21-002-EN-N 14 (Jan. 7, 2021), https://op.europa.eu/en/publication-detail/-/publication/d3006107-519b-11eb-b59f-01aa75ed71a1/language-en (emphasis added).

> manner on the basis of his/her identity is discrimination. . . . [I]t demands that Jews shed a key component of their identity as Jews—namely, the historic Jewish yearning and determination to return to Zion.[268]

It is also clear that anti-Zionist discrimination functions as anti-Jewish discrimination from an objective legal perspective, under a disparate impact analysis. That measure ignores motivation and looks rather at the discriminatory effect of a given action or policy.[269] A recent Gallup poll found that 95 percent of American Jews support Israel[270]—which is the definition of Zionism that tends to get Jewish students and Jewish groups excluded around the country[271]—even if they may disapprove of some or all Israeli policies. The research also shows that religion plays an important part in those beliefs,[272] but even if that part was not clear,[273] if in practice a policy has the effect of excluding or demonizing 95 percent of a group based on their shared ethnic beliefs,[274] "then it should be obvious that you are discriminating against that group and their beliefs."[275]

Some prominent examples of discriminatory anti-Zionism from the last few years include: the 2018 petition that fifty-three student groups

---

[268] Alyza Lewin, *Fighting Back Against Jew-hatred on Campus,* JEWISH STAR (July 9, 2020), https://www.thejewishstar.com/stories/fighting-back-against-jew-hatred-on-campus,19410.

[269] *See, e.g.*, Griggs v. Duke Power Co., 401 U.S. 424, 432 (1971).

[270] Frank Newport, *American Jews, Politics and Israel,* GALLUP (Aug. 27, 2019), https://news.gallup.com/opinion/polling-matters/265898/american-jews-politics-israel.aspx.

[271] Marcy Oster, *USC Student Gov't Head Quit Because She Was Harassed for Being Pro-Israel*, JERUSALEM POST (Aug. 7, 2020), https://www.jpost.com/diaspora/antisemitism/usc-student-govt-head-quit-because-she-was-harassed-for-being-pro-israel-637802.

[272] Frank Newport, *Religion Plays Large Role in Americans' Support for Israelis,* GALLUP (Aug. 1, 2014), https://news.gallup.com/poll/174266/religion-plays-large-role-americans-support-israelis.aspx.

[273] And even accounting for some of the modern pushback on disparate impact theory generally. *See, e.g.*, Susan D. Carle, *A Social Movement History of Title VII Disparate Impact Analysis*, 63 FLA. L. REV. 251, 254 (2011).

[274] The most common measure of adverse impact—and the measure used by the Uniform Guidelines on Employee Selection Procedures—is the Four-Fifths Rule, or 80 Percent Rule. *See* Nathan Mondragon, *What is Adverse Impact? And Why Measuring It Matters*, HIREVUE (Mar. 25, 2018), https://www.hirevue.com/blog/hiring/what-is-adverse-impact-and-why-measuring-it-matters. The Four-Fifths Rule was "codified in the 1978 Uniform Guidelines on Employee Selection Procedures, a document used by the U.S. Equal Employment Opportunity Commission ("EEOC"), Department of Labor, and Department of Justice in Title VII enforcement." DAN BIDDLE, ADVERSE IMPACT AND TEST VALIDATION: A PRACTITIONER'S GUIDE TO VALID AND DEFENSIBLE EMPLOYMENT TESTING 2–5 (2d ed. 2006).

[275] Goldfeder, *The Danger of Defining Your Own Terms, supra* note 197, at 44.

at NYU signed, pledging to boycott "not only Israeli goods or initiatives," but also their fellow students who were members of Zionist groups;[276] a student guide distributed by progressive groups at Vassar encouraging students to "slap a Zionist;"[277] a student government official at USC who was forced to resign amid a torrent of harassment that she was 'racist' for being Zionist;[278] a San Francisco State University Professor starting a campaign to declare that 'Zionists' are not welcome on campus[279]; and a Johns Hopkins teaching assistant tweeting about wanting to secretly deduct points from students who are Zionists.[280] Study after study has shown that this kind of discriminatory rhetoric eventually leads to action.[281] Sadly, these studies have been confirmed each time allegedly non-antisemitic "anti-Israel"[282] activism breaks through the

[276] Daniel Brooks, *NYT to Jews on Campus: Stop Whining, You Deserve the Hate*, TIMES ISRAEL: BLOGS (Jan. 26, 2021, 9:07 PM), https://blogs.timesofisrael.com/nyt-to-jews-on-campus-stop-whining-you-deserve-the-hate/; Adela Cojab Moadeb, *Student Who Sued NYU for Anti-Semitism: Trump Has 'Empowered' Jews on Campus*, N.Y POST (Dec. 14, 2019), https://nypost.com/2019/12/14/student-who-sued-nyu-for-anti-semitism-trump-has-empowered-jews-on-campus/.

[277] Nina Schutzman, *Vassar College Students Face Penalties for Making, Sharing Guide Deemed Antisemitic*, POUGHKEEPSIE J., (Sept. 5, 2018), https://www.poughkeepsiejournal.com/story/news/education/2018/09/05/vassar-college-students-face-penalties-antisemitic-guide/1195842002/.

[278] Rose Ritch, *I Was Harassed and Persecuted on Campus Just for Being a Zionist*, NEWSWEEK (Aug. 10, 2020), https://www.newsweek.com/i-was-harassed-persecuted-campus-just-being-zionist-opinion-1523873.

[279] Aaron Bandler, *SF Professor Under Fire for Saying That Zionists Aren't Welcome on Campus*, JEWISH J. (Mar. 26, 2018), https://jewishjournal.com/news/united-states/232343/sf-professor-fire-saying-zionists-wouldnt-allowed-campus/.

[280] *See* Letter to Ronald J. Daniels, President, Johns Hopkins Univ., and Dr. David Yarkony, Chair and D. Mead Johnson Professor of Chemistry, Johns Hopkins Univ. (Dec. 3, 2020), https://www.standwithus.com/post/letter-to-johns-hopkins-university-regarding-antisemitic-posts-from-graduate-researcher-and-ta; Cnaan Lipshiz, *Johns Hopkins University TA Suggests Penalizing Pro-Israel Students*, JERUSALEM POST (Jan. 9, 2021), https://www.jpost.com/diaspora/antisemitism/johns-hopkins-ta-suggests-penalizing-pro-israel-students-654780.

[281] *See, e.g.*, Morton A. Klein, *ZOA Center for Law and Justice Director Susan Tuchman's Testimony on Anti-Semitism Before the U.S. Commission on Civil Rights*, ZIONIST ORG. AM. (Nov. 18, 2005), https://zoa.org/2005/11/102058-zoa-center-for-law-and-justice-director-susan-tuchmans-testimony-on-anti-semitism-before-the-u-s-commission-on-civil-rights/:

> According to the Center for the Prevention of Hate Violence at the University of Southern Maine, in virtually every one of the investigations of serious violence or threats in high schools or colleges conducted by the Maine Attorney General's Office over the past eight years, the same pattern exists: the act of violence was not the beginning but rather the end of a stream of escalating harassment which at some point began with the use of degrading language.

[282] Jeremy Bauer-Wolf, *After Threat of Violence, Calls to Fire RA*, INSIDE HIGHER ED (Aug. 1, 2018), https://www.insidehighered.com/news/2018/08/01/calls-stanford-ra-be-fired-after-he-threatens-fight-zionists.

"nonviolent" veil,[283] leading to people getting hurt.[284] Or when the student groups that start by demanding Jews leave campus[285] end up threatening outright violence should they dare refuse to go.[286]

---

[283] Rachel Frommer, *British Jewish Leaders Outraged by London University Anti-Israel Protest Which Required Police Intervention,* ALGEMEINER (Oct. 28, 2016), https://www.algemeiner.com/2016/10/28/british-jewish-leaders-outraged-by-london-university-anti-israel-protest-which-required-police-intervention/.

[284] DIKER & BERK, supra note 231, at 28-33.

[285] SJP UIUC, *Smashing Fascism: Radical Resistance Against White Supremacy*, FACEBOOK (Sept. 1, 2017), https://www.facebook.com/SJP.UIUC/photos/a.631907060208926.1073741828.568877179845248/1443649489034675/?type=3.

[286] William A. Jacobson, *Anti-Israel Rally at U. Illinois: "No Zionists, No KKK, Resisting Fascists All the Way,"* LEGAL INSURRECTION (Sept. 6, 2017, 7:00 PM), https://legalinsurrection.com/2017/09/anti-israel-rally-at-u-illinois-no-zionists-no-kkk-resisting-fascists-all-the-way. This is not entirely surprising because while many 'anti-Israel' activists probably believe the easily refutable "hyperbolic calumnies" that they are fed and think that they are doing something noble, the leaders of the movement often do know better, and they prey upon innocent college-age kids to fill their heads with lies and indoctrinate them in hate. *See* Paul Miller, *From UCLA to NYU, BDS Supporters Struggle with Dialogue*, OBSERVER (Feb. 27, 2014) https://observer.com/2014/02/from-ucla-to-nyu-bds-supporters-struggle-with-dialogue/. Many of their followers probably do not know that several prominent anti-Israel organizations and academics are closely affiliated with violent radical antisemitic groups and convicted murderous terrorists. *See* Eitan Fischberger, *Anti-Academia at San Francisco State University*, JEWISH J. (Jan. 13, 2021), https://jewishjournal.com/commentary/327404/anti-academia-at-san-francisco-state-university/. For example, on the left, a recent study found that anti-Israel pro-Boycott Divestment and Sanctions ("BDS") activity is the strongest predictor of anti-Jewish hostility on campus. *See* AMCHA INITIATIVE, REPORT ON ANTISEMITIC ACTIVITY IN 2015 AT U.S. COLLEGES AND UNIVERSITIES WITH THE LARGEST JEWISH UNDERGRADUATE POPULATIONS 1, 11–12 http://www.amchainitiative.org/wp-content/uploads/2016/03/Antisemitic-Activity-at-U.S.-Colleges-and-Universities-with-Jewish-Populations-2015-Full-Report.pdf. Meanwhile, in 2016 Congress heard testimony from former U.S. Department of the Treasury terrorism finance analyst Jonathan Schanzer linking the BDS movement to radical terror groups whose mission is the destruction of Israel. *See Israel Imperiled: Threats to the Jewish State: Hearing Before H. Foreign Affairs Comm. Subcomm. On Terrorism, Nonproliferation, and Trade and the Subcomm. On the Middle E. and N. Afr.*, 114th Cong. (2016) (statement of Jonathan Schanzer), https://docs.house.gov/meetings/FA/FA18/20160419/104817/HHRG-114-FA18-Wstate-SchanzerJ-20160419.pdf. Since that time, his testimony has been confirmed and greatly expanded upon, with new reports finding that the nonprofit umbrella group for U.S.-based BDS organizations funnels money to terrorist organizations that try to carry out the more sinister BDS aims; *see* Armin Rosen & Liel Leibovitz, *BDS Umbrella Group Linked to Palestinian Terrorist Organizations,* TABLET (June 1, 2018), https://www.tabletmag.com/sections/news/articles/bds-umbrella-group-linked-to-palestinian-terrorist-organizations). *See also* William A. Jacobson, *UC-Berkeley Anti-Israel Activists Rip Up Photo of Rasmea Odeh's Terror Victims*, LEGAL INSURRECTION (Feb. 16, 2020, 9:00 PM), https://legalinsurrection.com/2020/02/uc-berkeley-anti-israel-activists-rip-up-photo-of-rasmea-odehs-terror-victims/#more. More than thirty of the BDS movement's leaders are *actual* violent terrorists; *see* STATE OF ISRAEL: MINISTRY OF STRATEGIC AFFAIRS AND PUBLIC DIPLOMACY, TERRORISTS IN SUITS: THE TIES BETWEEN NGOS PROMOTING BDS AND TERRORIST ORGANIZATIONS, (2019), https://www.gov.il/BlobFolder/generalpage/terrorists_in_suits/en/De-Legitimization%20Brochure.pdf; Emily Jones, *'Terrorists in Suits': Senior Leaders of Anti-Israel BDS Groups Tied to Palestinian Terror*,

Sometimes, instead of flyers and pronouncements, the discriminatory anti-Zionism takes the even quieter form of conditional invitations to opportunities, with entry to Jewish participants contingent on them disavowing an aspect of their Jewish identity. Over the last several years, Jewish individuals and groups have routinely been told they are not welcome at conferences,[287] coalitions,[288] campuses,[289] concerts,[290] demonstrations,[291] and even discussions[292]—unless, of course, they agree to denounce Zionism first.[293] Jews on campus have been denied letters of recommendation[294] and entry into events,[295] had their leadership credentials[296] and their loyalties

CBN NEWS (Feb. 4, 2019), https://www1.cbn.com/cbnnews/israel/2019/february/report-senior-leaders-of-anti-israel-bds-organizations-are-lsquo-terrorists-in-suits-rsquo. On the far right, former grand wizard of the Klu Klux Klan David Duke has been trying to popularize use of the word Zio (short for Zionist) as a stand in for the word Jew, to be able to criticize Jewish people without being immediately called antisemitic. *See generally* DAVIDDUKE.COM: ZIO-WATCH NEWS ROUND-UP, http://davidduke.com/category/zio-watch/ (last visited Aug. 30, 2020); *Understanding Antisemitism: An Offering to Our Movement*, JEWS FOR RACIAL & ECON. JUST., https://www.jfrej.org/assets/uploads/JFREJ-Understanding-Antisemitism-November-2017-v1-3-2.pdf (last visited Aug. 30, 2020).

287 Anthony Berteaux, *In the Safe Spaces on Campus, No Jews Allowed,* TOWER (Feb. 2016), http://www.thetower.org/article/in-the-safe-spaces-on-campus-no-jews-allowed/.

288 Geremia Di Maro, *Minority Rights Coalition to Reconsider Membership for Jewish Leadership Council*, CAVALIER DAILY (Mar. 3, 2018), https://www.cavalierdaily.com/article/2018/03/minority-rights-coalition-to-reconsider-membership-for-jewish-leadership-council.

289 Bandler, *supra* note 279.

290 Rabbi Yonah Bookstein, *Matisyahu Played, but BDS Racism is Winning,* JEWISH J. (Aug. 24, 2015), https://jewishjournal.com/israel/176973/matisyahu-played-but-bds-racism-is-winning/.

291 Ariel Behar, *Sarsour Group Says 'No Zionists' at Civil Rights Rally*, ALGEMEINER (June 24, 2020), https://www.algemeiner.com/2020/06/24/sarsour-group-says-no-zionists-at-civil-rights-rally/.

292 *A Strategy of Rejection: The Anti-Normalization Campaign*, ANTI-DEFAMATION LEAGUE (May 25, 2012), https://www.adl.org/news/article/a-strategy-of-rejection-the-anti-normalization-campaign.

293 Deborah Lipstadt, *It's Time to Walk Away from the Women's March*, HADASSAH MAG. (Jan. 2019), https://www.hadassahmagazine.org/2019/01/03/time-walk-away-womens-march/.

294 Jackson Richman, *Michigan Jewish Student Denied Recommendation by Professor, Citing BDS as Reason*, JEWISH NEWS SYNDICATE (Sept. 18, 2018), https://www.jns.org/jewish-student-denied-recommendation-by-university-of-michigan-professor-citing-bds-as-reason/.

295 Dave Schechter, *Hillels of Georgia Seeks Anti-Semitism Probe of Georgia Tech*, ATLANTA JEWISH TIMES (Jan 12, 2020), https://atlantajewishtimes.timesofisrael.com/hillels-of-georgia-seeks-anti-semitism-probe-of-georgia-tech/.

296 Aaron Bandler, *USC Student VP Resigns, Says She Was Bullied for Being a Zionist*, JEWISH J. (Aug. 6, 2020), https://jewishjournal.com/featured/319981/usc-student-vp-resigns-says-she-was-bullied-for-being-a-zionist/.

questioned,[297] been called pejorative names (e.g., murderers, pigs, apartheid enablers, baby killers),[298] labeled as white supremacists,[299] and scapegoated for everything from racism[300] to the coronavirus[301] to police brutality.[302] In general, Jewish people are routinely excluded from progressive movements[303] public marches,[304] and liberal coalitions,[305] "all because of their stated or assumed support for Zionism."[306]

Of course, it is true that some Jews are themselves anti-Zionistic. One problem (as Blake Flayton, a self-described progressive Zionist student at George Washington University, described it) is that all too often, progressive "groups protect themselves against accusations of antisemitism by trotting out their anti-Zionist Jewish supporters, despite that such Jews are a tiny fringe of the Jewish community. Such tokenism is seen as unacceptable—and rightfully so—in any other space

297 Barry Kosmin, *UCLA Student Is Latest Victim of Antisemitism on Campus*, CNN (Mar. 10, 2015), https://www.cnn.com/2015/03/10/opinions/kosmin-anti-semitism-campus/index.html.

298 Zina Rakhamilova, *#NOHATEONCAMPUS*, JERUSALEM POST (Nov. 3, 2018), https://www.jpost.com/Opinion/NOHATEONCAMPUS-570999; Blake Flayton, *On the Frontlines of Progressive Anti-Semitism*, N.Y. TIMES (Nov. 14, 2019), https://www.nytimes.com/2019/11/14/opinion/college-israel-anti-semitism.html.

299 Nada Elia, *Birds of a Feather: White Supremacy and Zionism*, MIDDLE EAST EYE (Aug. 24, 2017), https://www.middleeasteye.net/opinion/birds-feather-white-supremacy-and-zionism.

300 Farah Stockman, *Women's March Roiled by Accusations of Anti-Semitism*, N.Y. TIMES (Dec. 13, 2018), https://www.nytimes.com/2018/12/23/us/womens-march-anti-semitism.html.

301 Brenda Katten, *Even During the Coronavirus Pandemic, Jews Are Ever the Scapegoat*, JERUSALEM POST (May 14, 2020), https://www.jpost.com/opinion/even-during-the-coronavirus-pandemic-jews-are-ever-the-scapegoat-627982.

302 Ricki Hollander, *Black Lives Matter, JVP's Deadly Exchange, and Israel*, CAMERA (July 2, 2020), https://www.camera.org/article/black-lives-matter-jvps-deadly-exchange-and-israel/.

303 Berteaux, *supra* note 287.

304 Bari Weiss, *I'm Glad the Dyke March Banned Jewish Stars*, N.Y. TIMES (June 27, 2017), https://www.nytimes.com/2017/06/27/opinion/im-glad-the-dyke-march-banned-jewish-stars.html; William A. Jacobson, *Jewish Voice for Peace-Chicago Sides with "Dyke March" Anti-Semites*, LEGAL INSURRECTION (June 26, 2017, 8:40 PM), https://legalinsurrection.com/2017/06/jewish-voice-for-peace-chicago-sides-with-dyke-march-anti-semites/.

305 Geremia Di Maro, *Minority Rights Coalition to Reconsider Membership for Jewish Leadership Council*, CAVALIER DAILY (Mar. 3, 2018), https://www.cavalierdaily.com/article/2018/03/minority-rights-coalition-to-reconsider-membership-for-jewish-leadership-council.

306 Goldfeder, *The Danger of Defining Your Own Terms*, *supra* note 197, at 1431.

where a marginalized community feels threatened."[307] This classic trope, in the vein of "some of my best friends are ___," is a logically invalid claim of innocence by association,[308] and is so lazily dismissive that "it has become shorthand for weak denials of bigotry—a punch line about the absence of thoughtfulness and rigor in our conversations about racism."[309]

Jews, like any other group, are not homogenous and so, as Professor Andrew Pessin has noted, it is dire that the question of anti-Semitism be framed correctly:

> For if Jews come in many types . . . it is perfectly conceivable that someone legitimately characterizable as an antisemite might not hate all or even most Jews. The crucial question should not be whether he hates all or most Jews, in other words. It is whether the people he hates, *he hates for their Jewishness*.[310]

Or for some aspect of their Jewishness, including their actual or supposed Zionism.[311]

Unfortunately, as the dozens of examples above make clear, it is too often true that, as Martin Luther King, Jr. once said**:** "[w]hen people criticize Zionists, they mean Jews. You're talking anti-Semitism!"[312] To claim that Zionism and Judaism are completely separate phenomena is to be ignorant. Or, as Dennis Prager would say, is like pretending that "Italy has nothing to do with being Italian."[313]

---

307 Blake Flayton, Opinion, *On the Frontlines of Progressive Anti-Semitism*, N.Y. TIMES (Nov. 14, 2019), https://www.nytimes.com/2019/11/14/opinion/college-israel-anti-semitism.html.

308 *See* Matthew P. Winslow, *Reactions to the Imputation of Prejudice*, 26 BASIC & APPLIED SOC. PSYCH. 289, 289–97 (2004) (Experiment 2). As one expert explained, "it is like saying there is no such thing as sexism because we all have a close friend or family member who is a woman." ELIZABETH ANNE MCGIBBON & JOSEPHINE B. ETOWA, ANTI-RACIST HEALTH CARE PRACTICE 159 (2009)).

309 *See* John Eligon, *The 'Some of My Best Friends Are Black' Defense*, N.Y. TIMES (Feb. 16, 2019), https://www.nytimes.com/2019/02/16/sunday-review/ralph-northam-blackface-friends.html.

310 Andrew Pessin, *The Indelible Stain of Antisemitism: The Failed Practice of "Jew-Washing,"* TIMES OF ISRAEL: THE BLOGS (June 24, 2017, 11:04 PM), https://blogs.timesofisrael.com/the-indelible-stain-of-antisemitism-the-failed-practice-of-jew-washing/.

311 See Newport, *supra* note 270 above for a discussion of the research, which found that 95 percent of American Jews support Israel—which, is the definition of Zionism that tends to get Jewish students and Jewish groups excluded on campuses around the country—and that their Judaism plays an important part in that belief.

312 MARTIN KRAMER, THE WAR ON ERROR: ISRAEL, ISLAM, & THE MIDDLE EAST 260 (2016).

313 Dennis Prager, *Criticizing Israel Is Fine, but Anti-Zionism Is Anti-Semitic*, N.Y. POST (Aug. 20, 2019), https://nypost.com/2019/08/20/criticizing-israel-is-fine-but-anti-zionism-is-anti-semitic/; *see also* Forest Rain Marcia, *Anti-Zionism Is The New*

It is also worth remembering that to be anti-Zionist today is to be against the survival of the world's only Jewish state. As Alan Johnson noted: "[a]nti-Zionism has come to mean something entirely different . . . *after* the creation of the State of Israel in 1948: it has come to mean a programme of comprehensive hostility to all but a sliver of world Jewry, a programme for the eradication of actually existing Jewish self-determination."[314] To imagine that the state would go away "'without wholesale killing of Jews'"[315] is ridiculous. That means to be anti-Zionist, in the sense of wanting to destroy the Jewish State,[316] is to be okay with the mass slaughter of the Jews who live there.[317]

The examples in the IHRA definition are there for a reason. State officials and school administrators themselves might need more training in what is and is not acceptable, which is why an objective and consensus driven standard is necessary.[318] Too often perpetrators and enablers let the conflation of criticism of Israel and antisemitism serve as a shield for antisemites. Without a clear definition and the contextual

Antisemitism, ISRAEL FOREVER FOUND., https://israelforever.org/interact/blog/anti_zionism_is_the_new_antisemitism/ (last visited Oct. 19, 2021).

[314] Alan Johnson, *The Left and the Jews: Time for a Rethink*, FATHOM J., http://fathomjournal.org/the-left-and-the-jews-time-for-a-rethink/ (last visited Aug. 22, 2021).

[315] Aaron Kliegman, *Anti-Zionism Is, by Definition, Antisemitism*, WASH. FREE BEACON (Jan. 17, 2019, 3:40 PM), https://freebeacon.com/blog/anti-zionism-is-by-definition-anti-semitism/.

[316] As in the oft-used Hamas jihadist rallying cry, 'from the river to the sea,' that is sadly all too often echoed by commentators, see, e.g., Micha Danzig, *'Palestine From the River to the Sea' Has Always Been a Call for Annihilation Not Liberation*, JEWISH J. (Dec. 3, 2018), https://jewishjournal.com/commentary/blogs/242943/palestine-river-sea-always-call-annihilation-not-liberation/, and politicians, see, e.g., Dr. Mark Goldfeder, *Dr. Mark Goldfeder: House Should Censure Anti-Semitic Rep. Rashida Tlaib*, FOX NEWS (Dec. 3, 2020), https://www.foxnews.com/opinion/rashida-tlaib-anti-semitism-mark-goldfeder, who then feign ignorance, and by students on campus, see Aaron Bandler, *SJP Protesters Chant 'From the River to the Sea Palestine Will Be Free' During Hen Mazzig Speech*, JEWISH J. (Nov. 15, 2019), https://jewishjournal.com/news/united-states/307197/sjp-protesters-chant-from-the-river-to-the-sea-during-hen-mazzigs-speech-at-vassar-college/; Morton A. Klein & Susan B. Tuchman, *ZOA Letter to CUNY Leaders About Anti-Semitic, Violence-Inducing Rallies There*, ZIONIST ORG. AM. (Feb. 22, 2016), https://zoa.org/2016/02/10315402-letter-to-cuny-chancellor-and-board-of-trustees-jew-haters-spread-fear-at-cuny-colleges/, who don't.

[317] Kliegman, *supra* note 315.

[318] And students need protection from 'intellectuals' who have no qualms about spreading horrific lies made out of whole cloth in quasi-academic settings. *See* Liora Rez, *We Must Define Antisemitism to Stop Antisemitism*, JERUSALEM POST (Dec. 5, 2020, 9:47 PM), https://www.jpost.com/opinion/we-must-define-antisemitism-to-stop-antisemitism-651256. It is a shame that impressionable students are taken advantage of by people they trust co-opting the language of social justice to lead them down a dark path of hate. The IHRA definition is a tool that can shed some light to hopefully help bring many of them back.

understanding of how anti-Zionist language is often used to perpetuate antisemitic tropes, this issue will not be resolved, and students will continue to harass and be harassed by their peers, and potentially professors, on the basis of Jewish identification. Because this is the hardest part of the definition for many people to understand, it is worth providing a case study to illustrate the principle.

VIII. A CASE STUDY IN THE NECESSITY OF CLEARLY DEFINING TERMS

There is a real danger in allowing people to confuse conduct with speech, and antisemitism with criticism of Israel. The double conflation allows antisemites to do whatever they want to Jewish people, and then immediately claim that they, in fact, are the victims having their "political speech" silenced.

A. *What Happened "Over There"*

A recent German court case provides an illustrative example of what can happen when authorities allow antisemitic crime to hide behind the veil of criticism for Israel—the blurring of what it means to be anti-Israel and anti-Jew.[319] On July 29, 2014, three German-Palestinian men filled six bottles with petrol and attempted to firebomb a synagogue in Wuppertal, Germany.[320] It is noteworthy that Nazis burned the original synagogue during the infamous Kristallnacht pogroms in 1938.[321] It was finally rebuilt in 2002.[322]

Several months later, in 2015, the district court in Wuppertal ruled that this attack was not antisemitic, but merely anti-Israel political speech, and exempted the criminals from jail time.[323] On January 13, 2017, a German superior court upheld the lower court's ruling, affirming that German synagogues are legitimate targets of protest against Israel.[324] Per the official ruling, despite the fact that the defendants admittedly tried to burn down a synagogue, "[t]he attack on

---

[319] Jim Yardley, *Europe's Anti-Semitism Comes Out of the Shadows*, N.Y. TIMES (Sept. 23, 2014), https://www.nytimes.com/2014/09/24/world/europe/europes-anti-semitism-comes-out-of-shadows.html.

[320] Benjamin Weinthal, *German Court Calls Synagogue Torching an Act to 'Criticize Israel,'* JERUSALEM POST (Jan. 13, 2017), https://www.jpost.com/diaspora/german-court-calls-synagogue-torching-an-act-to-criticize-israel-478330.

[321] Yardley, *supra* note 319.

[322] *Id.*

[323] Benjamin Weinthal, *German Judge: Torching of Synagogue Not Motivated by Anti-Semitism*, JERUSALEM POST (Feb. 7, 2015, 8:20 PM), https://www.jpost.com/diaspora/german-judge-torching-of-synagogue-not-motivated-by-anti-semitism-390294.

[324] Joseph Bottum, *A German Court Rationalizes an Attack on a Synagogue*, WASH. EXAMINER (Jan. 26, 2017, 3:34 PM), https://www.washingtonexaminer.com/weekly-standard/a-german-court-rationalizes-an-attack-on-a-synagogue.

the Wuppertal synagogue cannot be defined as anti-Semitic, there is simply no proof for an anti-Semitic motivation."[325] As the Jewish community leader made clear in an interview with the German magazine *Spiegel*, "[t]his was not an Israeli embassy, but a house of God, used by Jewish German citizens, not Israelis, to practice their faith. If one were to make up a textbook definition of anti-Zionism becoming anti-Semitic, this would be it."[326]

This case illustrates why the Israel-related examples included in the IHRA definition, such as "[h]olding Jews collectively responsible for actions of the state of Israel"[327] are so critically necessary. In the words of essayist Joseph Bottum:

> To see the logic at play, suppose that three white men had attacked a traditionally black church in Birmingham, Alabama, scrawling graffiti and trying to set the church on fire . . . . Yes, the judge explained, they had been unlawfully violent and thus deserved to be convicted. But he suspended their sentences because their purpose in attacking the African-American church had not been to harm Americans but to protest the failure of the Nigerian government to halt the kidnapping of schoolgirls by the radical African militia Boko Haram. Or suppose something similar, but this time in Manila. After a court in the Philippines convicted several citizens of defacing a local mosque, the judge suspended their sentences—on the grounds that, however illegally they had behaved, they were engaged in legitimate political protest over the oppression of Christian guest workers by the Islamic government in Saudi Arabia. And then suppose that three men in Germany were arrested for throwing a Molotov cocktail at a synagogue. After their conviction, however, their sentences were suspended—again on the grounds that their admittedly illegal violence was motivated by a desire not to hurt German Jews but by a legitimate wish to protest the policies and actions of the foreign state of Israel . . . . Only the last of these three events is true, of course. But more to the point, only the last is even imaginable. Black citizens of the United States are never taken as symbolic representatives of African governments. For that matter, imagine the outcry if a judge condoned violence

[325] Benjamin Näegele, *Judge Rules Wuppertal Synagogue Firebombing Was Not Anti-Semitic, So What Happened?*, B'NAI B'RITH INT'L (Jan. 17, 2017), https://www.bnai-brith.org/expert-analysis/judge-rules-wuppertal-synagogue-firebombing-was-not-anti-semitic-so-what-happened.

[326] *Id.*

[327] *Working Definition of Antisemitism*, *supra* note 37.

> against the places of worship of native citizens who happened to be Muslim—because a distant government was doing something objectionable.[328]

The German Muslims who attacked the Wuppertal synagogue in 2014 took Germany's Jews as representatives of Israel, and in 2017 the German courts agreed, simply as a matter of law.

Think about that for a moment.

Once non-Israeli Jews have been legally recognized as (target-worthy) symbols of Israel, not even a ray of daylight can slip between opposition to Israel and opposition to Jews.

The unbelievable ruling in that case led to scrutiny in Germany and international criticism. As Deidre Berger, the director of the Berlin Ramer Institute for German-Jewish Relations of the American Jewish Committee explained, "[t]he lack of a unified definition has led to anti-Semitic incidents being all too often ignored in recent years. . . . The fact, for example, that the courts considered an arson attack on a synagogue in Wuppertal as non-anti-Semitic illustrates the necessity of a definition."[329] The German government commissioned an independent expert group to make a report with recommendations,[330] and the following year the government followed one of those recommendations[331] by endorsing the same global standard definition of antisemitism that this Article supports: the IHRA definition, which would, of course, have labeled those horrific acts as antisemitic.[332]

B. *Could That Happen Here?*

Of course, it could.

As far back as 2002 the presidents of more than 300 American colleges signed a statement which read, in relevant part:

> We are concerned that recent examples of classroom and on-campus debate have crossed the line into intimidation and hatred, neither of which have any place on university campuses. *In the past few months, students who are Jewish or*

---

328 Bottum, *supra* note 324.

329 Jefferson Chase, *German Government Adopts International Anti-Semitism Definition*, DEUTSCHE WELLE (Sept. 20, 2017), https://www.dw.com/en/german-government-adopts-international-anti-semitism-definition/a-40608166.

330 See *Germany Endorses Working Definition of Antisemitism*, INT'L HOLOCAUST REMEMBRANCE ALLIANCE (Sept. 20, 2017), https://holocaustremembrance.com/stories/germany-endorses-working-definition-antisemitism (referencing that the adoption of the IHRA definition was the result of recommendations made by an independent group of experts).

331 *Id.*

332 *Id.*

> *supporters of Israel's right to exist—Zionists—have received death threats and threats of violence. Property connected to Jewish organizations has been defaced or destroyed. Posters and websites displaying libelous information or images have been widely circulated, creating an atmosphere of intimidation.* These practices and others, directed against any person, group or cause, will not be tolerated on campuses. All instances will be investigated and acted upon so that the campus will remain devoted to ideas based on rational consideration.[333]

In 2005, a hearing before the U.S. Commission on Civil Rights regarding antisemitic incidents on college campuses found that antisemitism and anti-Israelism are systemic ideologies found in varying degrees in colleges and universities throughout the United States. Death threats, threats of violence against Jewish students or students who are supporters of Israel, and banners and posters containing antisemitic rhetoric and images are among the manifestations of these ideologies, which create an environment of intimidation and harassment in contrast to the norms and values of the university.[334] The Commission heard stories of swastikas being painted on Hillel buildings and signs with the Star of David dripping blood; of campus newspaper cartoons with pictures of Jews in ovens; stories of "harassment, physical intimidation, physical assault and vandalism" perpetrated against Jewish students[335]—often tied to anti-*Israel* rationales. Panelists explained how Jewish students were afraid to wear anything that could identify them as Jewish for fear of being targeted, and how it was "difficult for them to concentrate on their academic responsibilities because their thoughts are so focused on their discomfort or even on their fear for their physical safety on campus."[336] Twelve years later, in 2017, the Congressional Committee on the Judiciary was still hearing stories about violent attacks on campus: about shouts of "Death to Jews" made on campus in the context and

---

[333] The American Jewish Committee, *College Presidents Decry Intimidation on Campuses*, SCHOLARS FOR PEACE IN THE MIDDLE EAST (Oct. 15, 2002), https://spme.org/campus-news-climate/college-presidents-decry-intimidation-on-campuses/639/ (emphasis added).

[334] Morton A. Klein, *ZOA Center for Law and Justice Director Susan Tuchman's Testimony on Anti-Semitism Before the U.S. Commission on Civil Rights*, ZIONIST ORG. OF AM. (Nov. 18, 2005), https://zoa.org/2005/11/102058-zoa-center-for-law-and-justice-director-susan-tuchmans-testimony-on-antisemitism-before-the-u-s-commission-on-civil-rights/.

[335] *Id.*

[336] *Id.*

under the guise of anti-Zionism; and about how Jewish students "felt scared to be a Jew on campus."[337]

Again, we must reiterate that not every instance of antisemitism deserves disciplinary action; free speech *must* be protected. But that does not mean that antisemitism should not be correctly labeled. In a 2019 viral social media video of students at George Washington University ("GW"), one student asks the other, "What are we going to do to Israel?"[338] The woman responds, "Bro, we're going to fucking bomb Israel, bro. Fuck out of here, Jewish pieces of shit."[339] GW did not feel that the incident involved a credible threat,[340] and the GW President used his own speech to condemn the video as hateful antisemitism.[341] Although student leaders on campus were adamant that this episode was "emblematic of a larger issue of anti-Semitism at the University"[342] and that they "feel unsafe,"[343] GW handled this situation correctly. While GW took no disciplinary action, the GW President did call out the language as problematic from a university values standpoint.

A slightly harder case arose at Stanford in 2018, when an incoming resident assistant-to-be threatened to "physically fight" Zionists on campus and "abolish [their] ass."[344] This was not just any student, this was someone "entrusted by the University with authority over, and responsibility for, incoming freshmen."[345] And this was also not just any immature comment; this was an actual threat of physical violence

---

337 *Examining Anti-Semitism on College Campuses: Hearing Before the H. Comm. on the Judiciary*, 115th Cong. 45 (2017) (statement of Sandra Hagee Parker, Chairwoman, Christians United for Israel Action), https://www.govinfo.gov/content/pkg/CHRG-115hhrg32325/html/CHRG-115hhrg32325.htm.

338 Marina Pitofsky, *George Washington University Leaders, Students Condemn Anti-Semitic Snapchat Video*, HILL (Nov. 9, 2019, 11:06 PM), https://thehill.com/blogs/blog-briefing-room/news/469768-george-washington-university-leaders-students-condemn-anti.

339 Dani Grace et al., *Officials Condemn, Work to Respond to Anti-Semitic Snapchat Video*, GW HATCHET (Nov. 6, 2019, 2:12 PM), https://www.gwhatchet.com/2019/11/06/officials-condemn-work-to-respond-to-abhorrent-snapchat-video/.

340 *Id.*

341 *Id.*

342 Shannon Mallard & Zach Schonfeld, *Student Leaders Host Forums, Extend Support in Wake of Anti-Semitic Post*, GW HATCHET (Nov. 11, 2019, 1:38 AM), https://www.gwhatchet.com/2019/11/11/student-leaders-host-forums-extend-support-in-wake-of-anti-semitic-post/.

343 Grace, *supra* note 339.

344 Jeremy Bauer-Wolf, *After Threat of Violence, Calls to Fire RA*, INSIDE HIGHER ED (Aug. 1, 2018), https://www.insidehighered.com/news/2018/08/01/calls-stanford-ra-be-fired-after-he-threatens-fight-zionists.

345 Ben Simon, *The Mob That Never Was: A Defense of Justified Outrage*, STAN. REV. (Aug. 17, 2018), https://stanfordreview.org/the-mob-that-never-was-a-defense-of-justified-outrage/.

against other students. To his credit, even in the student's original retraction, he did not pretend that he had not really threatened people. Rather, he admitted to merely reconsidering his strategy. "I edited this post because I realize intellectually beating Zionists is the way to go . . . . Physical fighting is never an answer to [sic] when trying to prove people wrong."[346]

Like GW, Stanford assessed no credible threat, and that may have been the right decision. But the Jewish community was still bewildered why this incident was turned into yet another *political* referendum, with progressive students at Stanford rushing to the would-be RA's defense and "either praising his 'immense moral and intellectual stature' or assailing his critics' 'bullying tactics.'"[347] Even with a no-credible-threat determination, why would anyone *defend* this clearly wrong behavior? To better understand their confusion, try the thought experiment proposed by Rabbi Dov Greenberg, the executive director of the Rohr Chabad House at Stanford:

> Replace the word "Zionist" with "LGBT" or "supporters of #BlackLivesMatter" in Daoud's post. Almost certainly, the outcry would be universal and deafening. Yet, for some reason, when it comes to threatening physical violence against fellow students who support Israel, the response is indifference or, worse still, support. Somehow, the target of hate becomes the villain and the aggressor becomes the victim. How has this come to pass?[348]

The answer is simple. It has come to pass because people pretend that they cannot distinguish between criticism of the State of Israel and threats of violence or discrimination against other students on an American university campus. Whether or not a threat is deemed credible, *no* threat should be excused or defended as just "political speech," because when a credible threat does inevitably happen, that excuse will be used as well.

These are just snapshots of the Jewish American college experience, and these incidents must be understood contextually as part of the greater Jewish American experience contending with a rising tide of antisemitism, masquerading as criticism of the State of Israel. Over the last several years, multiple reports and studies have documented

---

346 Bauer-Wolf, *supra* note 344 (alteration in original).

347 Simon, *supra* note 345.

348 Dov Greenberg, *Stanford Student Threatens Violence Against Pro-Israel Students*, NAT'L REV. (July 31, 2018, 6:30 AM), https://www.nationalreview.com/2018/07/universities-must-oppose-immoral-dangerous-bds-movement/.

incidents of criminals attacking Jewish people (often students)[349] and businesses,[350] and then hiding behind the claim of merely being anti-Israel. "[T]here are thousands[351] of readily available,[352] easily accessible,[353] examples"[354] of activists on and off university campuses "crossing the line into straight antisemitism" in ways that, at first glance, do not reflect the pretext of criticism for Israel.[355] Categorically, these include people: calling for death to Jews[356] (not Israelis, but *Jews*);[357] bemoaning that Hitler's plan did not succeed;[358] spreading lies that depict Jewish religious beliefs as hateful;[359] denying the history[360] or the ancestry of the Jewish people;[361] banning or expelling individuals for

[349] *See, e.g.*, Letter from Jay Alan Sekulow, Chief Counsel, Am. Ctr. for Law & Justice, to James B. Milliken, Chancellor, The City University of New York (May 4, 2016), http://media.aclj.org/pdf/16.05.04-CUNY-Letter_Redacted.pdf.

[350] *See, e.g.*, Tom Tugend, *LA Jews Reeling After Local Institutions Looted and Burned in Floyd Protests*, TIMES OF ISRAEL (June 3, 2020, 2:01 A.M.), https://www.timesofisrael.com/la-jews-take-stock-after-george-floyd-protests-batter-local-institutions/.

[351] *See* DIKER & BERK, *supra* note 231, at 28-33.

[352] *See generally Because the World Should Know*, CANARY MISSION, https://canarymission.org/ (last visited Sept. 21, 2021).

[353] *See generally "Behind the Mask" – Unmasking Antisemitism Behind the BDS Campaign*, MINISTRY OF STRATEGIC AFFS. (Sept. 15, 2019), https://4il.org.il/1396/.

[354] *See generally* AMCHA INITIATIVE, https://amchainitiative.org/search-by-incident#incident/display-by-date/ (last visited Sept. 21, 2021) (containing a database that allows one to search and filter data on incidents of antisemitic activity that occurred on U.S. college and university campuses from 2015 to present day).

[355] Goldfeder, *The Danger of Defining Your Own Terms*, *supra* note 197.

[356] Josh Nathan-Kazis, *Megadonor Who Withdrew From AIPAC Conference Has History of Controversial Tweets*, FORWARD (Mar. 19, 2019), https://forward.com/fast-forward/421149/adam-milstein-aipac-twitter-omar-tlaib-muslim/.

[357] Sam Sokol, *South Africa BDS Leader Defends Call to 'Kill the Jew*,' JERUSALEM POST (Sept. 2, 2013, 7:45 PM), https://www.jpost.com/jewish-world/jewish-features/south-africa-bds-leaders-defends-call-to-kill-the-jew-325075.

[358] *See* Daniel Greenfield, *"I Would Have Killed All the Jews in the World": SJP's Holocaust Hate*, FRONTPAGE MAG. ARCHIVE (Feb. 5, 2018), https://archives.frontpagemag.com/fpm/i-would-have-killed-all-jews-world-sjps-holocaust-daniel-greenfield/.

[359] *See generally* Frank Barat, *An Interview with Roger Water*, COUNTERPUNCH (Dec. 6, 2013), https://www.counterpunch.org/2013/12/06/an-interview-with-pink-floyds-roger-waters/; C.R. Rublin, *Incitement Against Jews By U.S.-Based Neo-Nazi and White Supremacist Members of Pro-Palestinian and BDS Facebook Groups*, SPME (May 29, 2019), https://spme.org/antisemitism/incitement-against-jews-by-u-s-based-neo-nazi-and-white-supremacist-members-of-pro-palestinian-and-bds-facebook-groups/25536/; *Watch and Share Our PACBI Live Broadcast with Roger Waters*, BDS (July 26, 2017), https://bdsmovement.net/news/watch-and-share-our-pacbi-live-broadcast-roger-waters.

[360] *See Israel to Allocate $50m to Explore Foundations of Alleged Temple*, MIDDLE EAST MONITOR (Dec. 19, 2017, 12:38 AM), https://www.middleeastmonitor.com/20171219-israel-to-allocate-50m-to-explore-foundations-of-alleged-temple/.

[361] *See, e.g.*, ENERSEC USA, *Yasir Qadhi Anti-Semitic Rant*, YOUTUBE (Nov. 19, 2015), https://www.youtube.com/watch?v=2bSxOmcyI18&feature.

being Jewish (again, not Israeli, but Jewish);[362] promoting the actual medieval Passover religious blood libel[363] (or any of its modern counterparts[364]); and harassing[365] and physically attacking[366] Jewish students[367] and Jewish businesses.[368] Yet in all of the above instances, the perpetrators denied they were antisemitic, and claimed they were only anti-Israel.

Could it happen here? Of course it could.

---

362 *Matisyahu: Spanish Festival Ban is 'Appalling, Offensive,'* TIMES OF ISRAEL (Aug. 17, 2015, 11:10 PM), https://www.timesofisrael.com/matisyahu-spanish-festival-ban-is-appalling-offensive/; Yair Rosenberg, *Israel Boycott Activists Call for Jews to Be Expelled from South African University,* TABLET (Feb. 12, 2015), https://www.tabletmag.com/sections/news/articles/israel-boycott-activists-call-for-jews-to-be-expelled-from-south-african-university.

363 *Miftah Attacks Me, Refuses to Condemn Its Blood Libel,* ELDER OF ZIYON (Mar. 30, 2013), http://elderofziyon.blogspot.com/2013/03/miftah-attacks-me-refuses-to-condemn.html; *Jewish Kabbalistic Occult Ritual Child Murder Throughout History*, BITCHUTE (Oct. 5, 2019), https://www.bitchute.com/video/987FZhimkQpV/.

364 *See* Yair Rosenberg, '*Israelis Toast Syrian Slaughter': The Making of a Modern Blood Libel, Just in Time for Passover*, TABLET MAG. (Apr. 14, 2017), https://www.tabletmag.com/sections/news/articles/israelis-toast-syrian-slaughter-the-making-of-a-modern-blood-libel-just-in-time-for-passover.

365 *See, e.g.*, William A. Jacobson, *Anti-Israel Student Group Suspended at Northeastern for Vandalism, Intimidation, Disruption*, LEGAL INSURRECTION (Mar. 13, 2014, 10:00 AM), https://legalinsurrection.com/2014/03/anti-israel-student-group-suspended-at-northeastern-for-vandalism-intimidation-disruption/; William A. Jacobson, *Dorm Storming at NYU Targets Jewish Students,* LEGAL INSURRECTION (Apr. 24, 2014, 1:32 PM), https://legalinsurrection.com/2014/04/dorm-storming-at-nyu-targets-jewish-students/.

366 *See, e.g.*, Edwin Black, *Temple University–Latest Anti-Semitic Hotspot Protested Amid Record Donation Drive*, HUFFINGTON POST (Oct. 25, 2014), https://www.huffpost.com/entry/temple-university-latest-_b_5707919; Frances Dinkelspiel, *Jewish Student Sues UC Berkeley Over Assault by Palestine Supporter*, BERKELEYSIDE (Mar. 7, 2011, 12:19 PM), https://www.berkeleyside.com/2011/03/07/jewish-student-sues-uc-berkeley-over-assault-by-palestine-supporter.

367 Tori Cheifetz, *Jewish Students 'Held Hostage' in Toronto Hillel*, JERUSALEM POST (Feb. 15, 2009, 10:40 PM), https://www.jpost.com/jewish-world/jewish-news/jewish-students-held-hostage-in-toronto-hillel.

368 *See, e.g., SA: 21 arrested at violent BDS protest in South Africa*, CHRISTIANS UNITED FOR ISRAEL (Mar. 26, 2015), https://www.cufi.org.uk/news/sa-21-arrested-at-violent-bds-protest-in-south-africa.

Over the last several months, there have been not one,[369] not two,[370] not three,[371] not four,[372] but five[373] instances of Chabad Jewish community centers being set on fire across the United States. To date, the police have made no arrests, but it does not in any way strain the imagination to think that violent acts of antisemitism committed in this country—acts like setting Jewish community centers on fire—could be painted by the perpetrators (or those who wished to excuse them) as being somehow "only" politically motivated (i.e., anti-Israel and not anti-Jewish) despite the fact that none of the Chabad centers are or were affiliated with the State of Israel. To bring the matter closer to home, on January 13, 2021, security officers in Montreal caught a man desecrating a synagogue with swastikas. They also recovered a gasoline canister and lighter from his person and charged him with possessing incendiary and explosive materials with the intention of committing a criminal act. The perpetrator was an anti-Israel activist who had apparently been radicalized over time by propaganda.[374]

That is why a definition of antisemitism must refute the false idea that just because not *all* anti-Israel activity is inherently antisemitic, *none* of it should be considered antisemitic. Otherwise, antisemitic sentiment will continue to grow unchecked behind a socially acceptable excuse, until eventually something snaps, and it escalates to acts of outright violence and discrimination. Criticizing Israel is fine but hiding behind that criticism to be antisemitic is not.

---

369 Josh Shannon, *Investigator: Fire at UD's Chabad Center for Jewish Life was Intentionally Set*, NEWARK POST (Aug. 26, 2020), https://www.newarkpostonline.com/news/investigator-fire-at-ud-s-chabad-center-for-jewish-life-was-intentionally-set/article_f3802a5a-a865-5233-8de0-2a4f331d9c37.html.

370 Brandon Holveck, *Attempted Arson at Brandywine Hundred Chabad Center Investigated 2 months After Newark Chabad Center Fire*, DEL. ONLINE (Nov. 1, 2020, 9:45 AM), https://www.delawareonline.com/story/news/local/2020/11/01/state-fire-marshal-investigating-attempted-arson-brandywine-hundred-chabad-center/6112507002/.

371 *Investigators: Second Arson At A Delaware Chabad Center For Jewish Life*, FIRST STATES UPDATE (Nov. 1, 2020), http://firststateupdate.com/2020/11/investigators-second-arson-at-a-delaware-chabad-center-for-jewish-life/.

372 Fox 12 Staff, *Reward Increased in Arson Investigation at Chabad Center for Jewish Life in SW Portland*, FOX 12 OR. (Oct. 2, 2020), https://www.kptv.com/news/reward-increased-in-arson-investigation-at-chabad-center-for-jewish-life-in-sw-portland/article_7b72d848-0513-11eb-a0a6-8f7feb829485.html.

373 Marcy Oster, *Chabad Jewish Center in Portland Damaged in Second Fire in 5 Days*, TIMES OF ISRAEL (Aug. 20, 2020, 9:30 AM), https://www.timesofisrael.com/chabad-jewish-center-in-portland-damaged-in-second-fire-in-5-days/.

374 *See David Lazarus, Man Arrested After Swastikas Spray-Painted on Doors of Montreal Synagogue*, JEWISH TELEGRAPHIC AGENCY (Jan. 14, 2021), https://www.jta.org/quick-reads/man-arrested-after-swastikas-spray-painted-on-doors-of-montreal-synagogue.

To be fair, sometimes the excuse is so flimsy that it simply cannot, and does not, work. For instance, some of the examples of antisemitism described above were so outrageous[375] that when caught,[376] the perpetrators themselves had no choice but to apologize[377] for crossing the line from anti-Israel criticism into anti-Zionistic antisemitism.[378] But other times, like in Wuppertal, the excuse seems absurd, yet somehow passes muster. Regardless, antisemites trying to justify their actions should not get to decide the definitions of either Zionism or antisemitism.

And the problems are only getting worse, the excuses thinner, and the real objective clearer. As this Article was going to print, there was an outbreak of violence in the Middle East between Hamas, a U.S. and E.U. designated terror organization, and Israel, a key U.S. ally. Suddenly, in countries around the world,[379] antisemitic attacks shot up over 400 percent.[380] In cities across North America,[381] including Los Angeles[382] and New York,[383] hundreds of synagogues, Jewish community centers, kosher restaurants, Jewish-owned businesses, and individual Jewish

375 *See* Marc Lamont Hill, Opinion, *I'm Sorry My Word Choices Caused Harm*, PHILA. INQUIRER (Dec. 1, 2018, 12:05 PM), https://www.inquirer.com/philly/opinion/commentary/marc-lamont-hill-temple-university-cnn-palestine-israel-united-nations-20181201.html.

376 *See* Marcy Oster, *Palestinian Nonprofit Belatedly Apologizes for Blood Libel Article*, JEWISH TELEGRAPHIC AGENCY (Apr. 2, 2013, 2:08 PM), https://www.jta.org/2013/04/02/israel/palestinian-nonprofit-belatedly-apologizes-for-blood-libel-article.

377 *See* Kate Sullivan, Eli Watkinds, & Manu Raju, *Omar: 'I Unequivocally Apologize' After Backlash Over New Israel Tweets*, CNN (Feb. 12, 2019, 6:25 AM), https://www.cnn.com/2019/02/11/politics/ilhan-omar-aipac-backlash/index.html.

378 Rob Gloster, *Lecturer Apologizes for Retweet that UC Berkeley Condemned as Anti-Semitic*, JEWISH NEWS OF N. CAL. (Nov. 21, 2017), https://www.jweekly.com/2017/11/21/lecturer-apologizes-retweet-uc-berkeley-condemned-anti-semitic/.

379 *See generally Antisemitic Incidents at Anti-Israel Events and Actions Around the World,* ADL (June 1, 2021), https://www.adl.org/resources/fact-sheets/antisemitic-incidents-at-anti-israel-events-and-actions-around-the-world.

380 Jemima McEvoy, *Synagogue Attacks and Slurs: Jewish Community Rocked by Rise in Anti-Semitism Amid Israel-Gaza Fighting*, FORBES (May 20, 2021, 2:30 PM), https://www.forbes.com/sites/jemimamcevoy/2021/05/20/synagogue-attacks-and-slurs-jewish-community-rocked-by-rise-in-anti-semitism-amid-israel-gaza-fighting/?sh=6f89394e2262.

