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C.F.# 22-1241

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NOV - 1 2022

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## Background on the IHRA Redefinition of Antisemitism and its Weaponization for Political Gain

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The International Holocaust Remembrance Association (IHRA) “Working Definition of Antisemitism” is only the latest in a decades-long campaign to falsely conflate political speech critical of Israel or Zionism with antisemitism and thereby stigmatize and suppress advocacy for Palestinian rights.

While true antisemitism is certainly not new, the IHRA redefinition’s release in 2016 preceded the upsurge of vitriol and even murderous attacks on Jews that began after Donald Trump took office in 2017, from “Jews will not replace us” chants in Charlottesville to vandalism to synagogue shootings. This atmosphere of hate was abetted by Trump’s own dog whistles, invoking stereotypes about Jews and money, and coddling white supremacists. For them, antisemitism has always been a core tenet, most recently in the form of accusing Jews of having unnatural power in orchestrating the “replacement” of whites with immigrants of darker skin and/or non-Christian religions.

But Trump’s December 11, 2019, Executive Order 13899 on Combating Anti-Semitism,<sup>1</sup> ostensibly aimed at countering antisemitism and invoking the IHRA document, did not target these real manifestations of hatred. Instead, it played to an intended audience of political supporters for whom U.S.-Israel ties are paramount, whether right-wingers in the Jewish community, evangelicals enamored of Israel for their own theological reasons, the arms industry that profits from continued conflict or the white supremacists who may actually hate Jews but have come to admire Israel as a model for their desired ethno-state.

### a. New name for an old campaign

The campaign to conflate criticism of Israel with hatred of Jews began with invention and promotion of a so-called “new antisemitism”—a term coined in the 1960s alleging that criticism of the self-described Jewish state stemmed from hatred of Jews and not from Israel’s discriminatory treatment of non-Jewish citizens, its ongoing occupation and creeping annexation of territories conquered in war, and its refusal to accept responsibility for the expulsion of Palestinians from their homeland or recognize their right to return.

Criticism of the IHRA redefinition has centered on its 11 “examples” of what it says “could be” considered antisemitic, some of which could also be, and typically are, common political criticisms of Israeli policy. They include: “Denying the Jewish people their right to self-determination, e.g., by claiming that the existence of a State of Israel is a racist endeavor”; and “[d]rawing comparisons of contemporary Israeli policy to that of the Nazis. Another example, “[a]pplying double standards by requiring of [Israel] a behavior not expected or demanded of any other democratic nation,” is clearly false, as human rights advocates are prolific in their criticism of violations in many countries. Moreover, this example ignores the obvious reason that Israel is often a focus of U.S. progressives – until recently with Ukraine, no other country has come close to receiving the amount of military

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<sup>1</sup> Exec. Order No. 13899, 84 Fed. Reg. 68779 (Dec. 11, 2019), <https://www.federalregister.gov/documents/2019/12/16/2019-27217/combating-anti-semitism>.

support provided by the United States. Thus, it is only natural to examine the uses to which the aid is put. U.S. law, in fact, requires it.<sup>2</sup>

These examples in particular have been widely analyzed and roundly criticized, mainly for the chilling effect they have on protected speech.<sup>3</sup>

In focusing on the examples, however, the opening “definition” is often glossed over. While it lacks politically suspect elements, its utter incoherence is in itself strong evidence that the entire IHRA exercise was not a serious attempt to provide a crucial definition, let alone make the case that such a complex one is even necessary. Standard dictionaries do quite well with a single sentence defining antisemitism as hatred of or discrimination against Jews, sometimes also citing common stereotypes.

IHRA’s opening, however, defines antisemitism as “*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.*” Critics have noted that “certain perception” is utterly vague, as is mention of what else besides “hatred of Jews” “may” express antisemitism; and how antisemitism might be “directed . . . toward non-Jewish individuals or their property.”

