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11 **UNITED STATES DISTRICT COURT**
12 **CENTRAL DISTRICT OF CALIFORNIA**

13 DO NO HARM, et al.,
14 *Plaintiffs,*
15 and
16 UNITED STATES OF
17 AMERICA,
18 *Plaintiff-Intervenor,*
19 v.

20 REGENTS OF THE
21 UNIVERSITY OF
22 CALIFORNIA
23 *Defendants.*

Case No. 2:25-cv-04131-JWH-JDE

**UNITED STATES OF
AMERICA’S MEMORANDUM IN
OPPOSITION TO DEFENDANTS’
MOTION TO DISMISS FIRST
AMENDED COMPLAINT IN
INTERVENTION**

Honorable John W. Holcomb
United States District Judge

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INTRODUCTION

The Court should deny this Motion to Dismiss, filed under Rule 12(b)(6), which seeks dismissal by setting forth facts contrary to the complaint, and legal argument that does not rely on the applicable law. The Motion filed by the David Geffen School of Medicine at UCLA (“UCLA Med”) asks this Court to forget the proper roles of complaints, trials, and 12(b)(6) motions, by suggesting that the United States¹ has asked “this Court to impose [] unprecedented and extraordinary remed[ies]... based on its conclusory allegations.”² That is not, in fact, what the United States has asked of this Court. Rather, the United States asks the Court *to hold a trial*, where it will establish that UCLA Med has discriminated on the basis of race in its admissions processes. This showing constitutes a violation of Title VI of the Civil Rights Act of 1964 (“Title VI”) and separately, a breach of UCLA Med’s contracts with the United States.

The United States’s First Amended Complaint-in-Intervention (“Complaint”) presented concrete, specific facts outlining the case it will make at trial: For many years, schools including UCLA Med, prided themselves on “diversity” initiatives that considered race as a factor in admissions. In *Students for Fair Admissions, Inc. v. President & Fellows of Harvard Coll.*, 600 U.S. 181 (2023) (“*SFFA*”), the Supreme Court clarified that such race-conscious processes are discriminatory under Title VI. In response, many schools and administrators—including at UCLA Med—announced that they would seek workarounds to continue their discriminatory behavior. UCLA Med classes admitted since *SFFA* continue to show widely different admission criteria for applicants belonging to different racial groupings. Specific allegations in the Complaint support every element of this case.

¹ UCLA Med refers to the United States as the “Government,” in its briefing. However, The University of California is a part of the government of the State of California, and its subparts UCLA and UCLA Med are thus also governmental entities. For clarity, this brief refers to plaintiff-intervenor as the “United States.”

² Def.’s Mem. in Supp. of Mot. to Dismiss Pl.-Intervenor’s First Am. Compl.-in-Intervention 6:2–5, ECF 108-1.

1 In its Order Regarding the Defendants’ first motion to dismiss in this matter
2 (“Order,”) this Court reminded UCLA Med that in a ruling on a 12(b)(6) motion, all of the
3 allegations in the complaint must be taken as true.³ Despite this basic premise of Rule 12
4 motions, UCLA Med seeks to dismiss the claims now because “[UCLA Med] has long
5 complied with California’s Prop. 209 and federal antidiscrimination laws.”⁴

6 UCLA Med then asks this Court to adopt an interpretation of Title VI that ignores
7 clear definitions in both the statute and its implementing regulations—and that Congress
8 explicitly rejected when drafting the statutory definitions. To get there, UCLA Med had
9 to rely on outdated case law from another Circuit and ignore subsequent legal
10 developments that included a Supreme Court ruling supportive of the position it takes
11 today—and a four-year-long political battle to overturn it, in which Congress overrode a
12 Presidential veto *for the explicit purpose of making UCLA Med’s position untenable*.

13 UCLA Med also asks this Court to conflate contractual duty and breach with
14 remedies—and to rule, as a matter of law, that because clauses prohibiting the recipients
15 of federal funds from discriminating on the basis of race are now standard parts of all
16 government contracts, they are “not material” and therefore unenforceable under contract
17 law. It also—again—misreads the Complaint to suggest that the government is seeking
18 contract remedies under its Title VI claim, rather than under its contract claim.⁵
19
20

21 ³ Order Regarding Defendants’ Motion to Dismiss (“Order”), ECF No. 75 at 4.

