

THE PALESTINE EXCEPTION TO FREE SPEECH

A Movement Under Attack in the US

EXECUTIVE SUMMARY





Palestine Legal is an independent organization dedicated to protecting the civil and constitutional rights of people in the United States who speak out for Palestinian freedom. Founded in 2012, Palestine Legal provides legal advice, advocacy, and litigation support to college students, professors, grassroots activists, and affected communities who stand for justice in Palestine.

Palestine Legal is a fiscally sponsored project of the Tides Center, a 501(c)(3) nonprofit organization.



The Center for Constitutional Rights is dedicated to advancing and protecting the rights guaranteed by the United States Constitution and the Universal Declaration of Human Rights. Founded in 1966 by attorneys who represented civil rights movements in the South, CCR is a nonprofit legal and educational organization committed to the creative use of law as a positive force for social change.



This report was made possible in large part by the generous support of the Bertha Foundation, which has championed Palestine Legal and CCR's work to support advocates for justice.

If you would like to support Palestine Legal and CCR, go to palestinelegal.org or CCRJustice.org to make a donation toward providing legal assistance to activists for Palestinian rights.



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Cover photo: Wellesley Students for Justice in Palestine



Credit: AP Photo/Seth Perlman

Students participate in a protest in support of Professor Steven Salaita on September 9, 2014 at the University of Illinois at Urbana-Champaign.

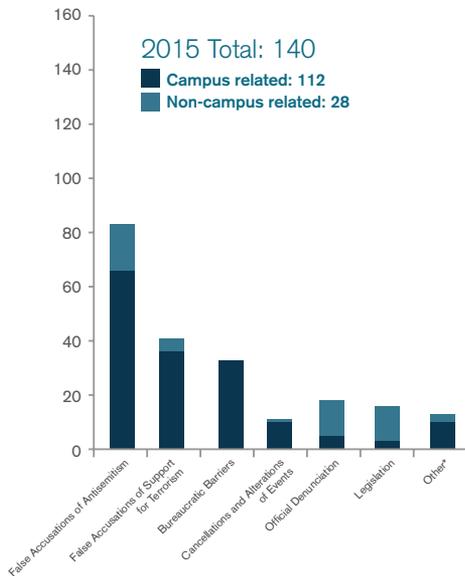
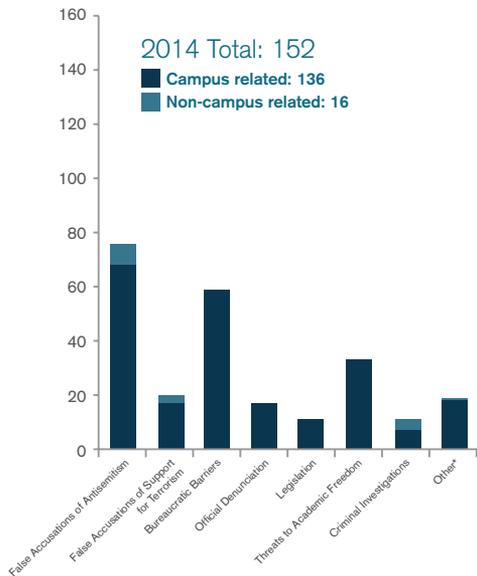
EXECUTIVE SUMMARY

Over the last decade, a dynamic movement in support of Palestinian human rights, particularly active in US colleges and universities, has helped raise public awareness regarding the Israeli government's violations of international law, as well as the role of corporations and the US government in facilitating these abuses. This activism, fueled by Israel's increasingly destructive assaults on Gaza, presents a robust and sustainable challenge to the longstanding orthodoxy in the United States that excuses,

justifies, and otherwise supports discriminatory Israeli government policies.

