

CLIENT ALERT

President Trump's Executive Order on Antisemitism Targets Campus Protestors

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On January 29, 2025, President Trump signed an Executive Order (the "Order")¹ labeled "Additional Measures to Combat Antisemitism," which has broad implications for colleges and universities. The Order codifies a more aggressive approach to the protection of Jewish students on campus, which may include the reevaluation of existing Title VI enforcement agreements, the forced removal of student visa holders engaged in protest activity, and the prior restraint of arguably protected speech. Given the far-reaching implications of this Order, schools should be prepared to engage with executive agencies and comply with the Order's requirements. University lawyers will need to evaluate the Order's terms and the conflicting legal obligations they create, which will implicate the rights of stakeholders across campus communities.

¹ Additional Measures to Combat Antisemitism, Executive Order (Jan. 29, 2025), <https://www.whitehouse.gov/presidential-actions/2025/01/additional-measures-to-combat-anti-semitism/>.

Reinforcing Executive Order 13899: “Combating Antisemitism”

The new Executive Order reaffirms President Trump's Executive Order 13899 titled “Combating Antisemitism,” signed on December 11, 2019.² Order 13899 established that discrimination against Jewish people may give rise to a violation of Title VI of the Civil Rights Act of 1964 (“Title VI”) when the discrimination is based on an individual's race, color, or national origin. It declared that “it shall be the policy of the executive branch to enforce Title VI against prohibited forms of discrimination rooted in antisemitism as vigorously as against all other forms of discrimination prohibited by Title VI.”³ Order 13899 adopted the International Holocaust Remembrance Alliance's (“IHRA”) definition of antisemitism which 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.”⁴ Order 13899 also cited to the IHRA's list of examples of antisemitism that may indicate discriminatory intent, including “holding Jews collectively responsible for actions of the state of Israel, drawing comparisons of contemporary Israeli policy to that of the Nazis, and denying the Jewish people their right to self-determination, e.g., by claiming that the existence of the State of Israel is a racist endeavor.”⁵

President Biden took office shortly after the order was signed and took no action to modify its terms. The Office of Civil Rights in the Department of Education (the “OCR”) cited the Order in opening numerous Title VI investigations involving allegations of harassment and discrimination based on national origin, many of which remain pending. Regardless of the prior administration's enforcement posture, the new Executive Order states that the Biden administration “effectively nullified” Order 13899 by failing to enforce it.⁶

The New Executive Order: “Additional Measures to Combat Antisemitism”

Citing the increase in antisemitism in the wake of the October 7, 2023 terrorist attack by Hamas in Israel, the new Order provides additional measures to advance the policy to combat antisemitism on college campuses. Section Two of the Order states: “It shall be the policy of the United States to combat antisemitism vigorously, using all available and appropriate legal tools, to prosecute, remove, or otherwise hold to account the perpetrators of unlawful anti-Semitic harassment and violence.”⁷ In a fact sheet accompanying the Order's release, the administration announced that immediate action will be taken by the Department of Justice to “quell pro-Hamas

² Executive Order 13899 – Combating Antisemitism (Dec. 11, 2019), <https://www.govinfo.gov/content/pkg/DCPD-201900859/pdf/DCPD-201900859.pdf>.

³ *Id.*

⁴ See International Holocaust Remembrance Alliance, *IHRA non-legally binding working definition of antisemitism* (May 26, 2016), <https://holocaustremembrance.com/resources/working-definition-antisemitism>.

⁵ *Id.*

⁶ See *supra* note 1.

⁷ *Id.*

vandalism and intimidation and investigate and punish anti-Jewish racism in leftist, anti-American colleges and universities.”⁸ While the text of the Order is targeted at “pro-Hamas” protestors, it does not define the term.

Section Three of the Order directs the heads of each executive department or agency to submit to the President a report identifying all civil and criminal authorities or actions within its jurisdiction that might be used to curb or combat antisemitism. The report must also contain an “inventory and analysis of all pending administrative complaints, as of the date of the report, against or involving institutions of higher education alleging civil rights violations related to or arising from post October 7, 2023 campus antisemitism.”⁹ The Order encourages the Attorney General to employ appropriate civil rights enforcement authorities to combat antisemitism, including 18 U.S.C. § 241 which prohibits conspiracies to restrict a person’s rights or privileges under the Constitution. This report must be submitted within 60 days of January 29.