381 *See* Dov Hikind (@HikindDov), TWITTER (May 20, 2021, 8:03 AM), https://twitter.com/hikinddov/status/1395349533899595779?s=21.

382 Ruth Graham, *Los Angeles Mayor Calls Attack on Diners 'Anti-Semitic,'* N.Y. TIMES (May 20, 2021), https://www.nytimes.com/2021/05/20/us/jewish-hate-crime-los-angeles.html.

383 *See generally* Joseph Borgen, *Brutally Beaten By Group Of Suspects in Manhattan's Diamond District, Speaks Out: 'My Whole Face Felt Like It Was on Fire for Hours,'* CBS N.Y. (May 24, 2021, 10:15 AM), https://newyork.cbslocal.com/2021/05/24/jewish-man-brutally-beaten-in-manhattans-diamond-district/.

people[384] have been targeted and attacked, beaten[385] and bullied, cursed, and demonized because they are Jewish. In every instance, the thin veneer of "anti-Zionism" was shattered by the open expressions of enraged anti-Semitism, including the use of such classics as "kill the Jews," "rape their daughters,"[386] and the swastika; not to mention the pummeling[387] of innocent (non-Israeli, but clearly religious[388]) Jewish people. On social media platforms, the hate has been even more transparent. In just one week, the phrase "Hitler was right," or some version of it, was tweeted over 17,000 times.[389] On college campuses, in between dodging protests outside of Hillel buildings,[390] ignoring death threats from fellow students,[391] and removing Nazi symbols,[392] Jewish students have been subjected to campaigns[393] supported by faculty[394] and student groups[395] alike that call Israel a colonialist settler state,

[384] *See* Ben Sales, *Jews Attacked, One Person Burned Amid Pro-Palestinian Protests in New York City*, TIMES OF ISRAEL (May 21, 2021), https://www.timesofisrael.com/jews-attacked-one-person-burned-amid-pro-palestinian-protests-in-new-york-city/.

[385] *See* Reuven Fenton & Amanda Woods, *Jewish Man Beaten During Wild NYC Protests Afraid to Wear Yarmulke*, N.Y. POST (May 21, 2021, 5:23 PM), https://nypost.com/2021/05/21/jewish-man-beaten-during-wild-midtown-protests-afraid-to-wear-yarmulke/.

[386] Laura Sharman, *'The Worst it has Been in 30 Years': London Jews Suffer Horrific Rise in Anti-Semitic Attacks*, EVENING STANDARD (May 21, 2021), https://www.standard.co.uk/news/london/rabbi-antisemitism-rise-london-jewish-community-cst-b936325.html.

[387] *See, e.g.*, Chaim Deutsch (@ChaimDeutsch), TWITTER (May 20, 2021, 10:41 PM), https://twitter.com/ChaimDeutsch/status/1395570403440009220.

[388] *See* Andrew Lapin, *Pro-Palestinian Demonstrators Assault Jews in Los Angeles*, TIMES OF ISRAEL (May 19, 2021, 10:59 PM), https://www.timesofisrael.com/pro-palestinian-demonstrators-assault-jews-in-los-angeles/.

[389] *Preliminary ADL Data Reveals Uptick in Antisemitic Incidents Linked to Recent Mideast Violence*, ADL (May 20, 2021), https://www.adl.org/news/press-releases/preliminary-adl-data-reveals-uptick-in-antisemitic-incidents-linked-to-recent.

[390] Tabby Refael, *Thank You, Progressive Jews, for Defending Israel in Difficult Spaces*, JEWISH J. (May 21, 2021), https://jewishjournal.com/commentary/columnist/336899/thank-you-progressive-jews-for-defending-israel-in-difficult-spaces/.

[391] *See* RHUL JSOC (@rhuljscoc), INSTAGRAM (May 14, 2021), https://www.instagram.com/p/CO3mFXcgZyq/?utm_source=ig_embed&ig_rid=d0ab6404-3aba-4391-b502-fa2585e8437d.

[392] *See* Jennifer Hassan, *During Israel-Hamas Conflict, British Jews Come Under Physical and Verbal Attack*, WASH. POST (May 21, 2021), https://www.washingtonpost.com/world/2021/05/21/israel-gaza-jewish-attacks-rise.

[393] *See Princeton University Community Statement of Solidarity with the Palestinian People*, DAILY PRINCETONIAN (May 18, 2021, 8:40 PM), https://www.dailyprincetonian.com/article/2021/05/princeton-university-community-statement-of-solidarity-palestine-israel.

[394] *Gender Studies Departments in Solidarity with Palestinian Feminist Collective*, PALESTINIAN FEMINIST COLLECTIVE, http://genderstudiespalestinesolidarity.weebly.com (last visited Sept. 21, 2021).

[395] *See, e.g.*, George Weykamp, *CSG Response to Events in Israel and Palestine Draws Mixed Reactions from U-M Community*, MICH. DAILY (May 13, 2021),

negating the history of their people, denying the deep Jewish connection to the Jewish State, and dismissing the lives of their coreligionists as unimportant, if they are even worth mentioning at all.

Of course, none of this is surprising—during the last war in Gaza, there was a predictable 400 percent increase[396] in antisemitic incidents. But for those still pretending that anti-Zionism is unrelated to antisemitism or fighting against the adoption of the IHRA definition on those grounds, May and June of 2021 should have been clarifying—and embarrassing.[397] Regardless of your politics and beliefs, ask yourself this question: If anti-Zionism is not related to antisemitism, why are all of these people suddenly attacking Jews around the world, collectively and at random?

There is no clearer demonstration than recent events as to why we need the IHRA, and why the IHRA definition includes examples of problematic anti-Zionism, such as "[h]olding Jews collectively responsible for actions of the state of Israel."[398]

IX. CONCLUSION

Until now, the absence of a legal definition of antisemitism has been an Achilles' heel for those who expect the government and/or university systems to take a stronger stand against antisemitism. So long as the meaning of antisemitism has been left murky and inconsistent, it has been easy for officials to shrug their shoulders, or even to look the other way, while failing to enforce existing laws and regulations about bigotry and discrimination.

Valid monitoring, informed analysis and investigation, and effective policy-making all require uniform definitions. While there can be no exhaustive definition of antisemitism—as it can take many forms—the IHRA definition has been an essential definitional tool used to educate people about what antisemitism is, how Jewish people experience it, and how to detect its contemporary manifestations. The government has a responsibility to protect its citizens, and universities have a responsibility to protect students and faculty from acts of hate and bigotry motivated by discriminatory animus—including

https://www.michigandaily.com/student-government/csg-response-to-the-israel-palestine-conflict-draws-mixed-reactions-from-u-m-community/.

396 Itamar Eicher, *Report: 400% Rise in Anti-Semitic Incidents During Gaza War*, YNET NEWS (Jan. 25, 2015, 12:53 PM), https://www.ynetnews.com/articles/0,7340,L-4618843,00.html.

397 Mark Goldfeder, *Anti-Semitism's True Nature Reveals Itself*, N.Y. DAILY NEWS (May 25, 2021, 7:30 AM), https://www.nydailynews.com/opinion/ny-oped-anti-semitisms-true-nature-reveals-itself-20210525-yw3dypevcbdejibzlbwkpt56tm-story.html.

398 *Working Definition of Antisemitism*, *supra* note 37.

antisemitism—and they must be given the tools to do so. It is no longer acceptable for officials charged with protecting people from antisemitism to not have an official definition of what antisemitism means. It is equally unacceptable to insist on a definition of antisemitism that does not include the most troubling anti-Zionist sentiments.

Despite what critics say, the IHRA definition is not "new" and it does not include "the formal redefining of antisemitism to include anti-Zionism."[399] Not all criticism of Israel is antisemitism, but when anti-Zionism crosses certain lines it *can* be antisemitic. Critics of the definition generally focus on the danger of governments using it to stifle free speech.[400] But those concerns are easily answered, primarily by clarifying that the definition should be used (a) to monitor and respond to antisemitism, and (b) to help evaluate intent in discriminatory conduct cases, which involve actions and *not* free speech.[401]

Embracing the IHRA definition of antisemitism for educational and reporting purposes should be uncontroversial. Adopting it for analyzing discrimination and harassment claims will not affect or regulate free speech. It is only to be used after a person has been credibly accused of engaging in discriminatory acts toward Jewish people; acts so severe or pervasive that they limit the ability of the victim to participate in or benefit from an opportunity. Then and only then should the definition be used as contextual, rebuttable evidence of a discriminatory motive, "to the extent that any examples might be useful as evidence of discriminatory intent," and with the additional caveat that "whether a particular act constitutes discrimination prohibited by Title VI will require a detailed analysis of the specific allegations."[402] Taken in this light, there should be no concern of chilled speech. If a person is merely criticizing Israel, even harshly, then this policy should not worry them at all. If, however, they are engaging in discriminatory conduct against Jews, to the extent that the Jewish victims are unable to participate in educational opportunities, *and* their motive seems to be based on their race or national origin, then perhaps those in charge of investigating the discriminatory behavior would benefit from utilizing a universal, gold-standard definition of antisemitism to correct for any lack of knowledge

399 *See, e.g.*, *Wielding Antidiscrimination Law to Suppress the Movement for Palestinian Rights*, 133 HARV. L. REV. 1360, 1381 (2020).

400 *See* Elizabeth Redden, *Trump Signs Order on Campus Antisemitism*, INSIDE HIGHER ED (Dec. 12, 2019), https://www.insidehighered.com/news/2019/12/12/trump-order-antisemitism-campuses-draws-free-speech-concerns.

401 *See* Goldfeder, *Why We Should Applaud*, *supra* note 137.

402 Exec. Order No. 13899, 84 Fed. Reg. 68,779 (Dec. 11, 2019), https://www.govinfo.gov/content/pkg/FR-2019-12-16/pdf/2019-27217.pdf.

or even implicit bias on the subject." There should be nothing controversial about that either.

Adopting the definition with its examples is a necessary corrective for the unfortunate reality that, on and off campuses across the country, people have engaged in horrific antisemitic behavior under the guise of anti-Israel rhetoric. Not all criticism of Israel is antisemitism, but in practice some of it is, and this policy clarification only touches the kinds of egregious behavior that the First Amendment does not protect. All too often, Jewish students are afraid to attend events or wear their yarmulkes or Stars of David in public, out of fear for their safety. All too often, school administrators shrug their collective shoulders and dismiss their students' fears and complaints of discrimination as a normal part of the university's marketplace of ideas, simply because the violators falsely claim to only hate Israel, not Jews—even as they target Jews. That is not the case, and it has never been the case. Legitimate criticism of Israel is fine, and the freedom of speech, even when offensive, should be cherished and protected as part of what makes our democracy healthy and great. But the conflation of speech with conduct, and antisemitism with criticism of Israel, allows antisemites to commit antisemitic acts and then claim that they were merely expressing political views. When anti-Zionism crosses over into harassment and invidious discrimination, it can and should be stopped. According to the FBI, most religiously motivated hate crimes in the United States are committed against Jewish people,[403] and that number is on the rise,[404] even though they make up less than 2 percent of the population.[405] These trends are terrifying, and there is much work to be done to reverse them. It starts with calling out antisemitism for what it is.

It starts by defining the problem.

---

403 *See Antisemitism in the United States: Statistics on Religious Hate Crimes (1996-2019),* JEWISH VIRTUAL LIBR., https://www.jewishvirtuallibrary.org/statistics-on-religious-hate-crimes (last visited Aug. 4, 2020).

404 *See* Quincy Walter, *Anti-Semitic Crime in The U.S. Reaches Record Level,* WBUR NEWS (May 12, 2020), https://www.wbur.org/news/2020/05/12/antisemitic-crime-record-level.

405 Emily Guskin, *How Many Jews Live in the U.S.? That Depends on How You Define 'Jewish.,'* WASH. POST (Feb. 23, 2018, 6:00 AM), https://www.washingtonpost.com/news/post-nation/wp/2018/02/23/measuring-the-size-of-the-u-s-jewish-population-comes-down-to-identity/.

Codifying Antisemitism

Mark Goldfeder*

ABSTRACT

Antisemitic harassment and discrimination are unlawful in many contexts, but without a standard definition of what 'antisemitism' includes, that idea is almost meaningless. This has led to an equal protection problem for members of the Jewish community, which is why states across the country have started to pass laws adopting the International Holocaust Remembrance Alliance ("IHRA") Definition of antisemitism for use in clarifying the application of existing legal protections for Jewish people from crime and discrimination. Thus far, the bills that have passed have for the most part been overwhelmingly bipartisan, but there have been minor pockets of pushback in a number of states. While a handful of the questions raised reflect honest concerns that deserve to be fully addressed for the benefit of legislators, unfortunately, the majority of the 'opposition' has been led by a small corps of disingenuous lobbying groups that as a matter of self-interest continue to purposefully lie about what these bills actually do—and by the same token could never do—in an apparent attempt to give greater cover to antisemitism and antisemites. This Article will answer some of the most common questions that lawmakers, citizens, and other interested stakeholders might have about statutes that utilize the IHRA Definition for the narrow purpose of assessing motivation when analyzing discriminatory conduct claims, so that critics can no longer hide behind the vague and erroneous assertion that such policies are somehow unfair to other groups or would in any way offend the First Amendment.

---

* Dr. Mark Goldfeder, Esq. is the Director of the National Jewish Advocacy Center, a Member of the United States Holocaust Memorial Council, counsel for Hillels of Georgia, and served as the founding Editor of the Cambridge University Press Series on Law and Judaism. The author would like to thank Danielle Park, Gadi Dotz, Marc Greendorfer, Jordan Cope, Yael Lerman, Carly Gammill, Jake Bennett, Joanne Bregman, Miles Terry, Kenneth Marcus, Alyza Lewin, Lesley Klaff, Harry Hutchison, and Wayne Keil for their thoughtful comments and review. Special thanks to Joseph Sabag for his edits on this piece and for his continued leadership in working with members of the legislatures in both parties, in each state, to try and help protect the Jewish people.

Table of Contents

I. INTRODUCTION 406
II. BACKGROUND: THE INTERNATIONAL HOLOCAUST REMEMBRANCE ALLIANCE ("IHRA") DEFINITION OF ANTISEMITISM 411
A. *Development of the IHRA Definition* 411
B. *Debunking Criticisms* 417
1. IHRA's Israel Examples 417
2. The Impermissibility of Speech Codes and Why IHRA Definition Bills Avoid Regulating Speech 429
C. *The Permissibility (and Even Necessity) of Regulating Unlawful Discriminatory Conduct* 435
III. ANALYSIS 437
A. *The Need to Codify a Definition of Antisemitism* 437
1. Is It Necessary and/or Important for States to Pass This Bill? 438
2. Why is Jewish Suffering Worthy of Exceptional Treatment? 439
3. Can You Incorporate a Definition into a Law by Reference and Why Would You Want to Do So? 446
B. *A Case Study in Bad Faith Argumentation* 449
IV. CONCLUSION: WHAT DOES IT MEAN FOR A STATE TO ADOPT IHRA AS PART OF AN ANTISEMITISM BILL? 452

I. INTRODUCTION

"I went to Boston College. It's a Catholic college, yeah I had a nickname there: Jew."

—Gary Gulman

During the 2022 legislative session, data showed antisemitic attacks across the United States were at an all-time high.[1] In response, Iowa became the first state to pass a law[2] adopting the International Holocaust Remembrance Alliance ("IHRA") definition of antisemitism ("IHRA Definition").[3] The IHRA Definition is, to date, the only consensus-driven and internationally accepted definition of antisemitism. The law[4] requires

1. *See* Paul Caine, *Anti-Defamation League Reports Record Number of Antisemitic Incidents Across U.S. in 2021*, WTTW: NEWS (Apr. 26, 2022, 7:30 PM), https://bit.ly/3CckKwD.

2. *See* IOWA CODE § 216F.1 (2022). South Carolina had previously adopted an appropriations restriction based on an earlier version of the Working Definition. *See* H.B. 4950, 122d Gen. Assemb., 2d Reg. Sess. (S.C. 2018).

3. *See The Working Definition of Antisemitism*, INT'L HOLOCAUST REMEMBRANCE ALL., https://bit.ly/3rxsuV2 (last visited Oct. 5, 2022).

4. The laws being discussed are based on a model bill I drafted in consultation with a number of major Jewish and non-Jewish organizations that focus on both free speech

authorities to make use of the IHRA Definition when assessing the motivation behind illegal discriminatory conduct.

Shortly after Iowa signed the bill into law, the Tennessee[5] and Arizona[6] Legislatures passed versions of the model bill, and a number of other states (including Georgia[7] and New Jersey)[8] also considered similar legislation. Additionally, South Carolina[9] and Florida[10] adopted the IHRA Definition for much the same use in their education systems. In total, more than half of the states in this country[11] have endorsed the definition in some official fashion, whether by proclamation,[12] executive order,[13] or resolution.[14] In so doing, they have joined the over 870 separate governments, Non-Governmental Organizations (NGOs), universities, and other key institutions that have adopted the IHRA Definition,[15] demonstrating an indisputable worldwide consensus.

It is significant that the IHRA Definition is being embraced both nation-wide and world-wide, sparking a number of articles that encourage the adoption and use of the IHRA Definition in other contexts, including when monitoring and tracking anti-Jewish sentiment in traditional[16] and on social media,[17] and when assessing the records of so-called human rights organizations.[18] Still, statewide bills addressing antisemitic discrimination in regulatory contexts represent a crucially

---

and civil rights. *See generally* Mark Goldfeder, *Defining Antisemitism*, 52 SETON HALL L. REV. 119 (2021). This current piece elaborates on the 2021 article, with a focus on the practical application of the theory discussed therein.

5. *See* 2022 Tenn. Pub. Acts 1075.

6. *See* H.B. 2675, 55th Leg., 2d Reg. Sess. (Ariz. 2022).

7. *See* H.B. 1274, 2022 Gen. Assemb., Reg. Sess. (Ga. 2022).

8. *See* S. 2434, 220th Leg. (N.J. 2022).

9. *See* H.B. 4000, 123d Gen. Assemb., 1st Reg. Sess. (S.C. 2019).

10. *See* FLA. STAT. §1000.05(8) (2022).

11. *See Half of All US States Now Using IHRA Definition of Antisemitism*, I24 NEWS (Apr. 28, 2022, 11:44 AM), https://bit.ly/3ykZhk0.

12. *See Kansas Legislature Adopts IHRA Working Definition of Anti-Semitism*, CLEV. JEWISH NEWS (Mar. 25, 2022, 6:00 AM), https://bit.ly/3fOgITK; Aaron Bandler, *NY Gov Issues Proclamation Embracing IHRA Definition of Antisemitism*, JEWISH J. (June 14, 2022), https://bit.ly/3V7p8Ww.

13. *See* Exec. Order No. 2022-06D (Ohio 2022).

14. *See* H.C.R. 5030, 2021–2022 Leg., 2022 Reg. Sess. (Kan. 2022).

15. *See* Zvika Klein, *865 Entities Have Adopted or Endorsed IHRA Definition of Antisemitism*, THE JERUSALEM POST (Mar. 16, 2022), https://bit.ly/3RFoix2.

16. *See National Religious Broadcasters Adopt IHRA Antisemitism Definition*, THE MEDIA LINE (Mar. 9, 2022), http:/bit.ly/3j4w4Fp.

17. *See* Letter from 180 Nonprofit and Civil Rights Organizations to Elon R. Musk, Twitter CEO (Nov. 16, 2022), https://bit.ly/3j6z305.

18. *See generally, e.g.*, Michael B. Atkins & Miriam F. Elman, *BDS as a Threat to Academic Freedom and Campus Free Speech in the United States*, 29 MICH. ST. INT'L. L. REV. 213 (2021); Gerald Steinberg, *Applying the IHRA Working Definition to the UN and Human Rights NGOs*, *in* CONTENDING WITH ANTISEMITISM IN A RAPIDLY CHANGING POLITICAL CLIMATE 44 (Ind. Univ. Press 2021).

important new development in the fight against antisemitism, the merits of which are worthy of their own respective analysis. This is particularly important in light of the small, yet vocal, number of groups bent on preventing accurate identification and correction of antisemitic activity (often, unfortunately, the sort of antisemitism that they engage in directly)[19] by mounting a disinformation campaign to foment suspicion and misconceptions about what these bills do.[20]

One reason that state legislatures are finally stepping up and adopting the IHRA Definition is that despite a demonstrable rise in antisemitic activity across the country[21] and the fact that over 90% of American Jews are concerned about antisemitism,[22] recent surveys have shown that roughly half of the U.S. population *does not even know what antisemitism is*.[23] Practically speaking, one cannot educate about antisemitism, combat antisemitic activity, or for that matter, fight back *against* an unfair antisemitic accusation if one cannot first define the term clearly. In fact, as described below, at least some of the rise in

19. This is particularly true of the Council on American-Islamic Relations (CAIR). Opposition from CAIR should not be interpreted as representing the united view of the Muslim community. In fact, the IHRA Definition was unanimously adopted, along with all its examples, including the ones related to the State of Israel, by the Global Imams Council, the largest international non-governmental body of Muslim religious leaders. *See* Memorandum from Imam Budari, President of Senior Imams Comm. on Adoption of the IHRA Working Definition of Antisemitism, to the Global Imams Council (Oct. 29, 2020), https://bit.ly/3SZg44h. It is also critical to note that CAIR was named by the U.S. Department of Justice as an unindicted co-conspirator in the *United States v. Holyland Foundation* case, the largest terror finance case in American history, which resulted in a conviction on all 108 counts. *See* Sean Durns, *CAIR Isn't Credible*, THE JERUSALEM POST (June 3, 2019, 10:10 PM), https://bit.ly/3fMsuxS. That case involved the provision of support for the Hamas terror organization, whose charter calls for the genocide of all Jewish persons everywhere. Last November, shortly before a terrorist targeted a synagogue in Colleyville, Texas, one of CAIR's executive directors gave a speech calling synagogues and other Jewish organizations "enemies" that are part of a massive conspiracy behind Islamophobia. The speech by Zahra Billoo, one of CAIR's Executive Directors, showcased classic antisemitism in attacking the mainstream U.S. Jewish community. Despite near-universal condemnation of her remarks, including from within the Muslim community, CAIR stood proudly behind her and defended them as merely expressing "an opinion about Palestinian human rights." *See* Hen Mazzig, *Don't Let CAIR off the Hook for Its Role in the Colleyville Hostage Crisis*, NEWSWEEK (Jan. 18, 2022, 6:30 AM), https://bit.ly/3ykMP3T.

20. *See, e.g.*, Jill Nolin, *State Senate Next Stop for Bill that Aims to Define Antisemitism in State Law*, ACLU GA. (Feb. 28, 2022), https://bit.ly/3SSZ8fG.

21. *See ADL Audit Finds Antisemitic Incidents in United States Reached All-Time High in 2021*, ANTI-DEFAMATION LEAGUE (Apr. 25, 2022), https://bit.ly/3yiT5c4. For some anecdotal examples of the mainstreaming of antisemitism, see Gabriel Groisman, *Anti-Semitism is Back. Will You Stand by or Stand Up?*, HUFFPOST (June 23, 2016, 11:16 AM), https://bit.ly/3T1W1Sm.

22. *See Over 90% of American Jews Concerned About Antisemitism – Survey*, THE JERUSALEM POST (Jan. 21, 2022), https://bit.ly/3LZbtg5.

23. Ben Sales, *Surveys: Half of Americans Don't Know What Anti-Semitism Means*, S. FLA. SUN SENTINEL: JEWISH J. (Oct. 27, 2020, 4:04 PM), https://bit.ly/3xTlq8U.

antisemitic incidents can be attributed to an equal protection deficit first created and then exacerbated by the continued absence of a uniform definition.[24] Until now, there has been a material void in most of our civil rights laws: Antisemitic discrimination is unlawful,[25] but no one knows exactly what this means or even how to go about determining if an action was motivated by antisemitism.[26] These new bills, however, give authorities the tools they need to fill that lacuna in the text and make those required determinations.

Freedom of speech is an important right, and bills incorporating the IHRA Definition do not implicate or infringe upon it. Any person or institution can think and say whatever they want to about Jewish people, the Jewish religion, or the Jewish State. But when it comes to illegal conduct—i.e., the commission of discrimination, harassment, and criminal activity, the nature of which these laws actually help clarify—an

---

24. As Assistant Secretary of Education for Civil Rights, Kenneth Marcus explained on the Tikvah Podcast:

> Protecting the rights of Jewish students has always been more difficult than other groups, and of course I've worked to protect the rights of virtually every racial and ethnic minority, as well as women, the disabled, the aged, and other groups, and yet there's always more controversy attached to any issue involving anti-Semitism. In fact, even the very basic notion that we should protect Jewish students from anti-Semitism at all had enormous pushback, and it should be surprising I think to your listeners that it was only in 2004 that we provided basic protections to Jewish students, and that even then this policy was largely disregarded for a significant part of the period between 2004 and 2010. This is very recent, and yet I had pushback along a number of different lines. There were conservatives who thought that I was interpreting the statue too broadly and that we should have a narrower interpretation of the statute. I considered that to be wrong. I think that there's simply no reasonable interpretation of the statute under which Jews lack protections, it's simply a straightforward interpretation. There were liberals who thought that the resources of the civil-rights apparatus should be focused on under-represented or non-privileged groups, and that American Jews by and large had sufficient privilege and resources and should not be the beneficiaries of civil-rights investigations. There were bureaucrats who tended to be change-averse, and who are reluctant to change the way things were going. There were some on the left who were suspicious of any effort within a Republican administration to do anything that would protect a religious group, since that looked like some sort of, perhaps, dubious use of the law to protect a religion. Everybody it seems, left, right, and center, had some reason to be suspicious of efforts to protect Jewish students, whether they had anything to do with anti-Zionism or not, so even the most basic efforts to protect Jewish students have faced far greater pushback than what I've seen with every other group.

Podcast: Kenneth Marcus on How the IHRA Definition of Anti-Semitism Helps the Government Protect Civil Rights, MOSAIC (July 30, 2021), https://bit.ly/3SB9OPA.

25. *See, e.g.*, Civil Rights Act of 1964, 42 U.S.C. § 2000d ("Title VI"); *id.* § 2000e ("Title VII"). For a chart of bias categories included in state law, see *Federal Bias Categories Included by State Laws*, U.S. DEP'T OF JUST., https://bit.ly/3RYlnQ7 (last visited Oct. 13, 2022).

26. *See* 162 CONG. REC. S6649–50 (2016) (statements of Reps. Scott and Casey).

objective way must exist to determine if, and when, an action constitutes unlawful discrimination.

In theory, cracking down on unlawful discrimination should not be controversial. Antidiscrimination laws always require officials to "deduce . . . that the protected trait was the reason for the adverse treatment at issue."[27] When, as in this case, a term needs some additional clarification, then the government should obviously be able to clarify what exactly the term means.[28] Yet, even though the rate of antisemitic incidents continues to rise across the country,[29] and even as more states move to pass these 'antisemitism laws' with wide bipartisan support, a small number of groups have vocally opposed these efforts, falsely claiming that the bills that add the clarifying definition could theoretically impinge on free speech.[30] While this writer's contention is that many of these groups are acting in bad faith,[31] there are still hundreds of well-meaning lawmakers who unfortunately might have been confused or even misled by the deliberate obfuscation of these actors. It is therefore important for the record to be clear about what the

---

27. Suzanne B. Goldberg, *Discrimination by Comparison*, 120 YALE L.J. 728, 731 (2011). Goldberg also states:

> The causation determination is necessary because one of the central inquiries in a discrimination case is whether the challenged acts were "because of" a protected characteristic. Title VII of the Civil Rights Act of 1964 provides, for example, that "[i]t shall be an unlawful employment practice for an employer . . . to fail or refuse to hire or to discharge any individual, or otherwise to discriminate against any individual with respect to his compensation, terms, conditions, or privileges of employment, *because of such individual's race, color, religion, sex, or national origin*."

Id. at 731 n.3 (quoting 42 U.S.C. § 2000e-2(a)(1)).

28. *See, e.g.*, Alex Reed, *The Title VII Amendments Act: A Proposal*, 59 AM. BUS. L. J. 339, 383-385 (2022) (proposing new legislation confirming various protections for the LGBT community under Title VII, even after the Supreme Court's ruling in *Bostock v. Clayton County*); *see also* Bostock v. Clayton Cnty., 140 S. Ct. 1731, 1754 (2020) (holding that Title VII protects employees against discrimination because they are gay or transgender); Preventing and Combatting Discrimination on the Basis of Gender Identity or Sexual Orientation, 86 Fed. Reg. 7,023 (Jan. 20, 2021) (President Biden's executive order further clarifying that gender identity and sexual orientation are to be treated as sex-based classes protected under Title VII).

29. *See* Luke X. Martin, *Kansas City's Young Jews Worry About Their Safety as Antisemitic Incidents Hit Historic Highs*, NPR: KCUR (Apr. 7, 2022, 3:00 AM), https://bit.ly/3RfNt9d; *Fight Antisemitism*, ADL, https://bit.ly/3fm7IES (last visited Oct. 14, 2022); *Anti-Semitism and Jewish Views on Discrimination*, PEW RSCH. CTR. (May 11, 2021), https://pewrsr.ch/3Rd7qNZ.

30. *See, e.g.*, Tyler Coward, *Biden Administration Commits to Anti-Semitism Definition That Could Stifle Campus Speech*, FIRE (Mar. 19, 2021), https://bit.ly/3SCa7cS.

31. *See* Ismail Allison, *CAIR Welcomes Maryland County Council's Shelving of Resolution to Adopt IHRA's Anti-Free Speech Framework of Antisemitism*, CAIR (July 25, 2022, 2:27 PM), https://bit.ly/3LMb2p3; *but see* Dmitriy Shapiro, *CAIR Backs Leader After 'Virulently Anti-Semitic' Speech Attacking Mainstream Jewish Entities*, JEWISH NEWS SYNDICATE (Dec. 14, 2021), https://bit.ly/3xQgqBO.

IHRA Definition is; why these laws make use of it; and how this type of legislation can and should be used to better provide the Jewish community with equal protections under the law—*without* infringing at all on the protected rights of any other group.

Other books and articles have addressed the various reasons why the IHRA Definition is the constitutionally appropriate tool for legislatures to assess unlawful discriminatory conduct.[32] This Article, however, addresses some of the common points and questions that have been raised on the ground during the legislative processes thus far, in the hope that proper clarification can lead to successful adoption of IHRA Definition bills in additional jurisdictions.

II. BACKGROUND: THE INTERNATIONAL HOLOCAUST REMEMBRANCE ALLIANCE ("IHRA") DEFINITION OF ANTISEMITISM

A. Development of the IHRA Definition

The IHRA is an intergovernmental organization whose purpose is to work with governments and experts in a united front "to strengthen, advance and promote Holocaust education, research and remembrance worldwide and to uphold the commitments of the 2000 Stockholm Declaration and the 2020 Ministerial Declaration."[33] In the early 2000s, a resurgence of antisemitic activity on the international stage[34] prompted the Organization for Security and Cooperation in Europe ("OSCE") to organize its first conference on antisemitism in 2003. The resurgence also prompted the European Monitoring Centre on Racism and Xenophobia ("EUMC") to commission its first-ever study of antisemitism that same year.[35] A second OSCE conference and another EUMC study followed the year after, and as part of its own internal review, the EUMC acknowledged that it was hampered by the lack of a common and comprehensive definition of antisemitism, as well as

32. *See generally, e.g.*, KENNETH L. MARCUS, THE DEFINITION OF ANTI-SEMITISM (2015); Goldfeder, *supra* note 4, at 126.

33. INT'L HOLOCAUST REMEMBRANCE ALL., https://bit.ly/3r5d625 (last visited Oct. 14, 2022). For information about the 2000 Stockholm Declaration, see *Stockholm Declaration*, INT'L HOLOCAUST REMEMBRANCE ALL., https://bit.ly/3Rd7Aoz (last visited Oct. 14, 2022). For information about the 2020 Ministerial Declaration, see *2020 IHRA Ministerial Declaration*, INT'L HOLOCAUST REMEMBRANCE ALL., https://bit.ly/3Rb9V3j (last visited Oct. 14, 2022).

34. *See Antisemitism*, INT'L HOLOCAUST REMEMBRANCE ALL., https://bit.ly/3BNNhZ4 (last visited Oct. 14, 2022); *see also* Andrew Baker et al., *The Origins of the Working Definition*, *in* IN DEFENCE OF THE IHRA WORKING DEFINITION OF ANTISEMITISM 8, 9 (Alan Johnson ed., 2021), https://bit.ly/3fkiRGm.

35. *See* Baker et al., *supra* note 34, at 9.

challenged by a lack of clarity in understanding "new forms and manifestations" of antisemitism as they relate to the Jewish State.[36]

EUMC Director, Beate Winkler, and American Jewish Committee's Director of International Jewish Affairs, Rabbi Andrew Baker, agreed to develop such a definition. The Committee on Antisemitism and Holocaust Denial spent several months working to develop one,[37] and they concluded the drafting in January 2005. The definition was formally released as a "Working Definition" two months later.[38]

The Working Definition was adopted as a guide by the U.S. Commission on Civil Rights in 2006[39] and by the U.S. State Department as early as 2007.[40] It later served as the bases for the State Department's official working definition, published in 2010.[41] The State Department formally adopted the definition in 2016,[42] after it was officially accepted by a plenary meeting of the then 31 countries in the IHRA.[43] The Working Definition later became known as the IHRA Definition. Since that time, over 870 governments, universities, NGOs, and other key institutions have also adopted the definition, demonstrating a substantial and clear worldwide consensus. The IHRA Definition has been endorsed by a growing number of world leaders, including the UN Secretary-General[44] and U.S. presidents of both parties,[45] and it is used by several departments within the U.S. federal government, including the Departments of Education and Justice.[46]

---

36. *Id.* (internal quotation marks omitted); *see also* KENNETH L. MARCUS, THE DEFINITION OF ANTI-SEMITISM 159–160 (2015) (noting that after the EUMC report, the Organization for Security and Co-operation in Europe (OSCE)'s Berlin Declaration recognized that post WW2 antisemitism had changed and was now at times directed against Jews as a collective and Israel as an embodiment of the Jew).

37. *See* Manfred Gerstenfeld, *To Fight Anti-Semitism, You Have to Define It,* ISRAEL NAT'L NEWS (May 3, 2018, 3:50 PM), https://bit.ly/3dJULo5.

38. *Id.*

39. *See generally* U.S. COMM'N ON C.R., FINDINGS AND RECOMMENDATIONS OF THE UNITED STATES COMMISSION ON CIVIL RIGHTS REGARDING CAMPUS ANTI-SEMITISM (2006), http://bit.ly/3TKbnew.

40. *See* "Working Definition" of Anti-Semitism, U.S. DEP'T OF STATE, OFF. TO MONITOR & COMBAT ANTI-SEMITISM (Feb. 8, 2007), http://bit.ly/3UURRg7.

41. *See Defining Antisemitism*, U.S. DEP'T OF STATE, https://bit.ly/3Eb9vqM (last visited Oct. 2, 2022).

42. *See id.*

43. *See 31 Countries Adopt New Definition of Antisemitism That Includes Anti-Zionism,* THE TOWER (June 3, 2016, 3:34 PM), https://bit.ly/3UWwvQd.

44. *See* Press Release, United Nations, Anti-Semitism Rising Even in Countries with No Jews at All Secretary-General Tells Event on Power of Education to Counter Racism, Discrimination (Sept. 26, 2018), https://bit.ly/3y9WvOk.

45. *See Biden Administration 'Embraces and Champions' IHRA Definition of Anti-Semitism*, I24NEWS (Feb. 2, 2021, 4:44 PM), https://bit.ly/3RwwIXD.

46. *See* Combating Anti-Semitism, Exec. Order No. 13899, 84 Fed. Reg. 68779 (Dec. 11, 2019) (directing the Department of Education's Office of Civil Rights, which handles Title VI complaints, and the Civil Rights Division of the Department of Justice,

While there can be no single exclusive or exhaustive definition of antisemitism, which can and does assume many forms, the IHRA Definition provides an objective baseline standard for what is and is not antisemitic and has proven to be an essential tool for identifying contemporary manifestations of anti-Jewish bigotry or hate.[47] The definition, including its accompanying illustrations, reads as follows:

> Antisemitism 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.
>
> To guide IHRA in its work, the following examples may serve as illustrations:
>
> Manifestations might include the targeting of the state of Israel, conceived as a Jewish collectivity. However, criticism of Israel similar to that leveled against any other country cannot be regarded as antisemitic. Antisemitism frequently charges Jews with conspiring to harm humanity, and it is often used to blame Jews for "why things go wrong." It is expressed in speech, writing, visual forms and action, and employs sinister stereotypes and negative character traits.
>
> Contemporary examples of antisemitism in public life, the media, schools, the workplace, and in the religious sphere could, taking into account the overall context, include, but are not limited to:
>
> - Calling for, aiding, or justifying the killing or harming of Jews in the name of a radical ideology or an extremist view of religion.
> - Making mendacious, dehumanizing, demonizing, or stereotypical allegations about Jews as such or the power of Jews as collective —such as, especially but not exclusively, the myth about a world Jewish conspiracy or of Jews controlling the media, economy, government or other societal institutions.
> - Accusing Jews as a people of being responsible for real or imagined wrongdoing committed by a single Jewish person or group, or even for acts committed by non-Jews.
> - Denying the fact, scope, mechanisms (e.g., gas chambers) or intentionality of the genocide of the Jewish people at the hands of National Socialist Germany and its supporters and accomplices during World War II (the Holocaust).

---

which is responsible for coordinating Title VI implementation and the federal agencies' enforcement efforts, to use the IHRA Definition).

47. *See* Ira Forman, *Combatting Antisemitism: Why the World Needs to Adopt the IHRA Definition*, THE JERUSALEM POST (Oct. 10, 2020, 9:48 PM), https://bit.ly/3dza2wy.

- Accusing the Jews as a people, or Israel as a state, of inventing or exaggerating the Holocaust.
- Accusing Jewish citizens of being more loyal to Israel, or to the alleged priorities of Jews worldwide, than to the interests of their own nations.
- 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.
- Applying double standards by requiring of it a behavior not expected or demanded of any other democratic nation.
- Using the symbols and images associated with classic antisemitism (e.g., claims of Jews killing Jesus or blood libel) to characterize Israel or Israelis.
- Drawing comparisons of contemporary Israeli policy to that of the Nazis.
- Holding Jews collectively responsible for actions of the state of Israel.

> Antisemitic acts are criminal when they are so defined by law (for example, denial of the Holocaust or distribution of antisemitic materials in some countries). Criminal acts are antisemitic when the targets of attacks, whether they are people or property – such as buildings, schools, places of worship and cemeteries – are selected because they are, or are perceived to be, Jewish or linked to Jews. Antisemitic discrimination is the denial to Jews of opportunities or services available to others and is illegal in many countries.[48]

In 2017, the European Commission published the *Handbook for the Practical Use of the IHRA Working Definition of Antisemitism*. The *Handbook* is an excellent resource that goes through all aspects of the definition—including every single one of the illustrative examples—and explains why each is a manifestation of antisemitism. It also gives real-life examples of actual antisemitic incidents that fit each of the descriptions.[49]

The guiding examples are an integral part of the definition, not an afterthought or an addition. Those who claim that the definition section

48. *What is Antisemitism?*, INT'L HOLOCAUST REMEMBRANCE ALL., https://bit.ly/3S3MgSI (last visited Oct. 5, 2022).

49. *See* BENJAMIN STEINITZ ET AL., EUR. COMM'N, HANDBOOK FOR THE PRACTICAL USE OF THE IHRA WORKING DEFINITION OF ANTISEMITISM 11–16 (2021), https://bit.ly/3EievtJ.

does not implicitly include all of the examples,[50] or who argue that the listed examples are somehow more controversial than the definition section itself,[51] simply misunderstand both its structure and content. Having explained what antisemitism is, the definition itself offers both classic and contemporary examples of things which could, considering the overall context, be antisemitic. An illustrative example of a particular class or style is just "something that has many of the typical features of such a class or style, and that you consider clearly represents it."[52] By the same token, "[i]f you use something as an illustrative example, or for illustrative purposes, you use it to show that what you are saying is true or to make your meaning clearer."[53] Illustrative examples do not change or add to a definition; they illuminate what is already there.[54] The definition is obviously not limited to those examples, but it should *always* be interpreted *in light of* those authoritative guiding illustrations, even in those contexts where the definition is written in its truncated form and the examples are not explicitly enumerated.

In recent years Dr. Kenneth Stern, one of the Committee on Antisemitism and Holocaust Denial members who worked on the definition,[55] has gained notoriety for claiming that the IHRA Definition was never meant to do anything but help data collectors "know what to include and exclude."[56] But as Rabbi Andrew Baker, Deidre Berger, and Michael Whine, three of the central Committee members and original IHRA authors, have clarified,[57] this oft-cited claim is nothing more than historical revisionism. In their words, the definition "was called a working definition for a reason. This was not meant to be a tool for

50. *See generally, e.g.*, JAMIE STERN-WEINER, THE POLITICS OF A DEFINITION: HOW THE IHRA WORKING DEFINITION OF ANTISEMITISM IS BEING MISREPRESENTED (2021), https://bit.ly/3SFgxZp.

51. *See, e.g.*, *IJV Urges the Canadian Government to Reconsider its Use of the IHRA Definition of Antisemitism*, IJV CAN. (June 26, 2019), https://bit.ly/3rEuw5C.

52. *Example*, COLLINS, https://bit.ly/3CLcMMF (last visited Oct. 5, 2022).

53. *Illustrative*, COLLINS, https://bit.ly/3SI6ToX (last visited Oct. 5, 2022).

54. For those familiar with the legal world, this is somewhat akin to how the American Law Institute's Restatements of the Law contain Illustrations, which are examples of how particular provisions would apply to specific sets of facts, and how many jurisdictions have adopted Restatement sections verbatim. *Cf.* Suzanne Ehrenberg & Susan Valentine, *Lecture Notes for Restatements of the Law*, CHI.-KENT COLL. OF L. (1999), http://bit.ly/3j6BK1H.

55. *See* Bayla Zohn, *Who Wrote the IHRA Working Definition of Anti-Semitism?*, THE LOUIS D. BRANDEIS CTR FOR HUM. RTS. UNDER L., https://bit.ly/3rfqBMp (last visited Oct. 14, 2022).

56. Kenneth Stern, *I Drafted the Definition of Antisemitism. Rightwing Jews Are Weaponizing It*, THE GUARDIAN (Jan. 6, 2021, 6:57 PM), https://bit.ly/3y8XEG0.

57. *See* Letter from Rabbi Andrew Baker, Deidre Berger & Michael Whine to Kathrin Meyer, Secretary General, IHRA, and Katharina von Schnurbein, Eur. Comm'n Coordinator on Combating Antisemitism and Fostering Jewish Life (Jan. 20, 2021), http://bit.ly/3TAYK5h.

academic researchers, but for those . . . who would put it to use."[58] From the very beginning, this included "those in authority who are responsible for identifying and responding to antisemitic hate crimes and other antisemitic events, such as police, prosecutors, and judges, among others."[59] In addition, assuming that the definition is objectively valid, which Stern does, it is not at all clear why it would be less valid or reliable for use in some contexts than in others.

Notably, the practical regulatory usage of the IHRA Definition has already been used in other parts of the world for years.[60] For instance, as the *Handbook* describes, the definition has been used in Europe, among other things

> to train police officers, prosecutors, judges, educators, state employees and human rights monitoring bodies to identify and track various manifestations of antisemitism; . . . to support decision-making processes by states, human rights monitoring organisations, law enforcement agencies, the judiciary, municipal governments, educators, civil society organisations and Jewish communities; [and] to identify aspects of antisemitism in court hearings, prosecutor actions, police recording, investigations and hate crime statistics[.][61]

The *Handbook* also explains that "[l]aw enforcement and the judiciary – including the police, public prosecutors, and judges – regularly face the reality of antisemitic crimes . . . and discriminatory behaviour"[62] and proceeds to demonstrate how the IHRA Definition can specifically help prosecutors and judges "determine the bias motivation of a crime[.]"[63] In recent years, further contrary to Dr Stern's assertion, a number of other guides,[64] fact sheets,[65] and policy papers[66] have also been published in the United States defending the use of the IHRA Definition to combat antisemitism in these and other important contexts.

---

58. Baker et al., *supra* note 34, at 10.

59. *Id.*

60. For a discussion of how Canada has done this as part of its national "Anti-Racism Strategy," see generally THE INT'L LEGAL F. & CTR. FOR ISR. AND JEWISH AFFS., THE IHRA WORKING DEFINITION OF ANTISEMITISM- LEGAL ANALYSIS (2020), https://bit.ly/3EjEcdo.

61. STEINITZ ET AL., *supra* note 49, at 7.

62. *Id.* at 18.

63. *Id.* at 24.

64. *See generally, e.g.*, INT'L HOLOCAUST REMEMBRANCE ALL., A GUIDE TO UNDERSTANDING AND ADOPTING IHRA WORKING DEFINITION OF ANTISEMITISM (2021), https://bit.ly/3SErw5o.

65. *See generally, e.g.*, THE LOUIS D. BRANDEIS CENTER FOR HUM. RTS. UNDER L., FAQS ABOUT DEFINING ANTI-SEMITISM (2022), https://bit.ly/3RxbJnn.

66. *See generally, e.g.*, NGO MONITOR, RECOMMENDATIONS: IMPLEMENTING THE IHRA DEFINITION OF ANTISEMITISM FOR NGO FUNDING (2021), https://bit.ly/3C92HHB.

B. Debunking Criticisms

1. IHRA's Israel Examples

Critics of the IHRA Definition tend to focus on the seven specific examples that illustrate how anti-Zionism can sometimes cross the line into antisemitism.[67] At the outset it must be noted that according to the IHRA Definition, "criticism of Israel similar to that leveled against any other country cannot be regarded as antisemitic."[68] This is "a fact so important, yet so routinely ignored by the critics of the definition as to suggest a deliberate repression on their part."[69] Sadly, that clear component of the definition has not deterred hostile 'activists' in their campaign to derail efforts that promote acceptance of the IHRA Definition—and as many have noticed, the most vocal groups are often the ones who themselves have a history of problematic antisemitism, with an accompanying vested interest in making sure that it is not defined.[70]

Perhaps, theoretically, antisemites would be more willing to accept the IHRA Definition if it did not mention the Jewish State.[71] However, for many Jews, their ethnicity and religious beliefs intersect in Zionism—broadly speaking, the movement for the re-establishment, and now the development and protection, of a sovereign Jewish nation in its ancestral homeland.[72] Thus, for a large segment of the Jewish world, it

---

67. *See, e.g.*, *Background on Efforts to Redefine Antisemitism as a Means of Censoring Criticism of Israel*, PALESTINE LEGAL (Jan. 2020), http://bit.ly/3kDAALJ.

68. *What is Antisemitism?*, *supra* note 48.

69. Alan Johnson, *Introduction: Seeing the IHRA Plain*, *in* IN DEFENCE OF THE IHRA WORKING DEFINITION OF ANTISEMITISM 4, 4 (Alan Johnson ed., 2021), https://bit.ly/3fkiRGm.

70. *See* @StopAntisemitism, Twitter (Aug. 3, 2020, 8:46 PM), https://bit.ly/3j1vgkE.

71. In recent years at least two groups have tried to 'rectify' the situation by creating new definitions. The problem with those definitions is threefold: 1) they do not add anything new to the IHRA Definition, *see* Mark Goldfeder, *The IHRA Definition Isn't Perfect. But Its Critics Aren't Making Things Better.*, FORWARD (Apr. 6, 2021), https://bit.ly/3V51JEX; 2) they do not actually solve the problems they were theoretically intended to, and antisemites still see them as being overly broad especially when it comes to Israel, *see* M. Muhannad Ayyash, *The Jerusalem Declaration on Antisemitism is an Orientalist Text*, ALJAZEERA (Apr. 21, 2021), https://bit.ly/3fDDoG1; and 3) their acceptance would only dull the IHRA consensus and be a feather in the antisemites' cap, *see* Mark Goldfeder, *New Definitions of Anti-Semitism Are Dangerous*, JEWISH NEWS SYNDICATE (Apr. 1, 2021), https://bit.ly/3EAsX0D.

72. *See* Mark Goldfeder, *A Yom Ha'atzmaut Reflection and Response*, JEWISH J. (May 6, 2022), https://bit.ly/3SzQvGS, briefly describing the religiously well-documented history of the Jewish people's Zionistic yearnings:

> Jews were Zionists before there were Muslims, and even before there were Christians. In multiple places throughout the New Testament, for example, the yearning for redemption is expressed in terms of the familiar and by-then-already-classic formulation of Jewish Zionism (see Matthew 21:5 and John

would be impossible to categorically separate Israel from the question of Jewish ethnic identity and religion.[73] Identifying with Israel in this way, as part of the Jewish religion/ethnic background/culture, is also not synonymous with 'political Zionism,' or with support for any or all particular policies of the Israeli government.[74]

It is also true that *antisemites* do not distinguish Israel from their antisemitism. Commonly, antisemites attack visibly Jewish people for their 'Zionism' because they are allegedly 'angry' about Israel.[75] Yet, many people being attacked are themselves members of communities that are not openly supportive of the State of Israel.[76]

Thus, to 'separate' Zionism from antisemitism would, as David Hirsh has succinctly explained, be unfair to the many innocent Jewish victims around the world who are regularly, actually (not theoretically), sometimes even physically, targeted and attacked 'because' of their real or imagined—but at the very least *perceived*—connection to the State of Israel:

> [Th]e fault does not lie with the drafters of the definition, the fault lies with the actual phenomenon of antisemitism which the drafters are trying to encapsulate and describe. Antisemites come for Jews, accusing them of being agents of Israel and Zionism. This kind of

---

12:15, paraphrasing Zechariah 9:9). The Quran itself is also quite clear about the long history of Jews in the Holy Land—and especially in Jerusalem. (See, for example, Surah Bani Isra'il, verses 1–7; *see also* Sheikh Abdul Hadi Palazzi, *Allah is a Zionist*, TABLET (Mar. 18, 2010), https://bit.ly/3fyAbaG]). While it is true that the Jews were twice expelled from their ancient kingdom of Israel, it is also true that they never fully left; since biblical times there has *always* been a Jewish community living in the eternal Jewish homeland. In the late-19th and early-20th centuries, Jews from around the world came to buy and cultivate land to further expand those *existing* Jewish communities that had remained in Israel as a continuous presence throughout all of the exiles.

Id.

73. *See* Alyza D. Lewin, *Recognizing Anti-Zionism as an Attack on Jewish Identity*, 68 CATH. U. L. REV. 643, 643–645 (2019).

74. *See id.*

75. *See, e.g.*, *Antisemitic Incidents at Anti-Israel Events and Actions Around the World*, ANTI-DEFAMATION LEAGUE (June 1, 2021), http://bit.ly/3EyBW1y (describing that whenever there is conflict in the Middle East, antisemitic attacks against domestic Jewish people and institutions skyrocket); Simon Ostrovsky, *Latest Israel-Gaza Conflict Sent Waves of Antisemitism Across the U.S.*, PBS (June 26, 2021, 4:30 PM), http://bit.ly/3Tygoqd (same).

76. *See* Nicole Chavez et al., *Anti-Semitic Attacks Are Being Reported in US Cities as Tensions Flare over the Israeli-Palestinian Conflict,* CNN (May 21, 2021, 5:30 PM), https://cnn.it/3SV7KCi; Luke Tress, *New York Police's Hate Crimes Unit Investigating 3 Alleged Antisemitic Attacks*, THE TIMES OF ISR. (Feb. 6, 2022, 10:35 PM), https://bit.ly/3yjWLdH; Sam Sokol, *Hasidic Man Assaulted in Antisemitic Attack in Brooklyn*, HAREETZ (July 11, 2021), https://bit.ly/3EeBBBE. This impulsive lashing out is in and of itself a manifestation of the classic antisemitic impulse to find a scapegoat in the Jew, whichever Jews happens to be closest.

> antisemitism defines 'Zionism' as racism, apartheid, imperialism and Nazism. In this context, the plurality of the ways in which Jews define their own identities and how they define their own relationships to Zionism and Israel are not relevant. What matters is the identity which is thrust upon them, in a hostile way from outside and without their consent, by antisemitism. Racism constructs race. Anti-Zionism constructs this kind of antisemitism.[77]

The problem of course, is that antizionists apply *their* definition of Zionism to people and institutions without the participation or consent of those they designate as 'Zionist.'[78] And they do so in a way that does not accurately reflect the perspectives of those they are labelling. People can be held accountable for ideas, identities, or viewpoints that they affirmatively embrace for themselves, but that is not how antisemitic antizionism works.[79] Instead, it attempts to hold people accountable for

---

77. David Hirsh, *It Was the New Phenomenon of Israel-Focused Antisemitism That Required the New* Definition *of Antisemitism*, *in* IN DEFENCE OF THE IHRA WORKING DEFINITION OF ANTISEMITISM 15, 19 (Alan Johnson ed., 2021), https://bit.ly/3fkiRGm.

78. It is possible to be politically anti-Zionist without it bleeding into antisemitism. The difference between political anti-Zionism and antisemitism can sometimes be reflected legally in the difference between primary boycotts and secondary or tertiary boycotts as follows:

> A primary boycott is usually defined as a boycott in which the boycotter is acting against the entity that it has a grievance with (for example, retail clerks picketing their employer over wages or working conditions). A secondary boycott is one in which the party boycotting an entity has a goal of affecting a third party, rather than the boycotted entity. A tertiary boycott is one in which the goal is to affect a fourth party, who supports the third party supporting the boycotted entity. BDS Movement activists [who often hide their antisemitism behind 'anti-Zionism,' for the most part, are engaging in something of a hybrid of a secondary-tertiary boycott. Their issue appears to be with the State of Israel, but they are not just engaging in a boycott of the government of Israel. The bulk of the individual companies, academics, institutions, and others who are targeted by BDS are not representing the government of Israel, and the bulk of the boycott activity is directed against them (a secondary boycott) and the people that support them (a tertiary boycott). Secondary-tertiary boycotts have very little protection under the First Amendment. The BDS supporters are not trying to protect their own constitutional rights; they are trying to use commerce to inflict harm on a foreign nation (and to discriminate against Americans who are of Jewish descent or who support Israel).