Fearful of a shift in domestic public opinion, Israel's fiercest defenders in the United States—a network of advocacy organizations, public relations firms, and think tanks—have intensified their efforts to stifle criticism of Israeli government policies. Rather than engage such criticism on its merits, these groups leverage their significant resources and lobbying power to pressure

INCIDENTS OF SUPPRESSION RESPONDED TO BY PALESTINE LEGAL, BY TACTIC

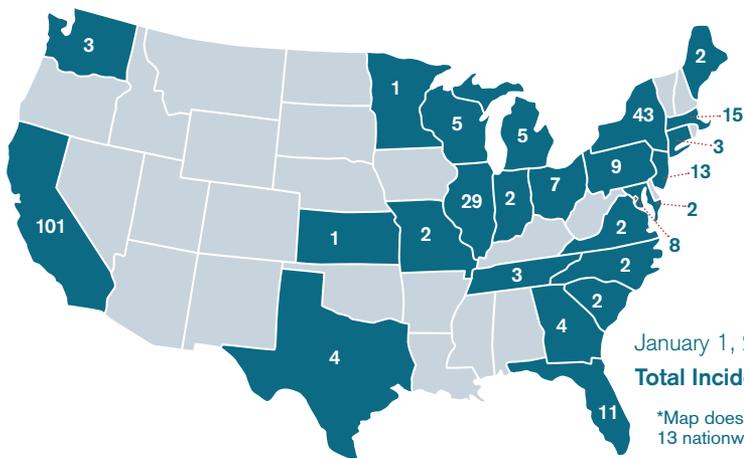


*Cancellations and Alterations of Events, Administrative Sanctions, Lawsuits and Legal Threats

*Threats to Academic Freedom, Lawsuits and Legal Threats, Criminal Investigations

Incidents often fall in multiple categories, therefore totals by tactic exceed the total number of incidents.

TOTAL INCIDENTS RESPONDED TO BY PALESTINE LEGAL, BY STATE



universities, government actors, and other institutions to censor or punish advocacy in support of Palestinian rights. In addition, high-level Israeli government figures, led by Prime Minister Benjamin Netanyahu, and wealthy benefactors such as Sheldon Adelson and Haim Saban have reportedly participated in strategic meetings to oppose Palestine activism, particularly boycott, divestment, and sanctions (BDS) campaigns.

These heavy-handed tactics often have their desired effect, driving institutions to enact a variety of punitive measures against human rights activists, such as administrative sanctions, censorship, intrusive investigations, viewpoint-based restriction of advocacy, and even criminal prosecutions. Such efforts intimidate activists for Palestinian human rights, chill criticism of Israeli government practices, and impede a fair-minded dialogue on the pressing question of Palestinian rights.

This Report, the first of its kind, documents the suppression of Palestine advocacy in the United States. In 2014, Palestine Legal—a nonprofit legal and advocacy organization supporting Palestine activism—responded to 152 incidents of censorship,

punishment or other burdening of advocacy for Palestinian rights and received 68 additional requests for legal assistance in anticipation of such actions. In the first six months of 2015 alone, Palestine Legal responded to 140 incidents and 33 requests for assistance in anticipation of potential suppression. These numbers understate the phenomenon, as many advocates who are unaware of their rights or afraid of attracting further scrutiny stay silent and do not report incidents of suppression. The overwhelming majority of these incidents—89 percent in 2014 and 80 percent in the first half of 2015—targeted students and scholars, a reaction to the increasingly central role universities play in the movement for Palestinian rights.

The tactics used to silence advocacy for Palestinian rights frequently follow recognizable patterns. Activists and their protected speech are routinely maligned as uncivil, divisive, antisemitic, or supportive of terrorism. Institutional actors—primarily in response to pressure from Israel advocacy groups—erect bureaucratic barriers that thwart efforts to discuss abuses of Palestinian rights and occasionally even cancel events or programs altogether. Sometimes the consequences are more severe: universities suspend student

groups, deny tenure to faculty, or fire them outright in response to their criticism of Israel. Meritless lawsuits and legal threats, which come from a variety of Israel advocacy groups identified in this Report, burden Palestinian rights advocacy and chill speech even when dismissed by the courts. Campaigns by such groups have even resulted in legislation to curtail Palestine advocacy, criminal investigations, and filing of charges against activists.

Specifically, the Report documents the following tactics employed to undermine advocacy for Palestinian rights.

False and Inflammatory Accusations of Antisemitism and Support for Terrorism: The Israel advocacy groups identified here devote considerable resources to monitoring the speech and activities of Palestinian rights advocates and falsely accusing them of antisemitism, based solely on their criticism of Israeli policy, in order to undermine their advocacy. Such conflation silences meaningful conversation about Palestinian rights and distracts from genuine forms of hatred and antisemitism. Some groups also accuse Arab-American, Muslim, and other Palestine solidarity activists of supporting or sympathizing with terrorism—an inflammatory charge

often lodged without evidence. In 2015, for example, the anonymously run website *Canary Mission* published a list of organizations and activists it accused of supporting terrorism, including campus chapters of the Muslim Student Association, which it refers to as a “virtual terror factory.” The website seeks to “expose” individuals and student groups as “anti-Freedom, anti-American and anti-Semitic” to schools and prospective employers.