Moreover, IHRA’s document did not come as a response to the recent upsurge in real antisemitism. An earlier version of the “working definition” was introduced in 2005 through the European Union’s Monitoring Center on Racism and Xenophobia, which later dropped it when it became clear the definition was being abused to suppress speech.<sup>4</sup> IHRA, a previously obscure educational body, resuscitated the redefinition in 2016 with slight amendments, and the U.S. State Department

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<sup>2</sup> See, e.g., the Arms Export Control Act [22 U.S.C. 2751] *et seq.*, <https://www.law.cornell.edu/uscode/text/22/2751>, especially the section known as the Leahy Law, which opens: “No assistance shall be furnished under this Act or the Arms Export Control Act to any unit of the security forces of a foreign country if the Secretary of State has credible information that such unit has committed a gross violation of human rights.” <https://www.law.cornell.edu/uscode/text/22/2378d>

<sup>3</sup> A lengthy, academic “Expert Opinion” by Peter Ullrich, published by the Rosa Luxemburg Stiftung, March 2019, in Germany, where the IHRA definition has achieved the most heightened legal status, finds that “systematic gaps, lack of clarity in formulations, contradictory and error-prone application in practice, and an unclear legal status” of the document “cause confusion,” and that it “provides a gateway for the stigmatization and public disadvantaging of disfavored positions in the Israeli-Palestinian conflict. In view of its quasi-legal status, this must be regarded as a threat to freedom of speech.” [https://www.rosalux.de/fileadmin/rls\\_uploads/pdfs/rls\\_papers/Papers\\_3-2019\\_Antisemitism.pdf](https://www.rosalux.de/fileadmin/rls_uploads/pdfs/rls_papers/Papers_3-2019_Antisemitism.pdf). See also an analysis by Rebecca Ruth Gold, “Defining Antisemitism by Erasing Palestinians,” in *The Political Quarterly*, Vol. 91, Issue 4, Oct.-Dec. 2020, which finds: “Neither the definition nor the accompanying examples explicitly advocate for the censorship of Israel-critical speech, yet the chilling of speech has been its widespread effect. It describes itself as a ‘legally non-binding working definition’, yet this apparent caveat has turned out to be more of an evasion in practice. Since there are few, if any, precedents for such a quasi-legal document in the context of defining racism, the meaning of both ‘legally non-binding’ and ‘working definition’ have had to be determined in practice. This trial-and-error approach has resulted, predictably, in numerous errors, false accusations, and instances of censorship.” <https://onlinelibrary.wiley.com/doi/full/10.1111/1467-923X.12883>.

<sup>4</sup> See Palestine Legal. *Backgrounder on Efforts to Redefine Antisemitism as a Means of Censoring Criticism of Israel*, January 2020, <https://palestinelegal.org/redefinition-efforts>

posted it.<sup>5</sup> Governments and educational institutions are being pressured to officially adopt it, often ignoring its self-declared “non-binding” nature.

#### Redefinition used as a tool to repress critical speech

Even before IHRA took up the mantle, advocates for Palestinian rights on U.S. campuses and job sites reported hundreds of cases in which they were subjected to undue scrutiny, censorship, restrictions on their work, and even penalties.<sup>6</sup> Today, shadowy groups, supported by Israel-aligned groups, regularly dox Palestinian students, employees and their supporters with the declared goal of destroying their academic and future careers.<sup>7</sup>

More and more ordinary people in the United States, however, including Jews, are voicing sharp criticism of Israel’s policies and its makeup as they learn the truth about Israel’s colonization of Palestinian land, ethnic cleansing, and the apartheid reality it has created on the ground. The increased knowledge that the narrative they have been fed is false and that Israel’s brutality is being supported by and financed with U.S. aid has naturally led to increased support for Palestinian rights.

At root, IHRA’s and others’ efforts to redefine antisemitism to include criticism of Israel are meant to unconstitutionally chill, if not actually suppress, such expression.