Mark Goldfeder, *Stop Defending Discrimination: Anti-Boycott, Divestment, and Sanctions Statutes Are Fully Constitutional*, 50 TEX. TECH L. REV. 207, 223–24 (2018).

79. As David Hirsh has so eloquently explained:

> [I]t is antizionism that defines most Jews as Zionist. [Not only that,] the Zionism thus ascribed to Jews is understood as a form of racism. Antizionism does not allow Jews, individuals or communities, to define their own identities. It defines their Zionism for them, against their will, and without consultation. It defines Zionism as racism and as support for apartheid. In so doing it defines most Jews as alien to any decent community of human beings.

David Hirsh, *How the Word "Zionist" Functions in Antisemitic Vocabulary*, J. CONTEMP. ANTISEMITISM, Jan. 2021, at 1, 6.

an identity created, defined, and erroneously applied to them by someone else. Antisemites should not get to define all Jews as Zionists, all Zionists as racists, and then all antisemitism as excluding all forms of anti-Zionism.

The consensus around the IHRA Definition, on the other hand, gives a good sense of how Jewish people actually define themselves, and the anti-Zionism that crosses the line into anti-Jewish sentiment. The IHRA Definition is not *just* academic. "Any definition does not come first out of thought but out of an understanding of, and an effort to describe, a thing which exists."[80] The plain fact is that the IHRA Definition should be adopted simply because it is a true and accurate description that captures the essence of antisemitism in many of its various forms, regardless of the ideological source. But even aside from its textbook correctness, the definition draws additional strength from the unprecedented reality that there exists a strong consensus of tens if not hundreds of thousands of people across nearly every sub-demographic in the Jewish world who agree that this explanation best encapsulates their shared identity and lived experiences on how antisemitism manifests, including as it relates to Israel.[81] For example, in the United States, the truly consensual nature of the definition as reflecting mainstream U.S. Jewish sentiments can be seen by the fact that the Conference of Presidents of Major American Jewish Organizations, an umbrella group that represents most of the Jewish community, recently announced that 51 of its 53 member organizations have adopted the IHRA Definition.[82] Additionally, the Jewish Federations of North America has made the adoption of IHRA one of its priorities.[83] Because the Jewish community is not monolithic, there are of course still dissenting voices within it, as there would be on any issue. But the overall degree of agreement is immense and remarkable, and while there have been some ill-intentioned efforts to create the misimpression of division within the Jewish community itself, this is easily and demonstrably debunked.

Digging a little deeper, the Jewish consensus behind IHRA is born out of the fact that while antisemites across time and space may conceal

80. David Hirsh, *It Was the New Phenomenon of Israel-Focused Antisemitism That Required the New* Definition *of Antisemitism*, *in* IN DEFENCE OF THE IHRA WORKING DEFINITION OF ANTISEMITISM 15, 19 (Alan Johnson ed., 2021), https://bit.ly/3fkiRGm.

81. *See* Goldfeder, *supra* note 4, at 141.

82. *See Conference of Presidents Member Organizations Adopt IHRA Definition*, CONF. OF PRESIDENTS OF MAJOR AM. JEWISH ORGS. (Jan. 26, 2021), https://bit.ly/3fKf3OY.

83. *See* THE JEWISH FED'NS OF N. AM., THE JEWISH FEDERATIONS OF NORTH AMERICA'S RECOMMENDATIONS TO PRESIDENT-ELECT JOSEPH R. BIDEN, VICE PRESIDENT-ELECT KAMALA HARRIS AND THE BIDEN-HARRIS TRANSITION COMMITTEE 5–6 (2020), https://bit.ly/3CAER98.

or deny their bigotry through different justifications, their feelings tend to manifest in similar thematic patterns, and their pretenses tend to reiterate common, conspiracy-driven theories.[84] As the IHRA bills underscore, antisemitism often holds Jews as a collective,[85] the idea being that while individual Jews might be tolerable, Jews as a separate collective identity should not be allowed to exist with the same rights as other groups.[86] That is why even as antisemitism has historically evolved, each iteration in any given era tends to focus on the primary form and expression of collective Jewish identity at that point in time.[87] In the Middle Ages, Jews were mostly a religious-identity community and were therefore hated for their religious affiliation, even if they were not religiously observant.[88] In the nineteenth and twentieth centuries, when many Jews had secularized, Jews were collectively brutalized for their ethnicity, and later for their race, regardless of the actual extent of their Jewish ancestry.[89] Today, when the primary collective expression of Jewish identity is through Jewish self-determination in their nation state, Jews around the world are hated and held accountable for 'their' country—regardless of their actual connection or lack thereof to the State of Israel.[90]

---

84. *See* Kenneth Waltzer, *Contending with Antisemitism in Its Many Forms*, *in* CONTENDING WITH ANTISEMITISM IN A RAPIDLY CHANGING POLITICAL CLIMATE 137, 140 (Alvin H. Rosenfeld, ed. 2021) ("It is worth stating here that antisemitism is above all a hatred rooted in an idea or portrait of the Jew as a negative being, an extraordinarily malevolent and powerful being, a threat, or a danger. Antisemitic thought at its core is shaped by conspiratorial presumptions; is accompanied by related beliefs about the Jews as powerful, influential, and dangerous; and is Manichean—drawing a world sharply divided between good and evil, in which the Jew is the opposite of the good and constitutes the malevolent, deformed, and threatening Other.").

85. *See* Goldfeder, *supra* note 4, at 128.

86. *See* The Rabbi Sacks Legacy, *Rabbi Sacks on the Connection Between Judaism and Israel*, YOUTUBE (Apr. 30, 2019), http://bit.ly/3Oawl54. Per Ahlmark, the former leader of the Swedish Liberal Party and Deputy Prime Minister of Sweden, remarked that while antisemitism begins primarily by attacking the collective Jews, "such attacks start a chain reaction of assaults on individual Jews and Jewish institutions." Irwin Cotler, *Global Antisemitism: Assault on Human Rights* 5 (Inst. for the Study of Glob. Antisemitism and Pol'y, Working Paper Cotler 2009), https://bit.ly/3TaZfDQ (quoting Per Ahlmark, Speech at The International Conference on "The Legacy of Holocaust Survivors": Combating Old – New Antisemitism (Apr. 11, 2002)).

87. *See* James Wald, *The New Replacement Theory: Anti-Zionism, Antisemitism, and the Denial of History*, *in* ANTI-ZIONISM AND ANTISEMITISM: THE DYNAMICS OF DELEGITIMIZATION 3, at 3 (Alvin H. Rosenfeld, ed. 2019).

88. *See* Thomas F. Madden, *The Truth About the Spanish Inquisition*, CATH. CULTURE (2003), https://bit.ly/3ErKF62.

89. *The Nuremberg Laws: Background & Overview*, JEWISH VIRTUAL LIBR., https://bit.ly/3SFGoQK (last visited Jan. 23, 2021).

90. *See* The Rabbi Sacks Legacy, *The Mutating Virus: Understanding Antisemitism | Rabbi Jonathan Sacks*, YOUTUBE (Sept. 28, 2016), https://bit.ly/3UCgoas; *see also* Goldfeder, *supra* note 4, at 131 (discussing same).

Put differently, one way that antisemitism classically manifests itself is "political antisemitism," a term coined by Lesley Klaff and Bernard Harrison and defined as "a delusive explanatory theory concerning the supposedly central role played not by this or that individual Jew but by a supposedly all-powerful and malign Jewish collectivity in controlling non-Jewish life and history."[91] As they describe it, while the specific accusations leveled against Jews might change across time and depending on location, the main tenets of the theory remain roughly the same in all its iterations:

> PA1. The Jewish community is organized to pursue goals of its own at what-ever cost to the lives and interests of non-Jewish groups. In consequence, it is directly and solely responsible for human suffering on a scale far exceeding anything that can be alleged against any other human group.
>
> PA2. The Jewish community is conspiratorially organized in the pursuit of its self-seeking and heinous goals to an extent that endows it with demonic powers not to be suspected from the weak and harmless appearance of its individual members.
>
> PA3. Through the efficacy of its conspiratorial organization and through its quasi-miraculous ability to acquire and manage money, the Jewish community has been able to acquire secret control over most of the main social, commercial, political, and governmental institutions of non- Jewish society.
>
> PA4. Given the secret control exercised by world Jewry over (only apparently) non-Jewish institutions and given the obsessive concern of the Jewish community with its own interests to the exclusion of those of non-Jews, it is simply not feasible to remedy the evils occasioned by the presence of the Jews in non-Jewish society by any means short of the total elimination of the Jews.
>
> PA5. Since the evils that the Jews do in the world owe their existence solely to Jewish wickedness, the elimination of the Jews will cause those evils to cease, without the need for any further action on the part of non-Jews, whose world will, in the nature of things, return forthwith to the perfect state of order natural to it, from which it would never have lapsed had it not been for the mischievous interventions of the Jews.[92]

If you just replace the word "Jew" with "Israel" in any or all of those paragraphs, it becomes immediately clear that the examples in the

91. Harrison Bernard & Lesley Klaff, *The IHRA Definition and Its Critics, in* CONTENDING WITH ANTISEMITISM IN A RAPIDLY CHANGING POLITICAL CLIMATE 9, 21 (Alvin H. Rosenfield ed., 2021).

92. *Id.* at 21–22.

IHRA Definition that are related to the State of Israel are not there to proscribe any legitimate criticism of Israel as a state. Instead, the purpose is to describe to someone unfamiliar with the history of antisemitism how earlier versions of an age-old hatred are recycled, repackaged, and revived. The historical progression of antisemitism is often simplified by advocates into these three stages: (1) "You cannot live among us *as Jews*," which has led to forced conversions; (2) "You cannot live among us," which has resulted in mass deportations and exile; and finally, (3) "You cannot live," which culminated in the Holocaust.[93] In the new version of antisemitism, Jews are constantly told that you cannot live among us as a state. They are told that you must stop being Jewish (as a state) or go somewhere else (as a state), or you must die (as a state).

For the antisemitic 'critic,' Israel, the only Jewish state, is also the only nation that essentializes and epitomizes evil.[94] To the antisemite, Israel is inherently synonymous with the worst thing one can be affiliated with at a given moment.[95] That is why, in their minds and in their papers, Zionism is therefore tantamount to Nazism, racism, colonialism, etc., and it remains the primary obstacle to societal progress or decency. *If only the Jewish state could be successfully eliminated, everything else would be better.*

The antisemites' hatred of Israel thus "follows a pattern made familiar by earlier versions. . . . That is to say, it offers an 'explanation' of certain disturbing features of modern life . . . in terms of the putative centrality to these disquieting events of 'the Jew,' as represented for present purposes by the state of Israel."[96] When is criticism of Israel

93. Felice Gaer, *"If Not Now, When?": Jewish Advocacy for Freedom of Religion*, THE REV. OF FAITH & INT'L AFFS., Aug. 2012, at 73, 74 (2012) (emphasis added). This idea has been attributed to the Jewish philosopher Emil Fackenheim. *See, e.g.*, Rabbi Stephen Lewis Fuchs, *Antisemitism Can Spread Like Wildfire … Will It?*, FINDING OURSELVES IN THE BIBLE (Jan. 8, 2023), http://bit.ly/3wq0LIo.

94. *See e.g.*, G.A. Res. 3379 (XXX), at 84 (Nov. 10, 1975) (defining Zionism as "a form of racism").

95. Yossi Klein Halevi, described what antisemitism does:

> What antisemitism does is turn . . . 'the Jew' into the symbol of whatever it is that a given civilization defines as its most loathsome qualities. . . . Under Christianity, before the Holocaust and Vatican II, 'the Jew' was the Christ Killer. . . . Under communism, 'the Jew' was the capitalist. Under Nazism, 'the Jew' was the race-polluter. . . . Now we live in the civilization where the most loathsome qualities are racism, colonialism, apartheid—and lo and behold, the greatest offender in the world today, with all of the beautiful countries in the world, is the Jewish state.

Yossi Klein Halevi, *The Latest Incarnation of Anti-Semitism*, YOUTUBE (Nov. 15, 2018), http://bit.ly/3EfDKeS.

96. Bernard & Klaff, *supra* note 91, at 26.

antisemitic?[97] As the IHRA Definition makes clear, criticism of Israel becomes antisemitic when people use classic antisemitic tropes or frameworks to treat the "collective Jew among the nations" as a proxy for how antisemites historically would talk about Jews[98] or the Jewish community.[99]

If Zion is essentially evil, then anyone who is 'Zionistic' must be essentially evil as well. Sadly, people on both the right[100] and the left[101] have expressed such hatred. As David Hirsh best put it:

> Attacking, denigrating, and threatening 'Zionists' has become the norm, with the crystal-clear understanding that 'Zionist' is now merely an epithet for 'Jew' the same way 'banker,' 'cabal,' 'globalist,' 'cosmopolitan,' 'Christ-killer,' and numerous other such dog-whistles [and dark metonymies] have been used over the centuries to target, demonize, and incite against Jews.[102]

Martin Luther King, Jr. also famously declared, "[w]hen people criticize Zionists, they mean Jews. You're talking anti-Semitism!"[103]

---

97. Guides on how to criticize Israel without being antisemitic have been created. *See e.g.*, Emanuel Miller & Soshanna Keats Jaskoll, *How to Criticize Israel Without Being Antisemitic,* HONEST REPORTING (Feb. 14, 2019, 12:00 AM), https://bit.ly/3dIt7Ys.

98. *See* Judea Pearl, *Is Anti-Zionism Hate?*, L.A. TIMES (Sept. 16, 2014, 12:05 PM), https://lat.ms/3LF8h9b ("Anti-Semitism rejects Jews as equal members of the human race; anti-Zionism rejects Israel as an equal member in the family of nations.").

99. *See generally* IRWIN COTLER, THE JEWISH PEOPLE POL'Y PLAN. INST., NEW ANTI-JEWISHNESS (2002), https://bit.ly/3xQSCO2.

100. *See, e.g.*, *Zio-Watch News Round-Up*, DAVID DUKE, https://bit.ly/3r3sJqK (last visited Oct. 16, 2022); JEWS FOR RACIAL & ECON. JUST., UNDERSTANDING ANTISEMITISM: AN OFFERING TO OUR MOVEMENT 21 (n.d.), https://bit.ly/3dFsCyC.

101. *See* David Hirsh, *How the Word "Zionist" Functions in Antisemitic Vocabulary*, J. OF CONTEMP. ANTISEMITISM, Jan. 2021, at 1, 2.

102. Letter from Mark Goldfeder, Special Couns. Am. Ctr. for L. & Just. & Jeff Ballabon, Senior Couns. Am. Ctr. for L. & Just., to Catherine E. Lhamon, Assistant Sec'y for Civ. Rts. (July 19, 2022), https://bit.ly/3UEiYg7; *see also* Andrew Pessin, *Irwin Cotler: Laundering Antisemitism Corrupts Our Common Humanity*, THE ALGEMEINER (Apr. 4, 2016, 1:31 PM), https://bit.ly/3r7r17z (discussing "remarks by Iranian leaders, and the charters of groups such as Hamas and Hezbollah, explicitly calling for the destruction of Israel and the murder not of 'Zionists,' but of Jews.").

103. Martin Kramer, *In the Words of Martin Luther King . . .* , MARTIN KRAMER ON THE MIDDLE E. (Mar. 12, 2012), https://bit.ly/3BGzjbD; *see also* Hirsh, *supra* note 101, at 3:

> [I]n our day the word "Zionism" itself often functions as an antisemitic curse word, which hurts and discredits Jews. When Jews are denounced as "Zionist," they are being accused of thinking they are better than everyone else and of supporting racism. It is a repackaging of old antisemitic understandings of the term "Chosen people," a term that was already in Christian traditions a repackaging of nuanced, complex, and developing ways in which Jews thought about themselves. The word "Zionism" frequently constructs Jews as participating in dishonest global networks, conspiracies of lies and propaganda, in their own selfish interest. It positions most Jews as though they are in alliance with a formidable global system of oppression, sometimes called

As it relates to the IHRA Definition, because modern antisemitism often manifests under the guise of anti-Zionism,[104] the definition includes several helpful examples of when criticism of Israel *can*, considering the overall context, cross the line into antisemitism. And as it relates to these bills, which make use of the IHRA Definition when assessing the motivation behind potentially discriminatory conduct, the examples provide added clarity and definitive guidelines to the material benefit of those officials tasked with determining the presence of anti-Jewish bias.

The IHRA Definition does not provide examples about Israel in order to shut down legitimate criticism of Israel, as the definition explicitly clarifies twice. It does so because of the false belief that *no* expression related to Israel can ever cross the line from political disagreement to drawing on and perpetuating antisemitic tropes,[105] and to prevent people from pretending that the line between politics and

---

> "modernity," or "capitalism," or "imperialism." The word "Zionism" in antizionist usage conveys a familiar mixture of contempt and fear, as have previous words that have been used against Jews. It does this in a world in which the old words and languages of Jew-hatred have appeared discredited.

Id.

104. *See* Mark Goldfeder, *Anti-Semitism's True Nature Reveals Itself*, N.Y. DAILY NEWS: OP. (May 25, 2021, 7:30 AM), https://bit.ly/3BLPvbx.

105. *See* Goldfeder, *supra* note 4, at 136; *see also* Eve Garrard, *The IHRA Definition, Institutional Antisemitism, and Wittgenstein*, *in* IN DEFENCE OF THE IHRA WORKING DEFINITION OF ANTISEMITISM 46 (Alan Johnson ed., 2021), https://bit.ly/3BMmsVf:

> [T]he other (putatively moral) objection – the claim that IHRA underpins an attack on the freedom of speech of critics of Israel – is not even true. Here's why: the IHRA definition is peppered with conditional verbs, saying that this or that 'may' be antisemitic, or 'could' or 'might' be antisemitic. Its list of examples is prefaced by the remark that they 'could' provide cases of contemporary antisemitism, but that such antisemitism is 'not limited' to just those examples. But to say that a practice may be antisemitic is to allow that it may not be. To say that applying double standards to Israel could in some cases be antisemitic leaves room for the possibility that in some cases it isn't antisemitic. That's how these conditional verbs work. And the reason that we need words that work in this cautious way is that racism of any kind occurs in the complicated contexts of our moral lives, and good moral judgements are highly context-sensitive. So the charge that the IHRA definition threatens our freedom of speech simply isn't true; what the definition does do is alert us to the fact that some ways of talking about Israel are antisemitic. The only view which this definition threatens is the view that criticism of Israel can never, ever, in any circumstances, be antisemitic. But this is not a view which is even remotely plausible (although some critics of the IHRA definition do seem to find it attractive). It is, of course, always possible that the IHRA text could be misused to assert the mistaken claim that criticism of Israel is always antisemitic. Misuse is a possibility with any text, but here the IHRA definition itself, with its cautious conditional claims, protects us all from accepting either of these implausible views.

Id. With regard to the bills in question, it is worth reiterating that, of course, even outright antisemitic speech would still be protected.

discriminatory hatred is somehow murkier when it comes to antisemitism than the line between sexist and non-sexist or racist and non-racist or homophobic and non-homophobic speech.[106] It is not.

As former Assistant Secretary of Education for Civil Rights Kenneth Marcus explained:

> [T]he ideology of the new anti-Semitism consists of negative stereotypes describing the Jewish state and its members, supporters, and coreligionists as threatening, immoral, and categorically different from other people, and it favors the use of restriction, exclusion, and suppression to solve the 'Israel problem.' This substitution is endemic of the new anti-Semitism.[107]

And in practice, as noted Holocaust historian Kenneth Waltzer has explained, examples of the type of line crossing described in the IHRA Definition are not that difficult to discern:

> When anti-Zionism continuously treats Israel as a caricature of extreme evil, offering cartoon versions of Zionism as inherently racist and colonialist, removed from real history, this is antisemitic anti-Zionism. When adherents of anti-Zionism insist that, even though all other nations enjoy a right to self-determination and sovereignty, Jews are not similarly eligible, this is antisemitic anti-Zionism. When anti-Zionism absorbs mystical claims or tropes about Jewish evil and power into discussion of the Jewish state and attributes claims made about Jews as part of the long history of antisemitism to the Jewish collective today, this too is antisemitic anti-Zionism. When anti-Zionism absorbs representations, images, and depictions of the physical Jew clearly derived from the long history of antisemitism into its standard discourse, we are witnessing antisemitic anti-Zionism. . . . When magical powers able to hypnotize the world are attributed to Jews, this is antisemitic anti-Zionism. When anti-Zionists raise questions about the fitness for student office of students of Jewish background or affiliated with Jewish community institutions, because they will not be able to act objectively in representing other students, this is also antisemitic anti-Zionism. When anti-Zionists accuse Jews who call out antisemitism of raising the issue in bad faith in order to silence anti-Zionism, this too is antisemitic anti-Zionism. . . . Finally, when anti-Zionists argue that European or American Jews far removed from Israel or Palestine

106. In general, no one who calls sexist speech sexist, racist speech racist, or homophobic speech homophobic, is accused of chilling speech. *See* Jonathan Friedman & Cynthia Miller-Idriss, *When Hate Speech and Free Speech Collide*, DIVERSE: OP. (Dec. 5, 2018), http://bit.ly/3TDXWfZ. And yet when it comes to calling antisemitic speech antisemitic, people suddenly have reservations. *See, e.g.*, Stern, *supra* note 56.

107. Kenneth L. Marcus, *Jurisprudence of the New Anti-Semitism*, 44 WAKE FOREST L. REV. 371, 376 (2009).

> (such as the Jews in the Paris kosher grocery Hypercacher, shot after the Charlie Hebdo attack) are fair game for attack as part of the broad anticolonial "resistance" because all Jews everywhere are allies of Israel, this too is antisemitic anti-Zionism.[108]

As Waltzer notes, it is ironic and idiosyncratically true of antisemitism—as opposed to other forms of discrimination—that even attempts to describe or define the phenomenon are often themselves rejected by antisemites *using classic antisemitic tropes about Jewish power*. Instead of believing or acknowledging the experiences of Jewish people who have been targeted and subject to abuse, and dispensing with any notion of good faith,[109] the antisemitic rejectionists instead blame and smear the victims themselves, accusing the Jews/Zionists[110] of once again organizing their secret cabal to act maliciously and manipulate others into doing their bidding and silencing others.[111] If it were not so

---

108. *See* Waltzer, *supra* note 84, at 148.

109. S*ee* Howard Jacobson, *Let's Be Clear – Antisemitism is a Hate Apart*, THE GUARDIAN (Oct. 22, 2016, 7:04 PM), https://bit.ly/3C8T5gf:

> The mantra bedevilling reasonable conversation about Israel is that the Jews have only one motive in labelling anti-Zionism antisemitic and that is to stifle legitimate criticism of Israel. This assertion defames Jews, the majority of whom, in my experience, take issue not with the idea of legitimate criticism, but with what in any given instance "legitimacy" amounts to. Criticism is not an inviolable concept. It can be moderate or extreme, truthful or mendacious, well-intentioned or malign. To complain when it is unjust is not to shut down debate . . . . The effect of a libel is to exhaust trust. It should not be automatically assumed that, when it comes to Israel, Jews are incapable of arguing honestly, an assumption that itself edges dangerously close to the racism that is being denied.

Id.

110. On the far right, David Duke, former grand wizard of the Klu Klux Klan, "has been trying to popularize the term 'Zio' (short for Zionist) as a stand-in for [the word] Jew," so as to be able to criticize Jewish people without being immediately called antisemitic. JEWS FOR RACIAL & ECON. JUST., *supra* note 100, at 21; *see also Zio-Watch News Round-Up*, DAVID DUKE, https://bit.ly/3TvzspD (last visited Oct. 16, 2022).

111. An example of this is seen in the difference between the Macpherson Principle, which says that if a person says they have been victimized, "then authorities and institutions should conduct their investigation on the same initial assumption, that the complaint is made in good faith," and the Livingstone Formulation, which is the standard articulation of the opposite assumption:

> The Livingstone Formulation says that that when people raise the issue of antisemitism, they are probably doing so in bad faith in a dishonest effort to silence legitimate criticism of Israel. It warns us to be suspicious of Jewish claims to have experienced antisemitism. It warns us to begin with the skeptical assumption that such claims are often sneaky tricks to gain the upper hand for Israel in debates with supporters of the Palestinians. And this is the substantial position of the 'call to reject' the IHRA definition of antisemitism. The Livingstone Formulation does not allege that Jews often misjudge what has happened to them, it alleges that they lie about what has happened to them. It is not an allegation of error, or over-zealousness, perhaps explicable by reference to the antisemitism of the past. It is an allegation of conspiracy.

sad,[112] the absurdity and hypocrisy of those who push these views would be comical.[113]

The late great Chief Rabbi Lord Jonathan Sacks once observed that one reason why antisemitism is so hard to define is because it is a "mutating virus."[114] Jews are criticized for being whatever a society, or a part of a society, hates at that particular moment.[115] Jews have been, sometimes simultaneously, targeted for being radicals *and* fundamentalists; capitalists *and* socialists; too liberal *and* too conservative; elitist *and* impoverished. It matters little that the reasons are entirely contradictory and inconsistent. Sadly, hating Jews has been one of the few things that has managed to unite people across every aisle.[116] This is why a consensus-driven definition is so critically needed.

A definition that can properly encompass all these possibilities and many more must be able to cut through any of the excuses that might be offered to justify this timeless hatred and focus instead on the *actions* taken by those who harbor hate and engage in bigotry. A praxeological, or conduct-based definition like the IHRA's, fills that void.[117] The examples in the IHRA Definition highlight the *manifestations* of antisemitism, i.e., what antisemites *do,* as opposed to *why* they do it. That is why the IHRA Definition, along with its examples, is especially helpful in assessing the motivation behind potentially antisemitic actions.

Hirsh, *supra* note 80, at 16. *See also* David Hirsh, *Accusations of Malicious Intent in Debates About the Palestine-Israel Conflict and About Antisemitism*, 11 TRANSVERSAL 47, 47 (2010); Steinberg, *supra* note 18, at 48–49 ("To the degree that the reference to a 'hidden agenda' is an echo of Jewish conspiracy theories, it is itself an example of antisemitism, in which classical antisemitic themes are attributed to Jewish and non-Jewish supporters of Israel.").

112. One common motif is to accuse anyone who calls out anti-Semitic or anti-Zionism of Islamaphobia. *See* Asaf Romirowsky & Richard Cravatts, *Blaming the Victim for Anti-Semitism*, THE JERUSALEM POST: OP. (Apr. 20, 2013, 10:56 PM), https://bit.ly/3rfkoAe; *see also* Mark Goldfelder, *Have the Democrats Finally Had It with Ilhan Omar*, NEWSWEEK: OP. (June 10, 2021, 6:13 PM), https://bit.ly/3rkVIq9; David Harris, *Ilhan Omar Has a Problem with Jews*, NEWSWEEK: OP. (July 1, 2021, 12:45 PM), https://bit.ly/3BYj2ie.

113. This is also similar to the phenomenon of declaring that every time the Jews or the Jewish State do something good, they must only be doing it for nefarious reasons. *See* Alan Dershowitz, *The Pinkwashing Campaign Against Israel: Another Conspiracy* Theory, HUFFPOST: THE BLOG (May 1, 2013), https://bit.ly/3UJL5L7.

114. The Rabbi Sacks Legacy, *The Mutating Virus: Understanding Antisemitism | Rabbi Jonathan Sacks*, YOUTUBE (Sep. 28, 2016), https://bit.ly/3ftG7lw.

115. *See* Manfred Gerstenfeld, *Anti-Israelism and Anti-Semitism: Common Characteristics and Motifs*, JEWISH POL. STUD. REV., Spring 2007, at 83, 85.

116. *See Israel Hatred: The Common Denominator between the American Far-Left and Far-Right*, THE MEDIALINE (July 30, 2020), https://bit.ly/3riBYUc.

117. *See* Mark Goldfeder, *Ga. Legislature Should Act on New Antisemitism Bill*, THE ATLANTA J.-CONST.: OP. (Feb. 11, 2022), https://bit.ly/3SKeW4g.

2. The Impermissibility of Speech Codes and Why IHRA Definition Bills Avoid Regulating Speech

Before discussing the use of the IHRA Definition in a regulatory context, we must first differentiate between what a definition itself *does*, and how that definition might then be used to regulate behavior, because certain disingenuous opponents purposefully conflate the two in an effort to keep 'antisemitism' vague in theory and in practice.

A definition is nothing more than "the formal statement of the meaning or significance of a word, phrase, idiom, etc., as found in dictionaries."[118] The IHRA Definition does not, and by definition, *could* not do *anything at all* to regulate behavior or to silence speech, including even outright antisemitic speech. The definition is simply a tool used to label antisemitism correctly.

Indeed, the IHRA Definition does not criminalize anything. Instead, it clarifies what discriminatory antisemitism looks like. This clarification is particularly important for authorities that investigate discriminatory antisemitism, including acts which have notably been made illegal by prior law. The definition does not say that anything definitively does, or does not, constitute antisemitism; "[w]hat it does do is draw attention to the kinds of things that we know, from experience, are sometimes antisemitic."[119] The IHRA Definition says that if you see these hallmarks, then you should make an objective judgment about whether the elements of the case, taken together in their full context, indicate the presence of antisemitism. "The alarm bells tell you where to look, they do not make final or fixed judgments."[120] In other words, the definition and the accompanying examples can help an official assess whether the conduct in question was motivated by illegally discriminatory intent, which is exactly the assessment they are *supposed* to make when applying anti-discrimination laws.[121]

---

118. *Definition*, DICTIONARY.COM, https://bit.ly/2so3dyc (last visited Oct. 17, 2022).

119. Hirsh, *supra* note 80, at 20.

120. *Id.*

121. Otherwise, anti-discrimination laws simply could not work. *See* Wisconsin v. Mitchell, 508 U.S. 476, 487 (1993) ("Mitchell argues that the Wisconsin penalty-enhancement statute is invalid because it punishes the defendant's discriminatory motive, or reason, for acting. But motive plays the same role under the Wisconsin statute as it does under federal and state antidiscrimination laws, which we have previously upheld against constitutional challenge."); Roberts v. U.S. Jaycees, 468 U.S. 609, 628 (1984); Hishon v. King & Spalding, 467 U.S. 69, 78 (1984); Runyon v. McCrary, 427 U.S. 160, 176 (1976). Title VII of the Civil Rights Act of 1964, for example, makes it unlawful for an employer to discriminate against an employee "*because of* such individual's race, color, religion, sex, or national origin." 42 U.S.C. § 2000e-2(a)(1) (emphasis added). In *Hishon,* the Supreme Court rejected the argument that Title VII infringed employers' First Amendment rights. *See Hishon*, 467 U.S. at 78.

Some might argue that using a definition to label something as problematic can create an effective norm, which might then end up silencing some antisemitic speech by making it socially unacceptable. Making something socially unacceptable, however, is neither unconstitutional, nor a regulation of speech, or even out of the ordinary. Indeed, the free exchange of ideas, whether hate speech or a counter thereto, is how we are *meant* to ascertain the truth.[122] Norms represent society's acceptance of the correctness of a position. The use of counter speech, in the form of applying a well-accepted definition in order to expose open or latent antisemitism, is precisely the right response to antisemitic rhetoric.

As Justice Brandeis famously explained in his concurrence in *Whitney v. California*, "[i]f there be time to expose through discussion, the falsehoods and fallacies, to avert the evil by the processes of education, the remedy to be applied is more speech, not enforced silence."[123] Applying the IHRA Definition to call out antisemitism is the "more speech" that Justice Brandeis was prescribing; indeed, the very "processes of education" that is required to respond to the falsehoods and fallacies that antisemites generate. Normally, anyone is free to call out racist or sexist or homophobic speech without being accused of silencing racists or being criticized for creating norms in which sexism or homophobia is unacceptable.[124] In this sense antisemitism is, or at least should be, no different than any other bigotry.

Using the IHRA Definition to determine whether a given statement or position is antisemitic does not change the fact that anyone anywhere can say whatever they want, whenever they want, and however abhorrent they want, about Judaism, the Jewish people, or the Jewish State. Freedom of speech, even offensive hateful speech, is an important cornerstone of a free society and part of what makes our democracy great.[125] But the fact that hate speech is constitutionally protected does not mean that we cannot use a definition to illustrate and explain why it

---

And more recently, in *R.A.V. v. City of St. Paul,* 505 U.S. 377, 389–390 (1992), the Supreme Court cited Title VII (as well as 18 U.S.C. § 242 and 42 U.S.C. §§ 1981 and 1982) as an example of a permissible content-neutral regulation of conduct.

As Kenneth Stern, one of the IHRA drafters, has explained: "The US Supreme Court case of Wisconsin v. Mitchell was the model for the language in the working definition." Kenneth S. Stern, *Antisemitism Rests on Intent Not Motive. It's Clear from the IHRA Definition*, THE TIMES OF ISR. (Jan. 25, 2022, 9:08 PM), https://bit.ly/3Clgufw.

122. *See* Garrison v. Louisiana, 379 U.S. 64, 73 (1964).

123. Whitney v. California, 274 U.S. 357, 377 (1927).

124. *See* Friedman & Miller-Idriss, *supra* note 106.

125. Of course, there are policies, like certain university speech codes, that are problematic. *See, e.g.*, *What are Speech Codes?*, FIRE, https://bit.ly/3UMWM3A (last visited Oct. 17, 2022). But these bills are explicitly not like that.

is hateful,[126] and the fact that this makes antisemites uncomfortable—as it leads people to weigh the competing viewpoints and hopefully *stop* engaging in antisemitism—is exactly what the counter-speech doctrine suggests and expects to happen.[127]

In short, it is unequivocally true that as a general matter, the government may *not* regulate speech "because of its message, its ideas, its subject matter, or its content."[128] That means people can say absolutely antisemitic things, and that other people can label those statements or positions as problematic. There is no serious debate on this issue, leading to the conclusion that *none* of the antisemitism bills which incorporate the IHRA Definition in any way attempt to regulate, limit, or chill speech. For example, look at the narrowly tailored actual text of the Iowa State antisemitism bill as codified in 2022:

> **HF 2220 (LSB 5469HV (4) 89)**
>
> RELATING TO ANTISEMITISM IN THE STATE OF IOWA.
>
> BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:
>
> Section 1. NEW SECTION. 216F.1 Definition.
>
> For purposes of this chapter, "antisemitism" means the working definition of antisemitism adopted by the international holocaust remembrance alliance on May 26, 2016, and includes the contemporary examples of antisemitism identified by the international holocaust remembrance alliance.
>
> Sec. 2. NEW SECTION. 216F.2 Rules of construction.
>
> This chapter shall not be construed to diminish or infringe upon any right protected under the first amendment to the United States Constitution, or the Constitution of the State of Iowa. This chapter shall not be construed to conflict with local, federal, or state discrimination laws.

---

126. *See* Moshe Goldfeder, *Hate Speech*, MISHPACHA (Apr. 25, 2022), https://bit.ly/3UHHsoK. Moshe Goldfeder another name used by the author of this piece.

127. *See* David L. Hudson Jr., *Counterspeech Doctrine*, THE FIRST AMEND. ENCYC. (Dec. 2017), https://bit.ly/3E1CVYv. ("The counterspeech doctrine posits that the proper response to negative speech is to counter it with positive expression. It derives from the theory that audiences, or recipients of the expression, can weigh for themselves the values of competing ideas and, hopefully, follow the better approach . . . . Justice Louis D. Brandeis established it in his classic concurring opinion in Whitney v. California (1927), when he wrote: 'If there be time to expose through discussion, the falsehoods and fallacies, to avert the evil by the processes of education, the remedy to be applied is more speech, not enforced silence.'").

128. Police Dep't of Chi. v. Mosle, 408 U.S. 92, 95 (1972).

> Sec. 3. NEW SECTION. 216F.3 Determination of discriminatory acts —— consideration of antisemitism.
>
> 1. In reviewing, investigating, or deciding whether there has been a violation of any relevant policy, law, or regulation prohibiting discriminatory acts, the state shall take into consideration the definition of antisemitism set forth in this chapter for purposes of determining whether the alleged act was motivated by discriminatory antisemitic intent. 2. A court or other relevant authority shall apply the same legal standard as applicable to like claims of discrimination arising under laws of this state protecting civil rights including chapter 216.
>
> Sec. 4. NEW SECTION. 216F.4 State personnel discrimination training.
>
> For the purposes of training of state personnel related to discrimination and anti-bias training, the definition of antisemitism shall be used as an educational tool to familiarize staff and officials with antisemitism.

Practically speaking, the Iowa bill is narrowly tailored. The bill does not limit or chill anyone's freedom of speech or expression. In fact, the bill emphatically employs a savings clause, doubling down on First Amendment protections.

The Supreme Court has unanimously ruled that that the First Amendment allows for the evidentiary use of speech to rebuttably assess motive without there being any concern of impermissibly chilling speech.[129] The First Amendment *does not*, however, protect harassing or discriminatory or criminal *conduct*,[130] i.e., the only areas that these bills actually address.

Antisemitic speech, without more, is constitutionally protected, and bills incorporating the IHRA Definition do not in any way attempt to alter or undermine that protection. While some various lobbying groups have made the claim that these bills could prohibit constitutionally

---

129. "[T]he First Amendment . . . does not prohibit the evidentiary use of speech . . . to prove motive or intent." Wisconsin v. Mitchell, 508 U.S. 476, 489 (1993).

130. Discriminatory conduct, for example, can include physical, verbal, graphic, or written conduct if that behavior "is sufficiently severe, pervasive, or persistent so as to interfere with or limit a student's ability to participate in or benefit from the services, activities or opportunities offered by a school." Letter from Russlynn Ali, Ass't Sec'y for C.R., Off. for C.R., U.S. Dep't of Educ., to Colleague (Oct. 26, 2010), http://bit.ly/3E3QODG. According to the OCR, "[h]arassing conduct may take many forms, including verbal acts." *Id.*; *see also Is Your Speech Protected by the First Amendment?*, FREEDOM F. INST., http://bit.ly/3GjAYrh (last visited Nov. 15, 2022).

protected speech,[131] no support has been given to identify even a single provision that would hinder the ability to criticize Israel or to engage in more classic blatant and virulent antisemitic speech.[132]

That is why, after all of the academic works,[133] public debates,[134] legislative sessions,[135] and informational conferences[136] that have been dedicated to thoroughly debunking this notion, arguments to the effect that these bills somehow nefariously limit constitutionally protected speech are more than just red herrings. At this point they are bad faith lies being spread in a purposeful disinformation campaign. Of course, it is true that someone could theoretically draft a *different* bill incorporating the IHRA Definition to limit speech, but that is not the case with any of the bills already established. The time has come to stop these bad faith actors[137] from tilting at windmills.

Nevertheless, because many organizations and publications continue to try and misinform the public by sowing seeds of confusion that are disingenuous at best,[138] we can quickly address their 'concerns' head on. One prominent scholar, for example, recently provided an illustration for why he does not support these bills by offering the following hypothetical: "Is it antisemitic for a Palestinian student to say that they don't think Israel should exist? . . . [A]re you going to require that this be looked at as a possible violation of the law?"[139]

According to the IHRA Definition, the answer to the first question—whether such a statement is antisemitic—depends upon further contextual information. In some instances, considering the overall context, it might very well be antisemitic for a person, Palestinian or otherwise, to say that the State of Israel should not exist. But the answer to the second question—is this a possible violation of the law—is an

131. *See, e.g.*, *Opinion: As Jewish Georgians, We Oppose HB1274's Problematic Definition of Antisemitism*, THE ATLANTA J.-CONST.: OP. (Feb. 25, 2022), http://bit.ly/3XT02Ly.

132. See, for example, the testimony of the ACLU below, which raises the specter of the First Amendment but can identify no instance of how the bill would actually infringe upon it.

133. *See, e.g.*, Goldfeder, *supra* note 4, at 126.

134. *See, e.g.*, Steven H. Resnicoff et al., Speech at the DePaul Univ. Symposium: Defining Antisemitism and Why it Matters: An In-Depth Exploration (Apr. 26, 2022).

135. *See, e.g.*, Joe Sabag, *Florida H741 Testimony – 3/28/19*, YOUTUBE (Mar. 28, 2019), https://bit.ly/3ENNAWZ.

136. *See, e.g.*, U.S. Department of State, *DOS Anti-Semitism Conference: "IHRA Working Definition,"* YOUTUBE (Nov. 3, 2020), https://bit.ly/3Tatfzv.

137. *See* Press Release, CAIR, CAIR Condemns Anti-Free Speech Bills Signed into Law by Iowa Governor as 'Doomed and Unconstitutional' (Mar. 25, 2022, 10:48 AM), https://bit.ly/3g8pN9X.

138. *See supra* note 19 and accompanying text.

139. Isaac Scher, *Three States Push to Curb Pro-Palestine Activism*, JEWISH CURRENTS (Apr. 26, 2022), http://bit.ly/3XT0dqc.

obvious and emphatic 'of course not.' It is not illegal for *anyone*, Palestinian or otherwise, to say that they do not think the State of Israel should exist, and nothing in the bills indicate otherwise. This is definitionally free speech.

To be clear, it *would* be a violation of the law for *anyone*, Palestinian or otherwise, to commit a hate crime against an innocent Jewish person or institution simply *because* they think that the State of Israel should not exist. I would hope that this scholar would agree. The latter scenario, not the former, is what the bills regulate with the helpful aid of the IHRA Definition.

It should be reiterated that one can fully support the Palestinian right to self-determination, and any other aspect of the 'Palestinian cause,' *without* doing anything that would be considered antisemitic. The anti-Zionist antisemites we are discussing are no friends of the Palestinians either. I am making strict reference to the self-righteous, reflexive notion that being pro-Palestinian means being anti-everything-Israel as it ignores the reality of studies that consistently show how the vast majority of Arabs in the region would prefer to live under Israeli rule rather than under the Palestinian Authority,[140] and how efforts to harm the State of Israel actually harm the Palestinians more than they harm the Israelis.[141] But even if a particular person's beliefs about the 'Palestinian cause' *are* antisemitic, the person has every right to think and say antisemitic things. What the person *cannot* do is use their understanding of the Palestinian cause as the basis for harmful or unlawfully discriminatory *treatment* of Jews. There should be nothing controversial about that.

In sum, all these bills do is use the IHRA Definition to analyze intent *after* there has already been an act that is alleged to have been discriminatorily or criminally unlawful. All they do is ensure that when assessing the motivation behind illegal discriminatory *actions* (not speech) that target Jewish people, *when* there is an allegation that the (already committed) action was *motivated* by anti-Jewish sentiment, authorities *consider* (as rebuttable evidence in determining whether such motivation was actually present) the world's most well-accepted definition of antisemitism—a definition that has already been officially adopted by over 870 separate governments, NGOs and other key

140. *See 93% of East Jerusalem Arabs Prefer Israeli Rule, Poll Shows*, ISR. HAYOM (Dec. 15, 2021, 7:33 AM), https://bit.ly/3D3KmNL.

141. *See* Carrie Sheffield, *Boycott Israel Movement Stunts the Palestinian Economy*, FORBES (Feb. 22, 2015, 4:20 PM), https://bit.ly/3D1Gn4s.

institutions, including several departments of our own federal government.[142]

C. *The Permissibility (and Even Necessity) of Regulating Unlawful Discriminatory Conduct*

While it is true that the government cannot generally regulate speech or expression,[143] it can, should, and does regularly regulate certain kinds of destructive behavior.[144] Such regulation is at the core of all criminal and many civil laws, including the federal and state statutes that regulate illegal discriminatory conduct on the bases of race, religion, national origin, gender, or ethnicity.[145] "The Supreme Court has consistently found that state and federal anti-discrimination laws that relate to race, religion, color, and national origin do not violate the highest level of First Amendment protections."[146] Crime and illegal discrimination are *not* forms of expression protected by the First Amendment.

In some instances, it is easy to establish the type of discriminatory behavior that could potentially violate the law. For example, the very act of illegally hiring, firing, or refusing to house a person based on a protected characteristic is itself the operative factor. But other cases, like discriminatory harassment, can be more difficult to pin down.

In general, "[u]nlawful harassment is defined as unwelcome conduct directed at an individual based on a characteristic that is protected by antidiscrimination law" and has a negative effect on the person to whom the conduct is directed.[147] For example, the U.S. Equal Employment Opportunity Commission defines harassment under Title VII of the Civil Rights Act of 1964 as:

---

142. *See 865 Entities Worldwide Have Adopted IHRA Antisemitism Definition Since 2016, Comprehensive CAM and Kantor Center Study Reveals*, COMBAT ANTI-SEMITISM (Mar. 22, 2022), https://bit.ly/3EP6LzN.

143. With certain obvious and limited exceptions including, for example, speech likely to incite imminent lawless action. *See* John R. Vile, *Incitement to Imminent Lawless Action*, THE FIRST AMEND. ENCYC., https://bit.ly/3eE5eli (last visited Oct. 17, 2022).

144. *See* Lily Wu, *Attorneys: First Amendment Protects Hate Speech, Not Hate Crimes*, KWCH 12 NEWS (Apr. 16, 2021, 7:38 PM), https://bit.ly/3eyhVON.

145. *See Civil Rights Act (1964)*, NAT'L ARCHIVES, https://bit.ly/3EO02WU (last visited Oct. 17, 2022).

146. Marc A. Greendorfer, *Boycotting the Boycotters: Turnabout Is Fair Play Under the Commerce Clause and the Unconstitutional Conditions Doctrine*, 40 CAMPBELL L. REV. 29, 61 (2018) (citing Bd. of Dirs. of Rotary Int'l v. Rotary Club of Duarte, 481 U.S. 537, 549 (1987); Holder v. Humanitarian L. Project, 561 U.S. 1, 39 (2015); Christian Legal Soc'y v. Martinez, 561 U.S. 661, 697–98 (2010)).

147. *What is Unlawful Harassment?*, SKILLSOFT COMPLIANCE, https://bit.ly/3gemBtA (last visited Oct. 17, 2022).

> unwelcome conduct that is based on race, color, religion, sex (including sexual orientation, gender identity, or pregnancy), national origin, older age (beginning at age 40), disability, or genetic information (including family medical history). Harassment becomes unlawful where 1) enduring the offensive conduct becomes a condition of continued employment, or 2) the conduct is severe or pervasive enough to create a work environment that a reasonable person would consider intimidating, hostile, or abusive . . . . Petty slights, annoyances, and isolated incidents (unless extremely serious) will not rise to the level of illegality. To be unlawful, the conduct must create a work environment that would be intimidating, hostile, or offensive to reasonable people.[148]

Well-established Supreme Court precedent requires behavior to be "objectively offensive" in order to fall under the category of discriminatory harassment,[149] a type of destructive conduct that, unlike speech, can and should be regulated.[150] Behavior that is merely offensive to some would *not* be included.[151] As the Court has noted, "the objective severity of harassment should be judged from the perspective of a reasonable person in the plaintiff's position, considering 'all the circumstances[.]'"[152]

It is also important to remember that even under anti-discrimination laws, not all forms of harassing behavior are illegal. For example, in the school context, generic bullying behavior, even if it is severe and pervasive, does not run afoul of Title VI of the federal Civil Rights Act of 1964, which requires recipients of federal funding to ensure their programs and activities are free from harassment, intimidation, and discrimination on the basis of race, color and national origin.[153] Bullying is only illegal, and therefore subject to regulation, if it is done with an illegal discriminatory intent, i.e., if the bullying behavior is based on the

148. *Harassment*, EEOC, http://bit.ly/3hJOomi (last visited Nov. 15, 2022).

149. Davis v. Monroe Cnty. Bd. of Educ., 526 U.S. 629, 652 (1999).

150. *See* Erwin Chemerinsky & Howard Gillman, *A Bill to Police Campus Speech*, WALL ST. J. (Dec. 15, 2016, 7:31 PM), http://bit.ly/3X6qYYn.

151. *See Davis*, 526 U.S. at 651 (stating that for behavior be considered harassment in the educational context, it must be "so severe, pervasive, and objectively offensive, and that so undermines and detracts from the victims' educational experience, that the victim-students are effectively denied equal access to an institution's resources and opportunities"); *see also* Saxe v. State Coll. Area Sch. Dist., 240 F.3d 200, 205–10 (3d Cir. 2001) (detailing analogous standards for Title VI, which prohibits racial discrimination in education; Title VII, which prohibits workplace harassment; and Title IX, which prohibits sexual harassment in education).

152. Oncale v. Sundowner Offshore Servs., Inc., 523 U.S. 75, 81 (1998) (quoting Harris v. Forklift Sys., Inc., 510 U.S. 17, 23 (1993)).

153. *See Civil Rights Requirements- A. Title VI of the Civil Rights Act of 1964, 42 U.S.C. 2000d et seq. ("Title VI")*, U.S. DEP'T OF HEALTH & HUM. SERVS. (July 26, 2013), https://bit.ly/3TrNVCL.

race, color, or national origin of the intended target, and had a tangible negative impact on the victim.

The idea that an official might be confused as to what constitutes an antisemitic act and what is merely speech or expression is untenable for the simple reason that authorities do not seem to be troubled by the fact that they sometimes need to draw a line and define what constitutes sexual harassment or even harassment based on a person's color, race, nationality, or sexual orientation. If you believe that it is possible to identify the difference between speech and conduct in every discriminatory context *except* when it comes to the Jews, i.e., if you cannot recognize that you are in fact applying a different standard for dealing with anti-Jewish discrimination,[154] then there might be an even deeper problem at play.

The reason that states need to adopt a definition of antisemitism has nothing to do with establishing new laws or creating new categories, and everything to do with defining a term to ensure equal protection by clarifying the application of existing laws. It is also true that from a First Amendment perspective, you do not want each state to decide what is and is not problematic—that might lead to First Amendment vagueness problems. In order to meet the 'objectively offensive' standard required by the law, the definition used in the discriminatory antisemitism motivational analysis must be an objectively valid one. To that end, it is obvious that the definition that should be used is the conduct-based, consensus-driven IHRA Definition—the *only* internationally recognized definition of antisemitism that is, or ever has been, ubiquitously accepted.

III. ANALYSIS

A. The Need to Codify a Definition of Antisemitism

Before we can discuss the need to codify a definition of antisemitism, we must first reiterate what codifying the definition does *not* mean. Codifying the IHRA Definition *does not* mean criminalizing anything that is antisemitic within the meaning of the IHRA Definition. Rather, codifying the IHRA Definition seeks to legislatively affirm that the IHRA Definition is the appropriate tool for use in the regulatory context, for the limited purpose of assessing motive behind already unlawful discriminatory conduct.

Throughout the months of legislative hearings accompanying the passage of the first statewide antisemitism bills, many lawmakers and other stakeholders have raised issues or concerns. The three most

154. *See* Natan Sharansky, *Foreword*, JEWISH POL. STUD. REV., Fall 2004, at 5, 5.

commonly asked questions are addressed in this section. They include the necessity and importance of passing statewide bills, why antisemitism in particular needs a clarifying definition, and what it means to incorporate a definition by reference.

1. Is It Necessary and/or Important for States to Pass This Bill?

Many lawmakers have wondered why these bills are necessary and/or important given that discrimination is by definition already unlawful.

First, there is an urgency to change something in response to what the data can show policymakers about the increasing frequency and severity of antisemitic attacks.[155] Beyond that, the bills are *necessary* because Jewish identity and corresponding manifestations of antisemitism are so multifaceted, incorporating aspects of religion, race, culture, national origin,[156] and ethnicity, that without a standard definition, it is easy for antisemites to hide behind this ambiguity, commit horrible antisemitic acts, and then claim their actions do not constitute antisemitism because the act was not based on a particular characteristic.[157] This vagueness is at the very core of an equal protection deficit that, as will be more fully described in the next section, has partially contributed to the increasing rates of antisemitic incidents presently being observed.[158] To that end, the bills do not revise *any* existing anti-discrimination policies. Rather, they simply define a term that was *supposed* to have been easily understood but in practice is not, and thereby ensure that the rules are *not* applied arbitrarily. This brings us to the second point.

The bills are *important* because people genuinely seem to be unaware of what antisemitism is and how systematically prevalent and

155. *See* JACOB BLAUSTEIN INST. FOR THE ADVANCEMENT OF HUM. RTS., ANTISEMITISM IN THE UNITED STATES 6 (2019), https://bit.ly/3D5Bjvh.

156. For an example of national origin antisemitism, see Jonathan S. Tobin, *The Left Slides into Acceptance of Anti-Semitism*, JEWISH NEWS SYNDICATE (June 22, 2021), https://bit.ly/3Tuh54h. In the words of Peter Beinart, no fan of the Jewish State, "[w]hatever your politics on Israel-Palestine, discriminating against a food truck owner because he's an American of Israeli descent is anti-Semitism, pure and simple." *Id.* (quoting @PeterBeinart, TWITTER (June 21, 2021, 9:51 PM), https://bit.ly/3TrNSai).

157. For discussion of a similar problem, see generally, e.g., Mark Goldfeder, *Why Arkansas Act 710 Was Upheld, and Will Be Again*, 74 ARK. L. REV. 607 (2022) (analyzing ongoing anti-Boycott, Divestment, and Sanctions litigation, wherein plaintiffs continuously allege that their discriminatory actions are nothing more than protected political expression). Without clear definitions, existing laws simply will be unenforceable when those engaging in discrimination are free to claim it's only politics.

