MEMORANDUM

TO: Federal Agency Civil Rights Directors and General Counsels

FROM: Eric S. Dreiband
Assistant Attorney General

SUBJECT: Agency Title VI Obligations Under Executive Order 13899, Combating Anti-Semitism

I am writing to provide you with information to support your agency's compliance with its obligations under the President's December 11, 2019 Executive Order 13899, Combating Anti-Semitism. Exec. Order No. 13899, Combating Anti-Semitism, reprinted at 84 Fed. Reg. 68779 (Dec. 11, 2019) (EO 13899). EO 13899 reaffirms the Administration's commitment to combating the rise of anti-Semitism. EO 13899 emphasizes that the executive branch will enforce Title VI of the Civil Rights Act of 1964 (Title VI), 42 U.S.C. 2000d et seq., against prohibited forms of discrimination rooted in anti-Semitism as vigorously as against all other forms of discrimination prohibited by Title VI.

As you know, Title VI prohibits discrimination on the basis of race, color, and national origin in programs and activities receiving Federal financial assistance. Under Executive Order 12250, the Department of Justice (DOJ) is charged with ensuring the consistent and effective implementation of Title VI and other civil rights laws "prohibiting discriminatory practices in Federal programs and programs receiving Federal financial assistance." Exec. Order No. 12250, Leadership and Coordination of Nondiscrimination Laws, reprinted at 45 Fed. Reg. 72,995 (Nov. 4, 1980). To fulfill this mandate, DOJ, through the Civil Rights Division's Federal Coordination and Compliance Section, runs a comprehensive program of assistance and oversight to federal agency civil rights offices. The Civil Rights Division's Educational Opportunities Section also plays a significant role in enforcing Title VI and further is responsible for enforcing Title IV of the Civil Rights Act of 1964 (Title IV), 42 U.S.C. § 2000c et seq., which gives the Attorney General authority to address certain complaints of discrimination against students on the basis of race, color, national origin, religion, and sex in public schools and institutions of higher learning.
As EO 13899 states, while Title VI does not cover discrimination based on religion, individuals who face discrimination on the basis of race, color, or national origin do not lose protection under Title VI for also being a member of a group that shares common religious practices. Agencies should exercise their jurisdiction to enforce the Title VI prohibitions against discrimination regardless of whether the group targeted for discrimination also exhibits religious characteristics.

In particular, discrimination against Jews may give rise to a Title VI violation when the discrimination is based on an individual’s race, color, or national origin. EO 13899 does not define Jews or Judaism as a race or national origin, nor does it expand Title VI protections beyond race, color, or national origin. Discrimination against Jews or members of other religious groups violates Title VI when that discrimination is based on actual or perceived race, color, or national origin, rather than on religious practice.

EO 13899 does not diminish or infringe upon any right protected under the First Amendment or any other provision of law. In enforcing Title VI, agencies must ensure that they do not diminish or infringe upon any such rights as they follow EO 13899’s directive to consider: (1) the non-legally binding working definition of anti-Semitism adopted by the International Holocaust Remembrance Alliance (IHRA) on May 26, 2016, and (2) the “Contemporary Examples of Anti-Semitism” identified by IHRA, to the extent any examples might be useful as evidence of discriminatory intent. Similarly, agencies should note that EO 13899 does not alter any evidentiary requirements pursuant to which an agency makes a determination that conduct, including harassment, amounts to actionable discrimination. As with all Title VI complaints, the inquiry into whether a particular act constitutes discrimination prohibited by Title VI will require a detailed analysis of the allegations.

As part of your agency’s obligations under EO 13899, by April 9, 2020, the head of your agency charged with enforcing Title VI must submit a report to the Assistant to the President for Domestic Policy, identifying additional nondiscrimination authorities within your agency’s enforcement authority to address anti-Semitism. These authorities should include all statutes within your agency’s enforcement authority that bar discrimination based on religion, regardless of whether these statutes also include provisions regarding federal financial assistance. Please consult your agency’s Liaison or Center for Faith and Opportunity Initiatives when gathering these authorities. When submitting your report, please send a copy to our Federal Coordination and Compliance Section at EO.12250@crt.usdoj.gov, with the subject line, “EO 13899.”

If you have any questions or if you would like assistance with this or any other Title VI issue, please do not hesitate to contact Christine Stoneman, Acting Chief of the Federal Coordination and Compliance Section, at christine.stoneman@usdoj.gov. If you would like assistance with Title IV or a Title VI issue pertaining to education, please contact Shaheena Simons, Chief of the Educational Opportunities Section, at shaheena.simons@usdoj.gov.