The Secretary of Education’s report must include “an inventory and an analysis of all Title VI complaints and administrative actions, including in K-12 education, related to antisemitism –pending or resolved after October 7, 2023 – within the Department’s Office of Civil Rights.”¹⁰ (emphasis added). Further, the Secretaries of State, Education, and Homeland Security must include in their reports specific “recommendations for familiarizing institutions of higher education with the grounds for inadmissibility under 8 U.S.C. § 1182(a)(3),” which governs which individuals are ineligible to receive visas to enter the U.S. The intended purpose of this directive is to ensure “such institutions may monitor for and report activities by alien students and staff relevant to those grounds and for ensuring that such reports about aliens lead, as appropriate and consistent with applicable law, to investigations and, if warranted, actions to remove such aliens.”¹¹ In the accompanying fact sheet, the administration also announced that it intends to revoke the student visas of and deport “Hamas sympathizers” on college campuses who violate the law.¹²

Potential Impacts on Higher Education Institutions

Compliance with the new Executive Order will require careful attention to its terms and awareness of the tension among competing obligations it creates. A few specific areas merit particular focus:

⁸ Fact Sheet: President Donald J. Trump Takes Forceful and Unprecedented Steps to Combat Antisemitism (Jan. 30, 2025), <https://www.whitehouse.gov/fact-sheets/2025/01/fact-sheet-president-donald-j-trump-takes-forceful-and-unprecedented-steps-to-combat-anti-semitism/>.

⁹ *Id.*

¹⁰ *Id.*

¹¹ *Id.*

¹² See *supra* note 8.

A. Prior Office of Civil Rights Resolutions

Enforcement of the new Executive Order will largely fall to the Office of Civil Rights at the Department of Education, which may seek to revisit prior investigations and take a more robust role in initiating and resolving complaints of antisemitic conduct. As indicated above, that office must submit an inventory of not only pending, but also previously concluded investigations. The inclusion of resolved investigations suggests that the OCR will carefully track compliance with the terms of those resolutions and potentially seek to impose additional terms on schools who entered those negotiated settlements. Schools who entered negotiated settlements with the OCR should expect robust monitoring and enforcement of the terms and be prepared to resist reopening of those investigations based on conduct that predates the resolutions. All schools should expect a continued focus on antisemitism to be a priority of the new Department of Education, which will result in enhanced enforcement activity and newly initiated investigations. Indeed, since the Order was signed, the OCR has already initiated five new investigations into universities for alleged failure to protect Jewish students.

B. First Amendment

The new Executive Order indicates that its terms “shall be implemented consistent with applicable law.”¹³ While Title VI requires that colleges and universities protect Jewish students from discrimination and violence, they are also obligated to ensure that their policies do not infringe on students’ First Amendment freedoms. This creates a dilemma for schools facing substantial campus protest activity, as speech which is constitutionally protected may make some students feel unsafe and allege discrimination or harassment. Chants or signs expressing solidarity with Palestinians, for example, may create a climate in which Jewish students feel unwelcome or harassed due to their national origin despite the fact that such language is protected by the First Amendment.

As institutions of higher education face pressure to take action on campus protests, they should ensure that their policies and procedures comply with both Title VI requirements and First Amendment rights. In particular, schools should ensure that their Title VI policy includes a prohibition against conduct related to antisemitism which provides a clear definition of antisemitism and a clear reporting channel to report complaints related to antisemitism. They should also review time, place, and manner restrictions on speech and ensure that they are consistently enforced on a content-neutral basis. When protected speech gives rise to reports of discrimination and harassment, schools must monitor the impact of the speech on the “learning environment” on campus and provide robust services to the impacted students. While navigation of these dual obligations will be fraught and complicated, schools must do all they can to protect both speech and student safety.

¹³ See *supra* note 1.

C. Deportation

The White House is particularly focused on undocumented and noncitizen students and threatens to deport those who participate in “pro-jihadist” protests.¹⁴ It is unclear how the administration will define a “pro-jihadist protest” or identify which students participated, nor is it clear how schools will be required to cooperate with federal agencies to do so. The Order anticipates that the Secretary of Education and other agencies will direct schools to monitor those participating in campus protests and provide recommendations on how to report and investigate civil rights violations, particularly those committed by students attending school on a visa. This puts universities in the untenable position of trying to protect academic freedom and robust dialogue without jeopardizing the immigration status of particular members of the community. Regardless of how schools manage that tension, the specter of revocation of student visas for protest activity will undoubtedly create uncertainty among those visa holders and other stakeholders. Schools should be mindful of that uncertainty and ensure that they are providing services and support to impacted students.

Willkie is here to assist institutions of higher education to analyze the new Order’s impact on existing policies and ensure compliance with Title VI without violating other federal laws. Our seasoned higher education team provides policy review and helps implement systems to ensure compliance with Title VI, the First Amendment, and other provisions of law. Willkie can assist university personnel by ensuring that current reporting protocols allow schools to efficiently address any claims of antisemitism and comply with executive orders as they emerge or evolve. Our team can also help colleges and universities create policies and procedures to manage campus protests in accordance with local and federal laws. Finally, our team routinely conducts investigations of reported violations of federal laws like Title VI. As issues of interpretation and application of the new Executive Order arise, we are standing by to provide advice and counsel.

¹⁴ See *supra* note 8.

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