158. *See* Mark Goldfeder, *Universities Must Shift Their Conception of Jewish Students as a Group*, JEWISH J. (Aug. 6, 2021), https://bit.ly/3giyMpn.

insidiously deep it has sadly become in this country.[159] Jews make up only 2% of the U.S. population, yet they are the victims of more than half of all hate crimes directed at a specific religious group and 13% of hate crimes overall.[160] A 2021 report found that one in every four American Jews had been a victim of antisemitism over the past year.[161] Even with those numbers rising,[162] nearly half of all Americans still say they have either never *heard* the word antisemitism, or at the very least, do not know what it means.[163] An official charged with determining the intent behind discrimination claims simply cannot assess the context of alleged antisemitism if the person does not know what the term means—which is also why some laws, like Iowa's, also include a call for additional education and training on the subject.[164]

2. Why is Jewish Suffering Worthy of Exceptional Treatment?

Others have asked why it is so important (and whether it is somehow 'unfair') for there to be a definition of antisemitism when other persecuted minorities do not (or do not yet) have similar definitions of racial or ethnic discrimination related to their group experience that a person charged with assessing intent can use as a guiding reference.

To be clear, these bills are *not* in any way about establishing Jewish exceptionalism; they are about ensuring Jewish equality. In fact, the claim that the Jews are somehow trying to seek an unfair advantage over other groups is itself a fairly common antisemitic claim.[165] While it is true that some academics like David Feldman have argued against 'privileging' the Jews over other minority groups by adopting clear and specific protections against antisemitism,[166] the response, especially in light of the Black Lives Matter/All Lives Matter debate, has been swift and powerful. As David Hirsch explained: "Jews go to their institutions

159. *See* Robert Shrimsley, *An Unheard Hatred: How Anti-Semitism is Dangerously Ignored*, FIN. TIMES (Feb. 4, 2021), https://on.ft.com/3VBScFw.

160. *See 2019 Hate Crime Statistics*, FBI: UCR, https://bit.ly/3yMvIIe (last visited Oct. 17, 2022).

161. *See* Avi Mayer, *The State of Antisemitism in America 2021: Insights and Analysis*, AM. JEWISH COMM. (Oct. 25, 2021), https://bit.ly/3VAxl5B.

162. *See ADL Tracker of Antisemitic Incidents*, ANTI-DEFAMATION LEAGUE, https://bit.ly/3TbttGz (last visited Oct. 17, 2022).

163. *See* AM. JEWISH COMM., THE STATE OF ANTISEMITISM IN AMERICA 2020 29 (2020), https://bit.ly/3yNexq5.

164. Several states are also including IHRA as a pedagogical standard in Holocaust Education mandates. *See, e.g.*, Nicole Raz, *Arizona Passes Long-Delayed Holocaust Education Bill After Sidelining Debate over Antisemitism Definitions*, JEWISH TELEGRAPHIC AGENCY (July 6, 2021, 9:16 AM), https://bit.ly/3MC4k5A.

165. *See, e.g.*, UNIV. OF TORONTO, REPORT OF THE UNIVERSITY OF TORONTO ANTI-SEMITISM WORKING GROUP 20 (2021), https://bit.ly/3MFu3Km.

166. *See* David Feldman, *The Government Should Not Impose a Faulty Definition of Antisemitism on Universities*, THE GUARDIAN (Dec. 2, 2020), https://bit.ly/3VyMJPQ.

and ask for protection against antisemitism. Feldman answers that all students and staff should be protected from all racism. He responds to 'Jewish Lives Matter' in a rather 'All lives matter' way."[167] There must be pushback on this line of questioning because "[t]o say that antisemitism matters[,] is not to say that other issues don't matter."[168] In other words, combating illegal antisemitism does not come at the expense of any other group but antisemites.[169]

The starting question for codifying antisemitism should never be about equivocating the needs of other affinity groups, it should be: "Do the Jewish people we are supposed to be protecting have a unique need that requires a distinct response?" And the answer to *that* question is clearly yes. Jewish people need this because history has shown that anti-Jewish hatred has been consistent, rampant, venomous, amorphous, evolving, and hard to define, and therefore even harder to educate about and combat.[170] Throughout the centuries, antisemites have abused this ambiguity to operate with impunity, exploiting the absence of a standard to escape any kind of culpability. Today, perpetrators of horrific, unlawful acts of antisemitic crime and discrimination often later claim that they were merely expressing 'anti-Israel' political sentiments by

---

167. David Hirsh, *Jews Are Asking for Protection from Their Universities from Antisemitism. David Feldman's 'All Lives Matter' Response is Not Helpful*, FATHOM J. (Dec. 2020), https://bit.ly/3CB5Gdd.

168. David Hirsh, *It Was the New Phenomenon of Israel-Focused Antisemitism that Required the New Definition. David Hirsh Responds to a 'Recent Call to Reject' the IHRA*, FATHOM J. (Jan. 2021), https://bit.ly/3EOyH6M; *see also* Jacobson, *supra* note 109:

> To assert that antisemitism is unlike other racisms is not to claim a privilege for it. Hating a Jew is no worse than hating anyone else. But while many a prejudice is set off by particular circumstance – the rise in an immigrant population or a locally perceived threat – antisemitism is, as often as not, unprompted, exists outside time and place and doesn't even require the presence of Jews to explain it. When Marlowe and Shakespeare responded to an appetite for anti-Jewish feeling in Elizabethan England, there had been no Jews in the country for 300 years. Jewishness, for its enemies, is as much an idea as it is anything else.

Id.

169. It is also sadly true that at least within many popular social justice movements, "anti-Semitism has been forgotten as a human rights cause by the generation that claims to be so invested in human rights." Leora Eisenberg, *When Your Liberal Values Need Not Apply*, THE TIMES OF ISR. (May 26, 2016, 10:22 PM), https://bit.ly/3McQF4B. This is true for movements that focus on issues ranging from climate change to racism. *See* Jonathan A. Greenblatt, *Antisemitism on the Left is Subtler than on the Right. But it's Getting Worse.*, WASH. POST (Oct. 27, 2021, 2:56 PM), https://wapo.st/3TbAnf8. This uncaring exclusion has last left many Jews, who have shown up consistently for all these movements, "wondering where their allies have gone." Melissa Block & Jerome Socolovsky, *Antisemitism Spikes, and Many Jews Wonder: Where Are Our Allies?*, NPR (June 7, 2021, 5:00 AM), https://n.pr/3SHixjS.

170. *See* The Rabbi Sacks Legacy, *The Mutating Virus: Understanding Antisemitism | Rabbi Jonathan Sacks*, YOUTUBE (Sept. 28, 2016), https://bit.ly/3gdfPUP.

attacking Jewish institutions, individuals, or points of Jewish collective identity.[171]

These bills also correct a longstanding equal protection issue. Antisemitism remains a major issue on college campuses, where most minority groups have long received protection under Title VI.[172] *Unlike* those groups, however, for a long time the federal government did not consider the Jewish community to be protected under Title VI because the law does not apply to *religious* groups. The government simply ignored the facts that (a) Jewish identity is not merely religious in nature, and (b) antisemitic bias is often based on Jewish characteristics other than religion. They also ignored longstanding Supreme Court precedent, holding that "Jewish people are permitted to seek redress for racial discrimination as a distinct race for the purposes of federal civil rights statutes."[173]

Data shows that over time, the lack of proper legal recognition of Jewish identity and antisemitism has led to a severe equal protection deficit for the Jewish community, and has taken a toll on the ability of Jewish people to, for example, participate fully in university life or exercise their own civil liberties in support of their Jewish or pro-Israel

171. *See, e.g.*, Goldfeder, *supra* note 104.

172. *See Civil Rights Requirements*, *supra* note 153.

173. Simon v. Par. of Jefferson, Civil Action No. 09-300, 2010 WL 745035, at *1 (E.D. La. Mar. 1, 2010) (citing Shaare Tefila Congregation v. Cobb, 481 U.S. 615, 617–18 (1987)); *see also* Proa v. NRT Mid Atl., Inc., 618 F. Supp. 2d 447, 460–61 (D. Md. 2009), *aff'd*, 398 F. App'x 882 (4th Cir. 2010) ("The Supreme Court has held that § 1981 applies exclusively to racial discrimination, but that a 'race' encompasses 'any identifiable class of persons who are subjected to intentional discrimination solely because of their ancestry or ethnic characteristics.' This includes Jewish people. *Cf.* Runyon v. McCrary, 427 U.S. 160, 168, 174–175 (1976) [(Section 1981, like the Civil Rights Act of 1866, reaches private acts of racial discrimination)]; Saint Francis College v. Al–Khazraji, 481 U.S. 604 (1987) [(Congress intended § 1981 to protect from discrimination identifiable classes of persons who are subjected to intentional discrimination solely because of their ancestry or ethnic characteristics)]; Shaare Tefila Congregation v. Cobb, 481 U.S. 615 (1987) [(same for § 1982)]."); *see also* Ortiz v. Bank of Am., 547 F. Supp. 550, 567 (E.D. Cal. 1982) (noting that the history of racial discrimination against *Jews* is "so well known as almost not to require documentation"); United States v. Nelson, 277 F.3d 164, 176–78 (2d Cir. 2002) (explaining that the framers of the Thirteenth Amendment understood *Jews* to be a "race"); T.E. v. Pine Bush Cent. Sch. Dist., 58 F. Supp. 3d 332, 354–55 (S.D.N.Y. 2014) (describing how "courts have regularly found that anti-Semitic harassment and discrimination amount to racial discrimination" (citing Bachman v. St. Monica's Congregation, 902 F.2d 1259, 1261 (7th Cir. 1990) (finding that *Jews* constitute a race within the meaning of federal civil rights statutes); Lenoble v. Best Temps, Inc., 352 F. Supp. 2d 237, 247 (D. Conn. 2005) (noting that "*Jews* are a distinct race for § 1981 purposes"); Powell v. Indep. Blue Cross, Inc., Civil Action No. 95-2509, 1997 WL 137198, at *6 (E.D. Pa. Mar. 26, 1997) (finding that § "1981 must be read to encompass discrimination against a plaintiff because of his Jewish ancestry or ethnicity"); Singer v. Denver Sch. Dist. No. 1, 959 F. Supp. 1325, 1331 (D. Colo. 1997) (noting that *Jews* are "a distinct racial group for the purposes of § 1981")).

identity.[174] Even today,[175] at colleges and universities across the country, institutional offices of Diversity, Equity, and Inclusion (DEI) that focus on historically marginalized populations, including racial and ethnic groups that have traditionally experienced discrimination, rarely include Jews and antisemitism in their programmatic missions or educational materials.[176] And a recent study found that an overwhelming number of DEI staff are openly antisemitic.[177]

Thankfully, federal officials have finally recognized this error and corrected their own institutional definitional (mis)understanding for how to properly protect Jewish students. In 2004, the Department of Education's Office for Civil Rights, which is responsible for enforcing Title VI, issued a series of policy statements announcing that they would henceforth investigate antisemitism complaints, to the extent that they implicate ethnic or ancestral bias. As the policy directive explained, "[g]roups that face discrimination on the basis of shared ethnic characteristics may not be denied the protection of our civil rights laws on the ground that they also share a common faith."[178]

---

174. *See, e.g.*, *Examining Anti-Semitism on College Campuses: Hearing Before the H. Comm. On the Judiciary,* 115th Cong. (2017) (statement of Rabbi Abraham Cooper).

175. *See* Jay P. Greene & James D. Paul, *Antisemitism is a Growing Problem Among College Diversity Administrators*, NEWSWEEK: OP. (Dec. 22, 2021, 6:00 AM), https://bit.ly/3CemEN8; *see also* Michelle Cordero, *New Study: Diversity Officers at U.S. Colleges Are Anti-Israel*, THE HERITAGE FOUND.: HERITAGE EXPLAINS (Dec. 19, 2021), https://herit.ag/3e94AMq.

176. *See, e.g.*, Ira Bedzow, *DEI Training Needs to Take Antisemitism Seriously*, FORBES (Nov. 24, 2021, 3:41 PM), https://bit.ly/3ElHnRP, which states:

> Stanford's DEI committee's justification—i.e. that Jews possess privilege and power—is a theme that comes right out of the *Protocols of the Elders of Zion* and Henry Ford's *The International Jew: The World's Foremost Problem*. The only difference is that Ford claimed that Jews are "dispersed among the nations, but never merging themselves with nations and never losing a very distinctive identity," while the DEI committee said that Jews could at least "pass" for white people. Or, as James Baldwin once described antisemitism, the committee was "really condemning the Jew for having become an American white man."

Id.

177. Jay Greene & James Paul, *Inclusion Delusion: The Antisemitism of Diversity Equity and Inclusion Staff at Universities*, THE HERITAGE FOUND. (Dec. 8, 2021), https://herit.ag/3SYRhNA. It is not just on campus either:

> The most prominent example of this from the corporate world was when Kamau Bobb, the head of diversity at Google, wrote that Jews have an "insatiable appetite for war" and an "insensitivity to the suffering [of] others." Amazingly, Bobb was only reassigned to work on STEM education efforts for Google. Bobb let the mask slip by accusing "Jews" of these crimes rather than simply saying "Israelis" or "Zionists."

Id.

178. *See* Letter from Kenneth L. Marcus, Deputy Assistant Sec'y for Enf't, Off. of C.R., U.S. Dep't of Educ., to Colleague (Sept. 13, 2004), https://bit.ly/3V7vZ1T.

This broader understanding of antisemitism has encompassed more than just a hatred based on religion or religious practices. It has also been confirmed in the context of Title VII cases. As Judge Mark Hornsby wrote in *Bonadona v. Louisiana Coll.*:

> America is no stranger to anti-Semitism, which is often rooted in prejudice against a person based on his heritage/ethnicity without regard to the person's particular religious beliefs. Jewish citizens have been excluded from certain clubs or neighborhoods, and they have been denied jobs and other opportunities based on the fact that they were Jewish, with no particular concern as to a given individual's religious leanings. Thus, they have been treated like a racial or ethnic group that Title VII was designed to protect from employment discrimination based on membership in that group.[179]

While federal law has steadily been coming around to the notion that Jewish identity (and anti-Jewish bias) can be multifaceted, modern antisemites have continued to push for a limited notion of antisemitism that allows them to attack Jews indiscriminately so long as they can credibly claim that they did not target Jews because of their religion, but rather for some other aspect of their identity. Nowadays, the most common example of this behavior is when Jewish people and institutions are attacked because antisemites hold them collectively responsible for the actions of the Jewish State. For example, in 2017, a German court decided that the firebombing of a synagogue in Wuppertal was not antisemitic because the criminals claimed that it was just the way they chose to express their anti-Israel politics.[180] Later that same year, and

---

179. *See* Bonadona v. La. Coll., No. 18-CV-0224, 2018 WL 4353979, at *4 (W.D. La. July 13, 2018).

180. Benjamin Näegele, *Judge Rules Wuppertal Synagogue Firebombing Was Not Anti-Semitic, so What Happened?*, B'NAI B'RITH INT'L (Jan. 17, 2017), https://bit.ly/3yggpaD. This was also not an isolated incident. From an antisemite's perspective, Jews across the world are consistently viewed as understandable targets because they are surrogates of Israel. *See* David Harris, *Antisemitism and Four Travesties of Justice*, THE TIMES OF ISR. (Apr. 22, 2021, 7:21 PM), https://bit.ly/3yldHQZ; Rivka Bond, *On Becoming Un-assimilated*, THE TIMES OF ISR. (May 6, 2016, 12:03 PM), https://bit.ly/3T2EF7W. *See also* Efraim Karsh, *The War Against the Jews*, MIDDLE E. F. (July 2012), https://bit.ly/3CdfrNw describing how:

> The 2006 Lebanon war has once more underlined just how widely Jews and Israelis are perceived as one and the same. During the crisis, there was a doubling of anti-Semitic attacks and incidents in the UK compared with July 2005 and a threefold increase in these events in Canada over the same period in the previous year. At the same time, the Jewish Memorial for Holocaust victims in Brussels and Berlin's Holocaust memorial have been desecrated and daubed with swastikas as have two synagogues in Sydney, Australia, and one in the Brazilian town of Campinas; twenty Jewish shops in Rome were also vandalized and daubed with swastikas, and a Pakistani-American walked into the Jewish Community center in Seattle in July 2006 and opened fire on innocent Jewish civilians, killing one and wounding five.

largely in response to this incident, Germany adopted the IHRA Definition.[181]

The above type of conflation occurs in the United States too. In 2008, during a period of increased fighting in the Middle East, a Molotov cocktail was thrown at a synagogue in Chicago.[182] In December 2019, during the Jewish holiday of Hanukkah, a man broke into a Hasidic Rabbi's home in Monsey, New York, and brutally stabbed five people with a giant sword.[183] According to court records filed by federal prosecutors, his recent search history included looking for "Zionist temples."[184] The Rabbi whose house was attacked is a member of the Kosov Hasidic sect, which is not actually Zionistic. In fact, one of his Hasidic followers, the man who managed to first slow down the attacker by throwing a table and then followed him outside to get his license plate number which ultimately led to his arrest, *turned down* a $20,000 prize for his heroism offered by the Jewish Federation of Rockland County and the Anti-Defamation League—in light of the 'Zionist' values embodied by those organizations. He did not want to even be associated with anything remotely Zionistic, and later told reporters: "I was not willing to offer my soul for $20,000. . . . My identity for $20,000 was not for sale." This man, an open and determined anti-Zionist, was attacked with a sword for his 'Zionism.' There is no clearer demonstration that these bills are not meant to protect Israel—they are meant to protect *Jews* from being attacked by antisemites 'because' of Israel.[185]

Unfortunately, these attacks are common. In May of 2021, while Israel was defending itself against the terrorist group Hamas, antisemitic attacks shot up by over 400%.[186] Across the United States, hundreds of random synagogues, Jewish community centers, kosher restaurants, Jewish-owned businesses, and individual Jews were targeted and

---

Id.

181. *See Germany Endorses Working Definition of Antisemitism*, INT'L HOLOCAUST REMEMBRANCE ALL. (Sept. 20, 2017), https://bit.ly/3fBTBvm.

182. *See* Ofelia Casillas, *Arsonist Hits N. Side Synagogue*, CHI. TRIB. (Dec. 30, 2008, 12:00 AM), https://bit.ly/3rB4n88.

183. *See* Kevin Armstrong et al., *Knife-wielding Man Shattered Night of Celebration, Witnesses Say, Renewing Fears of Violence Against Jews*, THE WASH. POST (Dec. 29, 2019, 10:18 PM), https://wapo.st/3geikX0.

184. Joseph Ostapiuk, *Feds: Hanukkah Stabbing Suspect Searched for 'Zionist Temples of Staten Island'*, SILIVE (Dec. 31, 2019, 8:34 AM), https://bit.ly/3fP9wXd.

185. Rossella Tercatin, *A Gesture to Honor Monsey Hero Ended up in Controversy; Here is Why*, THE JERUSALEM POST (Feb. 18, 2020, 7:30 PM), https://bit.ly/3yIuoGz.

186. *See* Jemima McEvoy, *Synagogue Attacks and Slurs: Jewish Community Rocked by Rise in Anti-Semitism Amid Israel-Gaza Fighting*, FORBES (May 20, 2021, 2:30 PM), https://bit.ly/3rATvXz; *see also* Shahar Eilam & Tom Eshed, *Increased Antisemitism in the United States Following Operation Guardian of the Walls: Permanent or Short Lived?*, THE INST. FOR NAT'L SEC. STUD. (Nov. 10, 2021), https://bit.ly/3ynBpMB.

attacked, beaten and bullied, all because they were Jewish.[187] Many of those who were targeted were not religious, and some were not even Zionists. Their only 'crime' was being visibly Jewish at a time when antisemites were angry at Israel.[188] And of course none of this was surprising; the same things happened in 2014 during the last Gaza war[189] with the same 400% increase in antisemitic incidents.[190]

When anti-Zionist ideology crosses over into antisemitic acts, they can and should be legally remedied. These bills will help the government to do that by codifying a definition that affords Jewish persons proper recognition, and therefore *equal* governmental protection from crime and discrimination, by correctly defining antisemitism as more than just attacking Jews for their religious identity or observance. Such bills will help ensure that when people discriminate against Jews for any aspect of their Jewish identity, whether religious, ethnic, or beyond, such bigotry is addressed accurately and with the same care, procedures, and processes in place, as discrimination against any other member of a minority group targeted for their racial or ethnic identity.

However, and notwithstanding all of the above, the importance of clarity and standards when defining forms of bigotry is *not* entirely unique to antisemitism. If any other group feels that it is being routinely and systemically discriminated against, and believes that there is a need for a uniform consensus definition to clarify what is and is not bias-motivated illegal conduct, that group's concerns *should* likewise be heeded in a legislative manner and would more than likely receive the in-kind support of much of the mainstream Jewish community.[191] Indeed, in 2018, the All-Party Parliamentary Group on British Muslims published a "Call for Evidence" asking for assistance "to facilitate the adoption of a working definition of Islamophobia that can be widely accepted by Muslim communities, political parties, and the Government,"[192] and in

187. *See* Andrew Pessin, *Remarks at the No Fear Rally Against Antisemitism*, THE TIMES OF ISR. (July 13, 2021, 5:44 PM), https://bit.ly/3RK2oZw ("Just last week, within one week, in Boston, a gunman arrested en route to a synagogue, a rabbi stabbed, an anti-Israel rally targeting not the Israeli consulate but the ADL.").

188. *See* Goldfeder, *supra* note 104.

189. *See* Benjamin Weinthal, *Why Anti-Zionism is Modern Anti-Semitism*, NAT'L REV. (July 29, 2014, 4:18 PM), https://bit.ly/3Ckz86e.

190. *See* Itamar Eichner, *Report: 400% Rise in Anti-Semitic Incidents During Gaza War*, YNET NEWS (Jan. 25, 2015, 12:53 PM), https://bit.ly/3CbAtMA.

191. Several Jewish organizations, including StandWithUs and the National Jewish Advocacy Center, have already been working with other minority communities to help them learn from the IHRA Definitions' success.

192. @APPGBritMuslims, TWITTER (Apr. 23, 2018, 12:29 PM), https://bit.ly/3M8VvA1.

2021 a group of Hindu scholars published a working definition of Hinduphobia.[193]

3. Can You Incorporate a Definition into a Law by Reference and Why Would You Want to Do So?

Many lawmakers have asked why the antisemitism bills, like Iowa's, incorporate the IHRA Definition by reference,[194] rather than laying out the definition as part of the text of the bill itself. Some have even assumed or implied that it might be an unlawful delegation of legislative authority to do so. There are really two parts to this question: (1) is it legal for a bill to incorporate a standard by reference; and (2) if so, why is it important for these bills to do so? Each deserves an answer.

In response to the first question, it is not in any way illegal or problematic for state or federal legislation to incorporate a standard by reference in the way that these antisemitism bills incorporate the IHRA Definition. In order for legislation to incorporate material by reference, without having to spell out the information as part of the legislative text, "the host document must identify with detailed particularity what specific material it incorporates and clearly indicate where that material is found in the various documents."[195] The sufficient particularity standard is an objective standard. It ensures that the determination is based on "whether one reasonably skilled in the art would understand the application as describing with sufficient particularity the material to be incorporated."[196] When a legislature incorporates an existing standard, the legislature is presumed to be familiar with the standard in its entirety and to approve of it,[197] and "'[w]hen a document incorporates outside material by reference, the subject matter to which it refers becomes a part of the incorporating document just as if it were set out in full.'"[198]

It *can* be an impermissible delegation of a legislature's power if a statute were to try and adopt a *fluid*, as opposed to a static, definite standard into law by reference—i.e., if a bill incorporated a standard *plus* any modifications it might undergo in the future. If that were to happen,

193. *See Hinduphobia*, HINDU AM. FOUND., https://bit.ly/3ykAvjZ (last visited Oct. 6, 2022).

194. *See* John Mark Keyes, *Incorporation by Reference in Legislation*, 25 STATUTE L. REV. 180, 180 (2004) ("Incorporation by reference is a drafting technique for providing that a legislative text . . . includes material . . . expressed elsewhere . . . . [w]ithout reproducing it word-for-word . . . .").

195. Zenon Env't, Inc. v. U.S. Filter Corp., 506 F.3d 1370, 1378 (Fed. Cir. 2007) (citing Cook Biotech Inc. v. Acell, Inc., 460 F.3d 1365, 1376 (Fed. Cir. 2006)).

196. Harari v. Lee, 656 F.3d 1331, 1334 (Fed. Cir. 2011).

197. *See* Repass v. Workers' Comp. Div., 569 S.E.2d 162, 177 (W. Va. 2002).

198. Diamond Resort Haw. Corp. v. Bay W. Kailua Bay, LLC, CV. NO. 10-00117, 2011 U.S. Dist. LEXIS 19544, at *19 (D. Haw. Feb. 25, 2011) (quoting Cunha v. Ward Foods, Inc., 804 F.2d 1418, 1428 (9th Cir. 1986)).

then a legislature could be said to be delegating its authority to the non-elected experts/authors of the standard, who could then change the standard in some way not currently contemplated by the legislature.[199] This concern is precisely why the antisemitism bills are careful and clear to establish definiteness by incorporating "the working definition of antisemitism adopted by the International Holocaust Remembrance Alliance *on May 26, 2016*."[200] That is a static, unchanging definition, tied to a specific date. If, for example, the IHRA itself were to update their definition, the definition in the *statute* would *not* change, unless and until the legislature specifically addressed and approved of the changes, and then voted to amend the definition in the bill to a new (and static) definition.

It is also worth noting that the bills incorporating the IHRA Definition are not in any way unconstitutionally vague or overbroad. A law is considered vague when people "of common intelligence must necessarily guess at its meaning[,]"[201] i.e., when it does not give sufficiently clear notice to a reasonable person of what it demands or prohibits. As the Supreme Court explained in *Kolender v. Lawson*, "the void-for-vagueness doctrine requires . . . sufficient definiteness that ordinary people can understand what conduct is prohibited and in a manner that does not encourage arbitrary and discriminatory enforcement."[202] A policy using the IHRA Definition to contextually assess the motivation behind potentially illegal discriminatory conduct before assuming it did or did not involve antisemitism provides such definiteness and clarity. Such a policy applies the well-accepted, and constitutionally upheld, definitions of discriminatory conduct, which are used in all similar circumstances, to reiterate that discriminatory antisemitic conduct is unacceptable. Furthermore, such a policy ensures that the application of the law will *not* be handled arbitrarily by providing an objective and clear definition of what antisemitism is, specifically for the purpose of discouraging the possibility of subjective enforcement. The IHRA Definition is fairly self-explanatory, such that a person of common intelligence would not be confused as to its meaning. In addition, for all of those concerned that Jews are 'weaponizing' criticism of Israel and will try and label everyone antisemites, the IHRA Definition repeatedly affirms that criticism of Israel, like that of any other nation, is not antisemitic and is the absolute best defenses available to an unfounded or politically motivated charge of antisemitism.

199. *See Repass*, 569 S.E.2d at 177; *see also* Mich. Mfrs. Ass'n v. Dir. of Workers' Disability Comp. Bureau, 352 N.W.2d 712, 715 (Mich. Ct. App. 1984).

200. IOWA CODE § 216F.1 (2022) (emphasis added).

201. Connally v. Gen. Constr. Co., 269 U.S. 385, 391 (1926).

202. Kolender v. Lawson, 461 U.S. 352, 357 (1983).

As it relates to overbreadth, the Supreme Court has emphasized in *Broadrick v. Oklahoma* that declaring a regulation overbroad is "manifestly strong medicine," to be employed "sparingly and only as a last resort," and not in situations in which "a limiting construction has been or could be placed on the challenged statute." The bills in question are explicitly limited to assessing intent for discriminatory conduct, not speech. They contain a clear savings clause with an explicit, limiting construction. Even if there were still any grey areas, they are to be construed in a limited fashion, consistent with constitutional law, and with those additional savings clauses thrown on top for good measure.

The answer to the second question—why it is *important* to incorporate the IHRA Definition by reference, instead of pushing for each individual state to simply adopt the same definition and call it their own—is fourfold.

First, from a First Amendment perspective, adopting a well-accepted and well-understood definition with a history of application is what we need to decide if behavior meets the 'objectively offensive' standard required by the law. Adopting such a definition also ensures against accusations of vagueness or of subjective enforcement. The definition comes with almost two decades worth of explanation and experience.

Second, adopting a static definition, rather than including the whole text in the bill, ensures that the IHRA Definition is what is *actually* adopted and utilized. Incorporating the definition lessens the likelihood that antisemitic lobbies will try and stall the legislative process by offering endless amendments designed to weaken the definition—or at the very least to weaken the consensus around it by having multiple different versions in the ether such that it would no longer be possible to say that yet *another* institution has adopted the same IHRA Definition.

Which brings us to the third and inter-connected aspect of why it is important to adopt the definition by reference: uniformity. Even if all states would adopt the identical definition, the strength of the IHRA Definition's consensus, and its undeniable validity, would be somewhat diminished if everyone agreed to adopt their own state-specific versions.[203]

Finally, codifying a well-accepted uniform standard, which can easily be plugged in to any other state's code, lowers the costs for legislators and makes it more likely that additional states and jurisdictions will move to fill the gap in their own antidiscrimination

203. *See Defining Antisemitism*, *supra* note 41 (explaining how the State Department has adopted this same May 26, 2016, IHRA definition "and has encouraged other governments and international organizations to use it as well").

statutes. As Dru Stevenson has explained, among the benefits of codification are that:

> Once a state's statutes are in codified form—sorted topically, with numbered and subordinated sections, indexed, and so forth—it becomes much easier to plug in a code or section, borrowed either from a sister jurisdiction or a model act, to fill a gap or to replace an existing hodgepodge section with a systematic treatment of a legal subject. Codified law makes interjurisdictional comparisons easier, replacement or gapfilling more precise, and the advantages of harmonization more apparent to lawmakers . . . The topical and systematic form of codes highlights the appeal of harmonization, rather than competition, with neighboring jurisdictions.[204]

B. A Case Study in Bad Faith Argumentation

The most prominent group to come out against the adoption of the IHRA Definition has been the American Civil Liberties Union (ACLU). In recent years, the ACLU has been battling a well-earned reputation for fostering and protecting antisemitism and antisemites,[205] and its position on this issue speaks volumes. While other less learned organizations might be excused for their ignorance, the ACLU should not be, and their strident opposition, based on claims that finds no basis in the bills' text or practical effect, deserves condemnation.[206] Here then, reproduced in full, are the remarks made by the ACLU of Georgia's Policy Counsel in his testimony opposing a version of the bill that was almost identical to Iowa's.[207] The bolded insertions are this author's annotated refutations:[208]

> Today I would like to share the ACLU of Georgia's grave concerns about HB 1274 as currently drafted. Our primary concern with HB 1274 is that this bill would prohibit constitutionally protected speech

204. Dru Stevenson, *Costs of Codification*, 2014 U. ILL. L. REV. 1129, 1157 (2014).

205. The American Civil Liberties Union (ACLU) is also not impartial in this matter. Many of its senior policymakers have been criticized for their open affiliations with groups that actively promote anti-Jewish discrimination and crime. *See* Alana Goodman, *ACLU Becomes Top Legal Defender of Anti-Semitic BDS Campaign*, THE WASH. FREE BEACON (Sept. 15, 2021, 5:00 AM), https://bit.ly/3MKtyik. The ACLU has also been called out by leading First Amendment experts for repeatedly lying about and mischaracterizing laws to protect antisemites and promote anti-Jewish bias. *See* David Bernstein, *The ACLU's Shameful Role in Promoting Antisemitism*, REASON (Mar. 11, 2019, 9:32 AM), https://bit.ly/3D5xOFE.

206. This seems to be part of a larger identity crisis the ACLU is now experiencing. *See, e.g.*, @RealTimers, TWITTER (Jan. 28, 2022, 11:14 PM), https://bit.ly/3s3jSFU; Michael Powell, *Once a Bastion of Free Speech, the ACLU Faces an Identity Crisis*, N.Y. TIMES (Sept. 28, 2021), http://bit.ly/3VhgK67.

207. *Hearing on H.B. 1274 Before the H. Judiciary Comm.*, 2022 Leg., Reg. Sess. (Ga. 2022) (statement of David Goldman, Pol'y Couns., ACLU of Ga.).

208. To be clear, this is not a personal attack on the individual who delivered the testimony, but rather on the institution that provided these talking points.

[The bill does not deal with speech, but rather with conduct. If that was not clear from the words of the bill itself, which it undoubtedly is, there is even a First Amendment savings clause that literally spells it out.] and risk criminalizing the expression of criticism of the state of Israel. **[The bill does not criminalize anything, even actions, and certainly not speech or expression. Note the complete lack of evidence, and the glaring inability to point to a single provision in the bill that would do any of these things.]**

The International Holocaust Remembrance Alliance's definition adopted by this bill is overly broad. **[These are parroted talking points of antisemites, with no explanation of why or how it is too broad.]** While the definition goes to some lengths to exclude criticism of Israel, the line between criticism of Israel and discriminatory animus remains too blurred to function as a law that ultimately punishes people for their speech. **[This is correct—which is why the bill *does not punish people for their speech*. The line between speech and illegal discriminatory conduct, which is what these bills deal with, is not blurry at all.]** One such note in the IHRA's definition is that "criticism of Israel similar to that level against any other country cannot be regarded as anti-Semitic." This language is unclear and unenforceable. **[First, the definition gives actual examples of the kinds of "criticism" that could constitute antisemitism, but regardless, no part of the bill attempts to "enforce" that language. That would be a speech code, and those who support the adoption of the IHRA Definition do not claim that would be lawful. Again, the IHRA Definition is merely intended to be an aid in determining whether certain content is substantively antisemitic, not whether the government may permissibly punish such speech—of course it could not.]** The State of Georgia is not a ministry of information that decides whether certain criticism of Israel is "similar to that leveled against any other country." **[Of course not, nor does this bill ever ask the State of Georgia to do that.]** For example, as a Jewish American, **[Note the use of tokenism, which is unacceptable in almost all other contexts.]** who is frequently critical of recent Israeli administrations, I wonder whether my speech could be construed to run afoul of these restrictions. **[Nowhere in the bill is there any restriction on speech of any kind, even outright antisemitic speech.]** Or more likely, would a non-Jewish person making the exact same criticisms as me be considered anti-Semitic while I am not. **[First, note the assumption of bad faith on the part of these imaginary accusers. Second, both Jews and non-Jews are capable of engaging in antisemitism. Neither the IHRA Definition nor the bill in question is concerned with this aspect of a perpetrator of antisemitism. If we are dealing with speech, then depending on**

what the Jewish or non-Jewish person said, the IHRA Definition might label either both or neither of the statements antisemitic. But that has nothing to do with the bill the ACLU counsel was testifying against. Note the conflation, as we have described, of the definition and the bill.] That is the determination we are leaving to the State of Georgia to make, **[No, it is not.]** and that is problematic. **[Or would be, if it were at all true.]** This definition remains useful as a moral or sociological definition, but not as a legal one. **[Note the lack of consistency—is it overly broad or not? If so, why is it useful there? If not, why should antisemites be allowed to commit discriminatorily antisemitic acts? If the IHRA Definition is useful for identifying antisemitism ("as a moral or sociological definition"), it is appropriate for the purposes of these bills.]** Even the Office of the United Nations High Commissioner for Human Rights (OHCHR), which has adopted the IHRA's language as a working definition, has clearly stated that this definition is a "'non-legally binding' definition intended to guide and educate. **[The definition itself is just a definition; it is not legally binding, and it is intended to guide. A bill, such as this one, uses it in a regulatory framework to guide officials who are charged with protecting real people against antisemitism. The High Commissioner actually encouraged states to do just that, noting that "[w]here public bodies use the definition in any regulatory context, due diligence must be exercised to ensure that freedom of expression within the law is protected for all." These bills demonstrate all such due diligence.]** It is not a means to squelch debate or free speech, **[On this we completely agree—because no one said that it was. Certainly, nowhere in the bill is this even suggested as a remote possibility.]** and those who misuse it in this way should be opposed." **[Of course they should—but that has nothing to do with this bill, which does not misuse it in this way.]**

The ACLU of Georgia also believes that this legislation is unnecessary. **[See above for why it is necessary. Antisemitism is surging around the country, and the Peach State has not been immune. Over the last five years Georgia has had 188 reported incidents of antisemitism, and in 2018 it had the highest number of incidents in the Southeast.[209]]** Importantly, Jewish Georgians are already protected by the Georgia code and the Civil Rights Act of 1964, under which numerous courts have held that Jews, whether actively religious or not, are protected from discrimination under the "race" and "national origin" language. **[Unfortunately, however, without a definition explaining what antisemitic discrimination looks like, these protections are clearly**

209. *See* ADL H.E.A.T. MAP™ (HATE, EXTREMISM, ANTISEMITISM, TERRORISM), ANTI-DEFAMATION LEAGUE, https://bit.ly/3yUGY5p (last visited Oct. 18, 2022).

> **and demonstrably insufficient. See the rising national rates of reported incidents for proof.]** Ultimately, HB 1274 would have a chilling effect on constitutionally protected political speech. **[A return to an unsubstantiated assertion already debunked. Still not one shred of evidence, not one explanation of how this bill would ever have an effect on speech of any kind, not one indication that counsel is aware of unanimous Supreme Court precedent declaring that the evidentiary use of speech to assess motivation behind illegal discriminatory acts does not chill speech, and not one provision counsel could point to as indicative of the problem they are 'gravely concerned' about.]** This committee should not pass this legislation as drafted and at the very least, this committee must reconsider incorporating the IHRA's definition of anti-Semitism into Georgia law. **[Note the quiet implication that there might be something problematic about incorporating a definition by reference.]** Thank you.[210]

Case study closed. This is not a game. There are real people here who are facing real and often violent attacks by perpetrators who then hide behind the lack of a definition to walk away free from accountability. The ACLU should be nothing less than ashamed to give 'testimony' of this nature and poor legal caliber.

IV. CONCLUSION: WHAT DOES IT MEAN FOR A STATE TO ADOPT IHRA AS PART OF AN ANTISEMITISM BILL?

One cannot fight a problem if one cannot even identify when it has occurred. Rectifying that problem when it comes to antisemitism begins with the ability to properly define its parameters. When antisemitic ideas, including antisemitic anti-Zionism, form the basis for, or provide the intent behind, or motivate illegal antisemitic *acts*, then authorities must be in a position to respond in a way that protects the Jewish community. God willing, these bills will help the government to do that.

Because Jewish identify is so multifaceted, in the absence of a standard definition for authorities to reference, antisemites have learned that it is easy to hide behind this ambiguity. Antisemites can, and do, commit heinous acts with impunity, then claim it was not antisemitism but rather some other more socially acceptable bias (e.g., anti-Zionism) that the victim deserves to be confronted with. The predator in turn pretends to be the prey. Practically speaking, the bills that some states have passed, and the bills many more states are considering, are actually quite narrow. All they do is ensure that when analyzing the intent behind illegal discriminatory actions (not speech) that target Jewish people,

210. *Hearing on H.B. 1274 Before the H. Judiciary Comm.*, 2022 Leg., Reg. Sess. (Ga. 2022) (statement of David Goldman, Pol'y Couns., ACLU of Ga.).

when there is an allegation that the action was motivated by anti-Jewish sentiment, authorities consider (as rebuttable, contextual evidence of whether antisemitism was involved) the world's most well-accepted definition of antisemitism.

Despite what some have tried to claim, if a person wishes to criticize Israel, even harshly, then these laws should not worry that person *at all*. In fact, even if a person was spewing more traditional antisemitic hatred, say about specific religious practices, they would still have nothing to fear because these laws, demonstrably, have nothing to do with silencing *anyone* about *anything*. If, however, people are actually engaging in the kind of destructive *conduct* that would be illegal if done for discriminatory purposes, *and* their motive seems to be based on targeting Jewish people, then the person investigating and charged with assessing whether or not there was antisemitic intent involved *should* be using the gold-standard definition of antisemitism as a measure to compensate or correct for any potential ignorance or implicit bias. Anyone opposing these bills must be called upon to substantiate why they disagree with that statement.

Once again, these bills categorically do *not* criminalize or make *anything* illegal. Nor do they create any new protected class, enhance any punishment, or regulate and restrict academic freedom. Unlawful discriminatory actions, harassment, and crimes, that are motivated by antisemitic intent, are already unlawful by definition. But without a standard definition of what antisemitism includes, it is too easy for officials to either willfully or accidentally fail to see the problem and therefore fail to enforce existing laws and regulations about bigotry and discrimination. These bills fill in that missing gap in the text.

One final reason to pass these bills is because of what antisemitism is *not*. It is *not* just about the Jews, and it is not just a Jewish problem. As the late Chief Rabbi Jonathan Sacks famously explained, at the root of antisemitic hatred is a society's unhealthy inability to tolerate difference. "[T]he hate that begins with Jews never ends with Jews. . . . Antisemitism is the world's most reliable early warning sign of a major threat to freedom. . . . It matters to all of us. Which is why we must fight it together."[211] As Ahmed Shaheed, the United Nations Special Rapporteur on freedom of religion or belief, noted in his recent Human Rights Council report on antisemitism,[212] the same report in which he

211. The Rabbi Sacks Legacy, *Rabbi Sacks on the Mutation of Antisemitism | Animation | Rabbi Jonathan Sacks*, YOUTUBE (Sept. 9, 2015), https://bit.ly/3gkMdVt. *See generally* RABBI JONATHAN SACKS, THE DIGNITY OF DIFFERENCE: HOW TO AVOID THE CLASH OF CIVILIZATIONS (2002).

212. *See generally* Ahmed Shaheed (Special Rapporteur on Freedom of Religion or Belief), *Elimination of All Forms of Religious Intolerance*, U.N. DOC. A/74/358 (Sept. 20, 2019). *See infra* note 213 and accompanying text for reasons why this might be the case.

recommended that governments around the world use the IHRA Definition,[213] "antisemitism, if left unchecked by governments, poses risks not only to Jews, but also to members of other minority communities. Antisemitism is toxic to democracy and mutual respect of citizens and threatens all societies in which it goes unchallenged."[214]

Let us challenge it together; country by country and state by state.

213. The Special Rapporteur included a thorough discussion of the IHRA as well as critics of the definition who claimed that it would restrict political expression about Israel. He noted, however, that

> [T]he IHRA definition does not designate these as examples of speech that are ipso facto antisemitic and further observes that a contextual assessment is required under the definition to determine if they are antisemitic. Nevertheless, the potential chilling effects of the use of these examples by public bodies on speech that is critical of Israeli government policies and practices must be taken seriously as should the concern that criticism of Israel sometimes has been used to incite hatred towards Jews in general such as through expression that feed on traditional antisemitic stereotypes of Jews. Therefore, the use of the definition, as a non-legal educational tool, could minimize such chilling effects and contribute usefully to efforts to combat antisemitism. *Where public bodies use the definition in any regulatory context, due diligence must be exercised to ensure that freedom of expression within the law is protected for all.*

Shaheed, *supra* note 212, at 13 (emphasis added). As this article has once again demonstrated, that due diligence has been taken.

214. *Id.* at 1.

Defining Antisemitism

*Mark Goldfeder**

"Some people hate Jews. Fine, alright it's been done.
I mean, that's part of my problem with it.
Could you hate somebody new?"
-Gary Gulman

Antisemitic harassment is illegal, but without a standard definition of what 'antisemitism' includes, that idea is almost meaningless. That is why state legislatures and university administrators across the country are debating enacting policies that adopt the International Holocaust Remembrance Alliance ("IHRA") definition of antisemitism. This Article will illustrate precisely how a state bill or a university policy utilizing the IHRA definition for assessing motivation when analyzing discriminatory conduct claims would actually function, so that critics can no longer vaguely claim that such policies would somehow offend the First Amendment. It will also explain the difference between protected political speech and thinly-veiled antisemitism, and provide a case study to illustrate the very real danger of what can happen when perpetrators are allowed to confuse speech with acts and conflate politics with demonizing and discriminatory hatred.

* Dr. Mark Goldfeder, Esq. is the Director of the National Jewish Advocacy Center, a Member of the United States Holocaust Memorial Council, counsel for Hillels of Georgia, and served as the founding Editor of the Cambridge University Press Series on Law and Judaism. The author wishes to thank Kenneth L. Marcus and Alyza Lewin for their thoughtful and helpful comments, Marc Greendorfer, Gadi Dotz, Eugene Kontorovich, Harry Hutchison, Jay Schaefer, Jeremy Rabkin, Sasha Volokh, Miles Terry, Danielle Park, Jonathan Fiebelkorn, Andrew Pessin, Mark Rotenberg, and Courtney Kramer for their insightful reviews, and Elliot Karp, CEO of Hillels of Georgia, for his leadership and investment on this issue.

I. INTRODUCTION 121
II. THE IHRA DEFINITION OF ANTISEMITISM 127
III. TITLE VI AND THE EXECUTIVE ORDER ON COMBATING ANTISEMITISM 143
IV. THE NEXT STEP FOR STATES AND UNIVERSITIES: PROACTIVELY ADOPTING THE IHRA DEFINITION 150
V. THE MODEL POLICY DOES NOT RESTRICT OR SUPPRESS SPEECH 154
A. What the Policy Does Not Do 154
1. The Model Policy Does Not Restrict or Prohibit Speech 154
2. The Model Policy Does Not Create Any Gray Area of Speech/Act Non-Distinction 155
3. Finally, Such a Policy Will Not Impermissibly Chill Speech 158
VI. ADOPTING THE DEFINITION HELPS STATES AND SCHOOLS MONITOR, PREVENT, AND EDUCATE ABOUT ANTISEMITISM 164
A. Adopting a Definition Would Help States and Schools Monitor and Report on Antisemitism 164
B. Adopting a Definition Would Help States and Schools Educate Their Constituencies About Antisemitism 168
VII. CRITICISM OF ISRAEL AND ANTISEMITISM 169
VIII. A CASE STUDY IN THE NECESSITY OF CLEARLY DEFINING TERMS 184
A. What Happened "Over There" 184
B. Could That Happen Here? 186
IX. CONCLUSION 195

I. INTRODUCTION

Antisemitism, loosely defined (we shall soon see why) as the prejudice against and hatred of the Jewish people, is often called the oldest form of hatred in the history of man.[1] Unfortunately, it is also perhaps the most persistent.[2] And, despite the fact that we are still within living memory of the Holocaust,[3] for the past several years antisemitism has been making a public comeback,[4] even in these United States,[5] and even during a pandemic.[6]

Each year since 1979, the Anti-Defamation League has published a report that measures the number of antisemitic acts in the United States.[7] In 2017, there were 1,986 reported antisemitic incidents, a 57 percent increase over the previous year, and the biggest annual jump

---

[1] Hillel Halkin, *The Persistence of the Oldest Hatred*, N.Y. TIMES (Sept. 10, 2019), https://www.nytimes.com/2019/09/10/books/review/how-to-fight-anti-semitism-bari-weiss.html; *see generally* Ildikó Barna et al., *Contemporary Forms of the Oldest Hatred: Modern Antisemitism in the Visegrád Countries*, *in* THE NOBLE BANNER OF HUMAN RIGHTS: ESSAYS IN MEMORY OF TOM LANTOS, 303–38 (Katrina Lantos Swett, Anna-Mária Biró & Máté Fischer eds., 2018).

[2] *Introduction*, *in* ANTISEMITISM: A HISTORY 8 (Albert S. Lindemann & Richard S. Levy eds., 2010).

[3] *See generally* FACING HISTORY AND OURSELVES, HOLOCAUST AND HUMAN BEHAVIOR, 606–11, 662 (2017).

[4] Ahmed Shaheed (Special Rapporteur on Freedom of Religion or Belief), *The Elimination of All Forms of Religious Intolerance*, U.N. Doc. A/74/358 (Sept. 20, 2019); Eva Cossé, *The Alarming Rise of Antisemitism in Europe: European Governments and Public Should Stand Up Against Hate*, HUM. RTS. WATCH (June 4, 2019, 10:12 AM), https://www.hrw.org/news/2019/06/04/alarming-rise-anti-semitism-europe.

[5] *See generally* AUDIT OF ANTI-SEMITIC INCIDENTS: YEAR IN REVIEW 2018, ANTI-DEFAMATION LEAGUE (2019), https://www.adl.org/media/13144/download [hereinafter 2018 REVIEW]; LEONARD SAXE ET AL., BRANDEIS UNIV.: MAURICE & MARILYN COHEN CTR. FOR MODERN JEWISH STUDIES, HOTSPOTS OF ANTISEMITISM AND ANTI-ISRAEL SENTIMENT ON US CAMPUSES (2016), https://bir.brandeis.edu/bitstream/handle/10192/33070/AntisemitismCampuses102016.pdf?sequence=1&isAllowed=y.

[6] Dina Porat, Position Paper, *Blaming the Jews and Israel for the Coronavirus Pandemic: Historical Background and Current-Day Reactions*, TEL AVIV UNIV.: KANTOR CTR., July 6, 2020; *see also* Walter Russell Mead, *Amid the Pandemic, Anti-Semitism Flares Up*, WALL ST. J. (Apr. 15, 2020, 6:53 PM), https://www.wsj.com/articles/amid-the-pandemic-anti-semitism-flares-up-11586991224; Samantha Mandeles, *Investigation: How Anti-Israel Activists Are Hijacking The Coronavirus Crisis And Turning It Against Israel*, LEGAL INSURRECTION (Apr. 9, 2020, 9:00 PM), https://legalinsurrection.com/2020/04/investigation-how-anti-israel-activists-are-hijacking-the-coronavirus-crisis-and-turning-it-against-israel/#more-312987.

[7] 2018 REVIEW, *supra* note 5; *Anti-Semitic Incidents Remained at Near-Historic Levels in 2019; Assaults Against Jews More Than Doubled*, ANTI-DEFAMATION LEAGUE (Apr. 30, 2019), https://www.adl.org/news/press-releases/anti-semitic-incidents-remained-at-near-historic-levels-in-2018-assaults.

since the organization started tracking these numbers.[8] In 2018, there was a 105 percent increase in the number of recorded physical assaults on Jewish people, including the deadliest attack on Jews in the history of the United States at the Tree of Life Synagogue in Pittsburgh.[9] On university campuses around the country, antisemitism has become entrenched, systemic, broad, and deep, with recent studies showing that the number of Jewish students experiencing antisemitism on campuses across the United States spiked to nearly 75 percent.[10] In 2017 alone there were more than 204 reports of antisemitic incidents of harassment, vandalism, or assault against Jewish students on campus—an 89 percent increase from the previous year.[11] The numbers continued to rise in 2018,[12] and the student organization, Hillel International, "reported that antisemitic incidents reached an all-time high . . . during the 2019–2020 academic year at the 550 U.S. colleges and universities that it serves."[13]

These statistics ought to raise serious concerns for American society and prompt further investment in identifying and dealing with the underlying illnesses[14] that fuel this never-ending hatred. This is true not only because it is simply wrong to be antisemitic, but also because history has shown that antisemitism is often a form of gateway racism;[15] the proverbial "canary in the coal mine of intolerance."[16]

---

[8] 2018 REVIEW, *supra* note 5, at 7.

[9] *Id.* at 8.

[10] LEONARD SAXE ET AL., BRANDEIS UNIV.: MAURICE & MARILYN COHEN CTR. FOR MODERN JEWISH STUDIES, ANTISEMITISM AND THE COLLEGE CAMPUS: PERCEPTIONS AND REALITIES 1, 13 (2015), https://bir.brandeis.edu/bitstream/handle/10192/30810/AntisemitismCampus072715.pdf.

[11] 2018 REVIEW, *supra* note 5, at 29.

[12] *See* Jeremy Bauer-Wolf, *A Surge of Anti-Semitism*, INSIDE HIGHER ED (Dec. 5, 2018), https://www.insidehighered.com/news/2018/12/05/anti-semitic-incidents-surge-college-campuses-after-pittsburgh-synagogue-shooting.

[13] Greta Anderson, *Responding to Rise in Campus Anti-Semitism*, INSIDE HIGHER ED (Sept. 9, 2020), https://www.insidehighered.com/news/2020/09/09/anti-semitism-rise-new-semester-starts.

[14] *See, e.g.*, NATHAN W. ACKERMAN & MARIE JOHODA, ANTI–SEMITISM AND EMOTIONAL DISORDER; A PSYCHOANALYTICAL INTERPRETATION (Max Horkheimer & Samuel H. Flowerman eds., 1950) (discussing the social and psychological roots of prejudice, with a focus on the research highlighting the close correlation between a number of deep-rooted personality disturbances and antisemitism).

[15] DENNIS PRAGER & JOSEPH TELUSHKIN, WHY THE JEWS?: THE REASON FOR ANTISEMITISM, THE MOST ACCURATE PREDICTOR OF HUMAN EVIL 201 (2003); Jerry Klinger, *The Canary in the Coal Mine? American Jewry 1654-1770*, JEWISH AM. SOC. FOR HISTORIC PRESERVATION, http://www.jewish-american-society-for-historic-preservation.org/images/The_Canary_in_the_Coal_Mine.pdf (last visited Oct. 6, 2019).