22 ⁴ MTD 6:8–9. UCLA Med’s claim that it complies with Prop 209 is more relevant to the
23 Plaintiffs’ claims than the United States’s claims. However, the laws overlap as both
24 federal law and Prop 209 prohibit the use of race in admissions. Underscoring that
25 Defendants’ factual assertions have no role in a 12(b)(6) motion, and must be tested at
26 trial, one of UCLA Med’s admissions officers has already admitted that UCLA Med’s
27 admissions training materials instruct admissions personnel in a manner that violates
28 Prop 209. [T. McAllister Deposition at 165:20–23.] Since this is not a summary
judgment motion, the deposition is not attached and is referenced only for illustrative
purposes.

⁵ First Am. Compl.-in-Intervention ¶ 93, ECF No. 104.

1 UCLA Med’s motion also asks this Court to make sweeping legal rulings limiting
2 the United States’s ability to enforce the civil rights laws based entirely upon generalized
3 pointers to treatises rather than citations to laws, regulations, or case law.

4 A large part of UCLA Med’s ploy here follows the same path that this Court rejected
5 in its Order regarding the Defendant’s first motion to dismiss.⁶ UCLA Med would like
6 this Court to eliminate powerful remedies from consideration, prior to the establishment
7 of specific liability, to ensure that “even if the [United States] could prove that UCLA Med
8 violates Title VI by considering race in its admissions, any such violation could not
9 support the [United States]’s extraordinary and draconian request[s]”⁷ for relief. It is
10 hardly extraordinary or draconian to ask that UCLA Med restore the federal funds it
11 accepted under a contractual duty to abide by Title VI, after violating those agreements by
12 continuing to use race in admissions after the *SFFA* decision.

13 The Court should deny its motion in its entirety.

14 BACKGROUND

15 The Equal Protection Clause of the Fourteenth Amendment to the U.S. Constitution
16 prohibits discriminatory state action. Title VI of the Civil Rights Act of 1964 (“Title VI”)
17 makes the matter even clearer, explicitly prohibiting discrimination based on race.⁸ The
18 Supreme Court drove the point home in *SFFA*: college admissions processes that apply
19 differing standards to applicants from different demographic groupings (specifically
20 groupings defined around race) violate both of these prohibitions. All attempts to justify
21 discrimination based on race are subject to strict scrutiny.⁹ A university’s asserted interest
22 in racial “diversity” in its classes, among its graduates, or within the profession its training,
23 necessarily fails this test.¹⁰

24 ⁶ Order at 10–11.

25 ⁷ MTD 6:12–14.

26 ⁸ 42 U.S.C. § 2000d.

27 ⁹ *Students for Fair Admissions, Inc. v. President & Fellows of Harv. Coll.*, 600 U.S. 181,
206 (2023).

28 ¹⁰ *Id.* at 214.

1 UCLA Med, as part of UCLA, itself part of the University of California system, is
2 a state agency subject to the Fourteenth Amendment.¹¹ UCLA receives federal funds,
3 including funding from the Department of Justice.¹² UCLA Med is bound by the non-
4 discrimination rules of Title VI, and it is subject to its enforcement provisions.

5 Title VI's clear statutory language outlines two distinct enforcement paths within
6 the statute. The first is prospective, allowing an agency to terminate an existing contract,
7 or refuse to grant a future contract, following a finding of noncompliance and an
8 opportunity for a hearing. The second is more flexible, extending to "any other means
9 authorized by law."¹³ The second, "any other means," enforcement path aligns Title VI's
10 statutory language with the clear historical purpose of the landmark civil rights legislation
11 that created it. Prior to 1964, civil rights enforcement—particularly efforts to undo the
12 legacy of *de jure* racial discrimination—was slow and uneven. Congress designed the
13 Civil Rights Act of 1964 to create new and powerful enforcement paths, but did not "deny,
14 impair, or otherwise affect any right or authority of the ... United States ... under existing
15 law to institute ... any action or proceeding."¹⁴ Nothing precludes the United States from
16 pursuing either enforcement path, or pursuing means outside of Title VI. As to UCLA
17 Med, the United States has pursued the second path, as well as a breach of contract claim
18 outside of Title VI.