Official Denunciation: In response to outside pressure, institutional actors sometimes pronounce official disapproval of the legitimate views and actions of Palestine advocates, frequently by unfairly characterizing Palestine activism, particularly support for BDS, as improperly “delegitimizing” Israel or as uncivil, divisive, or not conducive to dialogue. Such misleading framing, promoted by certain Israel advocacy groups and predominantly reserved for speech in support of Palestine, barely masks the officials’ underlying disagreement with the viewpoint of Palestine activists. In late 2014, for example, University of California president Janet Napolitano denounced a campaign which asked student government candidates to make an “ethics pledge” to refuse free trips from Israel advocacy groups as violating principles of “civility, respect, and inclusion.” Her predecessor, Mark

Yudof, likened a peaceful protest against a talk by former Israeli soldiers to hanging nooses, drawing swastikas, and vandalizing a campus LGBTQIA center.

Bureaucratic Barriers:

University officials routinely erect administrative obstacles or abruptly alter school policies so as to hamper student organizing for Palestinian rights. These measures include creating impediments to reserving rooms and forcing students to obtain advance approval for events, pay security fees, and attend mandated meetings with administrators. Though seemingly neutral, these policies sometimes target and frequently disproportionately burden speech in favor of Palestinian rights. For example, in 2014, administrators at the City University of New York's College of Staten Island repeatedly called members of Students for Justice in Palestine and their faculty advisor into meetings to question them about events and social media postings, urged the group to hold events alongside Israel advocacy groups, and instructed members to submit promotional flyers for official authorization.

Cancellations and Alterations of Academic and Cultural

Events: From campus lectures and community discussions to art and film exhibitions, public events

critical of Israeli policy often come under attack, forcing organizers to cancel, move, or substantially alter the programs. Israel advocacy groups frequently contend that programs lack “balance” or are antisemitic. For example, in the spring of 2015, the Missouri History Museum decided, after receiving complaints from Israel advocacy organizations, that an event on solidarity between activists working for justice in Ferguson, Mexico, and Palestine could not proceed unless organizers removed references to Palestine. In 2012, the University of California's Hastings Law School withdrew its official support of a conference entitled “Litigating Palestine” after being pressured by Israel advocacy groups.

Administrative Sanctions:

Universities often respond to complaints from Israel advocacy groups by investigating and disproportionately disciplining students and student groups for events and actions in support of Palestinian rights. For example, Loyola University Chicago launched an investigation into the school's chapter of Students for Justice in Palestine (SJP) in fall 2014, after students lined up at a Birthright Israel table to ask questions that highlighted the discriminatory nature of the program, which excludes non-

Jews. After a lengthy investigation, university administrators ultimately suspended the SJP group for the remainder of the year for failing to register the “demonstration.” Yet the administration chose *not* to suspend the campus Hillel chapter for similarly failing to register its tabling event, instead merely requiring the chapter group to meet with administrators to review school policy. In spring 2014, Northeastern University in Boston suspended a student group after members distributed flyers describing Israel’s policy of demolishing Palestinian homes. Public outcry and the threat of legal action, however, forced the university to reverse course and reinstate the group.

Threats to Academic Freedom:

Israel advocacy groups often target academics critical of Israeli policies or supportive of Palestinian rights. Campaigns against faculty — from Columbia University to the University of California at Los Angeles — sully reputations, instigate university investigations, and can even lead to termination of employment. For example, the University of Illinois at Urbana-Champaign, succumbing to pressure from Israel advocacy groups and donors, summarily dismissed Professor Steven Salaita from a tenured faculty position at the outset of the fall 2014 semester

because it deemed his personal tweets criticizing Israel’s 2014 assault on Gaza to be “uncivil.” San Francisco State University launched an investigation of Professor Rabab Abdulhadi in spring 2014, forcing her to defend a research trip to Palestine, after an Israel advocacy group accused her of abusing taxpayer funds and meeting with “known terrorists.” In fall 2014, the AMCHA Initiative, an Israel advocacy group, issued a blacklist of more than 200 Middle East Studies professors it declared to be “anti-Israel.”