[16] Bill Rinehart, *Rising Antisemitism Is 'Canary in a Coal Mine' For Other Communities*, CIN. PUB. RADIO (Apr. 9, 2019), https://www.wvxu.org/local-news/2019-04-09/rising-anti-semitism-is-canary-in-a-coal-mine-for-other-communities; Jonathan Freedland,

It is impossible to fully answer the question of *why* antisemitism persists, but former Chief Rabbi Lord Jonathan Sacks believed that "one root cause is the cognitive failure called scapegoating. When bad things happen to a group, its members can ask one of two questions: 'What did we do wrong?' or 'Who did this to us?'"[17] A group that asks what they can do differently in the future will move forward, but a group that asks who else they can blame will begin to persecute the ones who look most different.[18] Historically, this has often been the Jews,[19] but Rabbi Sacks posits that the underlying problem is a society's unhealthy inability to tolerate difference. "And because we are all different, the hate that begins with Jews never ends with Jews .... Antisemitism is the world's most reliable early warning sign of a major threat to freedom .... It matters to all of us. Which is why we must fight it together."[20]

As Ahmed Shaheed, the United Nations Special Rapporteur on freedom of religion or belief, noted in his recent Human Rights Council report on antisemitism, "antisemitism, if left unchecked by Governments, poses risks not only to Jews, but also to members of other minority communities. Antisemitism is toxic to democracy and mutual respect of citizens and threatens all societies in which it goes unchallenged."[21]

There are multiple opinions[22] and best practices guides[23] on how to best combat antisemitism in a variety of different contexts.[24] For

Opinion, *Antisemitism Matters: Jews Are the Canary in the Coalmine*, GUARDIAN (Mar. 30, 2018, 12:04 PM), https://www.theguardian.com/commentisfree/2018/mar/30/antisemitism-jews-canary-coalmine-fake-news; *Antisemitism May Be Canary in the Coal Mine of Intolerance*, JEWISH NEWS OF N. CAL. (Dec. 19, 2014), https://www.jweekly.com/2014/12/19/anti-semitism-may-be-canary-in-the-coal-mine-of-intolerance/.

17 *The Mutation of Antisemitism*, OFF. OF RABBI SACKS (Apr. 19, 2017), https://rabbisacks.org/the-mutation-of-antisemitism/ [hereinafter *Mutation of Antisemitism*].

18 *Id.*

19 As Rabbi Sacks notes, "for a thousand years [the Jews] were the most conspicuous non-Christian minority in Europe and today because Israel is the most conspicuous non-Muslim country in the Middle East." *Id.*

20 *Id. See generally* RABBI JONATHAN SACKS, THE DIGNITY OF DIFFERENCE: HOW TO AVOID THE CLASH OF CIVILIZATIONS (2002).

21 *See* Ahmed Shaheed (Special Rapporteur on Freedom of Religion or Belief), *The Elimination of All Forms of Religious Intolerance 2/23*, U.N. Doc. A/74/358 (Sept. 20, 2019). See below for reasons why this might be the case.

22 *See* BARI WEISS, HOW TO FIGHT ANTISEMITISM (2019).

23 *See* Kenneth L. Marcus, *Best Practices Guide for Combating Campus Antisemitism and Anti-Israelism*, LOUIS D. BRANDEIS CTR. FOR HUMAN RIGHTS UNDER LAW, https://brandeiscenter.com/wp-content/uploads/2017/10/guide_01.pdf (last visited July 30, 2021).

24 *See, e.g.*, ONLINE ANTISEMITISM TASK FORCE (2019), https://www.antisemitismtaskforce.org/ (last visited Aug. 28, 2020) ("[D]edicated solely to proactively seeking out, monitoring, and actively reporting online antisemitic content to remove it from the web.").

example, while many organizations push for more nuanced general education about religion[25] or programming about the benefits of diversity,[26] former New York Times editor Bari Weiss urges Jews to take control by taking pride in their heritage.[27] In the meantime, however, from a policy perspective, the government must take steps to stem a quantifiable and incontrovertible antisemitic tide. State officials and institutions, including educational institutions, have a responsibility to protect citizens and students from hate and bigotry. They must be given the necessary tools to both educate their constituencies about what contemporary antisemitism looks like and stem those criminal and discriminatory acts that are motivated by antisemitism.

One major problem is the lack of an accepted definition of antisemitism. A recent survey found that "*more than half* of Americans 18 to 29 years old—the cohort most widely represented among college students and recent graduates—said they didn't know the meaning of the word 'anti-Semitism.'"[28] The same report found that nearly *half of the general American population* is unfamiliar with the term.[29]

Antisemitic harassment is illegal,[30] but without a standard definition of what antisemitism includes, that idea is almost

---

[25] Joshua M. Z. Stanton & Benjamin P. Marcus, *The Key to Fighting Antisemitism? Children*, FORWARD (Feb. 26, 2019), https://forward.com/opinion/419961/the-key-to-fighting-antisemitism-children/.

[26] *Confront Hate and Antisemitism*: *Teaching About Antisemitism*, U.S. HOLOCAUST MEM'L MUSEUM (2019), https://www.ushmm.org/confront-antisemitism/teaching-about-antisemitism (providing resources and guides to teach about fighting all kinds of prejudice); RABBI EVAN MOFFIC, FIRST THE JEWS: COMBATING THE WORLD'S LONGEST-RUNNING HATE CAMPAIGN (2019) (urging people to respond to antisemitism by learning to appreciate the other and focus on common ground).

[27] *See, e.g.*, WEISS, *supra* note 22.

[28] Seffi Kogen, *It's Time We Taught Anti-Semitism*, INSIDE HIGHER ED (Feb. 2, 2021), https://www.insidehighered.com/views/2021/02/02/anti-semitism-major-problem-campuses-and-students-must-be-educated-about-it-opinion (citing AVI MAYER, AM. JEWISH COMM., THE STATE OF ANTISEMITISM IN AMERICA 2020 (2020), https://www.ajc.org/sites/default/files/pdf/2020-11/The_State_of_Antisemitism_in_America_2020.pdf).

[29] "While just over half (53%) of the general public has heard of antisemitism and knows what it means, a quarter of respondents (25%) said they had heard the term but aren't sure what it means and fully a fifth—21%—said they had never heard the term before." AVI MAYER, AM. JEWISH COMM., THE STATE OF ANTISEMITISM IN AMERICA 2020, at 7 (2020), https://www.ajc.org/sites/default/files/pdf/2020-11/The_State_of_Antisemitism_in_America_2020.pdf.

[30] Aside from a variety of more explicit state anti-discrimination laws (*see* JEROME HUNT, CTR. FOR AM. PROGRESS ACTION FUND, A STATE-BY-STATE EXAMINATION OF NONDISCRIMINATION LAWS AND POLICIES 5–6 (2012), https://www.americanprogress.org/wp-content/uploads/issues/2012/06/pdf/state_nondiscrimination.pdf), Title VII of the Civil Rights Act of 1964 protects employees against many forms of discrimination, including race, gender, national origin, sex, and religion, while Title VI protects Jewish

meaningless.[31] That is why numerous state legislatures[32] are considering enacting specific statutes that not only address antisemitic behavior, but adopt a definition of antisemitism to better protect against discriminatory antisemitic harassment. State laws would affect state schools, but to their credit many university systems—both public and private—are not waiting to be told that they have to care more about, and do more for, their Jewish students. The clear rise in antisemitic feeling and behavior,[33] especially on campuses,[34] led several universities[35] to proactively embrace a definition of antisemitism to better educate their campus communities about what antisemitism is[36] and to better protect against illegal antisemitic harassment.

This Article is addressed to the remainder of state legislatures and university officials who have not yet clarified their existing anti-

students from discrimination based on their race or national origin. *See* Civil Rights Act of 1964 §§ 6–7, 42 U.S.C. § 2000e (1964).

[31] Some have asked why antisemitism needs defining more than other discriminatory behaviors, and as discussed in various sections throughout this article, the answer is threefold: 1) throughout the generations no other hatred has been this amorphous and shifting, and therefore defying of definition; 2) related to that, modern antisemitism is unique because people can and do commit horrible acts of antisemitic discrimination and then claim that they were merely being "anti-Israel," and the lack of a definition allows them to get away with it; and 3) notwithstanding all of the above, the importance of clarity in such definitions is not unique to antisemitism—to the extent that any other group feels it is routinely and systemically discriminated against, and that there is a need for a definition to clarify what is and is not hate speech—that group's concerns should be addressed in a similar manner. In a somewhat related vein, the Black Lives Matter movement *has* argued that many states and universities do not understand structural racism, and students at dozens of schools have published their lists of demands for change. *See, e.g.*, THE DEMANDS, https://www.thedemands.org/ (last visited Jan. 17, 2020).

[32] As of the time of this writing, at least thirteen states are considering legislation to adopt the IHRA definition of anti-Semitism, not including Florida, which already adopted the definition.

[33] *Antisemitic Incidents Hit All-Time High in 2019*, ANTI-DEFAMATION LEAGUE (May 12, 2020), https://www.adl.org/news/press-releases/antisemitic-incidents-hit-all-time-high-in-2019.

[34] *See* Anderson, *supra* note 13.

[35] *See, e.g.*, *Arizona State University Student Government Adopted SR 05 in Support of the Jewish Students and the Pro Israel Community with a 15-1-3 Vote*, STUDENTS SUPPORTING ISRAEL (2019), https://www.ssimovement.org/asu.html; *Pace University Student Government Adopts Universal Definition of Anti-Semitism*, JEWISH NEWS SYNDICATE (Oct. 29, 2020), https://www.jns.org/pace-university-student-government-adopts-universal-definition-of-anti-semitism/; *Florida State University Adopts IHRA's Definition of Antisemitism*, JERUSALEM POST (Aug. 17, 2020), https://www.jpost.com/diaspora/florida-state-university-adopts-ihras-definition-of-antisemitism-638706.

[36] John Thrasher, *A Message from President John Thrasher: An Update on Antisemitism and Religious Discrimination*, FLA. ST. U. NEWS (Aug. 12, 2020, 3:50 PM), https://news.fsu.edu/news/university-news/2020/08/12/a-message-from-president-john-thrasher-an-update-on-antisemitism-and-religious-discrimination/.

discrimination provisions by defining antisemitism. It proposes two somewhat interrelated policy actions: (a) the passing of state-level legislation, and (b) the adoption of university policies, to define antisemitism using the internationally accepted International Holocaust Remembrance Alliance ("IHRA") definition of antisemitism.[37] These actions would not create any new laws or regulations, but would only ensure that existing laws and regulations protecting Jewish people are enforced.

These proposals build on the work of many others, including the groundbreaking work of former U.S. Department of Education Assistant Secretary for Civil Rights Kenneth Marcus,[38] Professor Eugene Kontorovich, the intellectual force behind state anti-Boycott Divestment and Sanctions ("BDS") bills,[39] and Senators Tim Scott and Bob Casey, sponsors of a similar act undertaken at the federal level.[40] This Article will illustrate how and why the efforts to have states and universities adopt the IHRA definition of antisemitism are proceeding[41] and are likely to succeed. Most importantly, it will also delineate precisely what a state bill or a university policy utilizing the IHRA definition to assess the motivation behind discriminatory conduct claims would *not* do, so that future critics cannot vaguely raise First Amendment or constitutional concerns.[42] Next, the Article will explain the difference

---

[37] *Working Definition of Antisemitism*, INT'L HOLOCAUST REMEMBRANCE ALLIANCE, https://www.holocaustremembrance.com/resources/working-definitions-charters/working-definition-antisemitism (last visited Jan. 22, 2021).

[38] *See* Kenneth L. Marcus, *The New OCR Anti-Semitism Policy*, 2 J. FOR STUDY OF ANTISEMITISM 479 (2011), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=1813192. Marcus was instrumental in ensuring that Title VI would also be used to protect students of faith. *See also* Kenneth L. Marcus, *Anti-Zionism as Racism: Campus Anti-Semitism and the Civil Rights Act of 1964*, 15 WM. & MARY BILL RTS J. 837, 839 (2007) (arguing "anti-Semitic harassment at [institutions receiving federal assistance], constitutes racial discrimination prohibited by Title VI when sufficiently severe, pervasive, and objectively offensive as to deny equal educational opportunities to Jewish students").

[39] *See Podcast: Eugene Kontorovich on the Legalities and Controversies of Anti-BDS Law*, MOSAIC MAG. (Mar. 7, 2019), https://mosaicmagazine.com/observation/history-ideas/2019/03/podcast-eugene-kontorovich-on-the-legalities-and-controversies-of-anti-bds-law/; *see also* Eugene Kontorovich, Opinion, *Israel Anti-Boycott Bill Does Not Violate Free Speech*, WASH. POST (July 27, 2017), https://www.washingtonpost.com/news/volokh-conspiracy/wp/2017/07/27/israel-anti-boycott-bill-does-not-violate-free-speech/.

[40] *See* Anti-Semitism Awareness Act of 2019, S. 852, 116th Cong. (2019).

[41] This gradual adoption is proceeding domestically and around the world. *See* Chris Parr, *More Universities Adopt IHRA Antisemitism Definition*, RES. PROF. NEWS (Dec. 9, 2020), https://www.researchprofessionalnews.com/rr-news-uk-universities-2020-12-more-universities-adopt-ihra-antisemitism-definition/.

[42] For a discussion of similar concerns raised in the context of state BDS legislation, see Mark Goldfeder, *Stop Defending Discrimination: Anti-Boycott, Divestment, and*

between criticism of Israel and thinly veiled antisemitism. Finally, the Article will provide a case study to illustrate the very real danger of what can happen when perpetrators are allowed to obfuscate their intentions by confusing speech with acts and conflating politics with demonizing and discriminatory hatred.

II. THE IHRA DEFINITION OF ANTISEMITISM

The International Holocaust Remembrance Alliance (originally the Task Force for International Cooperation on Holocaust Education, Remembrance, and Research) is an intergovernmental organization that "unites governments and experts to strengthen, advance and promote Holocaust education, research and remembrance and to uphold the commitments to [the 2000 Declaration of the Stockholm International Forum on the Holocaust]."[43] As "the only intergovernmental organization mandated to focus solely on Holocaust-related issues," and "with evidence that the scourge of antisemitism is once again on the rise," IHRA experts resolved to take a leading role in combatting antisemitism, and "determined that in order to begin to address the problem of antisemitism, there must be clarity about what antisemitism is."[44] The Committee on Antisemitism and Holocaust Denial first developed their definition in 2003–2004,[45] and published it as a Working Definition in January 2005.[46] The U.S. State Department endorsed the definition as a guide in 2007,[47] started using it in 2010,[48] and in 2016,[49] when the Working Definition was formally adopted by a

Sanctions Statutes are Fully Constitutional, 50 TEX. TECH. L. REV. 207, 218–38 (2018) [hereinafter Goldfeder, *Stop Defending Discrimination*].

[43] *About Us*, INT'L HOLOCAUST REMEMBRANCE ALLIANCE, https://www.holocaustremembrance.com/about-us (last visited Jan. 17, 2020); *Stockholm Declaration*, INT'L HOLOCAUST REMEMBRANCE ALLIANCE, https://holocaustremembrance.com/about-us/stockholm-declaration (last visited Jan. 17, 2020).

[44] *Antisemitism*, INT'L HOLOCAUST REMEMBRANCE ALLIANCE, https://www.holocaustremembrance.com/antisemitism (last visited Jan. 17, 2020).

[45] *See Anti-Semitism Across Borders*: *Hearing Before the Subcomm. on Afr., Glob. Health, Glob. Human Rights., & Int'l Orgs. of the H. Comm. on Foreign Affairs*, 115th Cong. (2017), https://www.govinfo.gov/content/pkg/CHRG-115hhrg24753/html/CHRG-115hhrg24753.htm.

[46] Manfred Gerstenfeld, *To Fight Antisemitism, You Have to Define It,* ARUTZ SHEVA, http://www.israelnationalnews.com/Articles/Article.aspx/22096 (last visited Aug. 1, 2020).

[47] https://2001-2009.state.gov/g/drl/rls/56589.htm

[48] *Id.*; *Defining Antisemitism*, U.S. DEP'T OF STATE, https://www.state.gov/defining-anti-semitism/ (last visited Oct. 19, 2021).

[49] *Defining Antisemitism*, *supra* note 48.

plenary meeting of the then thirty-one countries in the IHRA,[50] officially adopted it.[51] The definition (along with its accompanying illustrations) reads as follows:

> "Antisemitism 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."
>
> To guide IHRA in its work, the following examples may serve as illustrations:
>
> Manifestations might include the targeting of the state of Israel, conceived as a Jewish collectivity. However, criticism of Israel similar to that leveled against any other country cannot be regarded as antisemitic. Antisemitism frequently charges Jews with conspiring to harm humanity, and it is often used to blame Jews for "why things go wrong." It is expressed in speech, writing, visual forms and action, and employs sinister stereotypes and negative character traits.
>
> Contemporary examples of antisemitism in public life, the media, schools, the workplace, and in the religious sphere could, taking into account the overall context, include, but are not limited to:
>
> - Calling for, aiding, or justifying the killing or harming of Jews in the name of a radical ideology or an extremist view of religion.
> - Making mendacious, dehumanizing, demonizing, or stereotypical allegations about Jews as such or the power of Jews as collective—such as, especially but not exclusively, the myth about a world Jewish conspiracy or of Jews controlling the media, economy, government or other societal institutions.

[50] *31 Countries Adopt New Definition of Anti-Semitism that Includes Anti-Zionism,* TOWER (June 3, 2016, 3:24 PM), http://www.thetower.org/3462-31-countries-adopt-new-definition-of-anti-semitism-that-includes-anti-zionism/.

[51] *Defining Antisemitism*, *supra* note 48.

- Accusing Jews as a people of being responsible for real or imagined wrongdoing committed by a single Jewish person or group, or even for acts committed by non-Jews.
- Denying the fact, scope, mechanisms (e.g.[,] gas chambers) or intentionality of the genocide of the Jewish people at the hands of National Socialist Germany and its supporters and accomplices during World War II (the Holocaust[).]
- Accusing the Jews as a people, or Israel as a state, of inventing or exaggerating the Holocaust.
- Accusing Jewish citizens of being more loyal to Israel, or to the alleged priorities of Jews worldwide, than to the interests of their own nations.
- 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.
- Applying double standards by requiring of it a behavior not expected or demanded of any other democratic nation.
- Using the symbols and images associated with classic antisemitism (e.g., claims of Jews killing Jesus or blood libel) to characterize Israel or Israelis.
- Drawing comparisons of contemporary Israeli policy to that of the Nazis.
- Holding Jews collectively responsible for actions of the state of Israel.

Antisemitic acts are criminal when they are so defined by law (for example, denial of the Holocaust or distribution of antisemitic materials in some countries).

Criminal acts are antisemitic when the targets of attacks, whether they are people or property—such as buildings, schools, places of worship and cemeteries—are selected because they are, or are perceived to be, Jewish or linked to Jews.

Antisemitic discrimination is the denial to Jews of opportunities or services available to others and is illegal in many countries.[52]

[52] *Defining Antisemitism*, *supra* note 48 (quoting *Working Definition of Antisemitism*, INT'L HOLOCAUST REMEMBRANCE ALLIANCE, https://www.holocaustremembrance.com/

There are two reasons why this definition is appropriate to use when assessing motivation behind discriminatory acts. The first relates to the practical difficulty of defining antisemitism, and the second relates to the legal standard of objectivity required when assessing discriminatory intent.

While the term antisemitism is relatively modern—it was first popularized by German journalist Wilhelm Marr in 1879[53]—the history of hating Jews goes back much further.[54] There is nowhere near enough space in this article for even a brief history of antisemitism,[55] but it is worth noting that some patterns consistently emerge, in particular when it comes to antisemitism's focus; the form if not the content of its justifications; and the effective process by which it allows otherwise decent people to do horrible things.

In terms of its focus, antisemitism often looks at Jews as a collective,[56] the idea that while individual Jews might be tolerable, Jews as a separate collective identity should not be allowed to exist with the same rights as other groups.[57] That is why the majority of antisemitism

resources/working-definitions-charters/working-definition-antisemitism (last visited Jan. 22, 2021).

[53] FACING HISTORY AND OURSELVES, *supra* note 3. Why not the term anti-Jewish? According to Marr's biographer, Moshe Zimmerman, the term antisemitism itself, as opposed to anti-Jewish, "became popular . . . because of its scientific pretentions. The term was also somewhat vague and thus 'good cover' against 'legal suits,' casting 'a cloak of uncertainty over the intent of the hatred against the Jews.'" Thorsten Fuchshuber, *From Wilhelm Marr to Mavi Marmama: Antisemitism and Anti-Zionism as Forms of Anti-Jewish Action*, *in* ANTI-ZIONISM AND ANTISEMITISM: THE DYNAMICS OF DELEGITIMIZATION 30, 31–32 (2019) (citing MOSHE ZIMMERMANN, WILHELM MARR THE PATRIARCH OF ANTI-SEMITISM 90, 94 (1986)). In short, "the term *antisemitism* served the same 'purpose which the term "anti-Zionism" serves today—evading the accusation of engaging in something improper.'" *Id.* at 32.

[54] *Anti-Semitism*, HIST. (last updated June 10, 2019), https://www.history.com/topics/holocaust/anti-semitism.

[55] *See, e.g.*, LÉON POLIAKOV, THE HISTORY OF ANTISEMITISM: FROM THE TIME OF CHRIST TO THE COURT JEWS (Richard Howard trans., Univ. Penn. Press 2003) (1955); ROBERT S. WISTRICH, ANTISEMITISM: THE LONGEST HATRED (1991); HADASSA BEN-ITTO, THE LIE THAT WOULDN'T DIE: THE PROTOCOLS OF THE ELDERS OF ZION (2005); MICHAEL BURLEIGH, THE RACIAL STATE: GERMANY 1933–1945 (1991); ANTISEMITISM: A HISTORICAL ENCYCLOPEDIA OF PREJUDICE AND PERSECUTION (Richard S. Levy ed., 2005); JAMES W. PARKES, ANTISEMITISM (1963).

[56] When Marr founded the 'League of Antisemites,' for example, he wrote that "[n]ot individual Jews, but the Jewish spirit and Jewish consciousness have overpowered the world." Wilhem Marr, *Der Sieg des Judenthums ueber das Germanenthum vom nicht confessionellen Standpunkt ausbetrachtet*, (Paul Mendes-Flohr & Jehuda Reinharz trans., 1879) *in* THE JEW IN THE MODERN WORLD: A DOCUMENTARY HISTORY 331, 332 (Paul Mendes-Flohr & Jehuda Reinharz eds., 2d ed. 1995).

[57] *See, e.g.*, *Rabbi Sacks on the Connection Between Judaism and Israel*, OFF. OF RABBI SACKS (Apr. 29, 2019), https://rabbisacks.org/rabbi-sacks-on-the-connection-between-judaism-and-israel/. See also Per Ahlmark, former leader of the Swedish Liberal Party

in any given era tends to focus on the primary form of collective Jewish identity at that point in time.[58] Throughout the Middle Ages Jews were mostly a religious community and so they were hated for their religion—even if the particular Jews being oppressed were not religiously Jewish.[59] In the nineteenth and twentieth centuries, when many Jews became secularized, the primary unifying collective identity of Jews was their ethnicity, and so the hatred mutated to focus on race—even when the assimilated Jews being murdered had only a trace amount of Jewish blood.[60] Today, when the primary collective embodiment of Jewish people on the world stage is the people of Israel in their nation state, Jews around the world are hated and held accountable for 'their' state—even if they are not Israeli.[61]

In each instance the essence of antisemitism remains the same—even if the focus somewhat shifts. Antisemitism, or anti-Jewishness, is

> anchored in the denial of the very legitimacy of the Jews as a people .... [It is] an assault upon whatever is the core of Jewish self-definition at any given moment in time—be it the Jewish religion, or Israel as the 'civil religion' or juridical expression of the Jewish people.[62]

While antisemitism's focus can shift over time, in every generation those manifesting such bigotry use some variant of the same refrain: "we don't hate Jews, we just can't stand __."[63] To justify their hatred in a

---

and Deputy Prime Minister of Sweden, remarking that while antisemitism may begin by primarily attacking the collective Jews, "[s]uch attacks ... [start] a chain reaction of assaults ... on individual Jews and Jewish institutions." Per Ahlmark, *The Old in the New Anti-Semitism*, PROJECT SYNDICATE, https://www.project-syndicate.org/commentary/the-old-in-the-new-anti-semitism; Per Ahlmark, Yad Vashem, *Speech at International Conference on the Legacy of Holocaust Survivors*, *in* VIDAL SASSOON INTERNATIONAL CENTER FOR THE STUDY OF ANTISEMITISM, ANNUAL REPORT 8 (2002).

[58] James Wald, *The New Replacement Theory: Anti-Zionism, Antisemitism, and the Denial of History*, *in* ANTI-ZIONISM AND ANTISEMITISM: THE DYNAMICS OF DELEGITIMIZATION 2, 2–3 (2019).

[59] *See, e.g.*, Thomas F. Madden, *The Truth About the Spanish Inquisition*, CRISIS (Oct. 1, 2003), https://www.crisismagazine.com/2003/the-truth-about-the-spanish-inquisition-2.

[60] *See, e.g.*, *The Nuremberg Laws: Background & Overview*, JEWISH VIRTUAL LIBR., https://www.jewishvirtuallibrary.org/background-and-overview-of-the-nuremberg-laws (last visited Jan. 23, 2021).

[61] *See, e.g.*, *The Mutating Virus: Understanding Antisemitism*, OFF. OF RABBI SACKS (Sept. 27, 2016), https://rabbisacks.org/mutating-virus-understanding-antisemitism/ [hereinafter *The Mutating Virus*].

[62] Irwin Cotler, *Global Antisemitism: Assault on Human Rights* (Yale Initiative for the Interdisc. Study of Antisemitism, Working Paper No. 3, 2009), https://isgap.org/wp-content/uploads/2011/10/irwin-cotler-online-final1.pdf.

[63] Students Supporting Israel at Columbia University - SSI Columbia (@SSIcolumbia), FACEBOOK (Sept. 14, 2018), https://www.facebook.com/

socially acceptable way, antisemites need a rationale that can pass in polite society—ideally one that appeals directly to the highest source of authority currently in vogue. As Rabbi Sacks notes, sometimes the justification maps directly onto the target.[64] For example, in the Middle Ages, the highest source of authority was religion;[65] in post-Enlightenment Europe, it was science;[66] and today, it involves using (or abusing) the language of human rights with selective claims of social justice that see only Jews,[67] or the Jewish state,[68] as worthy of condemnation.[69]

watch/?v=300860790706207. In the enduring words of Rabbi Sacks, "We don't hate Jews, they said in the Middle Ages, just their religion. We don't hate Jews, they said in the 19th century, just their race. We don't hate Jews, they say now, just their nation state." *Antisemitism, or any Hate, Become Dangerous When Three Things Happen*, OFF. OF RABBI SACKS (Sept. 13, 2018), https://rabbisacks.org/antisemitism-hate-become-dangerous-three-things-happen-rabbi-sacks-speaks-house-lords/.

[64] Rabbi Jonathan Sacks, Keynote Address of The Future of the Jewish Communities in Europe Conference Before The European Parliament in Brussels (Sept. 27, 2016) [hereinafter The Future of Jewish Communities in Europe], https://www.ohchr.org/Documents/Issues/Religion/Submissions/OfficeofRabbiSacks.pdf.

[65] During the medieval crusades and the pogroms of the nineteenth and twentieth centuries, in which Jews were massacred and maimed, the persecutors focused more on Christian themes for their religious justifications, including charges of deicide and blood libels. *See* MARVIN PERRY & FREDERICK M. SCHWEITZER, ANTISEMITISM: MYTH AND HATE FROM ANTIQUITY TO THE PRESENT 73–117 (2002). Throughout the Biblical period, though, the people of Israel also experienced various forms of overtly religious persecution, largely because they refused to accept the pagan and idolatrous practices of their surrounding communities. *See A Brief History on Anti-Semitism*, ANTI-DEFAMATION LEAGUE (2013), https://www.adl.org/sites/default/files/documents/assets/pdf/education-out-reach/Brief-History-on-Anti-Semitism-A.pdf.

[66] Hence the reliance on pseudoscientific studies about racial eugenics. *See Antisemitism in History: Racial Antisemitism, 1875–1945*, U.S. HOLOCAUST MEM'L MUSEUM, https://encyclopedia.ushmm.org/content/en/article/antisemitism-in-history-racial-antisemitism-18751945 (last visited Jan. 30, 2021).

[67] *See, e.g.*, Channah Newman, *Pursuit of 'Social Justice' Gives Strength to Anti-Semitism*, JEWISH CHRON. (Dec. 2, 2018, 7:26 PM), https://jewishchronicle.timesofisrael.com/pursuit-of-social-justice-gives-strength-to-anti-semitism/.

[68] Sina Arnold & Blair Taylor, *Antisemitism and the Left: Confronting an Invisible Racism*, 9 J. OF SOC. JUST. 2, 20 (2019).

[69] The Future of Jewish Communities In Europe, *supra* note 64. As Rabbi Sacks explains,

> Today the highest source of authority worldwide is human rights. That is why Israel—the only fully functioning democracy in the Middle East with a free press and independent judiciary—is regularly accused of the five cardinal sins against human rights: racism, apartheid, crimes against humanity, ethnic cleansing and attempted genocide. The new antisemitism has mutated so that any practitioner of it can deny that he or she is an antisemite. After all, they'll say, I'm not a racist. I have no problem with Jews or Judaism. I only have a problem with the State of Israel. But in a world of 56 Muslim nations and 103 Christian ones, there is only one Jewish state, Israel, which constitutes one-quarter of one per cent of the land mass of the Middle East. Israel is the only one of the 193

Finally, in terms of its insidious process, one of the rare unifying themes that emerges from the history of antisemitism is the consistent to dehumanize the Jewish people. Whether they portray Jews as malevolently superhuman, as in the Protocols of the Elders of Zion,[70] or as worthlessly subhuman, as in the Nazi ideology,[71] antisemites throughout history have found that it is easier to despise and eventually kill that which they do not consider human. Jews have also been 'othered' in more subtle ways; for example, in America, Jews are regularly considered non-white when whites are privileged,[72] then told that they are privileged whites when they demand recognition of their struggles.[73] "In the past, Jews were rendered alien to the West by being

> member nations of the United Nations that has its right to exist regularly challenged, with one state, Iran, and many, many other groups, committed to its destruction.

That is why, as he has explained elsewhere, "[w]henever you hear human rights invoked to deny Israel's right to exist, you are hearing the new antisemitism." *See Mutation of Antisemitism*, *supra* note 17. At other times, the justification for antisemitism latches on to whatever concrete policy aim is likely to stir up popular support. For example, the Jewish people were enslaved in Egypt for reasons that were eerily foreboding of the kind of thing that would routinely happen to this nation. The Biblical Pharaoh rationalized his actions in the beginning to oppress his Jewish population by blaming the soon-to-be victims, saying: "Come, let us deal shrewdly with them. Otherwise, lest they multiply, and if a war breaks out, they join our enemies and fight against us and escape from the land." *Exodus* 1:10. As Jeff Jacoby keenly noted, Pharaoh's notion of dealing wisely with this national security threat entailed "slave labor, followed by mass murder." Jeff Jacoby, *Hitler, Pharaoh, and the Anti-Semitic Culture of Victimhood*, BOS. GLOBE (Apr. 18, 2012), https://www.bostonglobe.com/opinion/2012/04/18/hitler-pharaoh-and-anti-semitic-culture-victimhood-victims-who-persecute/Hph5XM6IfgWN7VkObPAasI/story.html. "Then Pharaoh commanded all his people, 'Every boy that is born to the Hebrews, you shall throw into the Nile.'" *Id.* (quoting *Exodus* 1:22). Thirty centuries later, when the Nazis came to power, their crimes against the Jews were also described as self-defense. "'The Jews of the whole world are trying to destroy Germany,' screamed government posters as the Nazis unleashed a boycott of Jewish-owned businesses. 'German people, defend yourselves!'" Jacoby, *supra* note 69.

[70] *See* KENNETH L. MARCUS, THE DEFINITION OF ANTI-SEMITISM 44 (2015).

[71] *See generally* Johannes Steizinger, *The Significance of Dehumanization: Nazi Ideology and Its Psychological Consequences,* 19 POL., RELIGION & IDEOLOGY 139 (2018).

[72] *See* KAREN BRODKIN, HOW JEWS BECAME WHITE FOLKS & WHAT THAT SAYS ABOUT RACE IN AMERICA 2 (1998).

[73] *See* ERIC L. GOLDSTEIN, THE PRICE OF WHITENESS: JEWS, RACE, AND AMERICAN IDENTITY 224 (2006). In a recent example of this phenomenon, the widely criticized latest draft of California's new proposed ethnic studies curriculum was condemned as antisemitic for a number of reasons, including that it both fails to discuss antisemitism and that it reinforces negative stereotypes about Jews. For example, it uses the word "privileged" to describe only one ethnic group—the Jews—and recommends that students discuss how Jews "sometimes have experienced conditional whiteness and privilege." *See* Matthew Foldi & Adam Kredo *Describing Jews as 'Privileged,' Ethnic Studies Curriculum Sparks Backlash*, WASH. FREE BEACON (Jan. 20, 2021, 3:17 PM), https://freebeacon.com/issues/describing-jews-as-privileged-ethnic-studies-curriculum-sparks-backlash/.

orientalized. Today, Jews are rendered alien to the Middle East by being redefined as European . . . ."[74]

The practical problem with defining antisemitism is that it is a mutating virus; Jews are criticized for being whatever society, or a particular part of society, hates at that moment. The right will call them radicals,[75] while the left will label them fundamentalists.[76] They are simultaneously too liberal or too conservative, both too rich and a drain on the society. They are variously too strong or too weak, at once too influential[77] and too parasitical.[78]

In the words of Robert Williams, Deputy Director for International Affairs at the United States Holocaust Memorial Museum: "Antisemitism has many influences, including religious discrimination, racism, white nationalism, identitarianism, anti-Zionism, anti-Globalism, Soviet legacies, extreme Islamism, post-colonialism, anti-Americanism, conspiracy thinking, populism, and other currents."[79] Or, as Eugene Kontorovich recently told Congress: "The most effective anti-Semites have always sought to justify their bigotry by what the Jews do . . . . In every age, the oldest hatred clothes itself in the justifications that appeal to contemporary values and public policy considerations."[80] It does not

---

[74] Wald, *supra* note 58, at 19.

[75] Fahima Kattani-Ghanayem, *The Jewish Fundamentalist Roots of Trump's "Peace Deal,"* PALESTINE-ISRAEL J. POL., ECON. & CULTURE, https://pij.org/articles/2004/the-jewish-fundamentalist-roots-of-trumps-peace-deal ("[T]he roots of violence in the Middle East belong to 'Jewish fundamentalism . . . .'").

[76] *Why is Billionaire George Soros a Bogeyman for the Hard Right?*, BRIT. BROAD. CORP. (Sept. 7, 2019), https://www.bbc.com/news/stories-49584157 ("[Arthur Finkelstein] suggested Soros, and it was a perfect choice, Grassegger says. 'The very right hated him because he was Jewish, people at the very left hated him because he was a capitalist.'").

[77] David Duke spoke at a neo-Nazi rally in Charlottesville, Virginia, declaring that "[t]he truth is, the American media, and the American political system, and the American Federal Reserve, is dominated by a tiny minority: the Jewish Zionist cause." *See* Mirah Curzer, *Does Your Progressivism Include Jews?*, HUFFINGTON POST (Aug. 18, 2017, 11:26 AM), https://www.huffpost.com/entry/does-your-progressivism-include-jews_b_599704e1e4b02eb2fda31f41.

[78] Travis Patron, the leader of the Canadian Nationalist Party, describes Jews as "swindlers," "snakes," "inside manipulators," and a "parasitic tribe." *See* Canadian Nationalist Party, *Beware the Parasitic Tribe*, FACEBOOK (July 11, 2020, 3:44 AM), https://web.archive.org/web/20200714201357/https://www.facebook.com/NationalistCA/videos/681224405758300/

[79] Bonjuk Center, *Today's Antisemitism & Its Relationship to Holocaust Denial and Distortion with Dr. Robert Williams*, YOUTUBE, at 2:49–3:14 (Oct. 29, 2020), https://www.youtube.com/watch?v=80yu42Y-vNQ&t=2607s&ab_channel=BoniukCenter.

[80] *Confronting the Rise in Anti-Semitic Domestic Terrorism: Hearing Before the H. Comm. on Homeland Sec. and the Subcomm. on Intelligence & Terrorism*, 116th Cong. (2020) (statement of Prof. Eugene Kontorovich), https://homeland.house.gov/download/011520-kontorovich-testimony.

matter if the reasons are contradictory—in the span of one generation, the main theory of antisemitism shifted from Jews being an inferior race worthy of destruction (by the Nazis in the Holocaust) to Jews being a powerful race that tries to destroy others (like the Nazis, in Holocaust inversion).[81]

A definition of antisemitism that encompasses all of these possibilities and more must be able to cut through the various timely rationales given for a hatred of and hostility towards Jews, and focus rather on the actions taken by those expressing or harboring the hate; a praxeological definition, if you will.[82] For our purposes, (i.e., for the limited purpose of finding the right definition for states and universities to adopt to better understand antisemitic intent in discriminatory conduct claims, and to better educate their constituencies about what antisemitism is) the IHRA definition serves this goal best. The examples it gives focus on the *manifestations* of antisemitism, (i.e., what antisemites *do,* as opposed to *why* they do it).

Over the last decade and a half, the IHRA definition has become the internationally accepted standard definition of antisemitism.[83] While there can be no one exclusive or exhaustive definition of antisemitism—as it can and does take many forms—the IHRA definition provides an objective baseline standard for what is and is not acceptable.

The IHRA definition comes as close to a world consensus as we are ever likely to get and is therefore the obvious choice for an objective standard for analysis. Per the recently published European Commission Handbook for the practical use of the IHRA Working Definition of Antisemitism, "[e]ntities that have adopted, endorsed, applied or taken note of the IHRA Working Definition of Antisemitism include parliaments, governments, federal and state ministries, municipalities, city councils, law enforcement agencies, the judiciary, educational institutions, universities, civil society organisations and Jewish community security organisations."[84] The Handbook also notes that it has been used

---

[81] Balázs Berkovits, *Social Criticism and the "Jewish Problem", in* ANTI-ZIONISM AND ANTISEMITISM: THE DYNAMICS OF DELEGITIMIZATION 53–54 (Alvin H. Rosenfeld ed., 2019).

[82] For a masterful work on the history and complexity of defining antisemitism, see MARCUS, *supra* note 70.

[83] Ahmed Shaheed (Special Rapporteur on Freedom of Religion or Belief), *The Elimination of All Forms of Religious Intolerance*, U.N. Doc. A/74/358 (Sept. 20, 2019).

[84] FED. ASS'N DEP'TS FOR RSCH. & INFO. ON ANTISEMITISM E.V., EUR. COMM'N, HANDBOOK FOR THE PRACTICAL USE OF THE IHRA WORKING DEFINITION OF ANTISEMITISM, DS-03-21-002-EN-N (Jan. 7, 2021), https://op.europa.eu/en/publication-detail/-/publication/d3006107-519b-11eb-b59f-01aa75ed71a1/language-en.

> to train police officers, prosecutors, judges, educators, state employees and human rights monitoring bodies to identify and track various manifestations of antisemitism; to categorize antisemitic incidents, as collected by police officers, interior and justice ministries, civil society organisations, hate crime monitoring bodies and academics; to support decision-making processes by states, human rights monitoring organisations, law enforcement agencies, the judiciary, municipal governments, educators, civil society organisations and Jewish communities; to identify aspects of antisemitism in court hearings, prosecutor actions, police recording, investigations and hate crime statistics and to help direct funding to civil society organisations and human rights organisations.[85]

The definition has been an essential tool used to determine contemporary manifestations of antisemitism. The pushback on broader adoption comes from the fact that among the list of potentially antisemitic behavior provided, the definition includes useful examples of discriminatory anti-Israel acts that *can* sometimes cross the line into antisemitism.

Critics challenge the use of the IHRA definition in policymaking on two main grounds. First, they claim that the safe harbor provision for "criticism for Israel similar to that leveled against any other country" is insufficient.[86] For example, a person may hold Israel to a higher standard than other countries because they are (for any number of reasons why) more invested in that state, and *not* because they are antisemitic. Or they may criticize Israel just because the context of what they are discussing at the particular time is Israel-related and has nothing to do with other countries. Critics claim that under the IHRA definition all such criticism would be considered antisemitic. But that argument is a red herring because that is precisely why the definition

---

[85] *Id.* at 7.

[86] *Working Definition of Antisemitism*, *supra* note 37. *See, e.g.*, Zach Greenberg, *OCR's Use of Overly Broad Anti-Semitism Definition Threatens Student and Faculty Speech*, FOUND. FOR INDIVIDUAL RTS. IN EDUC. (Sept. 14, 2018), https://www.thefire.org/ocrs-use-of-overly-broad-anti-semitism-definition-threatens-student-and-faculty-speech/; Letter from Dima Khalidi, Director, Palestine Legal, et al., to Rep. Bob Goodlatte and Rep. John Conyers, Jr., (Dec. 5, 2016), https://ccrjustice.org/sites/default/files/attach/2017/02/AntiSemitism%20Awareness%20Act%20Opposition%20Letter%20final.pdf ; *The BCCLA Opposes the International Campaign to Adopt the International Holocaust Remembrance Association (IHRA) Definition of Antisemitism*, B.C. CIV. LIBR. ASS'N (June 18, 2019), https://bccla.org/our_work/the-bccla-opposes-the-international-campaign-to-adopt-the-international-holocaust-remembrance-association-ihra-definition-of-antisemitism/.

includes the explicit caveat that the examples given, "*could, taking into account the overall context*," be antisemitic.[87]

Context is crucial here, as it is in all instances of alleged discrimination. For example, in the context of employment discrimination, the Supreme Court has been clear that

> the objective severity of harassment should be judged from the perspective of a reasonable person in the plaintiff's position, considering "all the circumstances." In same-sex (as in all) harassment cases, that inquiry requires careful consideration of the social context in which particular behavior occurs and is experienced by its target.[88]

Antisemitism is no different than racism or sexism in that context matters and no two cases are ever exactly the same.[89] The reason the specific examples are provided in the IHRA definition (and are important) is explicitly *not* because all forms of criticism about Israel are antisemitic—as the definition takes pains to point out—but precisely because some people claim that *no* criticism of Israel can *ever* cross the line.[90]

The second objection to using the IHRA definition in a policy context (famously made by one of its original main drafters, Dr. Kenneth Stern),[91] is that in the wrong hands, it could theoretically be used to stifle

---

[87] *Working Definition of Antisemitism*, *supra* note 37 (emphasis added).

[88] Oncale v. Sundowner Offshore Servs., Inc., 523 U.S. 75, 81 (1998) (citing Harris v. Forklift Sys., Inc., 510 U.S. 17, 23) (internal citations omitted).

[89] Of course, it is also true that context can belie pretext in these situations as well. "Pretext can be shown by such weaknesses, implausibilities, inconsistencies, incoherencies, or contradictions in the employer's proffered legitimate reasons for its action that a reasonable factfinder could rationally find them unworthy of credence and hence infer that the employer did not act for the asserted non-discriminatory reasons." Gómez-González v. Rural Opportunities, 626 F.3d 654, 662–663 (1st Cir. 2010) (citing Morgan v. Hilti, Inc., 108 F.3d 1319, 1323 (10th Cir. 1997)), *quoted in* Lugo v. Avon Prod., Inc., 777 F. Supp. 2d 275, 290 (D.P.R. 2011), *on reconsideration in part* (May 10, 2011).

[90] The same is true of the other examples, i.e., they may not be antisemitic in any given circumstance, but they certainly *can* be, contextually. For instance, while it may be true that any particular Jewish person is loyal to the State of Israel, the charge that *Jews* have dual loyalty is an old antisemitic canard straight out of the Protocols of the Elders of Zion, and tied to the even older (at least Middle Ages, arguably even Biblical) antisemitic canard that Jews are all incapable of real loyalty and part of a worldwide conspiracy that threatens their home countries and justifies acts of discrimination or violence. *See* Julie Hirschfield Davis, *The Toxic Back Story to the Charge That Jews Have a Dual Loyalty*, N.Y. TIMES (Aug. 21, 2019), https://www.nytimes.com/2019/08/21/us/politics/jews-disloyal-trump.html.

[91] *See, e.g.*, Kenneth S. Stern, Opinion, *Will Campus Criticism of Israel Violate Federal Law?*, N.Y. TIMES (Dec. 12, 2016), https://www.nytimes.com/2016/12/12/opinion/will-campus-criticism-of-israel-violate-federal-law.html.

speech.[92] To quote an oft-cited piece on the subject, noted scholars Erwin Chemerinsky and Howard Gillman came out against legislating the IHRA definition because, they argued, "[s]chools can prevent and punish threats, harassment and destruction of property, but never the expression of views."[93] Their argument is completely valid but ultimately misleading; the correct conclusion to be drawn from their concerns is that any policy using the IHRA definition must be crafted properly to avoid censuring speech—not that the IHRA definition cannot be used in a policy about discriminatory harassment.[94] Of course, this kind of policy making needs to be done carefully, because free speech is a core aspect of democracy, and there is no general hate speech exception for antisemitism or any other kind of hatred.[95] That is *precisely* why the state bills and the school policies *cannot* take the form of any kind of speech code.[96] But discriminatory harassment and criminal conduct are not just speech, even if words are sometimes used.[97] Unlike speech, such conduct is absolutely subject to government

[92] *See, e.g.*, *ACLU Statement on Senate Introduction of 'Anti-Semitism Awareness Act,'* ACLU (May 23, 2018), https://www.aclu.org/press-releases/aclu-statement-senate-introduction-anti-semitism-awareness-act?redirect=news/aclu-statement-senate-introduction-anti-semitism-awareness-act; Will Creeley, *State Department's Anti-Semitism Definition Would Likely Violate First Amendment on Public Campuses*, FOUND. FOR INDIVIDUAL RTS. IN EDUC. (May 22, 2015), https://www.thefire.org/state-departments-anti-semitism-definition-would-likely-violate-first-amendment-on-public-campuses/.

[93] Erwin Chemerinsky & Howard Gillman, *A Bill to Police Campus Speech*, WALL ST. J. (Dec. 15, 2016, 6:31 PM), https://www.wsj.com/articles/a-bill-to-police-campus-speech-1481846338.

[94] Thankfully, even some progressive groups have come to recognize this distinction. *See, e.g.*, Jordan Devon & Karen Mock, *Why We Support the IHRA Definition of Antisemitism…Cautiously*, CANADIAN JEWISH REC., (Nov. 5, 2020), https://canadianjewishrecord.ca/2020/11/05/why-we-support-the-ihra-definition-of-antisemitism-cautiously/.

[95] *Is Hate Speech Legal?*, FOUND. FOR INDIVIDUAL RTS. IN EDUC. (Mar. 28, 2019), https://www.thefire.org/issues/hate-speech/.

[96] See Sara L. Zeigler, *Anti-Discrimination Laws*, THE FIRST AMEND. ENCYC. (2009), https://www.mtsu.edu/first-amendment/article/1207/anti-discrimination-laws (noting how lower courts have struck down university regulations deemed overbroad in their attempts to minimize offensive speech on campus or that prohibited "offensive" speech "in such a way that limited the ability of students or faculty to discuss the effects of biological sex differences or competing views on whether homosexuality could be 'cured' through psychological counseling").

[97] Discriminatory conduct, for example, can include physical, verbal, graphic, or written conduct if that behavior "is sufficiently severe, pervasive, or persistent so as to interfere with or limit a student's ability to participate in or benefit from the services, activities or opportunities offered by a school." According to the OCR, "[h]arassing conduct may take many forms, including verbal acts." Office of the Assistant Sec'y of Civil Rights, OFFICE OF CIVIL RIGHTS, U.S. DEP'T OF EDUC., *Dear Colleague Letter* (Oct. 26, 2010), https://www2.ed.gov/about/offices/list/ocr/letters/colleague-201010_pg2.html. Here is an easy example of how this works: if a student is told she cannot serve on a leadership board because she is Jewish, that includes a verbal act which will be

regulation.[98] To paraphrase the Jewish Supreme Court Justice Louis Brandeis,[99] the proper response to hate speech is more speech, counter-speech, so that bad ideas can be publicly confronted and constructively dealt with in broad daylight. There can be no counter speech, however, when one side is intimidated into silence. At its core, the main purpose of an anti-discrimination bill or policy that adopts a definition of antisemitism is to provide for equality in the free speech arena by removing illegal harassing conduct motivated by definitional antisemitism.[100] This is not about establishing Jewish exceptionalism, but rather about ensuring equality. This is not a major revision of anti-discrimination policy; this is a simple clarification of a term.

Well-established Supreme Court precedent requires behavior to be "objectively offensive" to fall under the category of discriminatory harassment,[101] a type of behavior that even Chemerinsky and Gillman admit can and should be regulated.[102] Behavior that is merely offensive to some would not be included.[103] To meet this 'objectively offensive'

---

treated as discriminatory conduct. The question really is not about the form the behavior takes but rather whether or not it "creates a pervasively hostile environment for vulnerable students." *Speech on Campus*, ACLU, https://www.aclu.org/other/speech-campus (last visited Aug, 16, 2020).

98 Brett A. Sokolow et al., *The Intersection of Free Speech and Harassment Rules*, 38 HUM. RTS. 19, 19–20 (2011).

99 Whitney v. California, 274 U.S. 357, 377 (1927) (Brandeis, J., concurring) ("If there be time to expose through discussion the falsehoods and fallacies, to avert the evil by the processes of education, the remedy to be applied is more speech, not enforced silence.").

100 *See* Harry G. Hutchison, *Campus Free Speech in the Mirror of Rising Anti-Semitism*, 52 ST. MARY'S L. J. 419, 452 (2021) (noting that "[s]peech rights are subordinate to the judgment that the ultimate liberty is not speech but the right to live in peace").

101 Davis *ex rel.* Lashonda D. v. Monroe Cnty. Bd. of Educ., 526 U.S. 629, 652 (1999).

102 Chemerinsky & Gillman, *supra* note 93.

103 In the context of an OCR investigation,

> A violation of Title VI may be found if a recipient has created or is responsible for a racially hostile environment i.e., harassing conduct (e.g., physical, verbal, graphic, or written) that is *sufficiently severe, pervasive or persistent* so as to interfere with or limit the ability of an individual to participate in or benefit from the services, activities or privileges provided by a recipient. A recipient has subjected an individual to different treatment on the basis of race if it has effectively caused, encouraged accepted, tolerated or failed to correct a racially hostile environment of which it has actual or constructive notice.

Letter from Kelli Douglas, Supervisory Attorney, U.S. Dep't of Educ., to Dr. Matthew Seebaum (Mar. 27, 2018) (emphasis added), https://www2.ed.gov/about/offices/list/ocr/docs/investigations/more/07171262-a.pdf. The standard is even easier for complainants to prove than it is in money damages cases and Title IX cases. To be considered harassment in the educational context, the behavior must be "so severe, pervasive, and objectively offensive, and that so undermines and detracts from the victims' educational experience, that the victim-students are effectively denied equal

standard, the definition used in the discriminatory antisemitism motivational analysis must be an objectively well-accepted one. To that end, it is once again clear that the IHRA's definition should be used. As noted above, the IHRA definition is used by the federal government, the thirty-one member countries of the International Holocaust Remembrance Alliance, almost all fifty countries (except Russia) that comprise the Organization for Security and Cooperation in Europe ("OSCE"), the European Commission, the European Parliament, and all EU Member states, as well as Serbia, Bahrain, and Albania. It has been endorsed by a growing number of world leaders (including UN Secretary-General António Guterres),[104] and adopted by a growing number of universities at home (including New York University)[105] and abroad (including Oxford University and Cambridge University).[106] It is utilized by a variety of intergovernmental agencies (including the European Commission against Racism and Intolerance)[107] and non-governmental agencies (including the Iraq-based Global Imams

access to an institution's resources and opportunities" *See Davis ex rel.*, 526 U.S. at 652; *see also* Saxe v. State Coll. Area Sch. Dist., 240 F.3d 200, 205–10 (3rd Cir. 2001) (detailing analogous standards for Title VI, which prohibits racial discrimination in education; Title VII, which prohibits workplace harassment; and Title IX, which prohibits sexual harassment in education).

104 Press Release, António Guterres, U.N. Secretary General, Anti-Semitism Rising Even in Countries with No Jews at All, Secretary-General Tells Event on Power of Education to Counter Racism, Discrimination, U.N. Press Release SG/SM/19252-RD/1022 (Sept. 26, 2018), https://www.un.org/press/en/2018/sgsm19252.doc.htm.

105 *See* Rachel Wolf, *NYU Adopts IHRA Definition of Antisemitism*, JERUSALEM POST (Oct. 3, 2020, 11:59 AM), https://www.jpost.com/diaspora/antisemitism/nyu-dept-of-education-settle-antisemitism-lawsuit-with-student-644315. Other universities where IHRA has been adopted (often by student government resolution) include the University of Minnesota, University of Georgia, Indiana University, Texas A&M, Capital University, Kent State University, Chapman University, Ryerson University (Canada), Wake Forest University, Texas A&M, St. Thomas University, Arizona State University, Buenos Aires University, Foothill College, Pace University, City College of New York, St. Lawrence University, University of Manitoba, Florida State University, California State University Northridge, and the Georgia Institute of Technology.

106 *Antisemitism: IHRA Definition of Antisemitism*, UNIV. OF OXFORD: EQUALITY & DIVERSITY UNIT, https://edu.admin.ox.ac.uk/antisemitism (last visited Jan. 17, 2020). More than one in five British Universities already adopted the IHRA definition. *See* Aaron Bandler, *1 in 5 British Universities Have Adopted IHRA Definition of Anti-Semitism, Survey Says*, JEWISH J. (Sept. 30, 2020), https://jewishjournal.com/news/worldwide/322348/1-in-5-british-universities-have-adopted-ihra-definition-of-anti-semitism-survey-says/; *see also Three More UK Universities Adopt IHRA Definition of Antisemitism*, EUR. JEWISH CONG. (Nov. 25, 2020), https://eurojewcong.org/news/communities-news/united-kingdom/three-more-uk-universities-adopt-ihra-definition-of-antisemitism/.