19 Because the contracts between the United States and the University of California,
20 include an assurance clause requiring adherence to Title VI,¹⁵ discriminatory admissions
21 policies that violate Title VI also breach those contracts. The United States may thus
22 pursue the remedies available in contract cases, with potential limitations on remedies
23 arising only after specific bases for liability have been established.

25 ¹¹ Complaint ¶ 12.

26 ¹² Complaint ¶¶ 63–64.

27 ¹³ 42 U.S.C. § 2000d-1.

28 ¹⁴ 42 U.S.C. § 2000h-3.

¹⁵ Complaint ¶¶ 66–67.

1 The Complaint provides ample detail that makes a simple point: Prior to *SFFA*,
2 UCLA Med prided itself on the diversity of its classes and its commitment to enrolling
3 Underrepresented Minorities in Medicine (“URM,” *i.e.*, black, Hispanic, Pacific Islander,
4 or Native American).¹⁶ Numerous University of California leaders, including UCLA
5 Med’s Associate Dean for Admissions, Jennifer Lucero,¹⁷ were vocal in their support for
6 DEI initiatives because, “represent[ing] the demographics of the community [they] serve”
7 is a primary goal, far more important than admitting “qualified people.”¹⁸ While *SFFA*
8 may have changed the legality of DEI initiatives (at least at the federal level), the
9 allegations of the Complaint make clear the Defendants have not reconsidered the use of
10 DEI initiatives. UCLA Med’s position is clear: racial considerations are an appropriate
11 and important part of medical school admissions process, even if they are illegal.

12 The Complaint reviews UCLA Med’s admissions process to show *where* UCLA
13 Med injects racial considerations.¹⁹ The Complaint then documents relevant UCLA Med,
14 UCLA, and University of California leaders explaining *why* racial balance and
15 representativeness are among their primary goals.²⁰ Then the Complaint cites specific
16 numbers—MCAT scores—showing *how* UCLA Med’s admissions standards varied by
17 demographic grouping (or, stated another way, discriminated based on race).²¹ None of
18 these demonstrations are conclusory; they are all grounded in detail. And for the purposes
19 of this motion, they must be assumed to be true.

20 Taken together, the United States’ Complaint has framed and supported a clear and
21 logical case: (i) UCLA Med believes that it is appropriate and virtuous to consider race
22 when assembling a medical school class; (ii) UCLA Med has adopted admission processes
23 that enable the consideration of race; (iii) UCLA Med’s entering classes show that it has

24 ¹⁶ Complaint 2:24-3:11.

25 ¹⁷ Complaint ¶¶ 43–44.

26 ¹⁸ Complaint ¶ 35.

27 ¹⁹ Complaint ¶¶ 13–29.

28 ²⁰ Complaint ¶¶ 30–52.

²¹ Complaint ¶¶ 53–57.

1 tilted the admissions scales on the basis of race; (iv) the different racial categories in
2 UCLA Med’s entering classes showed markedly different median MCAT scores.
3 *Therefore:* (v) UCLA Med intentionally pits racial considerations against objective
4 measures of merit to achieve its desired goal of a racially “diverse” student body that
5 “looks like California.” Furthermore, this matter is only at the pleading stage. The
6 United States has not yet completed discovery of UCLA Med or offered expert reports and
7 testimony to prove that UCLA Med has discriminated based on race in its admissions. The
8 Court should deny the motion to dismiss and wait for the discovery process to move
9 forward. When proved at trial, the allegations in the Complaint will establish UCLA Med’s
10 violation of Title VI and breach of contract.