Lawsuits and Legal Threats:

Israel advocates also initiate lawsuits, administrative civil rights complaints, and other legal threats that hamper and intimidate advocates for Palestinian rights. Israel advocacy groups have filed at least six complaints with the Department of Education (DOE) asserting that, merely by tolerating campus events and protests that criticize Israeli policies, universities violate Title VI of the Civil Rights Act, which prohibits discrimination by programs receiving federal funds. Each of these complaints was ultimately dismissed. In 2011, five Olympia Food Co-op members, with the support of the Israel advocacy group StandWithUs, sued sixteen of the Co-op’s board members for voting to boycott Israeli goods,

claiming the board had exceeded its authority. Even when they do not succeed, these protracted legal battles drain emotional, financial, and organizing resources and generate bad publicity, driving some individuals and groups to refrain from openly supporting Palestinian rights.

Legislation: Lawmakers, sometimes at the behest of Israel advocacy groups, introduce legislation and resolutions to condemn or restrict Palestine advocacy, often by linking criticism of Israel to antisemitism. Eleven such measures were introduced in 2014 and at least another sixteen in the first half of 2015. Seven of the 2014 measures, including one in the US Congress, condemned the academic boycott of Israel after the American Studies Association (ASA) passed a boycott resolution. Some bills went further, proposing to defund universities that subsidized faculty involvement in associations that supported a boycott, like the ASA. In 2015, Congress passed a federal trade bill that included an anti-BDS provision, and Illinois became the first state to sign an anti-BDS measure into law. Legislative bodies passed resolutions condemning boycotts in Florida, South Carolina, Maryland, and Pennsylvania in 2014 and in Indiana, Tennessee, New York, and

Pennsylvania again in 2015.

Criminal Investigations and Prosecutions: Local and federal law enforcement officials have questioned, investigated, and in some cases prosecuted Palestine rights advocates based on their speech criticizing Israel. For example, in spring 2014, police questioned three Northeastern University students in their homes after an affiliated student group distributed flyers about Israel's home demolition policies under dorm room doors. Three years earlier, prosecutors in Orange County, California initiated a rare criminal prosecution of students for peacefully protesting a speech by Israel's ambassador to the United States and obtained guilty verdicts against ten University of California, Irvine and Riverside students on the charge of disrupting a public meeting.

All of these tactics—individually and in the aggregate—threaten the First Amendment rights of people who seek to raise awareness about Palestinian human rights and challenge the dominant perspective in this country, which discounts Israel's discriminatory and violent government policies. They further undermine the traditional role of universities in promoting the free expression of unpopular ideas and encouraging challenges

to the orthodoxies prevalent in official political discourse. Our constitutional tradition cannot tolerate an exception to the First Amendment simply because Palestinian human rights advocacy makes powerful listeners uncomfortable. The remedy for speech with which one disagrees is more speech, not enforced silence.

Yet, like the successful political and social movements that preceded it, the movement for Palestinian human rights faces reactionary forces that deploy heavy-handed financial, legal, and administrative measures to intimidate the movement and discredit its ideas—ideas that seek to promote justice, equality, and accountability. Today’s educational, governmental, and legal institutions should resist these tactics that attempt to punish, burden, or chill speech and advocacy supporting Palestinian rights or criticizing Israel. Instead, they should adhere to their stated commitments to provide space for open, robust debate on these vital issues of public concern.

Palestine Legal and the Center for Constitutional Rights (CCR) urge universities to review their policies to ensure that they protect academic freedom and to hear the concerns of students targeted by these attacks. Legislatures and government agencies, including the

State Department and the DOE’s Office for Civil Rights (OCR), should clearly distinguish between antisemitism and criticism of Israeli policies in their definitions, policies, and legislation. Activists should not be labeled as antisemites or supporters of terrorism based on their criticism of Israel.

Even in the face of a variety of repressive measures, the movement for Palestinian rights continues to draw strength from the force of its ideas and the real prospect that changes to US public opinion—and one day access to justice for the Palestinian people—are indeed possible. Legal, political, and educational institutions should permit this important debate to continue freely, lest they find themselves on the wrong side of history.



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