107 *ECRI's Opinion on the IHRA Working Definition of Antisemitism*, EUR. COMM'N AGAINST RACISM & INTOLERANCE (Dec. 2, 2020), https://rm.coe.int/opinion-ecri-on-ihra-wd-on-antisemitism-2755-7610-7522-1/1680a091dd.

Council).[108] Perhaps most importantly, hundreds of major Jewish organizations across the world,[109] and across the political and religious spectrums, representing people of all ages and backgrounds that are affected by antisemitism, including several major student organizations,[110] banded together to adopt the IHRA definition and urge others to adopt it as well,[111] because they all agree that it best reflects their shared lived experience and the realities of how antisemitism manifests itself today. This conduct-based, consensus-driven international definition of what constitutes problematic and offensive antisemitism is the only internationally recognized definition of antisemitism that there is, or ever has been.

The IHRA definition is also the definition against which educational institutions are already evaluated by the federal government when it investigates claims of discriminatory conduct—so schools do not lose anything by officially embracing it.[112] And it is the definition that schools are affirmatively required to *proactively* consider when

---

[108] *GIC Adopts IHRA Definition of Antisemitism*, GLOBAL IMAMS COUNCIL: NEWS (Oct. 30, 2020), https://imams.org/news/gic-adopts-ihra-definition-of-antisemitism/.

[109] *See, e.g.*, *Jewish Students Are Protected by the IHRA Definition of Antisemitism*, GUARDIAN (Jan. 22, 2021, 12:28 PM), https://www.theguardian.com/news/2021/jan/22/jewish-students-are-protected-by-the-ihra-definition-of-antisemitism.

[110] Including, in America, Alpha Epsilon Pi; Ameinu; American Friends of Likud; America-Israel Friendship League; American Israel Public Affairs Committee; American Jewish Committee; American Jewish Congress; American Jewish Joint Distribution Committee; American Sephardi Federation; American Zionist Movement; AMIT; Anti-Defamation League; ARZA; B'nai B'rith International; Bnai Zion; CAMERA; Central Conference of American Rabbis; Emunah of America; Friends of the Israel Defense Forces; Greater Miami Jewish Federation; Hadassah, Women's Zionist Organization of America; HIAS; Hillel International; Israel Bonds/Development Corporation for Israel; JCC Association of North America; Jewish Council for Public Affairs; Jewish Federations of North America; Jewish Institute for National Security of America; Jewish Labor Committee; Jewish National Fund; Jewish United Fund of Metropolitan Chicago; Jewish Women International; Mercaz USA, Zionist Organization of the Conservative Movement; NA'AMAT USA; NCSEJ: National Coalition Supporting Eurasian Jewry; National Council of Jewish Women; National Council of Young Israel; ORT America, Inc.; Rabbinical Assembly; Rabbinical Council of America; Religious Zionists of America; UJA-Federation of New York; Union for Reform Judaism; Union of Orthodox Jewish Congregations of America; United Synagogue of Conservative Judaism; WIZO; Women's League for Conservative Judaism; Women of Reform Judaism; World ORT USA; World Zionist Executive USA; and the Zionist Organization of America.

[111] Aaron Bandler, *More Than 120 Jewish and Pro-Israel Organizations Call on Facebook to Adopt IHRA Definition of Anti-Semitism*, JEWISH J. (Aug. 10, 2020), https://jewishjournal.com/featured/320140/more-than-120-jewish-and-pro-israel-organizations-call-on-facebook-to-adopt-ihra-definition-of-anti-semitism/.

[112] See L. Rachlem Lerman & Janilyn Brouwer Daub, *What Do Colleges and Universities Need to Know About the Executive Order and Title VI?*, NAT'L L. REV. (Jan. 3, 2020), https://www.natlawreview.com/article/what-do-colleges-and-universities-need-to-know-about-executive-order-and-title-vi.

formulating policies to create a safe environment on campus.[113] Therefore, universities should make use of this definition to better protect students from discriminatory conduct *before* there are any complaints. Likewise, states should use this definition when enacting or clarifying anti-discrimination statutes to protect their citizens from discriminatory harassment.

There is yet another reason for adopting the IHRA definition of antisemitism, namely for its considerable importance as an educational tool; that at least should be entirely uncontroversial.[114] When the Florida legislature passed an antisemitism bill in 2019, the signing statements made clear why the legislators felt it was important. Governor Ron DeSantis proclaimed that he was "proud to sign this bill to make clear through a bipartisan effort that anti-Semitism has no place in our state and our educational institutions will not tolerate discrimination against the Jewish people."[115] Representative Randy Fine, who was instrumental in the bill's passage, also noted that "[b]y requiring that Florida's public education systems treat anti-Semitism the same way as they treat racism, we send an unambiguous message that Jewish children will be protected from those who would discriminate against or maliciously target them."[116] Laws like this do two things: first, they remove any ambiguity as to the State's definition of problematic discrimination, and put everyone on notice by demarcating the limits of acceptable behavior.[117] Second, laws also serve a channeling function by reinforcing social norms.[118] Antisemitism is wrong (and antisemitic discrimination is illegal) whether or not the legislature takes the time to restate that clearly, and

---

113 "As a condition of receiving federal financial assistance, a school corporation gives the DOE 'an assurance that the program will be conducted . . . in compliance with all requirements imposed by or pursuant to this part.'" This imposes an affirmative obligation to provide an equal opportunity. Ivan E. Bodensteiner, *Peer Harassment—Interference with an Equal Educational Opportunity in Elementary and Secondary Schools*, 79 NEB. L. REV. 1, 24 (2000) (quoting 34 C.F.R. § 100.4(a) (1999)).

114 Ira Forman, *Combatting Antisemitism: Why the World Needs to Adopt the IHRA Definition*, JERUSALEM POST (Oct. 10, 2020), https://www.jpost.com/opinion/combatting-antisemitism-why-the-world-needs-to-adopt-the-ihra-definition-645275.

115 Staff, *Governor Ron DeSantis Signs Anti-Semitism Protections Bill CS/CS/HB 741*, RON DESANTIS 46TH GOVERNOR OF FLA. (May 31, 2019), https://www.flgov.com/2019/05/31/governor-ron-desantis-signs-anti-semitism-protections-bill-cs-cs-hb-741/.

116 *Id.*

117 This Article does not take any position on the specific language choices in the Florida State bill, nor on any other state bills or school policies that are not derived from the model bill and model policy contained herein.

118 Carl E. Schneider, *The Channeling Function in Family Law*, 20 HOFSTRA L. REV. 495, 506 (1991).

with an explicit definition. But when they *do* take the time to make the point, people notice and reflect.

Like states, universities can and should use the IHRA definition outside of the disciplinary context to better understand antisemitism in all its current manifestations, and to teach the university community how to recognize antisemitism in its many different forms.[119] As will be discussed in the next section, universities have an affirmative obligation under federal law to maintain a discrimination-free environment and must take prompt and effective steps to ensure that a targeted community is not deprived of educational opportunities. That process may involve training programs for staff, faculty, and students; forums for antisemitism victims to share their experiences; or even just the adoption of a barometer for when the university will use its own speech to call out and label antisemitic rhetoric without censoring it—and in doing so explain to the university community how and why such rhetoric runs counter to the university's values of mutual respect and inclusion. In all of these instances, the IHRA definition will be helpful. Using the definition in this way does not ban or remove hate speech—it just acknowledges its existence, no different than calling racist speech racist or sexist speech sexist. Universities can and should embrace the IHRA definition for educational (and ethical) reasons, but again, that part is easy. The real crux of the problem, and therefore the crux of this Article, is what happens when things move beyond rhetoric to discriminatory conduct.

III. TITLE VI AND THE EXECUTIVE ORDER ON COMBATING ANTISEMITISM

While this Article proposes two somewhat interrelated actions for officials to take, namely (a) the passing of state-level legislation and (b) the adoption of university policies that define antisemitism, one of those initiatives has already been partly effected in practice because all

---

119 See, for example, the recent statement of FSU President John Thrasher embracing IHRA for its educational importance:

> As a minority group, the Jewish people have faced bias and discrimination and have been marginalized for centuries. It is one of the oldest forms of bigotry and is as intolerable as all forms of hate. The United States, the State of Florida, and Florida State University recognize the International Holocaust Remembrance Alliance (IHRA) working definition of Antisemitism and its contemporary examples. I encourage everyone to educate themselves on the IHRA definition and examples of Antisemitism, as I have done myself.

A Message from President John Thrasher: An Update on Antisemitism and Religious Discrimination, FLA. ST. UNIV. (Aug. 12, 2020), https://news.fsu.edu/news/university-news/2020/08/12/a-message-from-president-john-thrasher-an-update-on-antisemitism-and-religious-discrimination/.

schools that accept federal funds (which is almost all schools) are *already* required to consider the IHRA definition when assessing the motivation behind discriminatory conduct.

In the United States, Title VI of the federal Civil Rights Act of 1964[120] requires recipients of federal funding to ensure their programs and activities are free from harassment, intimidation, and discrimination on the basis of race, color, and national origin. Notably, the Act does not give the Department of Education's Office for Civil Rights ("OCR") jurisdiction to investigate religious bias, and so until 2004, OCR typically refused to investigate antisemitism complaints on the ground that Jews are a religious group, and not a race or national origin. In a September 13, 2004, Dear Colleague letter,[121] then Deputy Assistant Secretary of Education for enforcement, Kenneth L. Marcus, issued a series of policy statements announcing that OCR would henceforth investigate antisemitism complaints to the extent that they implicate ethnic or ancestral bias. The logic behind the clarification is simple: much of the hatred embodied in antisemitism (and the same is true for Islamophobia) has nothing to do with specific religious practices, and everything to do with ethnicity or ancestral bias.[122] As the OCR policy directive explained, "[g]roups that face discrimination on the basis of shared ethnic characteristics may not be denied the protection of our civil rights laws on the ground that they also share a common faith."[123] This reasoning has been confirmed in court, both in regard to Title VI cases[124] and in the Title VII context as well.[125] While the

120 *Civil Rights Requirements- A. Title VI of the Civil Rights Act of 1964, 42 U.S.C. 2000d et seq. ("Title VI")*, U.S. DEP'T OF HEALTH & HUM. RES., https://www.hhs.gov/civil-rights/for-individuals/special-topics/needy-families/civil-rights-requirements/index.html (last updated July 26, 2013).

121 Kenneth L. Marcus, *Dear Colleague Letter: Title VI and Title IX Religious Discrimination in Schools and Colleges*, U.S. DEP'T OF EDUC.: OFFICE FOR CIVIL RIGHTS (Sept. 13, 2004), https://www2.ed.gov/about/offices/list/ocr/religious-rights2004.html.

122 People don't often hate Jews because, for instance, they wear phylacteries during morning prayer or light Shabbat candles on Friday evenings. They do, however, even today, sometimes hate them for their 'race,' i.e., their ethnicity or national origin. For a recent example of this phenomenon, see Aaron Bandler, *Wilshire Boulevard Temple Vandalized With "I Hate Your Race" Graffiti*, JEWISH J. (Jan. 18, 2021), https://jewishjournal.com/news/327594/wilshire-boulevard-temple-vandalized-with-i-hate-your-race-graffiti/.

123 Marcus, *supra* note 121.

124 T.E. v. Pine Bush Cent. Sch. Dist., 58 F. Supp. 3d 332, 354 (S.D.N.Y. 2014).

125 In the words of Judge Mark Hornsby:

> America is no stranger to anti-Semitism, which is often rooted in prejudice against a person based on his heritage/ethnicity without regard to the person's particular religious beliefs .... Jewish citizens have been excluded from certain clubs or neighborhoods, and they have been denied

Supreme Court has not yet weighed in on the issue, the Court *has* twice held that other statutes similarly intended to protect identifiable classes of persons subject to intentional discrimination "because of their ancestry or ethnic characteristics" included Jewish people—whether or not they would be classified as a race in terms of modern scientific theory.[126] On October 26, 2010, the Obama Justice Department released an opinion letter confirming the legal correctness of the 2004 Policy.[127]

> jobs and other opportunities based on the fact that they were Jewish, with no particular concern as to a given individual's religious leanings.

Michael Kunzelman, *Judge: Jewish Heritage Can be Basis for Race Discrimination*, ASSOCIATED PRESS (July 16, 2018), https://apnews.com/article/82c5075c54ce4f179e6517f0e4f07824. Thus, they have been treated like a racial or ethnic group that Title VII was designed to protect from employment discrimination based on membership in that group. *See* Bonadona v. La. Coll., No. 18-CV-0224, 2018 WL 4353979, at *4 (W.D. La. July 13, 2018).

[126] See T.E. v. Pine Bush Cent. Sch. Dist., 58 F. Supp. 3d 332, 354–55 (S.D.N.Y. 2014) for a broad overview of federal courts that have included Jewish people in this identifiable class:

> Regardless of whether religious bias alone can form the basis of a Title VI claim or anti-Semitism can provide a basis for national origin discrimination, courts have regularly found that anti-Semitic harassment and discrimination amount to racial discrimination. *See Shaare Tefila Congregation v. Cobb*, 481 U.S. 615, 617-18, 107 S. Ct. 2019, 95 L. Ed. 2d 594 (1987) (explaining "that the Court of Appeals erred in holding that Jews cannot state a § 1982 claim against other white defendants"); *Sherman v. Town of Chester*, 752 F.3d 554, 567 (2d Cir. 2014) (holding that "Jews are considered a race for the purposes of §§ 1981 and 1982"); *United States v. Nelson*, 277 F.3d 164, 177 (2d Cir. 2002) (holding that "Jews count as a 'race' under certain civil rights statutes enacted pursuant to Congress's power under the Thirteenth Amendment"); *Bachman v. St. Monica's Congregation*, 902 F.2d 1259, 1261 (7th Cir. 1990) (finding that Jews constitute a race within the meaning of federal civil rights statutes); *Lenoble v. Best Temps, Inc.*, 352 F. Supp. 2d 237, 247 (D. Conn. 2005) (noting that "Jews are a distinct race for § 1981 purposes"); *Powell v. Independence Blue Cross, Inc.*, No. 95-CV-2509, 1997 U.S. Dist. LEXIS 3866, 1997 WL 137198, at *6 (E.D. Pa. Mar. 26, 1997) (finding that "[§] 1981 must be read to encompass discrimination against a plaintiff because of his Jewish ancestry or ethnicity"); *Singer v. Denver Sch. Dist. No. 1*, 959 F. Supp. 1325, 1331 (D. Colo. 1997) (noting that Jews are "a distinct racial group for the purposes of § 1981").

[127] Kenneth L. Marcus, *The New OCR Antisemitism Policy*, 2 J. FOR STUDY OF ANTISEMITISM 479, 480 (2011); *see also* Mark Joseph Stern, *No, the Trump Administration is Not Redefining Judaism as a Nationality*, SLATE (Dec. 11, 2019, 12:29 PM), https://slate.com/news-and-politics/2019/12/trump-antisemitism-executive-order-israel-judaism.html. Debunking claims that the policy somehow redefined Jews as a race or nationality:

> The Obama administration reaffirmed this position in a 2010 letter written by Assistant Attorney General Thomas E. Perez, who is now the chair of the Democratic National Committee. "We agree," Perez wrote, with Marcus' analysis. "Although Title VI does not prohibit discrimination on the basis of religion, discrimination against Jews, Muslims, Sikhs, and

It is important to remember that even under Title VI, not all forms of harassing behavior are illegal.[128] For example, typical school bullying behavior does not run afoul of Title VI, so long as the bullying is not based on race, color, or national origin.[129] It is only illegal, and therefore subject to regulation, if it is based on an illegal discriminatory intent.[130] The problem for OCR was that without a definition of antisemitism to use as a reference, the unanswered question of how to determine illegal antisemitic intent meant that Jewish students were always vulnerable to attack and then obfuscation.

That is why on December 11, 2019, the federal government did two things. First, they announced an executive order codifying the now longstanding OCR policy that, for the purposes of Title VI discrimination claims, Jewish students are protected against antisemitism. Second, the order also stated that when evaluating these claims, the Department should consider the IHRA's definition of antisemitism.[131] This type of executive order is not at all uncommon; for example, on his very first day in office, President Biden issued an executive order clarifying that gender identity and sexual orientation should be treated as sex-based classes protected under Title VII.[132] Like his predecessor, he was not creating new laws; he was just clarifying how the federal government understands and applies the definitions in existing anti-discrimination law.

> members of other religious groups violates Title VI when that discrimination is based on the group's actual or perceived shared ancestry or ethnic characteristics, rather than its members' religious practice." . . . On Wednesday, I asked Perez's former principal deputy, Sam Bagenstos—now a professor at University of Michigan Law School—whether he felt this reasoning equated any religious group of a nationality or race. "The key point we were making," he told me, "is that sometimes discrimination against Jews, Muslims, and others is based on a perception of shared race, ethnicity, or national origin, and in those cases it's appropriate to think of that discrimination as race or national origin discrimination as well as religious discrimination. It doesn't mean that the government is saying that the group is a racial or national group. The government is saying that the discrimination is based on the discriminator's perception of race or national origin . . . ."

Id.

128 *Race and National Origin Discrimination Frequently Asked Questions*, U.S. DEP'T OF EDUC.: OFFICE FOR CIVIL RIGHTS, https://www2.ed.gov/about/offices/list/ocr/frontpage/faq/race-origin.html.

129 *Id.*

130 U.S. DEP'T OF JUST. CIVIL RIGHTS DIV., *Section VI: Proving Discrimination—Intentional Discrimination*, *in* TITLE VI LEGAL MANUAL, https://www.justice.gov/crt/fcs/T6Manual6.

131 Exec. Order No. 13899, 84 Fed. Reg. 68,779 (Dec. 11, 2019), https://www.govinfo.gov/content/pkg/FR-2019-12-16/pdf/2019-27217.pdf.

132 Exec. Order No. 13988, 86 Fed. Reg. 7023 (Jan. 20, 2021), https://www.govinfo.gov/content/pkg/FR-2021-01-25/pdf/2021-01761.pdf.

Critics, however, claimed that by formally adopting the IHRA definition the order was somehow an attack on free speech.[133] Properly translated into legal terminology, they based their critiques on either First Amendment overbreadth doctrine concerns, vagueness concerns, or both.[134] A law or regulation is overbroad when it can prohibit protected as well as non-protected speech,[135] and a law is vague when people "of common intelligence must necessarily guess at its meaning,"[136] (i.e., when it does not give sufficiently clear notice to a reasonable person of what it demands or prohibits). These arguments, as applied to the Executive Order and similar policies, are wrong, for the following six reasons.[137]

First, the order simply did not restrict or prohibit speech. Every person remains perfectly free to say what they want, however abhorrent, about Jews and/or the Jewish state. As the Supreme Court in *Tinker v. Des Moines* explained, "[t]he vigilant protection of constitutional freedoms is nowhere more vital than in the community of American schools."[138] Hate speech is protected, obviously, but that does not mean that we cannot call it what it is: hateful.[139] If that speech should cross the line and reach the level of discriminatory harassment, with or without accompanying acts,[140] "then and only then is regulation

---

133 *See, e.g.*, David Jackson, *Trump Signs Executive Order on Anti-Semitism that Critics Say Attacks Free Speech*, USA TODAY (Dec. 11, 2019, 8:03 PM), https://www.usatoday.com/story/news/2019/12/11/trump-sign-anti-semitism-order-critics-say-stifles-free-speech/4396213002/.

134 *See, e.g.*, *Submission by the Foundation for Individual Rights in Education to the Special Rapporteur on the Promotion and Protection of the Right to Freedom of Opinion and Expression Regarding Academic Freedom on College Campuses*, FOUND. FOR INDIVIDUAL RTS. IN EDUC. (Apr. 28, 2020), https://www.ohchr.org/Documents/Issues/Opinion/Submissions/NGOs/Foundation_for_Individual_Rights_in_Education_FIRE.pdf.

135 Richard Parker, *Overbreadth*, FIRST AMEND. ENCYC., https://www.mtsu.edu/first-amendment/article/1005/overbreadth (last updated Sept. 2017).

136 Connally v. Gen. Constr. Co., 269 U.S. 385, 391 (1926).

137 *See* Mark Goldfeder, *Why We Should Applaud Trump's Executive Order on Anti-Semitism*, HILL (Dec. 16, 2019, 2:00 PM), https://thehill.com/opinion/civil-rights/474271-why-we-should-applaud-trumps-executive-order-on-anti-semitism [hereinafter Goldfeder, *Why We Should Applaud*].

138 Tinker v. Des Moines Indep. Cmty. Sch. Dist., 393 U.S. 503, 512 (1969) (quoting Keyishian v. Bd. of Regents, 385 U.S. 589, 603 (1967)).

139 Phil Ciciora, *How Should Universities Handle Controversial Speech?*, ILL. NEW BUREAU: CAMPUS NEWS (Aug. 30, 2017, 8:30 AM), https://news.illinois.edu/view/6367/549565.

140 Office of the Assistant Sec'y of Civil Rights, *Dear Colleague Letter*, U.S. DEP'T OF EDUC.: OFFICE FOR CIVIL RIGHTS (Oct. 26, 2010) https://www2.ed.gov/about/offices/list/ocr/letters/colleague-201010_pg2.html (emphasis added).

> Harassing conduct may take many forms, including verbal acts . . . when the conduct is sufficiently severe, pervasive, or persistent so as to interfere with or limit a student's ability to participate in or benefit from

appropriate. Speech codes are constitutionally problematic; regulating discriminatory *conduct* is not."[141] The order only addresses harassment, not speech, and harassing actions (or verbal acts that rise to the level of harassment) are already impermissible.[142]

Second, "for there to be a violation of free speech, the order would have to be about regulating private speech, not government speech."[143] All the Executive Order does (and, for that matter, all that similar school policies and state bills would do) is explain how the government defines antisemitism when it is deciding where to allocate its money. The Supreme Court, in *Walker v. Texas Division, Sons of Confederate Veterans, Inc.*, held that "[w]hen government speaks, it is not barred by the Free Speech Clause from determining the content of what it says."[144] Without this exemption, the Court explained, government "would not work."[145]

Third, for those who complain that the government was somehow taking sides by adopting a well-accepted definition of antisemitism, thereby raising the specter of viewpoint discrimination, the answer to that question is once again right there in *Walker*: "[w]e have . . . refused '[t]o hold that the Government unconstitutionally discriminates on the basis of viewpoint when it chooses to fund a program dedicated to advance certain permissible goals, because the program in advancing those goals necessarily discourages alternative goals.'"[146] The government is free to advance its own permissible goals, including opposition to antisemitic discrimination, as defined by a well-accepted standard, and doing so is not impermissible viewpoint discrimination.[147]

Fourth, the order does not chill speech because there is no threat that the government will ever even investigate, let alone bar, any permissible speech of any kind. The order directs those charged with enforcing Title VI to consider the IHRA definition *only* to help ascertain the motivation for discriminatory conduct, and *not,* as some would contend, as a substitute for either the applicable harassment standard

> the services, activities, or opportunities offered by a school. When such harassment is based on race, color, national origin, sex, or disability, it violates the civil rights laws that OCR enforces.

Id. (emphasis added).

141 Goldfeder, *Why We Should Applaud*, *supra* note 137 (emphasis added).

142 *Id.*

143 *Id.*

144 Walker v. Sons of Confederate Veterans, Inc., 135 S. Ct. 2239, 2245 (2015).

145 *Id.* at 2246.

146 *Id.* (quoting Rust v. Sullivan, 500 U.S. 173, 194 (1991)).

147 *See* Goldfeder, *Stop Defending Discrimination*, *supra* note 42, at 219.

(i.e., what counts as discriminatory conduct in the first place) or the applicable First Amendment speech analysis.

Fifth, for those who argue that it is hard to distinguish acts from speech, the order does not create any new gray areas of overly broad speech/act non-distinction. It simply uses the longstanding definition of harassing conduct in Title IX and Title VI cases, a definition that has been upheld numerous times in a variety of cases and contexts. The standard, and therefore the order, only affects conduct that is so "severe, pervasive, or persistent so as to interfere with or limit a student's ability to participate in or benefit from the services, activities, or opportunities offered by a school."[148] To the extent that speech is at all implicated, it is only for evidentiary purposes, i.e., to clarify what is considered discriminatory towards Jewish people where the law has declared discrimination unacceptable.

And finally, the Order does have a savings clause, which specifically limits the use of the IHRA definition to fall within constitutional parameters.[149]

To summarize, the Order is clearly not overbroad or vague. Regarding overbreadth, as the Supreme Court emphasized in *Broadrick v. Oklahoma*,[150] declaring a regulation overbroad is "manifestly[] strong medicine[,]" to be employed "sparingly and only as a last resort[,]" and not in situations in which "a limiting construction has been or could be placed on the challenged statute."[151] The Order (like all similar policies) is limited to assessing intent for discriminatory conduct, not speech, and is to be constructed in a limited fashion, consistent with constitutional law. As it relates to vagueness, as the Court explained in *Kolender v. Lawson*, "the void-for-vagueness doctrine requires . . . sufficient definiteness that ordinary people can understand what conduct is prohibited and in a manner that does not encourage arbitrary and discriminatory enforcement."[152] A policy using the IHRA definition to contextually assess the motivation behind potentially illegal discriminatory conduct before assuming it did or did not involve antisemitism provides such definiteness and clarity. It uses the well-

---

148 Office of the Assistant Sec'y of Civil Rights, *Dear Colleague*, U.S. DEP'T OF EDUC.: OFFICE FOR CIVIL RIGHTS, https://www2.ed.gov/about/offices/list/ocr/letters/colleague-201010_pg2.html (last visited Sept. 20, 2021).

149 Exec. Order No. 13899, 84 Fed. Reg. 68,779 (Dec. 11, 2019), https://www.govinfo.gov/content/pkg/FR-2019-12-16/pdf/2019-27217.pdf.

150 *See generally* Broadrick v. Oklahoma, 413 U.S. 601 (1973).

151 *Id.* at 613; *see also* Parker, *supra* note 135 (describing other cases in which the Court refused to invalidate statutes for overbreadth, and instead applied limiting constructions).

152 Kolender v. Lawson, 461 U. S. 352, 357 (1983).

accepted and constitutionally upheld definition of discriminatory conduct used in all similar circumstances to reiterate that discriminatory antisemitic conduct is unacceptable. And it ensures that the application of the law will *not* be applied arbitrarily, by providing an objective and clear definition of what antisemitism is, specifically for the purpose of *discouraging* the possibility of subjective enforcement.

Critics were also wrong that the passage of the Order would create a huge number of cases or spur overreaching on the part of people or organizations hoping to abuse the Order and actually suppress speech.[153] Instead, for the most part, universities have settled the few complaints that have been brought and agreed to adopt the IHRA definition pro-actively moving forward.[154]

IV. THE NEXT STEP FOR STATES AND UNIVERSITIES: PROACTIVELY ADOPTING THE IHRA DEFINITION

After the President's Executive Order, *all* universities that accept federal money (which in practice is almost all universities) are required to use the IHRA definition when evaluating discrimination claims that appear to be antisemitic.[155] The problem, though, is that most universities only become aware of the necessity of having a definition, and the reasons why the IHRA definition is the right one, after someone files a complaint against them for getting it horribly wrong.

Instead of waiting for an antisemitic incident followed by a complaint that forces them to defensively evaluate their current standards in light of the federal government's approach, all universities should immediately and proactively embrace the IHRA definition of antisemitism for use in evaluating motivation in discriminatory conduct claims. Again, universities should also be using the IHRA definition proactively as an educational tool, outside of the disciplinary context entirely, in their staff training, student orientation, anti-discrimination materials, and other contexts. And, again, because the Executive Order is already in place, making the policy change in the limited context of evaluating the motivation behind discriminatory conduct will cost universities nothing. But doing so *would* send a strong signal to their Jewish populations that their presence is valued, their experiences are

153 *See* Kenneth Stern, *I Drafted the Definition of Antisemitism. Rightwing Jews Are Weaponizing It*, GUARDIAN (Dec. 13, 2019 6:25 AM), https://www.theguardian.com/commentisfree/2019/dec/13/antisemitism-executive-order-trump-chilling-effect.

154 *See, e.g.*, 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-antisemitism-case-education-department.

155 *See supra* pp. 24–25.

real, and their voices are heard. It would show Jewish students that the university cares about them and is not waiting to be forced to make the change. Here is what such a model policy change might look like:

> The University will revise its non-discrimination and anti-harassment policies to include a statement that the University prohibits discrimination on the basis of shared ancestry and ethnic characteristics, including antisemitism (as defined in Section 2(1)(i) of the Executive Order on Combatting Antisemitism (Exec. Order No. 13899)). The policy will not affect or regulate speech; the definition will only be considered in the context of analyzing the motivation behind the discriminatory conduct in a discriminatory conduct claim. It is only to be used after a person has been credibly accused of engaging in discriminatory acts toward Jewish people—acts that are so severe, pervasive, or persistent that they interfere with or limit the ability of the victim to participate in or benefit from an educational service, activity, opportunity, or privilege. Then and only then will the University use this definition as contextual, rebuttable evidence of a discriminatory motive, to the extent that any examples might be useful as evidence of discriminatory intent, and with the additional caveat that whether a particular act constitutes discrimination prohibited by Title VI will require a detailed analysis of the specific allegations.

When it comes to passing state legislation on antisemitism, the arguments in favor are equally pressing. The primary sponsor of a draft antisemitism bill in Arizona,[156] Rep. Alma Hernandez, D-Tucson, explained that she sponsored it to fight back against the antisemitic tide that her community and the nation are seeing, and to send a message of support for the Jewish victims.[157] "We know that [antisemitism] is on the rise—not only in my community, which is a Jewish community. We feel this is extremely important because of everything we're seeing around the country and around the world."[158] Sen. Joe Gruters, R-Sarasota, who sponsored the Florida version, put it simply:

---

156 H.R. 2683, 54 Leg., 2d Reg. Sess. (Ariz. 2020).

157 Wissam Melhem, *Bill to Define Anti-Semitism Passes State House*, ARIZ. MIRROR (Mar. 9, 2020, 7:00 AM), https://www.azmirror.com/2020/03/09/bill-to-define-anti-semitism-passes-state-house/.

158 *Id.*

"[a]ntisemitism is on the rise, and we have the ability to do something about it."[159]

The purpose of a state antisemitism bill is simple: provide state officials with a definition of antisemitism to consider when reviewing, investigating, or determining whether there has been a violation of any law, or any policy prohibiting discriminatory acts or practices on the basis of race, religion, or national origin. Here is what a model bill might look like:

A bill to be entitled: An act relating to Antisemitism in the State of XXX

> SO AS TO PROVIDE STATE OFFICIALS WITH A DEFINITION OF ANTISEMITISM TO CONSIDER WHEN REVIEWING, INVESTIGATING, OR DETERMINING WHETHER THERE HAS BEEN A VIOLATION OF ANY LAW OR ANY POLICY PROHIBITING DISCRIMINATORY ACTS OR PRACTICES ON THE BASES OF RACE, RELIGION, OR NATIONAL ORIGIN, AND TO PROVIDE THAT NOTHING IN THIS ACT MAY BE CONSTRUED TO DIMINISH OR INFRINGE UPON ANY RIGHTS AFFORDED BY THE FIRST AMENDMENT TO THE UNITED STATES CONSTITUTION OR ARTICLE XXX SECTION XXX OF THE CONSTITUTION OF THIS STATE.
>
> Findings:
>
> 1) Antisemitism, including harassment on the basis of actual or perceived Jewish origin, ancestry, ethnicity, identity, affiliation, or faith, remains a persistent, pervasive, and disturbing problem in contemporary American society;
>
> 2) Jewish people continue to be a targeted minority in the United States. Data shows, for instance, that Jews are consistently the most likely of all religious groups to be victimized by incidents of hate, and that such incidents are increasing at an alarming rate;
>
> 3) State officials and institutions have a responsibility to protect citizens from acts of hate and bigotry motivated by

[159] Samantha J. Gross, *Two Days After Deadly Synagogue Shooting, Florida Senate Passes Anti-Semitism Bill*, MIA. HERALD (Apr. 29, 2019), https://www.miamiherald.com/news/politics-government/state-politics/article229800129.html.

discriminatory animus, including antisemitism, and must be given the tools to do so;

4) Valid monitoring, informed analysis and investigation, and effective policy-making all require uniform definitions;

5) While there can be no exhaustive definition of antisemitism, as it can take many forms, the International Holocaust Remembrance Alliance ("IHRA") Working Definition has been an essential definitional tool used to determine contemporary manifestations of antisemitism, and includes useful examples of discriminatory anti-Israel acts that cross the line into antisemitism.

6) The IHRA definition is used by various agencies of the federal government and the thirty-one governments that are members of IHRA; recommended for use by the European Council and the European Parliament, endorsed by the UN Secretary General and the Secretary General of the OAS, included in policy guides prepared by the Organization for Security and Cooperation in Europe, and formally adopted by a growing number of European and Middle Eastern nations.

7) Use of this definition of antisemitism, although it is not to be taken as an exhaustive definition, will increase the awareness and understanding of the parameters of contemporary anti-Jewish discrimination in certain circumscribed areas.

Be it enacted by the General Assembly of the State of XXX:

A) For purposes of this Act, the term "definition of antisemitism" refers to the International Holocaust Remembrance Alliance Working Definition, as adopted on May 26, 2016, including the "contemporary examples of antisemitism," while noting that "criticism of Israel similar to that leveled against any other country is not antisemitic."

B) Nothing in this subsection shall be construed to diminish or infringe upon any right protected under the First Amendment to the United States Constitution, or the State Constitution.

> Nothing in this subsection shall be construed to conflict with local, federal or state discrimination laws.
>
> C) In reviewing, investigating, or deciding whether there has been a violation of any policy, law, or regulation prohibiting discriminatory acts, the State shall take into consideration the definition of antisemitism set forth in paragraph (A) above for purposes of determining whether the alleged act was motivated by discriminatory antisemitic intent.
>
> D) For the purposes of applying paragraph C, a discriminatory act includes any harassing conduct that is so severe, pervasive or persistent so as to interfere with or limit the ability of the victim to participate in or benefit from an educational service, activity, opportunity or privilege.

To alleviate any remaining concerns about protected speech, it is critically important to be abundantly clear about what the model bill and model policy do not do. They do not create any new anti-discrimination laws or regulations; they only clarify what constitutes discriminatory conduct under existing laws. For simplicity's sake, because the bill reflects a statewide policy clarification, and because the arguments for each are identical, for the purposes of the rest of this Article, all reference to the model policy in a university setting also includes the comparable provisions of the model state bill, as applicable.

V. THE MODEL POLICY DOES NOT RESTRICT OR SUPPRESS SPEECH

The following section responds to some of the most common questions about policies adopting the IHRA definition. It is important to respond thoroughly because even proponents of the IHRA definition have been openly concerned about the definition being used in the wrong way (i.e., to limit speech protected under the First Amendment). The answer, of course, is not to throw out the definition, but rather to make sure that it is only used correctly (i.e., in a way that does not restrict speech). The model policy does just that, and nothing else.

A. *What the Policy Does Not Do*

1. The Model Policy Does Not Restrict or Prohibit Speech

While it is true that the IHRA definition can and should be used in a variety of circumstances, including educational and reporting situations, when it comes to the *disciplinary* context it must be used

narrowly to avoid any First Amendment issues. That is why the recommended policy deals only with behavior, and the First Amendment protects neither criminal behavior nor discriminatory acts.[160] People are free to think, feel, and say whatever they want, however abhorrent, about Jews and about the Jewish state. All the policy update does is use a standard and widely accepted definition of antisemitism to clearly delineate what would reasonably be defined as discriminatory towards Jewish people in a praxeological sense. It does not create any new protected class or enhance any punishment, nor does it regulate or restrict academic freedom. Much antisemitic hate speech is constitutionally protected, just like racist and sexist speech, and the policy will not change that. Rather, it simply ensures that state and/or school authorities consider the federal government's well-accepted definition of antisemitism when considering and labeling *actions* as having been motivated by discriminatory intent.

2. The Model Policy Does Not Create Any Gray Area of Speech/Act Non-Distinction

The policy avoids this potentially significant trap by defining the kind of discriminatory conduct that is problematic in this context using the long-standing definition of harassment used by the Department of Education in its Title VI cases and guidance.[161] The IHRA definition is used only to help ascertain motivation for the conduct, and not as a substitute for either the applicable harassment standard or the applicable First Amendment speech analysis.

Lest there be any confusion, in theory even "just" speech *could* cross over into illegal harassment: per the OCR's Title VI Guidance, speech crosses over from protected territory into harassing verbal conduct when it is "sufficiently severe, pervasive or persistent so as to interfere with or limit the ability of an individual to participate in or benefit from the services, activities or privileges provided by a recipient."[162] To take one example that happened quite a few times in

[160] Lata Nott, *Is Your Speech Protected by the First Amendment?,* FREEDOM F. INST., https://www.freedomforuminstitute.org/first-amendment-center/primers/basics/ (last visited Aug. 16, 2020).

[161] *See Harassment,* U.S. EQUAL EMP. OPPORTUNITY COMM'N, https://www.eeoc.gov/harassment (last visited Aug. 16, 2020).

[162] *Racial Incidents and Harassment Against Students at Educational Institutions; Investigative Guidance*, 59 Fed. Reg. No. 47 (Mar. 10, 1994), https://www2.ed.gov/about/offices/list/ocr/docs/race394.html.

recent memory:[163] if a Jewish student is told that she cannot join a club or hold a leadership position because she is Jewish, that is not the kind of speech that the First Amendment shields. That would constitute a "verbal act" which, like all other discriminatory acts, is subject to regulation.[164] The well-established policies and practices of the Department of Education bear this out: "[t]he Civil Rights Act and Education Amendments Act mandate compliance obligations pursuant to the Department of Education's financial assistance rules,"[165] and as the Department of Education's Office For Civil Rights has made clear,[166] their "regulations and policies do not require or prescribe speech, conduct or harassment codes that impair the exercise of rights protected under the First Amendment."[167]

How then are we to make sure that the adoption of a harassment policy does not infringe on core protected speech? By following the law and being careful not to overreach. As the Third Circuit ruled in *DeJohn v. Temple University*, "there is no 'harassment exception' to the First Amendment's Free Speech Clause; that is . . . '[w]here pure expression is involved,' anti-discrimination law 'steers into the territory of the First Amendment.'"[168]

No one is disputing that.

The Court, however, continued by explaining that to be constitutionally upheld, all that is required is a bright line in the policy itself differentiating between speech that is pure expression and verbal acts that constitute objectively harassing conduct. The placement of that line comes from Supreme Court jurisprudence in the Title IX arena: "*[a]bsent any requirement akin to a showing of severity or pervasiveness—that is, a requirement that the conduct objectively and subjectively creates a hostile environment or substantially interferes with an individual's work—the policy provides no shelter for core protected speech.*"[169] Lower courts extended the Supreme Court's reasoning in

---

163 *See* Richard L. Cravatts, *Targeting Jewish Student Leaders for Banishment and Shaming*, TIMES ISRAEL (Jan. 16, 2021, 1:10 AM), https://blogs.timesofisrael.com/targeting-jewish-student-leaders-for-banishment-and-shaming/.

164 This too is not uncommon or idiosyncratic in First Amendment jurisprudence. *See, e.g.*, Gompers v. Bucks Stove & Range Co., 221 U.S. 418, 439 (1911).

165 Hutchison, *supra* note 100, at 475.

166 Gerald A. Reynolds, *First Amendment: Dear Colleague*, U.S. DEP'T OF EDUC.: OFFICE FOR CIVIL RIGHTS, https://www2.ed.gov/about/offices/list/ocr/firstamend.html (last visited Aug. 16, 2020).

167 *Id.*

168 DeJohn v. Temple Univ., 537 F.3d 301, 316 (3d Cir. 2008) (internal citations omitted).

169 *Id.* at 317–18 (internal citations omitted) (emphasis added) (quoting *Saxe,* 240 F.3d at 210–11 (referencing Davis Next Friend LaShonda D. v. Monroe County Bd. of

Davis v. Monroe County to cases brought under Title VI and Title VII of the Civil Rights Act of 1964,[170] which prohibits federally-funded programs from discriminating on the basis of race, color, and national origin.[171] When conduct (including this type of verbal conduct) rises to the level of discriminatory harassment, with or without accompanying acts, then and only then is regulation appropriate. Even free speech organizations recognize that "manifestly malicious and intimidating speech can impair equal access to the full benefits of a college education,"[172] and that "[f]or . . . harassment, and any other conduct that violates the law, an aggressive disciplinary response is warranted."[173]

Arguments that a carefully crafted policy could still lead to a slippery slope ending in a speech code are simply wrong, and more importantly they are legally invalid.[174] Speech codes are constitutionally problematic, while regulating discriminatory conduct is not. To break a slippery slope argument, provide a clear stopping point—an obvious bright line. The bright line here, we can all agree, is the First Amendment and the right to free speech. That is why the model policy includes the actual bright line articulated by the Courts for when such a policy does *not* violate the First Amendment.

The notion that state officials or university administrators will be somehow unable to differentiate between *acts* and *speech* is not an

Educ., 526 U.S. 629, 652 (1999))) ("[I]n the context of student-on-student harassment, damages are available only where the behavior is so severe, pervasive, and objectively offensive that it denies its victims the equal access to education that Title IX is designed to protect.").

170 *See* Harris v. Forklift Sys., Inc., 510 U.S. 17, 21 (1993) (quoting Meritor Sav. Bank, FSB v. Vison, 477 U.S. 57, 65–67 (1986)) ("When the workplace is permeated with 'discriminatory intimidation, ridicule, and insult' that is 'sufficiently severe or pervasive to alter the conditions of the victim's employment and create an abusive working environment,' Title VII is violated."). Note that case law in Title VII and OCR guidance in Title VI use the disjunctive standard to better protect students, while Title IX and private damages claims in Title VI use the more severe conjunctive standard.

171 *See, e.g.*, Bryant v. Indep. Sch. Dist. No. 1-38., 334 F.3d 928, 934 (10th Cir. 2003).

172 *Hateful Expression*, PEN AM.: CAMPUS FREE SPEECH GUIDE, https://campusfreespeechguide.pen.org/issue/hateful-expression/ (last visited Oct. 13, 2021).

173 *How to Respond to Expressions of Hate on Campus*, PEN AM.: CAMPUS FREE SPEECH GUIDE, https://campusfreespeechguide.pen.org/role/administrator/#hateful-expression (last visited Aug. 26, 2021).

174 Any proponents of the notion that regulating harassing speech will lead to the development of more speech codes need only to peruse the current jurisprudence on hostile work environment claims and the multiplicity of courts that refuse to enforce rules against most of what could colloquially be considered "harassing" conduct out of fear of creating "general civility code." *See* Faragher v. City of Boca Raton, 524 U.S. 775, 788 (1998); *see also* Nadine Strossen, *Regulating Workplace Sexual Harassment and Upholding the First Amendment—Avoiding A Collision*, 37 VILL. L. REV. 757, 757 (1992); Eugene Volokh, *Freedom of Speech and Workplace Harassment*, 39 UCLA L. REV. 1791, 1793 (1992).

argument for why there should not be an accepted definition of antisemitism. If, for example, a school cannot distinguish between *acts* and *speech*, then it presumably cannot distinguish between racist speech (protected) and racial harassment (not protected), between sexist speech (protected) and sexual harassment (not protected), or any other form of discrimination. If the state government or the university administration feel that they *can* distinguish between speech and acts in other contexts, but not in the context of antisemitic speech, then that is in itself profoundly and problematically antisemitic.

3. Finally, Such a Policy Will Not Impermissibly Chill Speech

Based on the above, it should be clear that the model policy does not in any way restrict protected speech. That being said, the next easy argument for critics to make is that the use of a definition in this very limited context will somehow "chill" protected speech in a different context. That argument is simply too broad; under that line of thought, state officials or university administrators would not be allowed to publicly denounce racism out of fear of 'chilling' racist speech. The more technical version of the argument, however, *is* worth addressing. As the Supreme Court made clear, in the First Amendment context, courts must "look through forms to the substance" of government conduct.[175] And as the Ninth Circuit has aptly described it, the fear of chilling speech is that "[i]nformal measures, such as 'the threat of invoking legal sanctions and other means of coercion, persuasion, and intimidation,' can violate the First Amendment also. . . . [G]overnment officials violate this provision when their acts 'would chill or silence a person of ordinary firmness from future First Amendment activities.'"[176]

In general, courts applied that standard to mean that lengthy investigations into permissible conduct could chill speech.[177] Here, however, there is no threat whatsoever that the government will ever investigate, let alone bar, permissible speech of any kind. The bill only addresses harassment, and speech that rises to the level of harassment is already impermissible. It is worth emphasizing again that the question of whether any specific speech or conduct is harassing is, and should be, a *separate inquiry* from the antisemitism inquiry, and that the definition only comes into play *after* it has been determined to be

[175] White v. Lee, 227 F.3d 1214, 1228 (9th Cir. 2000) (citing Bantam Books, Inc. v. Sullivan, 372 U.S. 58, 67 (1963)).

[176] *Id.*

[177] *Id.*; *see also* Savage v. Gee, 665 F. 3d 732 (6th Cir. 2012); Levin v. Harleston, 966 F. 2d 85 (2d Cir. 1992); Rakovich v. Wade, 850 F.2d 1180 (7th Cir. 1988), *abrogated by* Spiegla v. Hull, 371 F.3d 928 (7th Cir. 2004); Am. Civ. Liberties Union v. City of Pittsburgh, 586 F. Supp. 417, 427 (W.D. Pa. 1984).

harassing, and therefore not protected by the First Amendment. The definition does not affect which behavior is harassing. The definition is important because while some forms of harassment (i.e., typical bullying behavior) do not run afoul of Title VI, if the discriminatory behavior is motivated by the victim's race or national origin, then it *is* illegal and can be regulated.

The idea that a permissible regulation of impermissible discriminatory conduct would be unacceptable because it could theoretically lead to regulation of permissible speech turns law enforcement on its head by treating actual perpetrators as potential future victims. This is not a valid legal argument. As the Supreme Court in *Laird v. Tatum* held:

> In recent years this Court has found in a number of cases that constitutional violations may arise from the deterrent, or "chilling," effect of governmental regulations that fall short of a direct prohibition against the exercise of First Amendment rights. In none of these cases, however, did the chilling effect arise merely from the individual's knowledge that a governmental agency was engaged in certain activities or from the individual's concomitant fear that, armed with the fruits of those activities, the agency might in the future take some *other* and additional action detrimental to that individual. Rather, in each of these cases, the challenged exercise of governmental power was regulatory, proscriptive, or compulsory in nature, and the complainant was either presently or prospectively subject to the regulations, proscriptions, or compulsions that he was challenging.[178]

The court went on to note that "[a]llegations of a subjective 'chill' are not an adequate substitute for a claim of specific present objective harm or a threat of specific future harm," even if the apprehensions arise from the fear that the government may in the future "misuse the information in some way that would cause direct harm to respondents."[179] Courts have also held that in terms of the chilling of First Amendment speech, "self-censorship alone is insufficient to show injury."[180]

In *Abbott v. Pastides*, the Court held that even if the university were to launch an inquiry into student complaints *involving* speech, that would not be sufficient to argue for a chilling effect.[181] The same case

---

178 Laird v. Tatum, 408 U.S. 1, 11 (1972) (internal citations omitted).

179 *Id.* at 13–14.

180 Lopez v. Candaele, 630 F.3d 775, 792 (9th Cir. 2010).

181 Abbott v. Pastides, 900 F.3d 160, 163 (4th Cir. 2018). Even if there *were* a chilling effect, which there is not, as Hutchison notes, "[t]he Supreme Court has established that

also established that procedural meetings as a result of a complaint do not qualify as chilling speech.[182] In *Morrison v. Board of Education*, the Sixth Circuit ruled en banc in favor of the Board when a student claimed that the district policy prohibiting stigmatizing or insulting comments regarding another student's sexual orientation chilled his religious requirement to tell others that their conduct violated his understanding of Christian morality.[183] Finally, in *Lopez v. Candaele*, the Court held that advising a student via letter that other students perceived their language as "hateful propaganda" did not constitute a threat of enforcement under the college's sexual harassment policy and was not a sufficient injury-in-fact.[184] But again, the case for IHRA is even easier because we are not dealing with censuring speech, but rather with assessing motive behind impermissible conduct.

In general, no one who calls sexist speech sexist, racist speech racist, or homophobic speech homophobic, is accused of chilling speech.[185] Indeed, especially in the university context,[186] officials often receive praise for condemning this type of speech without crossing the line into censorship.[187] As the American Civil Liberties Union ("ACLU") recognized, it is fully consistent with the First Amendment that "campus administrators should … speak out loudly and clearly against expressions of racist, sexist, homophobic" and other bias, and "react promptly and firmly to counter acts of discriminatory harassment

'a university's mission is education,' depriving the First Amendment of power to preclude a university from imposing 'reasonable regulations compatible with that mission upon the use of its campus and facilities.'" Hutchinson, *supra* note 100, at 488 (citing Widmar v. Vincent, 454 U.S. 263, 267 n.5 (1981)). Hence, a university has the "right to exclude . . . First Amendment activities that . . . substantially interfere with the opportunity of other students to obtain an education." Widmar v. Vincent, 454 U.S. at 277 (citing Healy v. James 408 U.S. 169, 188–89 (1972)).

182 *See* Abbott v. Pastides, 263 F. Supp. 3d 565, 578 (D.S.C. 2017), *aff'd*, 900 F.3d 160 (4th Cir. 2018), *cert. denied*, 139 S. Ct. 1291 (2019).

183 Morrison v. Bd. of Educ., 521 F.3d 602, 605 (6th Cir. 2008).

184 *See Lopez*, 630 F.3d at 783; *see also id.* at 792 ("Under these circumstances, we must conclude that Lopez fails to meet the standard required of a pre-enforcement plaintiff to prove injury in fact, because he has not met the low threshold of clearly showing that he faces a specific, credible threat of adverse government action based on a violation of the sexual harassment policy.").

185 Cynthia Miller-Idriss & Jonathan Friedman, *When Hate Speech and Free Speech Collide*, DIVERSE (Dec. 5, 2018), https://diverseeducation.com/article/133611/.

186 *To the Point: Campus Inclusion and Freedom – Hateful Incidents on Campus*, AM. COUNCIL EDUC., https://www.acenet.edu/Documents/To-The-Point-Hateful-Incidents.pdf (last visited Aug. 30, 2020).

187 Nadine Strossen, *Counterspeech in Response to Changing Notions of Free Speech*, A.B.A.: HUM. RTS. MAG., https://www.americanbar.org/groups/crsj/publications/human_rights_magazine_home/the-ongoing-challenge-to-define-free-speech/counterspeech-in-response-to-free-speech/ (last visited Aug. 16, 2020).

. . . ."[188] All the model policy does is ask that antisemitism be treated the same way other forms of discrimination are already treated. In fact, some states have already started doing this by law.[189]

Hate speech is protected, obviously, but that does not mean that we cannot call it hateful.[190] Why then, should it be any different when it comes to antisemitism? To the extent that speech is at all affected by the adoption of a well-accepted definition, it is only to help clarify the motivation behind acts considered discriminatory towards Jewish people, where the law already declared discriminatory acts (not discriminatory speech alone) unacceptable. The actions are already impermissible; calling them what they are does not chill speech.

None of this should be controversial. The Supreme Court already firmly ruled in *Wisconsin v. Mitchell* that "[t]he First Amendment . . . does not prohibit the evidentiary use of speech . . . to prove motive or intent."[191] That case asked whether enhanced penalties for racially-motivated crimes violate a defendant's First Amendment rights. In their unanimous opinion in favor of the state, the Court also dealt with the "chilling" argument:

> Finally, there remains to be considered Mitchell's argument that the Wisconsin statute is unconstitutionally overbroad because of its "chilling effect" on free speech. Mitchell argues . . . that the statute is "overbroad" because evidence of the defendant's prior speech or associations may be used to prove that the defendant intentionally selected his victim on account of the victim's protected status. Consequently, the argument goes, the statute impermissibly chills free expression with respect to such matters by those concerned about the possibility of enhanced sentences if they should in the future commit a criminal offense covered by the statute. We find no merit in this contention.

---

188 *Speech on Campus*, ACLU, https://www.aclu.org/other/speech-campus (last visited Aug. 16, 2020).

189 *Florida Gov. Ron DeSantis Signs Bill Banning Anti-Semitism in Schools, Universities*, TOWER (June 4, 2019, 8:07 AM), http://www.thetower.org/7379-florida-gov-ron-desantis-signs-bill-banning-anti-semitism-in-schools-universities/ (detailing a Florida bill that applies the definition to laws already barring discrimination in the education system); *see* Ron Kampeas, *Florida Bill Would Add Protections Against Anti-Semitism to Education System*, JEWISH TELEGRAPHIC AGENCY (Jan. 24, 2019, 6:09 AM), https://www.jta.org/quick-reads/florida-state-bill-would-add-protections-against-anti-semitism-to-education-system (describing Fla. SB 471 (2019), https://www.flsenate.gov/Session/Bill/2019/741/BillText/er/PDF).

190 *See* Miller-Idriss & Friedman, *supra* note 185.