#### Jewish scholars dissent, propose a better definition

Executive Order 13899 was the Trump administration’s response to the successful efforts of the ACLU and other free speech defenders, including many U.S. Jews who consider it their moral duty to oppose Israeli policies, in thrice stymieing passage by Congress of the Anti-Semitism Awareness Act,<sup>8</sup> which would have ensconced the redefinition in statute.<sup>9</sup>

Given the flaws in the IHRA redefinition of antisemitism, it should not form the basis for legal policies or campus speech codes. Even Kenneth S. Stern, principal author of the original version in 2005, now fervently agrees. As Congress was debating the proposed act in December 2016, Stern wrote in a *New York Times* op-ed: “The worst remedy is to prohibit speech deemed offensive, disparaging or bigoted that would otherwise be protected by the First Amendment.” He further stated that the purpose of the definition he formulated was “intended for data collectors writing reports about anti-Semitism in Europe. It was never supposed to curtail speech on campus.”<sup>10</sup>

In response to the serious problems with and widespread criticism of the IHRA redefinition, a group of more than 200 scholars working in the fields of Jewish and antisemitism studies, Holocaust

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<sup>5</sup> Office of the Special Envoy to Monitor and Combat Anti-semitism, *Defining Anti-Semitism*, <https://2017-2021.state.gov/defining-anti-semitism/index.html>.

<sup>6</sup> Palestine Legal. *The Palestine Exception to Free Speech*, 2015, <https://palestinelegal.org/the-palestine-exception>.

<sup>7</sup> See Josh Nathan-Kazis, *Canary Mission Blacklist Funded By Jewish Federation*, FORWARD, Oct. 3, 2018, the first in a series of articles exposing one such group’s operations and the funders behind it. <https://forward.com/news/411355/revealed-canary-mission-blacklist-is-secretly-bankrolled-by-major-jewish>

<sup>8</sup> <https://www.congress.gov/bill/116th-congress/senate-bill/852/text> was the most recent version. House and Senate bills were introduced in the 114th, 115th, and 116th Congresses.

<sup>9</sup> ACLU’s letter opposing the 115<sup>th</sup> Congress version of the bill: [https://www.aclu.org/sites/default/files/field\\_document/anti-semitism\\_awareness\\_act\\_hill\\_letter\\_6.4.18.pdf](https://www.aclu.org/sites/default/files/field_document/anti-semitism_awareness_act_hill_letter_6.4.18.pdf)

<sup>10</sup> Kenneth Stern, *Will Campus Criticism of Israel Violate Federal Law?* NEW YORK TIMES, Dec. 12, 2016, <https://www.nytimes.com/2016/12/12/opinion/will-campus-criticism-of-israel-violate-federal-law.html>.

history, Israel, Palestine, and Middle East studies, on March 24, 2021, released an alternative document – the Jerusalem Declaration on Antisemitism (JDA).<sup>11</sup> It sets forth a clear, simple, and straightforward definition of antisemitism, similar to what appears in many dictionaries: “Antisemitism is discrimination, prejudice, hostility or violence against Jews as Jews (or Jewish institutions as Jewish).” Adopting a format similar to that of IHRA, it then sets forth 15 examples of what may, and more importantly, what does not constitute antisemitism; many examples directly contradicting the IHRA formulations.<sup>12</sup>

The scholar authors of the Jerusalem Declaration also affirm the view that no definition of antisemitism should be made into a legal or quasi-legal instrument. Indeed, no definition should be codified into law or otherwise used to restrict the legitimate exercise of academic freedom, free speech, or open public debate that falls within the limits laid down by laws governing hate crime.

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<sup>11</sup> Jerusalem Declaration on Antisemitism, <https://jerusalemdeclaration.org/>.

<sup>12</sup> While some have criticized the JDA for following IHRA’s practice of making criticism of Israel a focus of its discourse on antisemitism, signers have noted that this was compelled by the fact that it was written explicitly as a response to IHRA. See, for example, <https://jewishcurrents.org/why-i-signed-the-jerusalem-declaration-on-antisemitism>