11 **LEGAL STANDARD**

12 This Court has already laid out the legal standard applicable to assessing UCLA
13 Med’s motion and stated that “to survive a motion to dismiss, a complaint ‘must contain
14 sufficient factual matter, accepted as true, to state a claim to relief that is plausible on its
15 face.’”

16 A motion to dismiss under Rule 12(b)(6) of the Federal Rules of Civil
17 Procedure tests the legal sufficiency of the claims asserted in a
18 complaint. See *Navarro v. Block*, 250 F.3d 729, 732 (9th Cir. 2001).
19 In ruling on a Rule 12(b)(6) motion, “[a]ll allegations of material fact
20 are taken as true and construed in the light most favorable to the
21 nonmoving party.” *Am. Family Ass’n*, 277 F.3d at 1120. Although a
22 complaint attacked by a Rule 12(b)(6) motion “does not need detailed
23 factual allegations,” a plaintiff must provide “more than labels and
24 conclusions.” *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555–56
(2007).

25 To state a plausible claim for relief, the complaint “must contain
26 sufficient allegations of underlying facts” to support its legal
27 conclusions. *Starr v. Baca*, 652 F.3d 1202, 1216 (9th Cir. 2011).
28 “Factual allegations must be enough to raise a right to relief above the
speculative level on the assumption that all the allegations in the
complaint are true (even if doubtful in fact)” *Twombly*, 550 U.S.
at 555–56 (citations and footnote omitted). Accordingly, **to survive a**

1 **motion to dismiss, a complaint “must contain sufficient factual**
2 **matter, accepted as true, to state a claim to relief that is plausible**
3 **on its face,”** which means that a plaintiff must plead sufficient factual
4 content to “allow[] the Court to draw the reasonable inference that the
5 defendant is liable for the misconduct alleged.” *Ashcroft v. Iqbal*, 556
6 U.S. 662, 678 (2009) (internal quotation marks omitted). A complaint
must contain “well-pleaded facts” from which the court can “infer
more than the mere possibility of misconduct.” *Id.* at 679.²²

7 As described below, the United States’ Complaint provides more than sufficient “well-
8 pleaded facts” to allow this Court to deny this motion to dismiss.

9 **ARGUMENT**

10 **1. The Complaint Contains Facts Stating a Violation of Title VI**

11 The Complaint pleads sufficiently to pass the motion to dismiss stage. As noted
12 above, the Complaint pleads facts concerning UCLA Med’s motive for discriminating, the
13 processes that enabled UCLA Med’s discrimination, and the effects of UCLA Med’s
14 discrimination as manifested in its recent entering classes. It thus sets up a straightforward
15 inference of blatant, intentional discrimination based on race in clear violation of Title
16 VI—which the Court presumes true and from which the Court can draw the reasonable
17 inference that the defendant is liable for the misconduct alleged.

18 UCLA Med does not argue that the pleadings fail to allege facts sufficient to clear
19 the hurdle and defeat its 12(b)(6) motion. Instead, it suggests that the United States has
20 asked this Court to impose “unprecedented and extraordinary” remedies on the basis of
21 “conclusory allegations.”²³ Proceeding from there, UCLA Med asks this Court to make
22 sweeping and unsupportable legal rulings limiting available remedies, and on that basis
23 dismiss the United States’s ability to terminate grants to UCLA prospectively, to recover
24 funding retrospectively, and to proceed under any contract theory.²⁴

25
26 _____
27 ²² Order at 4 (emphasis added).

28 ²³ MTD 6:2–5.

²⁴ See, Defendant’s [Proposed] Order appended to the present motion.

1 To dispel any doubt, the United States *is not* asking this Court to impose any
2 remedies based on conclusory allegations. The United States acknowledges that this Court
3 will impose remedies *only after* it has proved its case at trial. The appropriate time for this
4 Court to consider potential limitations on remedies is after considering the factual bases
5 and legal specifics establishing UCLA Med’s liability. The Court should deny UCLA
6 Med’s motion to limit the available remedies, as a matter of law, under Rule 12(b)(6).