191 Wisconsin v. Mitchell, 508 U.S. 476, 489 (1993).

> The sort of chill envisioned here is far more attenuated and unlikely than that contemplated in traditional "overbreadth" cases. We must conjure up a vision of a Wisconsin citizen suppressing his unpopular bigoted opinions for fear that if he later commits an offense covered by the statute, these opinions will be offered at trial to establish that he selected his victim on account of the victim's protected status, thus qualifying him for penalty enhancement . . . . We are left, then, with the prospect of a citizen suppressing his bigoted beliefs for fear that evidence of such beliefs will be introduced against him at trial if he commits a more serious offense against person or property. This is simply too speculative a hypothesis to support Mitchell's overbreadth claim.[192]

In other words, the proposed policy of using a standard definition of antisemitism for evidentiary purposes when analyzing intent behind discriminatory conduct to determine the motive for the harassment is fully constitutional.[193] The First Amendment does not protect harassing conduct, but it does allow for the evidentiary use of speech to (rebuttably) assess motive without a concern of chilling speech. The policies recommended in this Article do not change the standard for harassing conduct; all they do is provide a definition to guide the evidentiary analysis.

In truth, the lack of a definition, which creates the ability for antisemites to get away with their destructive behavior and intimidate Jewish students, is actually what damages the free exchange of ideas at universities. To quote two leading scholars of antisemitism, Professors Dave Rich and Phillip Spencer, to be concerned that the definition will have a "'chilling effect' . . . is to turn things entirely on their head. It is

---

[192] *Id.* at 488–89.

[193] As Paul Clement told a Congressional hearing on campus antisemitism in 2017, discussing a proposed similar federal act, there really isn't even a debatable question:

> [S]omebody . . . can engage on campus in the most abhorrent anti-Semitic speech and the Education Department will not take action against them just for that. But, if they couple that abhorrent speech with say a physical attack on a Jewish student, then this Act and the Constitution allow the use of that anti-Semitic speech to demonstrate the motive of the person engaged in the harassment . . . . There were not that many things that Chief Justice Rehnquist and Justice Blackman agreed on, but this was one of them: no First Amendment problem.

Anti-Semitism on College Campuses: Hearing Before the H. Comm. on the Judiciary, 115th Cong. 45 (2017) (Statement of Paul Clement, Partner, Kirkland & Ellis LLP), https://www.govinfo.gov/content/pkg/CHRG-115hhrg32325/html/CHRG-115hhrg32325.htm.

antisemitic speech which has a chilling effect on Jewish students, academic and professional staff."[194]

Recall that the standard we are discussing involves behavior that denies Jewish students the ability to partake in educational opportunities. When Jewish students are targeted with verbal and physical abuse, it is not political discourse that they are experiencing.[195] As Sandra Hagee Parker once told Congress while discussing the discriminatory harassment of Jewish students on campus:

> It is harassment aimed to silence and shut down the perspective of Jewish students and those who support them. Allowing this behavior to shut down free speech is at odds with the free thinking and safe environment our Nation's colleges strive to create . . . . Providing a standard by which to judge these acts, no more chills free speech than the presence of a thermometer prevents the temperature from rising. Both sides of the argument deserve to be heard, but at present, one side is using the First Amendment as both a sword with which to inflict harm and a shield with which to protect itself from the consequences of its actions . . . . [T]he exercise of free speech is not an affirmative defense for harassment.[196]

All of the above sounds fairly simple and—being that the IHRA definition is widely accepted and consensus driven—appropriate. Which leads to the next question: What then, would the adoption of the IHRA definition do, other than explain a term? In other words, if adopting the definition in this narrow clarifying context does so little, and will only be used to help determine discriminatory intent after a discriminatory conduct complaint, then why is it so important for States and universities to take these steps? The answer to that is twofold.

---

194 Dave Rich & Phillip Spencer, *David Feldman Should Not Be Encouraging Those Who Denigrate Jews*, JEWISH CHRON. (Dec. 14, 2020), https://www.thejc.com/comment/opinion/david-feldman-should-not-be-encouraging-those-who-denigrate-jews-1.509689.

195 *See* Ilanit Chernick, *Jewish Students Allegedly Assaulted at Labour Rally in Bristol*, JERUSALEM POST (Dec. 11, 2019), https://www.jpost.com/diaspora/jewish-students-allegedly-assaulted-at-labour-rally-in-bristol-610606.

196 *Anti-Semitism on College Campuses: Hearing Before the H. Comm. on the Judiciary*, 115th Cong. 45 (2017) (statement of Sandra Hagee Parker, Chairwoman, Christians United for Israel Action Fund), https://www.govinfo.gov/content/pkg/CHRG-115hhrg32325/html/CHRG-115hhrg32325.htm.

VI. ADOPTING THE DEFINITION HELPS STATES AND SCHOOLS MONITOR, PREVENT, AND EDUCATE ABOUT ANTISEMITISM

A. *Adopting a Definition Would Help States and Schools Monitor and Report on Antisemitism*

First, do not underestimate the importance of properly defining terms.[197] It is crucial to adopt the IHRA definition because, until now, the absence of a definition of antisemitism has been an Achilles' heel for those who expect state actors, including colleges and universities, to take a stronger stand on campus antisemitism. Consider the alternative to adopting a definition; everyone agrees that antisemitic harassment is illegal, but frankly speaking, no one knows what that means. Without a definition, the status quo basically empowers whatever official is charged on any given day with determining whether any particular case involved antisemitic bias with unfettered discretion and no objective guidelines.[198] Sometimes antisemitic crimes and discrimination are undeniable. One can easily point to any of the following incidents of violence against those of Jewish descent: the shootings at the Tree of Life Synagogue in Pittsburgh, Pennsylvania in 2018 and at the Chabad of Poway in California in 2019,[199] the recent series of random physical attacks on identifiably Jewish persons in New York City,[200] and the rising number of desecrated Jewish cemeteries[201] and vandalized

---

[197] *See generally* Mark Goldfeder, *The Danger of Defining Your Own Terms: Responding to the Harvard Law Review on Anti-Discrimination Law and the Movement for Palestinian Rights*, 3 J. CONTEMP. ANTISEMITISM 141 (2020) [hereinafter Goldfeder, *The Danger of Defining Your Own Terms*] (noting the tendency amongst some legal writers to set up multiple strawman arguments by defining terms in self-serving ways). .

[198] *See Anti-Semitism on College Campuses: Hearing Before the H. Comm. on the Judiciary*, 115th Cong. 45 (2017) (statement of Paul Clement, Partner, Kirkland & Ellis LLP), https://www.govinfo.gov/content/pkg/CHRG-115hhrg32325/html/CHRG-115hhrg32325.htm

> Whatever Congress does here, if Congress does nothing it is still going to be the Education Department's position that [T]itle VI forbids harassment motivated by anti-Semitism. So, the question really boils down to whether the Education Department officials are going to make that judgment without a definition or with a definition. And I certainly think it serves First Amendment values to guide that discretion.

[199] *San Diego Synagogue Shooting: One Person Dead in Poway, California*, BRIT. BROAD. CORP. (Apr. 29, 2019), https://www.bbc.com/news/world-us-canada-48081535.

[200] *See* Liam Stack, *'Most Visible Jews' Fear Being Targets as Antisemitism Rises*, N.Y. TIMES (Feb. 17, 2020), https://www.nytimes.com/2020/02/17/nyregion/hasidic-jewish-attacks.html.

[201] *See* Adam Nossiter, *Jewish Graves Desecrated in Historic French Cemetery*, N.Y. Times (Dec. 4, 2019), https://www.nytimes.com/2019/12/04/world/europe/jewish-graves-france-desecrated.html; Deanna Paul, *Dozens of Jewish Graves Vandalized with Swastikas and Anti-Semitic Slurs*, WASH. POST (Mar. 21, 2019),

synagogues.[202] There have been numerous physical attacks on Jewish businesses,[203] and on university campuses around the country, there have been countless well-documented examples of antisemitic harassment,[204] property damage,[205] and physical attacks[206] on Jewish students.[207] The problem is that states and universities often do not report, and sometimes even hesitate to admit,[208] that there has been a major spike in people discriminating against and targeting Jewish people in their jurisdictions.[209] So long as the meaning of antisemitism is left murky and inconsistent, it will be easy for officials to look the other way and fail to enforce existing regulations regarding bigotry.[210]

https://www.washingtonpost.com/religion/2019/03/21/dozens-jewish-graves-vandalized-with-swastikas-anti-semitic-slurs/.

202 *See, e.g.*, Marcy Oster, *Florida Man to be Charged with Vandalism of 2 Synagogues*, FORWARD (July 27, 2020), https://forward.com/fast-forward/451533/florida-man-will-be-charged-with-vandalism-of-2-reform-synagogues-in/; *see also Synagogues in Los Angeles and Richmond Vandalized During Protests*, TIMES OF ISRAEL (June 1, 2020, 4:50 AM), https://www.timesofisrael.com/synagogues-in-los-angeles-and-richmond-vandalized-during-protests/.

203 *SA: 21 Arrested at Violent BDS Protest in South Africa*, CHRISTIANS UNITED FOR ISRAEL (Mar. 26, 2015), https://www.cufi.org.uk/news/sa-21-arrested-at-violent-bds-protest-in-south-africa.

204 *See* William A. Jacobson, *Dorm Storming at NYU Targets Jewish Students*, LEGAL INSURRECTION (Apr. 24, 2014, 1:32 PM), https://legalinsurrection.com/2014/04/dorm-storming-at-nyu-targets-jewish-students/. *See generally* William A. Jacobson, *Anti-Israel Student Group Suspended at Northeastern for Vandalism, Intimidation, Disruption*, LEGAL INSURRECTION (Mar. 13, 2014, 10:00 AM), https://legalinsurrection.com/2014/03/anti-israel-student-group-suspended-at-northeastern-for-vandalism-intimidation-disruption/.

205 *See* Interview by Lenny Giteck with Andrew Pessin, Professor, Conn. Coll. (Jan. 11, 2021), https://antisemitismexposed.org/andrew-pessin/?fbclid=IwAR2JL5fb908-yCrojGdwsx9Hral_u-BcE8N7dPMy1c8MhjQV5YQNNe6oSTQ.

206 *See* Frances Dinkelspiel, *Jewish Student Sues UC Berkeley Over Assault by Palestine Supporter*, BERKELEYSIDE (Mar. 7, 2011, 12:19 PM), https://www.berkeleyside.com/2011/03/07/jewish-student-sues-uc-berkeley-over-assault-by-palestine-supporter. *See generally* Edwin Black, *Temple University – Latest Anti-Semitic Hotspot Protested Amid Record Donation Drive*, HUFFINGTON POST (Oct. 25, 2014), https://www.huffpost.com/entry/temple-university-latest-_b_5707919.

207 Tori Cheifetz, *Jewish Students 'Held Hostage' in Toronto Hillel*, JERUSALEM POST (Feb. 15, 2009), https://www.jpost.com/jewish-world/jewish-news/jewish-students-held-hostage-in-toronto-hillel.

208 Some even call on the Jewish students to "get tougher skin." Greta Anderson, *Responding to Rise in Campus Anti-Semitism*, INSIDE HIGHER ED (Sept. 9, 2020), https://www.insidehighered.com/news/2020/09/09/antisemitism-rise-new-semester-starts.

209 AMCHA INITIATIVE, THE HARASSMENT OF JEWISH STUDENTS ON U.S. CAMPUSES: HOW ELIMINATIONIST ANTI-ZIONISM AND ACADEMIC BDS INCITE CAMPUS ANTISEMITISM 8–17 (2019), https://amchainitiative.org/wp-content/uploads/2019/09/Eliminationist-Anti-Zionism-and-Academic-BDS-on-Campus-Report.pdf.

210 Evan Gerstmann, *Hate Crimes Against Jewish Students Are at an All-Time High*, FORBES (Sept. 9, 2020, 5:12 PM), https://www.forbes.com/sites/evangerstmann/

Thankfully, there is an easy fix. The IHRA definition simply defines antisemitism the same way that the federal government does, and adopting it would only require states and universities to apply their own rules fairly. State anti-discrimination laws and university conduct codes that forbid student groups from engaging in discriminatory activities should be enforced across the board. If there is a definition, then administrators cannot simply shrug and say that they "don't know what antisemitism looks like."

Under the federal Clery Act,[211] universities are required to file an annual report on campus crime. The law is meant to provide transparency around policy and statistics, and one of the four categories they must disclose are hate crimes. The problem is that, "[m]any universities interpret the guidelines as narrowly as possible, leaving out antisemitic vandalism that would likely be categorized as hate crimes if they happened off-campus."[212] In 2017, for example, after someone drew a swastika on a bathroom stall in Binghamton University's library, the school condemned the incident as a "hate crime" in a public statement but then failed to report it in its annual crime report. When asked, the university spokesman said there was not enough evidence that it was motivated by bias.[213]

Binghamton University is hardly alone. Ithaca College, for example, had three swastika incidents in 2018—two classified by police as aggravated harassment, 1st degree—and one instance of a Jewish student having his *mezuzah* (religious parchment) knocked off his door, but it also reported zero hate crimes for the year. According to an in depth-analysis done by the Forward:

> [C]omparing news reports of campus antisemitism between 2016 and 2018 to the filings for those years found that fewer than half of the incidents that could have been reported as hate crimes actually were. Out of a total of 158 incidents at 64 schools, 93—including antisemitic vandalism at brand-name schools known for vibrant Jewish communities like Harvard, Princeton, MIT, UCLA and the University of Maryland—were left out of the federal filings.[214]

2020/09/09/hate-crimes-against-jewish-students-are-at-an-all-time-high/?sh=23eb23bc632f.

[211] 34 C.F.R. § 668.46(c) (2021).

[212] Aiden Pink, *Colleges Express Outrage About Anti-Semitism—But Fail to Report it as a Crime*, FORWARD (Aug. 17, 2020), https://forward.com/news/national/452483/college-antisemitic-hate-crimes/.

[213] *Id.*

[214] *Id.*

At best, this points to a lack of understanding or awareness on the part of university administrators about what antisemitism looks and feels like; multiple schools told the Forward that their lack of swastika reporting was an inadvertent error. At worst, it might point to something more sinister, with schools hiding behind the vagueness of 'antisemitism' to purposefully sweep it under the rug and avoid the bad publicity. Regardless, adopting a bright-line definition will solve either or both of those problems. In the above-mentioned incidents, if the schools adopted the IHRA definition, then going forward it should be clear to whomever files the annual reports that a swastika is an antisemitic symbol.

Similarly, state legislation adopting the IHRA definition would also fix a troubling problem in terms of the federal reporting that states are required to do. Under the 1990 Hate Crime Statistics Act[215] (modified in 2009 by The Matthew Shepard and James Byrd, Jr. Hate Crimes Prevention Act),[216] the Attorney General, through the FBI, is tasked with tracking and tabulating crimes committed because of the victim's race, religion, disability, sexual orientation, or ethnicity (i.e., crimes in which there was "manifest evidence of prejudice" against these protected groups) regardless of differences in how state laws define who is protected and regardless of whether or not the incidents in question were actually prosecuted as hate crimes.[217] The FBI relies on local law enforcement agencies to collect and submit data, but thousands of police agencies opt out of the reporting, and even "among the 15,000 that do, some 88 percent reported they had no hate crimes."[218] According to one ProPublica report, "investigators frequently did not mark down incidents as motivated by bias, even if there was evidence suggesting

215 28 U.S.C. § 534.

216 Matthew Shepard and James Byrd, Jr. Hate Crimes Prevention Act, Pub L. No. 111-84, §§ 4701-4713, 123 Stat. 2835 (2009) (codified at 18 U.S.C. § 249).

217 Ken Schwencke, *Why America Fails at Gathering Hate Crime Statistics*, PROPUBLICA (Dec. 4, 2017, 8:00 AM), https://www.propublica.org/article/why-america-fails-at-gathering-hate-crime-statistics.

218 "Local law enforcement agencies reported a total of 6,121 hate crimes in 2016 to the FBI, but estimates from the National Crime Victimization Survey, conducted by the federal government, pin the number of potential hate crimes at almost 250,000 a year—one indication of the inadequacy of the FBI's data. . . . It's true that many hate crime cases fall away before they start because about half the victims never report them to authorities. But to understand why so many cases that *are* reported to authorities still fall through the cracks, ProPublica requested incident reports or aggregate data from more than 350 law enforcement agencies in 48 states, including the 50 largest agencies nationwide, on the bias-motivated crimes they had investigated since 2010. More than 280 agencies responded, but in many cases only to say they hadn't investigated any such incidents, or had no records, or that their records were bad." *Id.*

this was so. A spray-painted swastika, for example, might be classified simply as vandalism and not also as a hate crime."[219]

In 2019, for the second straight year, the number of law enforcement agencies participating in providing statistics declined, but even with fewer agencies reporting, the number of reported hate crimes actually increased by 113 percent from the previous year.[220] In particular, as it relates to this Article, the year 2019 saw a 14 percent increase in anti-Jewish hate crimes, and all across the country 63 percent of the total reported religion-based crimes were directed against Jewish people and Jewish institutions.[221] If states adopted a standard definition of antisemitism—the IHRA definition—simply for the purpose of evaluating motive in potential bias incidents, it would be incredibly helpful in making sure that the statistics about anti-Jewish crime more accurately reflect the reality of lived experiences of Jewish people.

B. *Adopting a Definition Would Help States and Schools Educate Their Constituencies About Antisemitism*

Second, adopting the definition would have an important educational aspect. In some instances, people may not even realize that they are engaging in or supporting antisemitism when, for example, they express certain anti-Zionist views. Of course, not all criticisms of Israel are antisemitic, but there is a popular false dichotomy: since not *all* anti-Israel rhetoric is necessarily antisemitism, none of it should be included in a definition of antisemitism. "What this argument does is provide a convenient way for modern antisemites to remain in polite society while espousing incredible hate under the thinnest of anti-Zionistic veils. Antisemites should not get to decide the definition of antisemitism."[222] In this context too, the IHRA definition is important and helpful *because* it includes useful examples of discriminatory anti-Israel statements that cross the line into antisemitism. If critics claim that the adoption of such a definition would shut down criticisms of the State of Israel or its leaders, that is *patently* false. According to the definition itself, not all criticism of Israel is antisemitism, even harsh criticism, but when anti-Zionism crosses certain lines, it *can* be antisemitic. As discussed earlier,

---

[219] In most states, local law enforcement agencies are supposed to "send their hate crime data to the state, which is then supposed to submit it to the FBI," but the report also "found several instances in which this chain broke down." *Id.*

[220] *ADL Calls for Improved Hate Crime Reporting in Response to New FBI Data*, ANTI-DEFAMATION LEAGUE (Nov. 16, 2020), https://www.adl.org/news/press-releases/adl-calls-for-improved-hate-crime-reporting-in-response-to-new-fbi-data.

[221] *Id.*

[222] Goldfeder, *The Danger of Defining Your Own Terms*, *supra* note 197, at 142.

critics of the definition generally focus on the danger of governments using it to stifle free speech.[223] While those concerns are easily answered—primarily by having policies that focus only on actions and not speech[224]—that is a conversation about the contours of protecting hate speech. It is a *far* different argument to pretend that the speech itself is *not* antisemitic, but that is the argument that antisemites often try to exploit.[225]

VII. CRITICISM OF ISRAEL AND ANTISEMITISM

Legitimate criticism of Israel is fine under the IHRA definition, and if you are merely criticizing Israel, even harshly and regularly, then the definition should not affect you one iota. By now it should be clear that this entire discussion has *nothing* to do with any attempt to fight against Palestinian rights, or to silence advocates for the Palestinian cause. Here is an easy example to differentiate: Mahmoud Abbas is the President of the Palestinian Authority and arguably the world's leading advocate for Palestinian rights. To agree with his political views is *not* inherently antisemitic. To agree with his public statements at times *denying* the Holocaust and at other points *blaming* the genocide on the Jewish victims' behavior *is* inherently antisemitic.[226] Based on his public apologies, even Mahmoud Abbas would have to agree with that.[227]

When is criticism of Israel antisemitic? Sometimes the answer is clear, like when proponents use classic antisemitic tropes to discuss the "collective Jew among the Nations" as a proxy for how antisemites historically would talk about Jewish individuals.[228] These stereotypes

---

223 Elizabeth Redden, *Trump Signs Order on Campus Antisemitism,* INSIDE HIGHER ED (Dec. 12, 2019), https://www.insidehighered.com/news/2019/12/12/trump-order-antisemitism-campuses-draws-free-speech-concerns.

224 Goldfeder, *Why We Should Applaud*, *supra* note 137.

225 Mark Goldfeder, *House Should Censure Anti-Semitic Rep. Rashida Tlaib*, FOX NEWS (Dec. 3, 2020), https://www.foxnews.com/opinion/rashida-tlaib-anti-semitism-mark-goldfeder.

226 Jonathan Freedland, *It's Right to Condemn Mahmoud Abbas for His Antisemitic Remarks*, GUARDIAN (May 2, 2018, 7:14 AM), https://www.theguardian.com/commentisfree/2018/may/02/condemn-mahmoud-abbas-antisemitic-remarks-holocaust.

227 Stephen Farrell, *Palestinian Leader Abbas Offers Apology for Remarks on Jews*, REUTERS (May 4, 2018, 6:30 AM), https://www.reuters.com/article/us-israel-palestinians-abbas/palestinian-leader-abbas-offers-apology-for-remarks-on-jews-idUSKBN1I5131.

228 Irwin Cotler, *New Anti-Jewishness*, THE JEWISH PEOPLE POL'Y PLANNING INST. 7 (Nov. 2002), http://jppi.org.il/uploads/Alert%201%20New%20Anti%20Jewishness.pdf.

include, but are not limited to: "accusations of" Jewish conspiracies;[229] blood libels;[230] portraying Jews (not even actual *Israelis* but caricatures of religious *Jews*) as Satanic, demonic, and evil;[231] accusing Jews of dual loyalty;[232] and engaging in Holocaust denial[233] and Holocaust inversion.[234] When this happens, the symbols and signals used often belie the speaker's true nefarious intent.[235] Again, no one is saying this speech should be criminalized or contained, just that it should be *labeled* correctly.

Sometimes antisemitism might not be as obvious to a casual observer. That is exactly why there needs to be a definition to assess context and motivation. That is also why antisemites do not like the IHRA definition—because it takes away their freedom to push past the line. In practice, denying history to claim that Jews are not indigenous to Israel,[236] denying (only) the Jewish people their right to self-determination (as consecrated in both *the International Covenant on Civil and Political Rights* and *the International Covenant on Economic, Social and Cultural Rights*),[237] while at the same time calling for the

---

229 *What is...Anti-Israel, Anti-Semitic, Anti-Zionist?*, ANTI-DEFAMATION LEAGUE, https://www.adl.org/resources/tools-and-strategies/what-is-anti-israel-anti-semitic-anti-zionist (last visited Aug. 1, 2020).

230 *See Blood Libel: A False, Incendiary Claim Against Jews*, ANTI-DEFAMATION LEAGUE, https://www.adl.org/education/resources/glossary-terms/blood-libel (last visited Aug. 1, 2020).

231 *See generally* DAN DIKER & JAMIE BERK, JERUSALEM CTR. FOR PUB. AFFS., STUDENTS FOR JUSTICE IN PALESTINE UNMASKED: TERROR LINKS, VIOLENCE, BIGOTRY, AND INTIMIDATION ON US CAMPUSES 54–72 (2018), https://jcpa.org/pdf/SJP_unmasked_2018_web.pdf.

232 *See id.* at 29.

233 ENERSEC USA, *Yasir Qadhi Anti-Semitic Rant*, YOUTUBE (Nov. 19, 2015), https://www.youtube.com/watch?v=2bSxOmcyI18&feature=youtu.be&t=466.

234 *See* DIKER & BERK, *supra* note 231, at 54–75.

235 Goldfeder, *The Danger of Defining Your Own Terms*, *supra* note 197.

236 Roberta P. Seid, *Omar Barghouti at UCLA: A Speaker Who Brings Hate*, JEWISH J. (Jan. 16, 2014), https://jewishjournal.com/commentary/opinion/126186/. In the words of former Minister of Justice and Attorney General of Canada Irwin Cotler, "[i]f 'Holocaust Revisionism' is an assault on Jewish memory and historical experience, 'Middle East Revisionism' constitutes no less an assault on Jewish memory and historical experience. It cynically serves to invert the historical narrative so that Israel is seen an 'alien' and 'colonial implant' in the region. . . ." Cotler, *supra* note 62, at 7.

237 *See* G.A. Res. 2200A (XXI), *International Covenant on Civil and Political Rights* (Mar. 23, 1976), https://www.ohchr.org/en/professionalinterest/pages/ccpr.aspx; G.A. Res. 2200(a) (XXI), International Covenant on Economic, Social and Cultural Rights (Jan. 3, 1976), https://www.ohchr.org/en/professionalinterest/pages/cescr.aspx. "Jews are being singled-out and discriminated against when they alone are denied this right. As Martin Luther King, Jr. put it: 'this is the denial to the Jews of the same right, the right to self-determination, that we accord to African nations and all other peoples of the globe. In short, it is anti-Semitism.'" Cotler, *supra* note 62.

elimination of the world's only Jewish state,[238] ethnic cleansing of the region,[239] and/or the genocidal extermination[240] of the millions of Jewish people who live there,[241] are all examples of things that are *also* likely to be antisemitic, depending on the circumstances.[242] And when 'criticism' of Israel is done in a discriminatory manner (i.e., when Israel is singled out for disparate and disparaging treatment) "not because of what it's done, [but] because of what it is: a Jewish state,"[243] this is antisemitism, and it should not be taken lightly, for two reasons. First, because it is ethically objectionable; and second, because it is dangerous.

This modern form of antisemitism is morally indistinguishable from the historical forms of antisemitism that blamed all manner of evil on 'the Jew.' As Yossi Klein Halevi explains:

> What antisemitism does is turn 'the Jew' into the symbol of whatever it is that a given civilization defines as its most loathsome qualities .... Under Christianity, before the Holocaust and Vatican II, 'the Jew' was the Christ Killer .... [U]nder communism, 'the Jew' was the capitalist. Under Nazism 'the Jew' was the race-polluter .... Now we live in the civilization where the most loathsome qualities are racism, colonialism, apartheid—and lo and behold, the greatest offender in the world today, with all of the beautiful countries in the world, is the Jewish state. The Jewish state is the symbol

---

238 *BDS: In Their Own Words,* JEWISH VIRTUAL LIBR., https://www.jewishvirtuallibrary.org/bds-in-their-own-words (last visited Oct. 13, 2021). As a matter of reference, there are about fifty-seven Islamic nations and 159 in which Christians form the majority. *Id.* Many of these countries have established state religions, and so the idea of there being a state religion alone cannot in and of itself be the problem. *Id.* The difference, of course, and the problem, is the Jewishness. *Id.*

239 *Nada Elia,* CANARY MISSION, https://canarymission.org/professor/Nada_Elia (last visited Oct. 13, 2021).

240 Micha Danzig, *'Palestine From the River to the Sea' Has Always Been a Call for Annihilation Not Liberation,* JEWISH J. (Dec. 3, 2018), https://jewishjournal.com/commentary/blogs/242943/palestine-river-sea-always-call-annihilation-not-liberation/.

241 Jackson Richman, *'Day of Rage' Protesters in Boston Chant Anti-Israel, Pro-Hamas Slogans, Call for Intifada,* JEWISH J. (July 3, 2020), https://jewishjournal.com/israel/318428/day-of-rage-protesters-in-boston-chant-anti-israel-pro-hamas-slogans-call-for-intifada/.

242 Again, context matters. For example, a globalist who believes there should be no states is not antisemitic if they think there should be no Israel.

243 Adam Levick, *Guardian Letter by Palestinian Artists and Academics: Zionists Are Racists*, CAMERA-UK (Nov. 30, 2020), https://camera-uk.org/2020/11/30/guardian-letter-by-palestinian-artists-and-academics-zionists-are-racists/.

> of the genocidal, racist, apartheid state .... The state of the Jews has become 'the Jew' of the states.[244]

An example of this type of treatment is unfortunately often on display at the United Nations. "It is legitimate for the UN to criticize Israel, which should be held accountable like every other country. However, it is not legitimate when UN bodies do so unfairly, selectively,

---

[244] Yossi Klein Halevi, *The Latest Incarnation of Anti-Semitism*, YOUTUBE, 0:23-1:54 (Nov. 15, 2018), https://www.youtube.com/watch?v=qmRZFeyghvY&ab_channel=YossiKleinHalevi. Israel is not colonialist or settler-colonialist because the Jews are indigenous to the land and have maintained a continual presence there. Land prior to the creation of the state was purchased legally and Israel acquired more territory in clearly defensive wars, the vast majority of which it already gave back in the name of peace. *See* Dore Gold, *The Myth of Israel as a Colonialist Entity: An Instrument of Political Warfare to Delegitimize the Jewish State*, 23 JEWISH POL. STUD. REV. 84, 85 (2011). Israel is also not an apartheid state; there are actual legal definitions of apartheid, primarily G.A. Res. 2068 (XXVIII), *International Convention on the Suppression and Punishment of the Crime of Apartheid*, (July 18, 1976) https://www.un.org/en/genocideprevention/documents/atrocity-crimes/Doc.10_International%20Convention%20on%20the%20Suppression%20and%20Punishment%20of%20the%20Crime%20of%20Apartheid.pdf, which says that

> For the purpose of the present Convention, the term 'the crime of apartheid', which shall include similar policies and practices of racial segregation and discrimination as practiced in southern Africa, shall apply to the following inhumane acts committed for the purpose of establishing and maintaining domination by one racial group of persons over any other racial group of persons and systematically oppressing them ....

And also, Rome Statute of the International Criminal Court, Art. VII2(h), which states that:

> The 'crime of apartheid' means inhumane acts of a character similar to those referred to in paragraph 1, committed in the context of an institutionalised regime of systematic oppression and domination by one racial group over any other racial group or groups and committed with the intention of maintaining that regime.

In the words of Judge Richard Goldstone, "in Israel, there is no apartheid. Nothing there comes close to the definition of apartheid under the 1998 Rome Statute." Richard J. Goldstone, *Israel and the Apartheid Slander*, N.Y. TIMES (Oct. 31, 2011), https://www.nytimes.com/2011/11/01/opinion/israel-and-the-apartheid-slander.html. Israel has made over thirty attempts at peace, including some that even the leaders of the Arab world hailed as fair. *See* DENNIS ROSS, THE MISSING PEACE: THE INSIDE STORY OF THE FIGHT FOR MIDDLE EAST PEACE 1699 (2005) (quoting Saudi Prince Bandar that "[i]f Arafat does not accept what it available now, it won't be a tragedy, it will be a crime"). A state cannot be practicing apartheid if they keep on trying to make peace. In addition, the claims of disparity are demonstrably false. While Israel does make distinctions between the rights of citizens and non-citizens (as does every other country) Israeli Arabs have full and equal rights, and are represented in every branch of government. In fact, as of the time of this writing, the Arab-led Joint List is the third largest bloc in the Israeli government.

massively, sometimes exclusively, and always obsessively."[245] In other words, political anti-Israel activity is fine; discriminatory anti-Israel activity that scapegoats the Jewish state the same way that antisemites have always scapegoated the Jewish people, is *not* fine. The problem is that this happens all the time.[246] For instance, the UN Human Rights Council was established in 2006 to address human rights issues around the globe. In its first year, 100 percent of its condemnatory resolutions—all nine—targeted Israel.[247] Israel remains the only country in the entire world that has a permanent agenda item dedicated to it. From 2006 to 2016, 68 of the 135 UNHRC resolutions—over 50 percent—were targeted at Israel.[248] In the UN Commission on Human Rights, half of all the resolutions that censure states are targeted at Israel, and the General Assembly is even worse. From 2012 to 2015, the GA adopted ninety-four resolutions criticizing countries.[249] Eighty-three of those, or 86 percent, were targeted at Israel, with eleven for the rest of the globe.[250] As of the time of this writing, in the current seventy-fifth session of the UN General Assembly (2020-2021) there have been seventeen resolutions against Israel, and seven about *the rest of the world combined.*[251]

Former Secretary General Ban Ki-moon conceded that there is an anti-Israel bias within the UN that threatens the work the UN is attempting to do. As he explains, "[d]ecades of political maneuvering have created a disproportionate number of resolutions, reports and conferences criticizing Israel."[252] Of course, the most famous example

---

245 Hillel C. Neuer, *The Struggle Against Anti-Israel Bias at the UN Commission on Human Rights*, JERUSALEM CTR. FOR PUB. AFFS. (Jan. 1, 2006), https://www.jcpa.org/phas/phas-040-neuer.htm.

246 *See* Eugene Kontorovich, *Unsettled: A Global Study of Settlements in Occupied Territories*, 9 J. LEGAL ANALYSIS 285 (2017) (discussing how the *international* community treats *settlement* activity in the disputed territories in Israel differently than any other areas in the world that might be considered "*occupied territory*."

247 *See The U.N. and Israel: Key Statistics from UN Watch*, UN WATCH (Aug. 23, 2016), https://unwatch.org/un-israel-key-statistics. During this same time, there were: blatant extrajudicial killings in Bangladesh, two million displaced Ugandans—80 percent women and children—due to the Lord's Resistance Army in northern Uganda, and other such atrocities, but the Human Rights Council's sole attention during its first year was to condemn Israel.

248 *Id.*

249 *Id.*

250 *Id.*

251 For comparison sake, North Korea, Syria, and Iran each have one. *See 2020-2021 UNGA Resolutions on Countries*, UN WATCH (Dec. 16, 2020), https://unwatch.org/2020-2021-un-general-assembly-resolutions-singling-out-israel-texts-votes-analysis/.

252 Ban Ki-moon, U.N. Secretary-General, Secretary-General's Briefing to the Security Council on the Situation in the Middle East, Including the Palestinian Question (Dec. 16,

of antisemitic slander at the UN was Resolution 3379 of November 10, 1975, which declared Zionism to be a form of racism and racial discrimination.[253] Before the vote, the U.S. Ambassador to the United Nations, Daniel Patrick Moynihan, warned that, "[t]he United Nations is about to make anti-Semitism international law. . . . The United States does not acknowledge, it will not abide by, it will never acquiesce in this infamous act . . . A great evil has been loosed upon the world.[254] That resolution, which former Secretary General Kofi Annan described as a "low point" in UN history, was finally repealed on December 16, 1991.[255] Still, in 2015, Ban Ki-moon noted that the resolution was based on "hatred and ignorance," and admitted that "[t]he reputation of the United Nations was badly damaged by the adoption of resolution 3379, in and beyond Israel and the wider Jewish community."[256]

This type of discrimination does not only happen at the international macro level; it also occurs when individual students and/or student groups are singled out and discriminated against because of their stated or assumed support of 'Zionism.' And so, it is worth explaining why discrimination against 'Zionists' is problematic—with the twin caveats that not all antisemitic anti-Zionism is illegal (for

2016), https://www.un.org/sg/en/content/sg/statement/2016-12-16/secretary-generals-briefing-security-council-situation-middle-east.

253 On the day it was passed, Israeli Ambassador Chaim Herzog addressed the General Assembly and pointed out the absurdity of the claim noting that:

> You dare talk of racism when I can point with pride to the Arab ministers who have served in my government; to the Arab deputy speaker of my Parliament; to Arab officers and men serving of their own volition in our border and police defense forces, frequently commanding Jewish troops; to the hundreds of thousands of Arabs from all over the Middle East crowding the cities of Israel every year; to the thousands of Arabs from all over the Middle East coming for medical treatment to Israel; to the peaceful coexistence which has developed; to the fact that Arabic is an official language in Israel on a par with Hebrew; to the fact that it is as natural for an Arab to serve in public office in Israel as it is incongruous to think of a Jew serving in any public office in an Arab country, indeed being admitted to many of them. Is that racism? It is not! That . . . is Zionism.

Chaim Herzog, Response to 'Zionism is Racism' (Nov. 10, 1975), *in* GREAT SPEECHES OF THE TWENTIETH CENTURY 163 (Bob Blaisdell ed., 2011).

254 Daniel Patrick Moynihan, Response to United Nations Resolution 3379 (Nov. 10, 1975), *in Online Speech Bank*, AMERICAN RHETORIC, https://www.americanrhetoric.com/speeches/danielpatrickmoynihanun3379.htm.

255 *Israel at the UN: A History of Bias and Progress – September 2012*, ANTI-DEFAMATION LEAGUE (2013), https://www.adl.org/sites/default/files/documents/israel-international/un-international-organizations/c/Israel-at-the-UN-1.pdf.

256 Press Release, U.N. Secretary-General, Secretary-General Commemorates Anniversary of Chaim Herzog's Speech Condemning General Assembly Resolution Equating Zionism with Racism, U.N. Press Release SG/SM/17319 (Nov. 11, 2015), https://www.un.org/press/en/2015/sgsm17319.doc.htm.

example, when it involves free speech) and not all anti-Zionism is *inherently* antisemitic (for instance, political anti-Zionism). But anti-Zionism that allows for discrimination against Jewish people and/or their allies because of their affiliation with, affinity for, or support of the biblical/prophetic/historical/ethnic/cultural/Jewish ideal of Zionism *is* antisemitism.[257] Antisemites should not get to narrowly define what *they* think Zionism does or should mean to Jewish people, claim that it is racist, project that onto Jews, and then discriminate against them for allegedly holding that super-imposed bogeyman belief. Zionism is the movement for the re-establishment and now, development and protection, of a Jewish nation in its ancestral homeland.[258] Discriminating against a Jewish person or group just because they are Zionist is illegal because Zionism is demonstrably *not* just a political movement. "For the vast majority of Jewish people across time and space, Zionism is and always has been an integral part of their Jewish, often their religious, identities."[259] For thousands of years, Jews across the world have prayed to God at least three times a day (and often more)[260] for a safe return to Zion. The Bible itself references this ancient

[257] The difference between political anti-Zionism and antisemitism is sometimes reflected legally in the difference between primary boycotts and secondary or tertiary boycotts.

> A primary boycott is usually defined as a boycott in which the boycotter is acting against the entity that it has a grievance with (for example, retail clerks picketing their employer over wages or working conditions). A secondary boycott is one in which the party boycotting an entity has a goal of affecting a third party, rather than the boycotted entity. A tertiary boycott is one in which the goal is to affect a fourth party, who supports the third party supporting the boycotted entity. BDS Movement activists [for the most part] are engaging in something of a hybrid of a secondary-tertiary boycott. Their issue appears to be with the State of Israel, but they are not just engaging in a boycott of the government of Israel. The bulk of the individual companies, academics, institutions, and others who are targeted by BDS are not representing the government of Israel, and the bulk of the boycott activity is directed against them (a secondary boycott) and the people that support them (a tertiary boycott). Secondary—tertiary boycotts have very little protection under the First Amendment. The BDS supporters are not trying to protect their own constitutional rights; they are trying to use commerce to inflict harm on a foreign nation (and to discriminate against Americans who are of Jewish descent or who support Israel).

Goldfeder, *Stop Defending Discrimination*, *supra* note 42, at 223–24.

[258] *Frequently Asked Questions About Israel: What is Zionism?*, ISRAEL MINISTRY FOREIGN AFFS. (Nov. 1, 2001), https://mfa.gov.il/MFA/MFA-Archive/2001/Pages/Frequently%20Asked%20Questions%20About%20Israel.aspx#zionism.

[259] Goldfeder, *The Danger of Defining You Own Terms*, *supra* note 197.

[260] Briana Simon, *Zion in the Sources: Yearning for Zion*, WORLD ZIONIST ORG., https://www.wzo.org.il/index.php?dir=site&page=articles&op=item&cs=3318&langpage=heb (last visited Aug. 4, 2020).

Jewish hope,[261] while the Prophets and Writings of the Hebrew Bible repeatedly record this aspiration.[262] From a Jewish law perspective, over half of the Biblical commandments that religious Jewish people are bound to obey are specifically tied to the Jewish homeland.[263] From a doctrinal point of view, belief in and hope for the return to Zion is literally part of the Thirteen Principles of Jewish Faith.[264]

While it is not inherently antisemitic to be against political Zionism,[265] the reason that the IHRA definition includes "[d]enying the Jewish people their right to self-determination"[266] is precisely because it recognizes that for *many*, if not *most* Jewish people, Zionism is a fundamental *Jewish* belief, and discriminating against someone for their religious belief (or ethnoreligious identity) is wrong. "Denying the Jewish people the right to self-determination and a national homeland is antisemitic because it denies the *religious* and historic ties of Jews to the land of Israel."[267] As Alyza Lewin eloquently put it:

> Zionism is as integral to Judaism as observing the Jewish Sabbath or maintaining a kosher diet. Not all Jews observe Shabbat or kashrut, but those who do, do so as an expression of their Jewish identity. Similarly, not all Jews are Zionists. But for many Jews identifying with and expressing support for the Jewish homeland is also an expression of their Jewish religious and ethnic identity. Harassing, marginalizing, demonizing and excluding these Jews on the basis of the Zionist part of their identity is just as unlawful and discriminatory as attacking a person for observing Shabbat or keeping kosher. It's comparable to demanding that a Catholic student disavow the Vatican or that a Muslim student shed his/her connection to Mecca. Excluding an individual in this

---

261 *See, e.g.*, *Deuteronomy* 30:1-5.

262 *See, e.g.*, *Isaiah* 11:11-12; *Jeremiah* 29:14; 20:41-42; *Psalm* 126; *Psalm* 137.

263 *About Us,* TORAH VEHA'ARETZ INST., https://en.toraland.org.il/about/ (last visited Oct. 13, 2021).

264 *Maimonides' Introduction to Perek Helek,* MAIMONIDES HERITAGE CTR. 14, https://www.mhcny.org/qt/1005.pdf. (explaining the 12th Fundamental Principle).

265 As many are aware, there are even fringe religious Jewish groups that call themselves anti-Zionists, like the Neturei Karta group. Although it is worth noting that while they are against modern political Zionism, they *also* believe in the Jewish right to a homeland in the Land of Israel, and pray for that to happen every day. They just believe that the time of redemption must come first.

266 *Defining Antisemitism*, *supra* note 48.

267 FED. ASS'N DEP'TS FOR RSCH. & INFO. ON ANTISEMITISM E.V., EUR. COMM'N, HANDBOOK FOR THE PRACTICAL USE OF THE IHRA WORKING DEFINITION OF ANTISEMITISM, DS-03-21-002-EN-N 14 (Jan. 7, 2021), https://op.europa.eu/en/publication-detail/-/publication/d3006107-519b-11eb-b59f-01aa75ed71a1/language-en (emphasis added).

> manner on the basis of his/her identity is discrimination. . . . [I]t demands that Jews shed a key component of their identity as Jews—namely, the historic Jewish yearning and determination to return to Zion.[268]

It is also clear that anti-Zionist discrimination functions as anti-Jewish discrimination from an objective legal perspective, under a disparate impact analysis. That measure ignores motivation and looks rather at the discriminatory effect of a given action or policy.[269] A recent Gallup poll found that 95 percent of American Jews support Israel[270]—which is the definition of Zionism that tends to get Jewish students and Jewish groups excluded around the country[271]—even if they may disapprove of some or all Israeli policies. The research also shows that religion plays an important part in those beliefs,[272] but even if that part was not clear,[273] if in practice a policy has the effect of excluding or demonizing 95 percent of a group based on their shared ethnic beliefs,[274] "then it should be obvious that you are discriminating against that group and their beliefs."[275]

Some prominent examples of discriminatory anti-Zionism from the last few years include: the 2018 petition that fifty-three student groups

---

[268] Alyza Lewin, *Fighting Back Against Jew-hatred on Campus,* JEWISH STAR (July 9, 2020), https://www.thejewishstar.com/stories/fighting-back-against-jew-hatred-on-campus,19410.

[269] *See, e.g.*, Griggs v. Duke Power Co., 401 U.S. 424, 432 (1971).

[270] Frank Newport, *American Jews, Politics and Israel,* GALLUP (Aug. 27, 2019), https://news.gallup.com/opinion/polling-matters/265898/american-jews-politics-israel.aspx.

[271] Marcy Oster, *USC Student Gov't Head Quit Because She Was Harassed for Being Pro-Israel*, JERUSALEM POST (Aug. 7, 2020), https://www.jpost.com/diaspora/antisemitism/usc-student-govt-head-quit-because-she-was-harassed-for-being-pro-israel-637802.

[272] Frank Newport, *Religion Plays Large Role in Americans' Support for Israelis,* GALLUP (Aug. 1, 2014), https://news.gallup.com/poll/174266/religion-plays-large-role-americans-support-israelis.aspx.

[273] And even accounting for some of the modern pushback on disparate impact theory generally. *See, e.g.*, Susan D. Carle, *A Social Movement History of Title VII Disparate Impact Analysis*, 63 FLA. L. REV. 251, 254 (2011).

[274] The most common measure of adverse impact—and the measure used by the Uniform Guidelines on Employee Selection Procedures—is the Four-Fifths Rule, or 80 Percent Rule. *See* Nathan Mondragon, *What is Adverse Impact? And Why Measuring It Matters*, HIREVUE (Mar. 25, 2018), https://www.hirevue.com/blog/hiring/what-is-adverse-impact-and-why-measuring-it-matters. The Four-Fifths Rule was "codified in the 1978 Uniform Guidelines on Employee Selection Procedures, a document used by the U.S. Equal Employment Opportunity Commission ("EEOC"), Department of Labor, and Department of Justice in Title VII enforcement." DAN BIDDLE, ADVERSE IMPACT AND TEST VALIDATION: A PRACTITIONER'S GUIDE TO VALID AND DEFENSIBLE EMPLOYMENT TESTING 2–5 (2d ed. 2006).

[275] Goldfeder, *The Danger of Defining Your Own Terms, supra* note 197, at 44.

at NYU signed, pledging to boycott "not only Israeli goods or initiatives," but also their fellow students who were members of Zionist groups;[276] a student guide distributed by progressive groups at Vassar encouraging students to "slap a Zionist;"[277] a student government official at USC who was forced to resign amid a torrent of harassment that she was 'racist' for being Zionist;[278] a San Francisco State University Professor starting a campaign to declare that 'Zionists' are not welcome on campus[279]; and a Johns Hopkins teaching assistant tweeting about wanting to secretly deduct points from students who are Zionists.[280] Study after study has shown that this kind of discriminatory rhetoric eventually leads to action.[281] Sadly, these studies have been confirmed each time allegedly non-antisemitic "anti-Israel"[282] activism breaks through the

[276] Daniel Brooks, *NYT to Jews on Campus: Stop Whining, You Deserve the Hate*, TIMES ISRAEL: BLOGS (Jan. 26, 2021, 9:07 PM), https://blogs.timesofisrael.com/nyt-to-jews-on-campus-stop-whining-you-deserve-the-hate/; Adela Cojab Moadeb, *Student Who Sued NYU for Anti-Semitism: Trump Has 'Empowered' Jews on Campus*, N.Y POST (Dec. 14, 2019), https://nypost.com/2019/12/14/student-who-sued-nyu-for-anti-semitism-trump-has-empowered-jews-on-campus/.

[277] Nina Schutzman, *Vassar College Students Face Penalties for Making, Sharing Guide Deemed Antisemitic*, POUGHKEEPSIE J., (Sept. 5, 2018), https://www.poughkeepsiejournal.com/story/news/education/2018/09/05/vassar-college-students-face-penalties-antisemitic-guide/1195842002/.

[278] Rose Ritch, *I Was Harassed and Persecuted on Campus Just for Being a Zionist*, NEWSWEEK (Aug. 10, 2020), https://www.newsweek.com/i-was-harassed-persecuted-campus-just-being-zionist-opinion-1523873.

[279] Aaron Bandler, *SF Professor Under Fire for Saying That Zionists Aren't Welcome on Campus*, JEWISH J. (Mar. 26, 2018), https://jewishjournal.com/news/united-states/232343/sf-professor-fire-saying-zionists-wouldnt-allowed-campus/.

[280] *See* Letter to Ronald J. Daniels, President, Johns Hopkins Univ., and Dr. David Yarkony, Chair and D. Mead Johnson Professor of Chemistry, Johns Hopkins Univ. (Dec. 3, 2020), https://www.standwithus.com/post/letter-to-johns-hopkins-university-regarding-antisemitic-posts-from-graduate-researcher-and-ta; Cnaan Lipshiz, *Johns Hopkins University TA Suggests Penalizing Pro-Israel Students*, JERUSALEM POST (Jan. 9, 2021), https://www.jpost.com/diaspora/antisemitism/johns-hopkins-ta-suggests-penalizing-pro-israel-students-654780.

[281] *See, e.g.*, Morton A. Klein, *ZOA Center for Law and Justice Director Susan Tuchman's Testimony on Anti-Semitism Before the U.S. Commission on Civil Rights*, ZIONIST ORG. AM. (Nov. 18, 2005), https://zoa.org/2005/11/102058-zoa-center-for-law-and-justice-director-susan-tuchmans-testimony-on-anti-semitism-before-the-u-s-commission-on-civil-rights/:

> According to the Center for the Prevention of Hate Violence at the University of Southern Maine, in virtually every one of the investigations of serious violence or threats in high schools or colleges conducted by the Maine Attorney General's Office over the past eight years, the same pattern exists: the act of violence was not the beginning but rather the end of a stream of escalating harassment which at some point began with the use of degrading language.

[282] Jeremy Bauer-Wolf, *After Threat of Violence, Calls to Fire RA*, INSIDE HIGHER ED (Aug. 1, 2018), https://www.insidehighered.com/news/2018/08/01/calls-stanford-ra-be-fired-after-he-threatens-fight-zionists.

"nonviolent" veil,[283] leading to people getting hurt.[284] Or when the student groups that start by demanding Jews leave campus[285] end up threatening outright violence should they dare refuse to go.[286]

---

[283] Rachel Frommer, *British Jewish Leaders Outraged by London University Anti-Israel Protest Which Required Police Intervention,* ALGEMEINER (Oct. 28, 2016), https://www.algemeiner.com/2016/10/28/british-jewish-leaders-outraged-by-london-university-anti-israel-protest-which-required-police-intervention/.

[284] DIKER & BERK, supra note 231, at 28-33.

[285] SJP UIUC, *Smashing Fascism: Radical Resistance Against White Supremacy*, FACEBOOK (Sept. 1, 2017), https://www.facebook.com/SJP.UIUC/photos/a.631907060208926.1073741828.568877179845248/1443649489034675/?type=3.

[286] William A. Jacobson, *Anti-Israel Rally at U. Illinois: "No Zionists, No KKK, Resisting Fascists All the Way,"* LEGAL INSURRECTION (Sept. 6, 2017, 7:00 PM), https://legalinsurrection.com/2017/09/anti-israel-rally-at-u-illinois-no-zionists-no-kkk-resisting-fascists-all-the-way. This is not entirely surprising because while many 'anti-Israel' activists probably believe the easily refutable "hyperbolic calumnies" that they are fed and think that they are doing something noble, the leaders of the movement often do know better, and they prey upon innocent college-age kids to fill their heads with lies and indoctrinate them in hate. *See* Paul Miller, *From UCLA to NYU, BDS Supporters Struggle with Dialogue*, OBSERVER (Feb. 27, 2014) https://observer.com/2014/02/from-ucla-to-nyu-bds-supporters-struggle-with-dialogue/. Many of their followers probably do not know that several prominent anti-Israel organizations and academics are closely affiliated with violent radical antisemitic groups and convicted murderous terrorists. *See* Eitan Fischberger, *Anti-Academia at San Francisco State University*, JEWISH J. (Jan. 13, 2021), https://jewishjournal.com/commentary/327404/anti-academia-at-san-francisco-state-university/. For example, on the left, a recent study found that anti-Israel pro-Boycott Divestment and Sanctions ("BDS") activity is the strongest predictor of anti-Jewish hostility on campus. *See* AMCHA INITIATIVE, REPORT ON ANTISEMITIC ACTIVITY IN 2015 AT U.S. COLLEGES AND UNIVERSITIES WITH THE LARGEST JEWISH UNDERGRADUATE POPULATIONS 1, 11–12 http://www.amchainitiative.org/wp-content/uploads/2016/03/Antisemitic-Activity-at-U.S.-Colleges-and-Universities-with-Jewish-Populations-2015-Full-Report.pdf. Meanwhile, in 2016 Congress heard testimony from former U.S. Department of the Treasury terrorism finance analyst Jonathan Schanzer linking the BDS movement to radical terror groups whose mission is the destruction of Israel. *See Israel Imperiled: Threats to the Jewish State: Hearing Before H. Foreign Affairs Comm. Subcomm. On Terrorism, Nonproliferation, and Trade and the Subcomm. On the Middle E. and N. Afr.*, 114th Cong. (2016) (statement of Jonathan Schanzer), https://docs.house.gov/meetings/FA/FA18/20160419/104817/HHRG-114-FA18-Wstate-SchanzerJ-20160419.pdf. Since that time, his testimony has been confirmed and greatly expanded upon, with new reports finding that the nonprofit umbrella group for U.S.-based BDS organizations funnels money to terrorist organizations that try to carry out the more sinister BDS aims; *see* Armin Rosen & Liel Leibovitz, *BDS Umbrella Group Linked to Palestinian Terrorist Organizations,* TABLET (June 1, 2018), https://www.tabletmag.com/sections/news/articles/bds-umbrella-group-linked-to-palestinian-terrorist-organizations). *See also* William A. Jacobson, *UC-Berkeley Anti-Israel Activists Rip Up Photo of Rasmea Odeh's Terror Victims*, LEGAL INSURRECTION (Feb. 16, 2020, 9:00 PM), https://legalinsurrection.com/2020/02/uc-berkeley-anti-israel-activists-rip-up-photo-of-rasmea-odehs-terror-victims/#more. More than thirty of the BDS movement's leaders are *actual* violent terrorists; *see* STATE OF ISRAEL: MINISTRY OF STRATEGIC AFFAIRS AND PUBLIC DIPLOMACY, TERRORISTS IN SUITS: THE TIES BETWEEN NGOS PROMOTING BDS AND TERRORIST ORGANIZATIONS, (2019), https://www.gov.il/BlobFolder/generalpage/terrorists_in_suits/en/De-Legitimization%20Brochure.pdf; Emily Jones, *'Terrorists in Suits': Senior Leaders of Anti-Israel BDS Groups Tied to Palestinian Terror*,

Sometimes, instead of flyers and pronouncements, the discriminatory anti-Zionism takes the even quieter form of conditional invitations to opportunities, with entry to Jewish participants contingent on them disavowing an aspect of their Jewish identity. Over the last several years, Jewish individuals and groups have routinely been told they are not welcome at conferences,[287] coalitions,[288] campuses,[289] concerts,[290] demonstrations,[291] and even discussions[292]—unless, of course, they agree to denounce Zionism first.[293] Jews on campus have been denied letters of recommendation[294] and entry into events,[295] had their leadership credentials[296] and their loyalties

CBN NEWS (Feb. 4, 2019), https://www1.cbn.com/cbnnews/israel/2019/february/report-senior-leaders-of-anti-israel-bds-organizations-are-lsquo-terrorists-in-suits-rsquo. On the far right, former grand wizard of the Klu Klux Klan David Duke has been trying to popularize use of the word Zio (short for Zionist) as a stand in for the word Jew, to be able to criticize Jewish people without being immediately called antisemitic. *See generally* DAVIDDUKE.COM: ZIO-WATCH NEWS ROUND-UP, http://davidduke.com/category/zio-watch/ (last visited Aug. 30, 2020); *Understanding Antisemitism: An Offering to Our Movement*, JEWS FOR RACIAL & ECON. JUST., https://www.jfrej.org/assets/uploads/JFREJ-Understanding-Antisemitism-November-2017-v1-3-2.pdf (last visited Aug. 30, 2020).

