

**UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS**

AMERICAN ASSOCIATION OF
UNIVERSITY PROFESSORS–HARVARD
FACULTY CHAPTER, AMERICAN
ASSOCIATION OF UNIVERSITY
PROFESSORS, and INTERNATIONAL
UNION, UNITED AUTOMOBILE,
AEROSPACE AND AGRICULTURAL
IMPLEMENT WORKERS OF AMERICA,

Plaintiffs,

v.

UNITED STATES DEPARTMENT OF
JUSTICE et al.

Defendants.

Case No. 1:25-cv-10910

PLAINTIFFS’ MOTION FOR LEAVE TO FILE SECOND AMENDED COMPLAINT

For the reasons stated below, Plaintiffs American Association of University Professors (“AAUP”), American Association of University Professors–Harvard Faculty Chapter (“AAUP–Harvard”), and International Union, United Automobile, Aerospace and Agricultural Implement Workers of America (“UAW”) request leave of the Court pursuant to Federal Rule of Civil Procedure 15(a)(2) to file the Second Amended Complaint attached hereto as Exhibit 1.

On April 11, 2025, Plaintiffs AAUP and AAUP–Harvard filed this lawsuit challenging the Trump administration’s unconstitutional coercion of Harvard University through the abuse of threats to withhold federal funding under Title VI of the Civil Rights Act (ECF No. 1). Harvard University rejected the Trump administration’s demands on April 14 and filed a related lawsuit on April 21 (Case No. 25-cv-11048). Plaintiffs AAUP and AAUP–Harvard then joined with Harvard University in seeking expedited summary judgment on a parallel schedule and, to that end, agreed to amend their complaint to reflect the changed circumstances by May 5. This Court entered that

agreed-upon schedule, including an order that Plaintiffs AAUP and AAUP–Harvard file that amended complaint by May 5 (ECF No. 49).

At 4:30 pm on May 5, Plaintiffs filed their Amended Complaint (ECF No. 50). The Amended Complaint adds UAW as a plaintiff and updates Plaintiffs’ allegations to reflect the circumstances as Plaintiffs understood them at that time.

At 6:20 pm on May 5, twenty minutes after this Court’s 6:00 pm deadline for filings, *see* Local Rule 5.4(d), Defendant Secretary of Education Linda McMahon published a letter (the “May 5 Letter”) on the social media platform X, which she had sent to Harvard University President Alan M. Garber that day, announcing that the federal government will no longer award grants to Harvard. The May 5 Letter marks a significant escalation in Defendants’ use of unconstitutional coercion and abusive threats to suppress academic freedom at Harvard without any semblance of due process. Secretary McMahon’s conduct and the May 5 Letter fall squarely within the claims Plaintiffs raised in their Amended Complaint. Had Plaintiffs been aware of these events in sufficient time to include them, Plaintiffs would have added allegations related to the May 5 Letter in the Amended Complaint. Plaintiffs now include those allegations in their proffered Second Amended Complaint.

Leave to amend is appropriate here. Rule 15(a) reflects a liberal amendment policy and provides that “[t]he court should freely give leave when justice so requires.” Fed. R. Civ. P. 15(a). *See Sampel v. Whole Foods Mkt. Grp., Inc.*, No. 1:18-CV-11752-ADB, 2018 WL 6199567, at *1 (D. Mass. Nov. 27, 2018) (“Leave to amend is generally granted absent bad faith, dilatory motive, repeated failure to cure deficiencies, undue prejudice, or futility of the amendment.”). Plaintiffs seek to amend to incorporate Secretary McMahon’s May 5 Letter, which expands the scope of Defendants’ coercive conduct to include not only Harvard’s existing funding but also any funding

Harvard may apply for in the future. The May 5 Letter is part of the same agency decision-making process as the agency actions Plaintiffs challenge in the Complaint and Amended Complaint. Plaintiffs respectfully submit that justice requires they have the opportunity to challenge this conduct, which became public less than two hours after Plaintiffs filed the Amended Complaint and just twenty minutes after this Court's 6:00 pm deadline for that filing.

Nor will leave unduly prejudice Defendants. Plaintiffs bring this motion one day after the developments they seek to incorporate. Plaintiffs' Second Amended Complaint adds no new parties, and Defendants were presumably aware of Secretary McMahon's actions at or before the time Plaintiffs became aware of them. *See Meador v. United States*, No. 22-CV-40024-DJC, 2024 WL 583687 (D. Mass. Feb. 13, 2024) (no undue prejudice where defendants had notice of claims at or before the time plaintiffs became aware of them). Nor do Defendants' own unlawful actions or Plaintiffs' Second Amended Complaint seeking to address them constitute good cause to modify the schedule this Court has already entered in this matter. *See Cabana v. Forcier*, 200 F.R.D. 9, 14 (D. Mass. 2001) ("[T]he good cause test requires that the deadline in the scheduling order may not reasonably be met, despite the diligence of the party seeking the extension.").

For the foregoing reasons the Court should enter an order granting Plaintiffs' leave to file the Second Amended Complaint attached hereto as Exhibit 1.

Dated: May 6, 2025

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that this document, filed electronically through the Court's CM/ECF system, was sent electronically to the registered participants as identified on the Notice of Electronic Filing (NEF).

Dated: May 6, 2025

/s/ Daniel Silverman

Daniel Silverman