The President’s Executive Order on Anti-Semitism: Frequently Asked Questions

On December 11, 2019, President Trump signed an Executive Order on anti-Semitism. The order is designed to give the federal government more tools to protect Jews from anti-Semitism by addressing a gap in the interpretation of Title VI of the Civil Rights Act of 1964, a key federal statute prohibiting discrimination in programs receiving federal financial assistance. The order addresses that gap by explicitly adopting the International Holocaust Remembrance Alliance (IHRA) working definition of anti-Semitism.

This Executive Order is an important step acknowledging the growing concern about rising anti-Semitism on American college campuses. Including Jews in Title VI protections is something that ADL and previous presidential administrations have supported for years. ADL has likewise long supported the IHRA definition, which has been adopted by more than 20 countries and entities around the world as a non-legally binding definition of anti-Semitism.

As there’s been much confusion over what this Executive Order means both from a policy standpoint and over how the order defines Judaism, ADL has compiled here some responses to frequently asked questions about the Executive Order, why it’s necessary, and how it will work.

What does the President’s Executive Order accomplish?
In a climate of rising anti-Semitism, this Executive Order provides valuable guidance on anti-Semitism, giving law enforcement and campus officials an additional tool to fight this pernicious hate.

Specifically, the Executive Order asserts that “it shall be the policy of the executive Branch” to enforce Title VI of the Civil Rights Act of 1964, which prohibits discrimination in programs receiving federal funding, “against prohibited forms of discrimination rooted in anti-Semitism as vigorously as against all other forms of discrimination; prohibited by the statute.”

The U.S. will adopt the IHRA working definition of anti-Semitism. This is an important step acknowledging the growing concern about anti-Semitism on American college campuses. The Executive Order includes Jews in Title VI protections, something ADL and previous administrations, both Democratic and Republican, have supported for years.

In so doing, the order is very similar to the proposed Anti-Semitism Awareness Act which ADL has endorsed and supported. It directs the U.S. Departments of Education and Justice to consider the IHRA definition in determining whether an investigation of an incident of anti-Semitism is warranted under Title VI.

The Executive Order also reaffirms protection of Jews under Title VI without infringing on First Amendment rights

**Why is this order necessary?**

In recent years, we’ve seen an uptick in activity targeting Jews on college campuses, including some incidents of anti-Semitism masked as anti-Israel activity.

With this Order, the President has officially confirmed the Department of Education’s authority to protect Jews on campus, as it does for other targets of discrimination.
The Executive Order will help the government determine what constitutes anti-Semitism and clarify when an anti-Israel incident crosses the line from protected free expression into harassing, unlawful or discriminatory conduct, because investigations would be informed by the current, widely accepted definition of anti-Semitism.

The Executive Order would require the Department of Education to consider the definition of anti-Semitism as part of its assessment when reviewing whether there has been a violation of Title VI.

Under the order, criticism of Israel may be considered protected speech, but the line must be drawn when such expression becomes intentional, unlawful, discriminatory intimidation and harassment.

**How much of a problem is anti-Semitism on campus?**

Anti-Semitism is disturbingly pervasive and moving into the mainstream. In recent years, the issue of hostility towards Jewish students and Israel on college campuses, including a number of anti-Semitic incidents, has been significant.

ADL’s *Audit of Anti-Semitic Incidents* has documented an 86 percent increase in reported incidents at colleges and universities – from 108 incidents in 2016 to 201 incidents in 2018.

In fact, campus anti-Semitic incidents accounted for more than 10 percent of the total anti-Semitic incidents reported to ADL in the U.S. in 2018.

Likewise, a 2016 Brandeis University study stated: “On many campuses more than one third of Jewish students feel at least a little uncomfortable expressing their opinions about the Israeli-Palestinian conflict.”

While most incidents of anti-Semitism on campus are unrelated to anti-Israel activity, the Department of Education and the Department of Justice should have
the authority to investigate instances in which anti-Israel activity – including anti-Semitic stereotypes and anti-Israel or anti-Zionist expressions coded as political discourse – cross the line to targeted, intentional, discriminatory intimidation and harassment of Jewish students and university leaders do not respond appropriately.

**What is the IHRA definition?**

At its most basic, the IHRA defines anti-Semitism as hatred toward Jews. This includes “rhetorical and physical manifestations of anti-Semitism … directed toward Jewish people or non-Jewish individuals and/or their property, toward Jewish community institutions and religious facilities.”

The IHRA definition has been adopted by more than 20 countries, government entities, U.S. states and cities, and is supported or endorsed by a number of other entities including the European Union and the U.N. Secretary General.

The IHRA offers a broad, inclusive, non-binding working definition covering classic and current displays of anti-Semitism. This includes when criticism of Israel crosses the line from fair critique of the policies of the Israeli government into the delegitimization of the Jewish State, which is unequivocally anti-Semitic.

**Does this mean that Jews will be defined under Title VI as a “nationality”?**

No, the Executive Order does not define Jews as a nationality. The EO asserts that “it shall be the policy of the executive Branch” to enforce Title VI of the Civil Rights Act of 1964.

Title VI is one of the most important federal education anti-discrimination statutes. But it only prohibits discrimination on the basis of race, color, or national origin.
Both the Department of Justice and the Department of Education previously concluded that Title VI also prohibits discrimination against Jews, Muslims, Sikhs, and members of other religious groups when the discrimination is based on the group's actual or perceived shared ancestry or ethnic characteristics – or when the discrimination is based on actual or perceived citizenship or residence in a country whose residents share a dominant religion or a distinct religious identity. This EO affirms that determination.

**Is the White House asserting that Jews are a race?**

The White House's order does not define Jews as a race, but it does identify Jewish Americans as a protected class who, like other minority students on campus, should not be subjected to harassment, intimidation and discrimination.

**During the Obama Administration, the Department of Education determined that religions qualify for protection under Title VI on the basis of ancestry. Is this new EO anything different?**

The EO does not break new ground legally.

In October 2010, the Department of Education Office for Civil Rights (OCR) sent a letter to schools across the country announcing they would be enforcing their inclusive reading of Title VI authority – and emphasized new responsibilities for schools under this interpretation.

However, the Office for Civil Rights did not provide guidance on what constitutes anti-Semitism.

The new Executive Order provides a reference point that can be useful in these cases, including instances when targeted, discriminatory anti-Semitic conduct may be couched as anti-Israel or anti-Zionist.