287 Anthony Berteaux, *In the Safe Spaces on Campus, No Jews Allowed,* TOWER (Feb. 2016), http://www.thetower.org/article/in-the-safe-spaces-on-campus-no-jews-allowed/.

288 Geremia Di Maro, *Minority Rights Coalition to Reconsider Membership for Jewish Leadership Council*, CAVALIER DAILY (Mar. 3, 2018), https://www.cavalierdaily.com/article/2018/03/minority-rights-coalition-to-reconsider-membership-for-jewish-leadership-council.

289 Bandler, *supra* note 279.

290 Rabbi Yonah Bookstein, *Matisyahu Played, but BDS Racism is Winning,* JEWISH J. (Aug. 24, 2015), https://jewishjournal.com/israel/176973/matisyahu-played-but-bds-racism-is-winning/.

291 Ariel Behar, *Sarsour Group Says 'No Zionists' at Civil Rights Rally*, ALGEMEINER (June 24, 2020), https://www.algemeiner.com/2020/06/24/sarsour-group-says-no-zionists-at-civil-rights-rally/.

292 *A Strategy of Rejection: The Anti-Normalization Campaign*, ANTI-DEFAMATION LEAGUE (May 25, 2012), https://www.adl.org/news/article/a-strategy-of-rejection-the-anti-normalization-campaign.

293 Deborah Lipstadt, *It's Time to Walk Away from the Women's March*, HADASSAH MAG. (Jan. 2019), https://www.hadassahmagazine.org/2019/01/03/time-walk-away-womens-march/.

294 Jackson Richman, *Michigan Jewish Student Denied Recommendation by Professor, Citing BDS as Reason*, JEWISH NEWS SYNDICATE (Sept. 18, 2018), https://www.jns.org/jewish-student-denied-recommendation-by-university-of-michigan-professor-citing-bds-as-reason/.

295 Dave Schechter, *Hillels of Georgia Seeks Anti-Semitism Probe of Georgia Tech*, ATLANTA JEWISH TIMES (Jan 12, 2020), https://atlantajewishtimes.timesofisrael.com/hillels-of-georgia-seeks-anti-semitism-probe-of-georgia-tech/.

296 Aaron Bandler, *USC Student VP Resigns, Says She Was Bullied for Being a Zionist*, JEWISH J. (Aug. 6, 2020), https://jewishjournal.com/featured/319981/usc-student-vp-resigns-says-she-was-bullied-for-being-a-zionist/.

questioned,[297] been called pejorative names (e.g., murderers, pigs, apartheid enablers, baby killers),[298] labeled as white supremacists,[299] and scapegoated for everything from racism[300] to the coronavirus[301] to police brutality.[302] In general, Jewish people are routinely excluded from progressive movements[303] public marches,[304] and liberal coalitions,[305] "all because of their stated or assumed support for Zionism."[306]

Of course, it is true that some Jews are themselves anti-Zionistic. One problem (as Blake Flayton, a self-described progressive Zionist student at George Washington University, described it) is that all too often, progressive "groups protect themselves against accusations of antisemitism by trotting out their anti-Zionist Jewish supporters, despite that such Jews are a tiny fringe of the Jewish community. Such tokenism is seen as unacceptable—and rightfully so—in any other space

297 Barry Kosmin, *UCLA Student Is Latest Victim of Antisemitism on Campus*, CNN (Mar. 10, 2015), https://www.cnn.com/2015/03/10/opinions/kosmin-anti-semitism-campus/index.html.

298 Zina Rakhamilova, *#NOHATEONCAMPUS*, JERUSALEM POST (Nov. 3, 2018), https://www.jpost.com/Opinion/NOHATEONCAMPUS-570999; Blake Flayton, *On the Frontlines of Progressive Anti-Semitism*, N.Y. TIMES (Nov. 14, 2019), https://www.nytimes.com/2019/11/14/opinion/college-israel-anti-semitism.html.

299 Nada Elia, *Birds of a Feather: White Supremacy and Zionism*, MIDDLE EAST EYE (Aug. 24, 2017), https://www.middleeasteye.net/opinion/birds-feather-white-supremacy-and-zionism.

300 Farah Stockman, *Women's March Roiled by Accusations of Anti-Semitism*, N.Y. TIMES (Dec. 13, 2018), https://www.nytimes.com/2018/12/23/us/womens-march-anti-semitism.html.

301 Brenda Katten, *Even During the Coronavirus Pandemic, Jews Are Ever the Scapegoat*, JERUSALEM POST (May 14, 2020), https://www.jpost.com/opinion/even-during-the-coronavirus-pandemic-jews-are-ever-the-scapegoat-627982.

302 Ricki Hollander, *Black Lives Matter, JVP's Deadly Exchange, and Israel*, CAMERA (July 2, 2020), https://www.camera.org/article/black-lives-matter-jvps-deadly-exchange-and-israel/.

303 Berteaux, *supra* note 287.

304 Bari Weiss, *I'm Glad the Dyke March Banned Jewish Stars*, N.Y. TIMES (June 27, 2017), https://www.nytimes.com/2017/06/27/opinion/im-glad-the-dyke-march-banned-jewish-stars.html; William A. Jacobson, *Jewish Voice for Peace-Chicago Sides with "Dyke March" Anti-Semites*, LEGAL INSURRECTION (June 26, 2017, 8:40 PM), https://legalinsurrection.com/2017/06/jewish-voice-for-peace-chicago-sides-with-dyke-march-anti-semites/.

305 Geremia Di Maro, *Minority Rights Coalition to Reconsider Membership for Jewish Leadership Council*, CAVALIER DAILY (Mar. 3, 2018), https://www.cavalierdaily.com/article/2018/03/minority-rights-coalition-to-reconsider-membership-for-jewish-leadership-council.

306 Goldfeder, *The Danger of Defining Your Own Terms*, *supra* note 197, at 1431.

where a marginalized community feels threatened."[307] This classic trope, in the vein of "some of my best friends are ___," is a logically invalid claim of innocence by association,[308] and is so lazily dismissive that "it has become shorthand for weak denials of bigotry—a punch line about the absence of thoughtfulness and rigor in our conversations about racism."[309]

Jews, like any other group, are not homogenous and so, as Professor Andrew Pessin has noted, it is dire that the question of anti-Semitism be framed correctly:

> For if Jews come in many types . . . it is perfectly conceivable that someone legitimately characterizable as an antisemite might not hate all or even most Jews. The crucial question should not be whether he hates all or most Jews, in other words. It is whether the people he hates, *he hates for their Jewishness*.[310]

Or for some aspect of their Jewishness, including their actual or supposed Zionism.[311]

Unfortunately, as the dozens of examples above make clear, it is too often true that, as Martin Luther King, Jr. once said**:** "[w]hen people criticize Zionists, they mean Jews. You're talking anti-Semitism!"[312] To claim that Zionism and Judaism are completely separate phenomena is to be ignorant. Or, as Dennis Prager would say, is like pretending that "Italy has nothing to do with being Italian."[313]

---

307 Blake Flayton, Opinion, *On the Frontlines of Progressive Anti-Semitism*, N.Y. TIMES (Nov. 14, 2019), https://www.nytimes.com/2019/11/14/opinion/college-israel-anti-semitism.html.

308 *See* Matthew P. Winslow, *Reactions to the Imputation of Prejudice*, 26 BASIC & APPLIED SOC. PSYCH. 289, 289–97 (2004) (Experiment 2). As one expert explained, "it is like saying there is no such thing as sexism because we all have a close friend or family member who is a woman." ELIZABETH ANNE MCGIBBON & JOSEPHINE B. ETOWA, ANTI-RACIST HEALTH CARE PRACTICE 159 (2009)).

309 *See* John Eligon, *The 'Some of My Best Friends Are Black' Defense*, N.Y. TIMES (Feb. 16, 2019), https://www.nytimes.com/2019/02/16/sunday-review/ralph-northam-blackface-friends.html.

310 Andrew Pessin, *The Indelible Stain of Antisemitism: The Failed Practice of "Jew-Washing,"* TIMES OF ISRAEL: THE BLOGS (June 24, 2017, 11:04 PM), https://blogs.timesofisrael.com/the-indelible-stain-of-antisemitism-the-failed-practice-of-jew-washing/.

311 See Newport, *supra* note 270 above for a discussion of the research, which found that 95 percent of American Jews support Israel—which, is the definition of Zionism that tends to get Jewish students and Jewish groups excluded on campuses around the country—and that their Judaism plays an important part in that belief.

312 MARTIN KRAMER, THE WAR ON ERROR: ISRAEL, ISLAM, & THE MIDDLE EAST 260 (2016).

313 Dennis Prager, *Criticizing Israel Is Fine, but Anti-Zionism Is Anti-Semitic*, N.Y. POST (Aug. 20, 2019), https://nypost.com/2019/08/20/criticizing-israel-is-fine-but-anti-zionism-is-anti-semitic/; *see also* Forest Rain Marcia, *Anti-Zionism Is The New*

It is also worth remembering that to be anti-Zionist today is to be against the survival of the world's only Jewish state. As Alan Johnson noted: "[a]nti-Zionism has come to mean something entirely different . . . *after* the creation of the State of Israel in 1948: it has come to mean a programme of comprehensive hostility to all but a sliver of world Jewry, a programme for the eradication of actually existing Jewish self-determination."[314] To imagine that the state would go away "'without wholesale killing of Jews'"[315] is ridiculous. That means to be anti-Zionist, in the sense of wanting to destroy the Jewish State,[316] is to be okay with the mass slaughter of the Jews who live there.[317]

The examples in the IHRA definition are there for a reason. State officials and school administrators themselves might need more training in what is and is not acceptable, which is why an objective and consensus driven standard is necessary.[318] Too often perpetrators and enablers let the conflation of criticism of Israel and antisemitism serve as a shield for antisemites. Without a clear definition and the contextual

Antisemitism, ISRAEL FOREVER FOUND., https://israelforever.org/interact/blog/anti_zionism_is_the_new_antisemitism/ (last visited Oct. 19, 2021).

[314] Alan Johnson, *The Left and the Jews: Time for a Rethink*, FATHOM J., http://fathomjournal.org/the-left-and-the-jews-time-for-a-rethink/ (last visited Aug. 22, 2021).

[315] Aaron Kliegman, *Anti-Zionism Is, by Definition, Antisemitism*, WASH. FREE BEACON (Jan. 17, 2019, 3:40 PM), https://freebeacon.com/blog/anti-zionism-is-by-definition-anti-semitism/.

[316] As in the oft-used Hamas jihadist rallying cry, 'from the river to the sea,' that is sadly all too often echoed by commentators, see, e.g., Micha Danzig, *'Palestine From the River to the Sea' Has Always Been a Call for Annihilation Not Liberation*, JEWISH J. (Dec. 3, 2018), https://jewishjournal.com/commentary/blogs/242943/palestine-river-sea-always-call-annihilation-not-liberation/, and politicians, see, e.g., Dr. Mark Goldfeder, *Dr. Mark Goldfeder: House Should Censure Anti-Semitic Rep. Rashida Tlaib*, FOX NEWS (Dec. 3, 2020), https://www.foxnews.com/opinion/rashida-tlaib-anti-semitism-mark-goldfeder, who then feign ignorance, and by students on campus, see Aaron Bandler, *SJP Protesters Chant 'From the River to the Sea Palestine Will Be Free' During Hen Mazzig Speech*, JEWISH J. (Nov. 15, 2019), https://jewishjournal.com/news/united-states/307197/sjp-protesters-chant-from-the-river-to-the-sea-during-hen-mazzigs-speech-at-vassar-college/; Morton A. Klein & Susan B. Tuchman, *ZOA Letter to CUNY Leaders About Anti-Semitic, Violence-Inducing Rallies There*, ZIONIST ORG. AM. (Feb. 22, 2016), https://zoa.org/2016/02/10315402-letter-to-cuny-chancellor-and-board-of-trustees-jew-haters-spread-fear-at-cuny-colleges/, who don't.

[317] Kliegman, *supra* note 315.

[318] And students need protection from 'intellectuals' who have no qualms about spreading horrific lies made out of whole cloth in quasi-academic settings. *See* Liora Rez, *We Must Define Antisemitism to Stop Antisemitism*, JERUSALEM POST (Dec. 5, 2020, 9:47 PM), https://www.jpost.com/opinion/we-must-define-antisemitism-to-stop-antisemitism-651256. It is a shame that impressionable students are taken advantage of by people they trust co-opting the language of social justice to lead them down a dark path of hate. The IHRA definition is a tool that can shed some light to hopefully help bring many of them back.

understanding of how anti-Zionist language is often used to perpetuate antisemitic tropes, this issue will not be resolved, and students will continue to harass and be harassed by their peers, and potentially professors, on the basis of Jewish identification. Because this is the hardest part of the definition for many people to understand, it is worth providing a case study to illustrate the principle.

VIII. A CASE STUDY IN THE NECESSITY OF CLEARLY DEFINING TERMS

There is a real danger in allowing people to confuse conduct with speech, and antisemitism with criticism of Israel. The double conflation allows antisemites to do whatever they want to Jewish people, and then immediately claim that they, in fact, are the victims having their "political speech" silenced.

A. *What Happened "Over There"*

A recent German court case provides an illustrative example of what can happen when authorities allow antisemitic crime to hide behind the veil of criticism for Israel—the blurring of what it means to be anti-Israel and anti-Jew.[319] On July 29, 2014, three German-Palestinian men filled six bottles with petrol and attempted to firebomb a synagogue in Wuppertal, Germany.[320] It is noteworthy that Nazis burned the original synagogue during the infamous Kristallnacht pogroms in 1938.[321] It was finally rebuilt in 2002.[322]

Several months later, in 2015, the district court in Wuppertal ruled that this attack was not antisemitic, but merely anti-Israel political speech, and exempted the criminals from jail time.[323] On January 13, 2017, a German superior court upheld the lower court's ruling, affirming that German synagogues are legitimate targets of protest against Israel.[324] Per the official ruling, despite the fact that the defendants admittedly tried to burn down a synagogue, "[t]he attack on

---

[319] Jim Yardley, *Europe's Anti-Semitism Comes Out of the Shadows*, N.Y. TIMES (Sept. 23, 2014), https://www.nytimes.com/2014/09/24/world/europe/europes-anti-semitism-comes-out-of-shadows.html.

[320] Benjamin Weinthal, *German Court Calls Synagogue Torching an Act to 'Criticize Israel,'* JERUSALEM POST (Jan. 13, 2017), https://www.jpost.com/diaspora/german-court-calls-synagogue-torching-an-act-to-criticize-israel-478330.

[321] Yardley, *supra* note 319.

[322] *Id.*

[323] Benjamin Weinthal, *German Judge: Torching of Synagogue Not Motivated by Anti-Semitism*, JERUSALEM POST (Feb. 7, 2015, 8:20 PM), https://www.jpost.com/diaspora/german-judge-torching-of-synagogue-not-motivated-by-anti-semitism-390294.

[324] Joseph Bottum, *A German Court Rationalizes an Attack on a Synagogue*, WASH. EXAMINER (Jan. 26, 2017, 3:34 PM), https://www.washingtonexaminer.com/weekly-standard/a-german-court-rationalizes-an-attack-on-a-synagogue.

the Wuppertal synagogue cannot be defined as anti-Semitic, there is simply no proof for an anti-Semitic motivation."[325] As the Jewish community leader made clear in an interview with the German magazine *Spiegel*, "[t]his was not an Israeli embassy, but a house of God, used by Jewish German citizens, not Israelis, to practice their faith. If one were to make up a textbook definition of anti-Zionism becoming anti-Semitic, this would be it."[326]

This case illustrates why the Israel-related examples included in the IHRA definition, such as "[h]olding Jews collectively responsible for actions of the state of Israel"[327] are so critically necessary. In the words of essayist Joseph Bottum:

> To see the logic at play, suppose that three white men had attacked a traditionally black church in Birmingham, Alabama, scrawling graffiti and trying to set the church on fire . . . . Yes, the judge explained, they had been unlawfully violent and thus deserved to be convicted. But he suspended their sentences because their purpose in attacking the African-American church had not been to harm Americans but to protest the failure of the Nigerian government to halt the kidnapping of schoolgirls by the radical African militia Boko Haram. Or suppose something similar, but this time in Manila. After a court in the Philippines convicted several citizens of defacing a local mosque, the judge suspended their sentences—on the grounds that, however illegally they had behaved, they were engaged in legitimate political protest over the oppression of Christian guest workers by the Islamic government in Saudi Arabia. And then suppose that three men in Germany were arrested for throwing a Molotov cocktail at a synagogue. After their conviction, however, their sentences were suspended—again on the grounds that their admittedly illegal violence was motivated by a desire not to hurt German Jews but by a legitimate wish to protest the policies and actions of the foreign state of Israel . . . . Only the last of these three events is true, of course. But more to the point, only the last is even imaginable. Black citizens of the United States are never taken as symbolic representatives of African governments. For that matter, imagine the outcry if a judge condoned violence

---

325 Benjamin Näegele, *Judge Rules Wuppertal Synagogue Firebombing Was Not Anti-Semitic, So What Happened?*, B'NAI B'RITH INT'L (Jan. 17, 2017), https://www.bnai-brith.org/expert-analysis/judge-rules-wuppertal-synagogue-firebombing-was-not-anti-semitic-so-what-happened.

326 *Id.*

327 *Working Definition of Antisemitism*, *supra* note 37.

> against the places of worship of native citizens who happened to be Muslim—because a distant government was doing something objectionable.[328]

The German Muslims who attacked the Wuppertal synagogue in 2014 took Germany's Jews as representatives of Israel, and in 2017 the German courts agreed, simply as a matter of law.

Think about that for a moment.

Once non-Israeli Jews have been legally recognized as (target-worthy) symbols of Israel, not even a ray of daylight can slip between opposition to Israel and opposition to Jews.

The unbelievable ruling in that case led to scrutiny in Germany and international criticism. As Deidre Berger, the director of the Berlin Ramer Institute for German-Jewish Relations of the American Jewish Committee explained, "[t]he lack of a unified definition has led to anti-Semitic incidents being all too often ignored in recent years. . . . The fact, for example, that the courts considered an arson attack on a synagogue in Wuppertal as non-anti-Semitic illustrates the necessity of a definition."[329] The German government commissioned an independent expert group to make a report with recommendations,[330] and the following year the government followed one of those recommendations[331] by endorsing the same global standard definition of antisemitism that this Article supports: the IHRA definition, which would, of course, have labeled those horrific acts as antisemitic.[332]

B. *Could That Happen Here?*

Of course, it could.

As far back as 2002 the presidents of more than 300 American colleges signed a statement which read, in relevant part:

> We are concerned that recent examples of classroom and on-campus debate have crossed the line into intimidation and hatred, neither of which have any place on university campuses. *In the past few months, students who are Jewish or*

---

328 Bottum, *supra* note 324.

329 Jefferson Chase, *German Government Adopts International Anti-Semitism Definition*, DEUTSCHE WELLE (Sept. 20, 2017), https://www.dw.com/en/german-government-adopts-international-anti-semitism-definition/a-40608166.

330 See *Germany Endorses Working Definition of Antisemitism*, INT'L HOLOCAUST REMEMBRANCE ALLIANCE (Sept. 20, 2017), https://holocaustremembrance.com/stories/germany-endorses-working-definition-antisemitism (referencing that the adoption of the IHRA definition was the result of recommendations made by an independent group of experts).

331 *Id.*

332 *Id.*

> *supporters of Israel's right to exist—Zionists—have received death threats and threats of violence. Property connected to Jewish organizations has been defaced or destroyed. Posters and websites displaying libelous information or images have been widely circulated, creating an atmosphere of intimidation.* These practices and others, directed against any person, group or cause, will not be tolerated on campuses. All instances will be investigated and acted upon so that the campus will remain devoted to ideas based on rational consideration.[333]

In 2005, a hearing before the U.S. Commission on Civil Rights regarding antisemitic incidents on college campuses found that antisemitism and anti-Israelism are systemic ideologies found in varying degrees in colleges and universities throughout the United States. Death threats, threats of violence against Jewish students or students who are supporters of Israel, and banners and posters containing antisemitic rhetoric and images are among the manifestations of these ideologies, which create an environment of intimidation and harassment in contrast to the norms and values of the university.[334] The Commission heard stories of swastikas being painted on Hillel buildings and signs with the Star of David dripping blood; of campus newspaper cartoons with pictures of Jews in ovens; stories of "harassment, physical intimidation, physical assault and vandalism" perpetrated against Jewish students[335]—often tied to anti-*Israel* rationales. Panelists explained how Jewish students were afraid to wear anything that could identify them as Jewish for fear of being targeted, and how it was "difficult for them to concentrate on their academic responsibilities because their thoughts are so focused on their discomfort or even on their fear for their physical safety on campus."[336] Twelve years later, in 2017, the Congressional Committee on the Judiciary was still hearing stories about violent attacks on campus: about shouts of "Death to Jews" made on campus in the context and

---

[333] The American Jewish Committee, *College Presidents Decry Intimidation on Campuses*, SCHOLARS FOR PEACE IN THE MIDDLE EAST (Oct. 15, 2002), https://spme.org/campus-news-climate/college-presidents-decry-intimidation-on-campuses/639/ (emphasis added).

[334] Morton A. Klein, *ZOA Center for Law and Justice Director Susan Tuchman's Testimony on Anti-Semitism Before the U.S. Commission on Civil Rights*, ZIONIST ORG. OF AM. (Nov. 18, 2005), https://zoa.org/2005/11/102058-zoa-center-for-law-and-justice-director-susan-tuchmans-testimony-on-antisemitism-before-the-u-s-commission-on-civil-rights/.

[335] *Id.*

[336] *Id.*

under the guise of anti-Zionism; and about how Jewish students "felt scared to be a Jew on campus."[337]

Again, we must reiterate that not every instance of antisemitism deserves disciplinary action; free speech *must* be protected. But that does not mean that antisemitism should not be correctly labeled. In a 2019 viral social media video of students at George Washington University ("GW"), one student asks the other, "What are we going to do to Israel?"[338] The woman responds, "Bro, we're going to fucking bomb Israel, bro. Fuck out of here, Jewish pieces of shit."[339] GW did not feel that the incident involved a credible threat,[340] and the GW President used his own speech to condemn the video as hateful antisemitism.[341] Although student leaders on campus were adamant that this episode was "emblematic of a larger issue of anti-Semitism at the University"[342] and that they "feel unsafe,"[343] GW handled this situation correctly. While GW took no disciplinary action, the GW President did call out the language as problematic from a university values standpoint.

A slightly harder case arose at Stanford in 2018, when an incoming resident assistant-to-be threatened to "physically fight" Zionists on campus and "abolish [their] ass."[344] This was not just any student, this was someone "entrusted by the University with authority over, and responsibility for, incoming freshmen."[345] And this was also not just any immature comment; this was an actual threat of physical violence

---

337 *Examining Anti-Semitism on College Campuses: Hearing Before the H. Comm. on the Judiciary*, 115th Cong. 45 (2017) (statement of Sandra Hagee Parker, Chairwoman, Christians United for Israel Action), https://www.govinfo.gov/content/pkg/CHRG-115hhrg32325/html/CHRG-115hhrg32325.htm.

338 Marina Pitofsky, *George Washington University Leaders, Students Condemn Anti-Semitic Snapchat Video*, HILL (Nov. 9, 2019, 11:06 PM), https://thehill.com/blogs/blog-briefing-room/news/469768-george-washington-university-leaders-students-condemn-anti.

339 Dani Grace et al., *Officials Condemn, Work to Respond to Anti-Semitic Snapchat Video*, GW HATCHET (Nov. 6, 2019, 2:12 PM), https://www.gwhatchet.com/2019/11/06/officials-condemn-work-to-respond-to-abhorrent-snapchat-video/.

340 *Id.*

341 *Id.*

342 Shannon Mallard & Zach Schonfeld, *Student Leaders Host Forums, Extend Support in Wake of Anti-Semitic Post*, GW HATCHET (Nov. 11, 2019, 1:38 AM), https://www.gwhatchet.com/2019/11/11/student-leaders-host-forums-extend-support-in-wake-of-anti-semitic-post/.

343 Grace, *supra* note 339.

344 Jeremy Bauer-Wolf, *After Threat of Violence, Calls to Fire RA*, INSIDE HIGHER ED (Aug. 1, 2018), https://www.insidehighered.com/news/2018/08/01/calls-stanford-ra-be-fired-after-he-threatens-fight-zionists.

345 Ben Simon, *The Mob That Never Was: A Defense of Justified Outrage*, STAN. REV. (Aug. 17, 2018), https://stanfordreview.org/the-mob-that-never-was-a-defense-of-justified-outrage/.

against other students. To his credit, even in the student's original retraction, he did not pretend that he had not really threatened people. Rather, he admitted to merely reconsidering his strategy. "I edited this post because I realize intellectually beating Zionists is the way to go . . . . Physical fighting is never an answer to [sic] when trying to prove people wrong."[346]

Like GW, Stanford assessed no credible threat, and that may have been the right decision. But the Jewish community was still bewildered why this incident was turned into yet another *political* referendum, with progressive students at Stanford rushing to the would-be RA's defense and "either praising his 'immense moral and intellectual stature' or assailing his critics' 'bullying tactics.'"[347] Even with a no-credible-threat determination, why would anyone *defend* this clearly wrong behavior? To better understand their confusion, try the thought experiment proposed by Rabbi Dov Greenberg, the executive director of the Rohr Chabad House at Stanford:

> Replace the word "Zionist" with "LGBT" or "supporters of #BlackLivesMatter" in Daoud's post. Almost certainly, the outcry would be universal and deafening. Yet, for some reason, when it comes to threatening physical violence against fellow students who support Israel, the response is indifference or, worse still, support. Somehow, the target of hate becomes the villain and the aggressor becomes the victim. How has this come to pass?[348]

The answer is simple. It has come to pass because people pretend that they cannot distinguish between criticism of the State of Israel and threats of violence or discrimination against other students on an American university campus. Whether or not a threat is deemed credible, *no* threat should be excused or defended as just "political speech," because when a credible threat does inevitably happen, that excuse will be used as well.

These are just snapshots of the Jewish American college experience, and these incidents must be understood contextually as part of the greater Jewish American experience contending with a rising tide of antisemitism, masquerading as criticism of the State of Israel. Over the last several years, multiple reports and studies have documented

---

346 Bauer-Wolf, *supra* note 344 (alteration in original).

347 Simon, *supra* note 345.

348 Dov Greenberg, *Stanford Student Threatens Violence Against Pro-Israel Students*, NAT'L REV. (July 31, 2018, 6:30 AM), https://www.nationalreview.com/2018/07/universities-must-oppose-immoral-dangerous-bds-movement/.

incidents of criminals attacking Jewish people (often students)[349] and businesses,[350] and then hiding behind the claim of merely being anti-Israel. "[T]here are thousands[351] of readily available,[352] easily accessible,[353] examples"[354] of activists on and off university campuses "crossing the line into straight antisemitism" in ways that, at first glance, do not reflect the pretext of criticism for Israel.[355] Categorically, these include people: calling for death to Jews[356] (not Israelis, but *Jews*);[357] bemoaning that Hitler's plan did not succeed;[358] spreading lies that depict Jewish religious beliefs as hateful;[359] denying the history[360] or the ancestry of the Jewish people;[361] banning or expelling individuals for

[349] *See, e.g.*, Letter from Jay Alan Sekulow, Chief Counsel, Am. Ctr. for Law & Justice, to James B. Milliken, Chancellor, The City University of New York (May 4, 2016), http://media.aclj.org/pdf/16.05.04-CUNY-Letter_Redacted.pdf.

[350] *See, e.g.*, Tom Tugend, *LA Jews Reeling After Local Institutions Looted and Burned in Floyd Protests*, TIMES OF ISRAEL (June 3, 2020, 2:01 A.M.), https://www.timesofisrael.com/la-jews-take-stock-after-george-floyd-protests-batter-local-institutions/.

[351] *See* DIKER & BERK, *supra* note 231, at 28-33.

[352] *See generally Because the World Should Know*, CANARY MISSION, https://canarymission.org/ (last visited Sept. 21, 2021).

[353] *See generally "Behind the Mask" – Unmasking Antisemitism Behind the BDS Campaign*, MINISTRY OF STRATEGIC AFFS. (Sept. 15, 2019), https://4il.org.il/1396/.

[354] *See generally* AMCHA INITIATIVE, https://amchainitiative.org/search-by-incident#incident/display-by-date/ (last visited Sept. 21, 2021) (containing a database that allows one to search and filter data on incidents of antisemitic activity that occurred on U.S. college and university campuses from 2015 to present day).

[355] Goldfeder, *The Danger of Defining Your Own Terms*, *supra* note 197.

[356] Josh Nathan-Kazis, *Megadonor Who Withdrew From AIPAC Conference Has History of Controversial Tweets*, FORWARD (Mar. 19, 2019), https://forward.com/fast-forward/421149/adam-milstein-aipac-twitter-omar-tlaib-muslim/.

[357] Sam Sokol, *South Africa BDS Leader Defends Call to 'Kill the Jew*,' JERUSALEM POST (Sept. 2, 2013, 7:45 PM), https://www.jpost.com/jewish-world/jewish-features/south-africa-bds-leaders-defends-call-to-kill-the-jew-325075.

[358] *See* Daniel Greenfield, *"I Would Have Killed All the Jews in the World": SJP's Holocaust Hate*, FRONTPAGE MAG. ARCHIVE (Feb. 5, 2018), https://archives.frontpagemag.com/fpm/i-would-have-killed-all-jews-world-sjps-holocaust-daniel-greenfield/.

[359] *See generally* Frank Barat, *An Interview with Roger Water*, COUNTERPUNCH (Dec. 6, 2013), https://www.counterpunch.org/2013/12/06/an-interview-with-pink-floyds-roger-waters/; C.R. Rublin, *Incitement Against Jews By U.S.-Based Neo-Nazi and White Supremacist Members of Pro-Palestinian and BDS Facebook Groups*, SPME (May 29, 2019), https://spme.org/antisemitism/incitement-against-jews-by-u-s-based-neo-nazi-and-white-supremacist-members-of-pro-palestinian-and-bds-facebook-groups/25536/; *Watch and Share Our PACBI Live Broadcast with Roger Waters*, BDS (July 26, 2017), https://bdsmovement.net/news/watch-and-share-our-pacbi-live-broadcast-roger-waters.

[360] *See Israel to Allocate $50m to Explore Foundations of Alleged Temple*, MIDDLE EAST MONITOR (Dec. 19, 2017, 12:38 AM), https://www.middleeastmonitor.com/20171219-israel-to-allocate-50m-to-explore-foundations-of-alleged-temple/.

[361] *See, e.g.*, ENERSEC USA, *Yasir Qadhi Anti-Semitic Rant*, YOUTUBE (Nov. 19, 2015), https://www.youtube.com/watch?v=2bSxOmcyI18&feature.

being Jewish (again, not Israeli, but Jewish);[362] promoting the actual medieval Passover religious blood libel[363] (or any of its modern counterparts[364]); and harassing[365] and physically attacking[366] Jewish students[367] and Jewish businesses.[368] Yet in all of the above instances, the perpetrators denied they were antisemitic, and claimed they were only anti-Israel.

Could it happen here? Of course it could.

---

362 *Matisyahu: Spanish Festival Ban is 'Appalling, Offensive,'* TIMES OF ISRAEL (Aug. 17, 2015, 11:10 PM), https://www.timesofisrael.com/matisyahu-spanish-festival-ban-is-appalling-offensive/; Yair Rosenberg, *Israel Boycott Activists Call for Jews to Be Expelled from South African University,* TABLET (Feb. 12, 2015), https://www.tabletmag.com/sections/news/articles/israel-boycott-activists-call-for-jews-to-be-expelled-from-south-african-university.

363 *Miftah Attacks Me, Refuses to Condemn Its Blood Libel,* ELDER OF ZIYON (Mar. 30, 2013), http://elderofziyon.blogspot.com/2013/03/miftah-attacks-me-refuses-to-condemn.html; *Jewish Kabbalistic Occult Ritual Child Murder Throughout History*, BITCHUTE (Oct. 5, 2019), https://www.bitchute.com/video/987FZhimkQpV/.

364 *See* Yair Rosenberg, '*Israelis Toast Syrian Slaughter': The Making of a Modern Blood Libel, Just in Time for Passover*, TABLET MAG. (Apr. 14, 2017), https://www.tabletmag.com/sections/news/articles/israelis-toast-syrian-slaughter-the-making-of-a-modern-blood-libel-just-in-time-for-passover.

365 *See, e.g.*, William A. Jacobson, *Anti-Israel Student Group Suspended at Northeastern for Vandalism, Intimidation, Disruption*, LEGAL INSURRECTION (Mar. 13, 2014, 10:00 AM), https://legalinsurrection.com/2014/03/anti-israel-student-group-suspended-at-northeastern-for-vandalism-intimidation-disruption/; William A. Jacobson, *Dorm Storming at NYU Targets Jewish Students,* LEGAL INSURRECTION (Apr. 24, 2014, 1:32 PM), https://legalinsurrection.com/2014/04/dorm-storming-at-nyu-targets-jewish-students/.

366 *See, e.g.*, Edwin Black, *Temple University–Latest Anti-Semitic Hotspot Protested Amid Record Donation Drive*, HUFFINGTON POST (Oct. 25, 2014), https://www.huffpost.com/entry/temple-university-latest-_b_5707919; Frances Dinkelspiel, *Jewish Student Sues UC Berkeley Over Assault by Palestine Supporter*, BERKELEYSIDE (Mar. 7, 2011, 12:19 PM), https://www.berkeleyside.com/2011/03/07/jewish-student-sues-uc-berkeley-over-assault-by-palestine-supporter.

367 Tori Cheifetz, *Jewish Students 'Held Hostage' in Toronto Hillel*, JERUSALEM POST (Feb. 15, 2009, 10:40 PM), https://www.jpost.com/jewish-world/jewish-news/jewish-students-held-hostage-in-toronto-hillel.

368 *See, e.g., SA: 21 arrested at violent BDS protest in South Africa*, CHRISTIANS UNITED FOR ISRAEL (Mar. 26, 2015), https://www.cufi.org.uk/news/sa-21-arrested-at-violent-bds-protest-in-south-africa.

Over the last several months, there have been not one,[369] not two,[370] not three,[371] not four,[372] but five[373] instances of Chabad Jewish community centers being set on fire across the United States. To date, the police have made no arrests, but it does not in any way strain the imagination to think that violent acts of antisemitism committed in this country—acts like setting Jewish community centers on fire—could be painted by the perpetrators (or those who wished to excuse them) as being somehow "only" politically motivated (i.e., anti-Israel and not anti-Jewish) despite the fact that none of the Chabad centers are or were affiliated with the State of Israel. To bring the matter closer to home, on January 13, 2021, security officers in Montreal caught a man desecrating a synagogue with swastikas. They also recovered a gasoline canister and lighter from his person and charged him with possessing incendiary and explosive materials with the intention of committing a criminal act. The perpetrator was an anti-Israel activist who had apparently been radicalized over time by propaganda.[374]

That is why a definition of antisemitism must refute the false idea that just because not *all* anti-Israel activity is inherently antisemitic, *none* of it should be considered antisemitic. Otherwise, antisemitic sentiment will continue to grow unchecked behind a socially acceptable excuse, until eventually something snaps, and it escalates to acts of outright violence and discrimination. Criticizing Israel is fine but hiding behind that criticism to be antisemitic is not.

---

369 Josh Shannon, *Investigator: Fire at UD's Chabad Center for Jewish Life was Intentionally Set*, NEWARK POST (Aug. 26, 2020), https://www.newarkpostonline.com/news/investigator-fire-at-ud-s-chabad-center-for-jewish-life-was-intentionally-set/article_f3802a5a-a865-5233-8de0-2a4f331d9c37.html.

370 Brandon Holveck, *Attempted Arson at Brandywine Hundred Chabad Center Investigated 2 months After Newark Chabad Center Fire*, DEL. ONLINE (Nov. 1, 2020, 9:45 AM), https://www.delawareonline.com/story/news/local/2020/11/01/state-fire-marshal-investigating-attempted-arson-brandywine-hundred-chabad-center/6112507002/.

371 *Investigators: Second Arson At A Delaware Chabad Center For Jewish Life*, FIRST STATES UPDATE (Nov. 1, 2020), http://firststateupdate.com/2020/11/investigators-second-arson-at-a-delaware-chabad-center-for-jewish-life/.

372 Fox 12 Staff, *Reward Increased in Arson Investigation at Chabad Center for Jewish Life in SW Portland*, FOX 12 OR. (Oct. 2, 2020), https://www.kptv.com/news/reward-increased-in-arson-investigation-at-chabad-center-for-jewish-life-in-sw-portland/article_7b72d848-0513-11eb-a0a6-8f7feb829485.html.

373 Marcy Oster, *Chabad Jewish Center in Portland Damaged in Second Fire in 5 Days*, TIMES OF ISRAEL (Aug. 20, 2020, 9:30 AM), https://www.timesofisrael.com/chabad-jewish-center-in-portland-damaged-in-second-fire-in-5-days/.

374 *See David Lazarus, Man Arrested After Swastikas Spray-Painted on Doors of Montreal Synagogue*, JEWISH TELEGRAPHIC AGENCY (Jan. 14, 2021), https://www.jta.org/quick-reads/man-arrested-after-swastikas-spray-painted-on-doors-of-montreal-synagogue.

To be fair, sometimes the excuse is so flimsy that it simply cannot, and does not, work. For instance, some of the examples of antisemitism described above were so outrageous[375] that when caught,[376] the perpetrators themselves had no choice but to apologize[377] for crossing the line from anti-Israel criticism into anti-Zionistic antisemitism.[378] But other times, like in Wuppertal, the excuse seems absurd, yet somehow passes muster. Regardless, antisemites trying to justify their actions should not get to decide the definitions of either Zionism or antisemitism.

And the problems are only getting worse, the excuses thinner, and the real objective clearer. As this Article was going to print, there was an outbreak of violence in the Middle East between Hamas, a U.S. and E.U. designated terror organization, and Israel, a key U.S. ally. Suddenly, in countries around the world,[379] antisemitic attacks shot up over 400 percent.[380] In cities across North America,[381] including Los Angeles[382] and New York,[383] hundreds of synagogues, Jewish community centers, kosher restaurants, Jewish-owned businesses, and individual Jewish

375 *See* Marc Lamont Hill, Opinion, *I'm Sorry My Word Choices Caused Harm*, PHILA. INQUIRER (Dec. 1, 2018, 12:05 PM), https://www.inquirer.com/philly/opinion/commentary/marc-lamont-hill-temple-university-cnn-palestine-israel-united-nations-20181201.html.

376 *See* Marcy Oster, *Palestinian Nonprofit Belatedly Apologizes for Blood Libel Article*, JEWISH TELEGRAPHIC AGENCY (Apr. 2, 2013, 2:08 PM), https://www.jta.org/2013/04/02/israel/palestinian-nonprofit-belatedly-apologizes-for-blood-libel-article.

377 *See* Kate Sullivan, Eli Watkinds, & Manu Raju, *Omar: 'I Unequivocally Apologize' After Backlash Over New Israel Tweets*, CNN (Feb. 12, 2019, 6:25 AM), https://www.cnn.com/2019/02/11/politics/ilhan-omar-aipac-backlash/index.html.

378 Rob Gloster, *Lecturer Apologizes for Retweet that UC Berkeley Condemned as Anti-Semitic*, JEWISH NEWS OF N. CAL. (Nov. 21, 2017), https://www.jweekly.com/2017/11/21/lecturer-apologizes-retweet-uc-berkeley-condemned-anti-semitic/.

379 *See generally Antisemitic Incidents at Anti-Israel Events and Actions Around the World,* ADL (June 1, 2021), https://www.adl.org/resources/fact-sheets/antisemitic-incidents-at-anti-israel-events-and-actions-around-the-world.

380 Jemima McEvoy, *Synagogue Attacks and Slurs: Jewish Community Rocked by Rise in Anti-Semitism Amid Israel-Gaza Fighting*, FORBES (May 20, 2021, 2:30 PM), https://www.forbes.com/sites/jemimamcevoy/2021/05/20/synagogue-attacks-and-slurs-jewish-community-rocked-by-rise-in-anti-semitism-amid-israel-gaza-fighting/?sh=6f89394e2262.

381 *See* Dov Hikind (@HikindDov), TWITTER (May 20, 2021, 8:03 AM), https://twitter.com/hikinddov/status/1395349533899595779?s=21.

382 Ruth Graham, *Los Angeles Mayor Calls Attack on Diners 'Anti-Semitic,'* N.Y. TIMES (May 20, 2021), https://www.nytimes.com/2021/05/20/us/jewish-hate-crime-los-angeles.html.

383 *See generally* Joseph Borgen, *Brutally Beaten By Group Of Suspects in Manhattan's Diamond District, Speaks Out: 'My Whole Face Felt Like It Was on Fire for Hours,'* CBS N.Y. (May 24, 2021, 10:15 AM), https://newyork.cbslocal.com/2021/05/24/jewish-man-brutally-beaten-in-manhattans-diamond-district/.

people[384] have been targeted and attacked, beaten[385] and bullied, cursed, and demonized because they are Jewish. In every instance, the thin veneer of "anti-Zionism" was shattered by the open expressions of enraged anti-Semitism, including the use of such classics as "kill the Jews," "rape their daughters,"[386] and the swastika; not to mention the pummeling[387] of innocent (non-Israeli, but clearly religious[388]) Jewish people. On social media platforms, the hate has been even more transparent. In just one week, the phrase "Hitler was right," or some version of it, was tweeted over 17,000 times.[389] On college campuses, in between dodging protests outside of Hillel buildings,[390] ignoring death threats from fellow students,[391] and removing Nazi symbols,[392] Jewish students have been subjected to campaigns[393] supported by faculty[394] and student groups[395] alike that call Israel a colonialist settler state,

[384] *See* Ben Sales, *Jews Attacked, One Person Burned Amid Pro-Palestinian Protests in New York City*, TIMES OF ISRAEL (May 21, 2021), https://www.timesofisrael.com/jews-attacked-one-person-burned-amid-pro-palestinian-protests-in-new-york-city/.

[385] *See* Reuven Fenton & Amanda Woods, *Jewish Man Beaten During Wild NYC Protests Afraid to Wear Yarmulke*, N.Y. POST (May 21, 2021, 5:23 PM), https://nypost.com/2021/05/21/jewish-man-beaten-during-wild-midtown-protests-afraid-to-wear-yarmulke/.

[386] Laura Sharman, *'The Worst it has Been in 30 Years': London Jews Suffer Horrific Rise in Anti-Semitic Attacks*, EVENING STANDARD (May 21, 2021), https://www.standard.co.uk/news/london/rabbi-antisemitism-rise-london-jewish-community-cst-b936325.html.

[387] *See, e.g.*, Chaim Deutsch (@ChaimDeutsch), TWITTER (May 20, 2021, 10:41 PM), https://twitter.com/ChaimDeutsch/status/1395570403440009220.

[388] *See* Andrew Lapin, *Pro-Palestinian Demonstrators Assault Jews in Los Angeles*, TIMES OF ISRAEL (May 19, 2021, 10:59 PM), https://www.timesofisrael.com/pro-palestinian-demonstrators-assault-jews-in-los-angeles/.

[389] *Preliminary ADL Data Reveals Uptick in Antisemitic Incidents Linked to Recent Mideast Violence*, ADL (May 20, 2021), https://www.adl.org/news/press-releases/preliminary-adl-data-reveals-uptick-in-antisemitic-incidents-linked-to-recent.

[390] Tabby Refael, *Thank You, Progressive Jews, for Defending Israel in Difficult Spaces*, JEWISH J. (May 21, 2021), https://jewishjournal.com/commentary/columnist/336899/thank-you-progressive-jews-for-defending-israel-in-difficult-spaces/.

[391] *See* RHUL JSOC (@rhuljscoc), INSTAGRAM (May 14, 2021), https://www.instagram.com/p/CO3mFXcgZyq/?utm_source=ig_embed&ig_rid=d0ab6404-3aba-4391-b502-fa2585e8437d.

[392] *See* Jennifer Hassan, *During Israel-Hamas Conflict, British Jews Come Under Physical and Verbal Attack*, WASH. POST (May 21, 2021), https://www.washingtonpost.com/world/2021/05/21/israel-gaza-jewish-attacks-rise.

[393] *See Princeton University Community Statement of Solidarity with the Palestinian People*, DAILY PRINCETONIAN (May 18, 2021, 8:40 PM), https://www.dailyprincetonian.com/article/2021/05/princeton-university-community-statement-of-solidarity-palestine-israel.

[394] *Gender Studies Departments in Solidarity with Palestinian Feminist Collective*, PALESTINIAN FEMINIST COLLECTIVE, http://genderstudiespalestinesolidarity.weebly.com (last visited Sept. 21, 2021).

[395] *See, e.g.*, George Weykamp, *CSG Response to Events in Israel and Palestine Draws Mixed Reactions from U-M Community*, MICH. DAILY (May 13, 2021),

negating the history of their people, denying the deep Jewish connection to the Jewish State, and dismissing the lives of their coreligionists as unimportant, if they are even worth mentioning at all.

Of course, none of this is surprising—during the last war in Gaza, there was a predictable 400 percent increase[396] in antisemitic incidents. But for those still pretending that anti-Zionism is unrelated to antisemitism or fighting against the adoption of the IHRA definition on those grounds, May and June of 2021 should have been clarifying—and embarrassing.[397] Regardless of your politics and beliefs, ask yourself this question: If anti-Zionism is not related to antisemitism, why are all of these people suddenly attacking Jews around the world, collectively and at random?

There is no clearer demonstration than recent events as to why we need the IHRA, and why the IHRA definition includes examples of problematic anti-Zionism, such as "[h]olding Jews collectively responsible for actions of the state of Israel."[398]

IX. CONCLUSION

Until now, the absence of a legal definition of antisemitism has been an Achilles' heel for those who expect the government and/or university systems to take a stronger stand against antisemitism. So long as the meaning of antisemitism has been left murky and inconsistent, it has been easy for officials to shrug their shoulders, or even to look the other way, while failing to enforce existing laws and regulations about bigotry and discrimination.

Valid monitoring, informed analysis and investigation, and effective policy-making all require uniform definitions. While there can be no exhaustive definition of antisemitism—as it can take many forms—the IHRA definition has been an essential definitional tool used to educate people about what antisemitism is, how Jewish people experience it, and how to detect its contemporary manifestations. The government has a responsibility to protect its citizens, and universities have a responsibility to protect students and faculty from acts of hate and bigotry motivated by discriminatory animus—including

https://www.michigandaily.com/student-government/csg-response-to-the-israel-palestine-conflict-draws-mixed-reactions-from-u-m-community/.

396 Itamar Eicher, *Report: 400% Rise in Anti-Semitic Incidents During Gaza War*, YNET NEWS (Jan. 25, 2015, 12:53 PM), https://www.ynetnews.com/articles/0,7340,L-4618843,00.html.

397 Mark Goldfeder, *Anti-Semitism's True Nature Reveals Itself*, N.Y. DAILY NEWS (May 25, 2021, 7:30 AM), https://www.nydailynews.com/opinion/ny-oped-anti-semitisms-true-nature-reveals-itself-20210525-yw3dypevcbdejibzlbwkpt56tm-story.html.

398 *Working Definition of Antisemitism*, *supra* note 37.

antisemitism—and they must be given the tools to do so. It is no longer acceptable for officials charged with protecting people from antisemitism to not have an official definition of what antisemitism means. It is equally unacceptable to insist on a definition of antisemitism that does not include the most troubling anti-Zionist sentiments.

Despite what critics say, the IHRA definition is not "new" and it does not include "the formal redefining of antisemitism to include anti-Zionism."[399] Not all criticism of Israel is antisemitism, but when anti-Zionism crosses certain lines it *can* be antisemitic. Critics of the definition generally focus on the danger of governments using it to stifle free speech.[400] But those concerns are easily answered, primarily by clarifying that the definition should be used (a) to monitor and respond to antisemitism, and (b) to help evaluate intent in discriminatory conduct cases, which involve actions and *not* free speech.[401]

Embracing the IHRA definition of antisemitism for educational and reporting purposes should be uncontroversial. Adopting it for analyzing discrimination and harassment claims will not affect or regulate free speech. It is only to be used after a person has been credibly accused of engaging in discriminatory acts toward Jewish people; acts so severe or pervasive that they limit the ability of the victim to participate in or benefit from an opportunity. Then and only then should the definition be used as contextual, rebuttable evidence of a discriminatory motive, "to the extent that any examples might be useful as evidence of discriminatory intent," and with the additional caveat that "whether a particular act constitutes discrimination prohibited by Title VI will require a detailed analysis of the specific allegations."[402] Taken in this light, there should be no concern of chilled speech. If a person is merely criticizing Israel, even harshly, then this policy should not worry them at all. If, however, they are engaging in discriminatory conduct against Jews, to the extent that the Jewish victims are unable to participate in educational opportunities, *and* their motive seems to be based on their race or national origin, then perhaps those in charge of investigating the discriminatory behavior would benefit from utilizing a universal, gold-standard definition of antisemitism to correct for any lack of knowledge

399 *See, e.g.*, *Wielding Antidiscrimination Law to Suppress the Movement for Palestinian Rights*, 133 HARV. L. REV. 1360, 1381 (2020).

400 *See* Elizabeth Redden, *Trump Signs Order on Campus Antisemitism*, INSIDE HIGHER ED (Dec. 12, 2019), https://www.insidehighered.com/news/2019/12/12/trump-order-antisemitism-campuses-draws-free-speech-concerns.

401 *See* Goldfeder, *Why We Should Applaud*, *supra* note 137.

402 Exec. Order No. 13899, 84 Fed. Reg. 68,779 (Dec. 11, 2019), https://www.govinfo.gov/content/pkg/FR-2019-12-16/pdf/2019-27217.pdf.

or even implicit bias on the subject." There should be nothing controversial about that either.

Adopting the definition with its examples is a necessary corrective for the unfortunate reality that, on and off campuses across the country, people have engaged in horrific antisemitic behavior under the guise of anti-Israel rhetoric. Not all criticism of Israel is antisemitism, but in practice some of it is, and this policy clarification only touches the kinds of egregious behavior that the First Amendment does not protect. All too often, Jewish students are afraid to attend events or wear their yarmulkes or Stars of David in public, out of fear for their safety. All too often, school administrators shrug their collective shoulders and dismiss their students' fears and complaints of discrimination as a normal part of the university's marketplace of ideas, simply because the violators falsely claim to only hate Israel, not Jews—even as they target Jews. That is not the case, and it has never been the case. Legitimate criticism of Israel is fine, and the freedom of speech, even when offensive, should be cherished and protected as part of what makes our democracy healthy and great. But the conflation of speech with conduct, and antisemitism with criticism of Israel, allows antisemites to commit antisemitic acts and then claim that they were merely expressing political views. When anti-Zionism crosses over into harassment and invidious discrimination, it can and should be stopped. According to the FBI, most religiously motivated hate crimes in the United States are committed against Jewish people,[403] and that number is on the rise,[404] even though they make up less than 2 percent of the population.[405] These trends are terrifying, and there is much work to be done to reverse them. It starts with calling out antisemitism for what it is.

It starts by defining the problem.

---

403 *See Antisemitism in the United States: Statistics on Religious Hate Crimes (1996-2019),* JEWISH VIRTUAL LIBR., https://www.jewishvirtuallibrary.org/statistics-on-religious-hate-crimes (last visited Aug. 4, 2020).

404 *See* Quincy Walter, *Anti-Semitic Crime in The U.S. Reaches Record Level,* WBUR NEWS (May 12, 2020), https://www.wbur.org/news/2020/05/12/antisemitic-crime-record-level.

405 Emily Guskin, *How Many Jews Live in the U.S.? That Depends on How You Define 'Jewish.,'* WASH. POST (Feb. 23, 2018, 6:00 AM), https://www.washingtonpost.com/news/post-nation/wp/2018/02/23/measuring-the-size-of-the-u-s-jewish-population-comes-down-to-identity/.

◯