7 **2. Contract Law Applies to Grants Under Title VI**

8 Part of UCLA Med’s contract defense is to argue that Title VI does not permit a
9 coexisting contract claim. UCLA Med does not dispute the contractual nature of grants,
10 only that Title VI somehow supplants a contract cause of action. This claim is wrong as a
11 matter of statute: “Nothing in this Act shall be construed to deny, impair, or otherwise
12 affect any right or authority of the Attorney General or of the United States or any agency
13 or officer thereof under existing law to institute ... any action or proceeding.” 42 USC
14 §2000h-3.

15 UCLA Med supports this assertion with a reference to *Bennett v. Ky. Dep’t of Educ.*,
16 470 U.S. 656 (1985). However, that case provides that the grant-receiving “State gave
17 certain assurances as a condition for receiving the federal funds, and if those assurances
18 were not complied with, the United States is entitled to recover amounts spent contrary to
19 the terms of the grant agreement.”²⁵ Similarly, UCLA Med gave assurances that it would
20 comply with Title VI as a condition for receiving federal funds and did not comply with
21 those assurances (at least as per the allegations of the Complaint). The United States seeks
22 the same relief for the same reason—a failure to abide by the terms of the assurances given.

23 **3. Retrospective Relief is Available Under Contract Law**

24 UCLA Med asserts that “Title VI limits the [United States] to forward-looking
25 remedies,” and that “the return of grant funds already disbursed and spent for their
26

27
28 ²⁵ [*Bennett v. Ky. Dep’t of Educ.*, 470 U.S. 656, 663](#) (1985).

1 intended purposes is unavailable as a matter of law.”²⁶ The Complaint contains three
2 causes of action seeking relief: The first for UCLA Med’s violation of the Equal Protection
3 Clause; the second for UCLA Med’s violation of Title VI; and the third for UCLA Med’s
4 breach of contract.

5 The United States does not raise retrospective relief in the context of either UCLA
6 Med’s Equal Protection or its Title VI violations. Retrospective relief arises only in the
7 context of the breach of contract claim: “[UCLA Med]’s failure to comply with Title VI
8 is grounds for the United States to rescind grant payments made during the period of
9 noncompliance.”²⁷

10 Restitution is a standard contract remedy as available to the United States as it is to
11 all other parties, including for violations of Title VI. In *Barnes v. Gorman*, the Supreme
12 Court addressed the availability of standard contract remedies in the context of private
13 suits alleging violations of Title VI:

14 Title VI invokes Congress’s power under the Spending Clause to place
15 conditions on the grant of federal funds. We have repeatedly
16 characterized this statute and other Spending Clause legislation as
17 “much in the nature of a *contract*: in return for federal funds, the
18 [recipients] agree to comply with federally imposed conditions.” ... A
19 funding recipient is generally on notice that it is subject not only to
20 those remedies explicitly provided in the relevant legislation, but also
21 to those remedies traditionally available in suits for breach of contract.

22 ...

23 When a federal-funds recipient violates conditions of Spending Clause
24 legislation, the wrong done is the failure to provide what the
25 contractual obligation requires....²⁸

26 The Supreme Court has long been clear that “[w]hen the United States enters into
27 contract relations, its rights and duties therein are governed generally by the law applicable
28

²⁶ MTD 6:23–25.

²⁷ Complaint ¶ 93.

²⁸ [*Barnes v. Gorman*, 536 U.S. 181, 185–189](#) (2002), (internal references omitted;
emphasis in original).

1 to contracts between private individuals.”²⁹ Therefore, contrary to UCLA Med’s claim
2 about the “return of grant funds already disbursed and spent,” restitution is an available
3 and standard contract remedy. The Federal Circuit stated matter-of-factly that “because an
4 award of restitution in a breach of contract case is a standard contract-based remedy, the
5 Court of Federal Claims has jurisdiction to grant that form of relief.”³⁰ As a remedy
6 applicable to private individuals, it is available to the United States.

7 That reference to “rights and duties” confirms the symmetry in the relationship
8 between government and contractor. Thus, the Supreme Court’s explanation that “[i]f the
9 Government said it would break, or did break, an important contractual promise, thereby
10 substantially impairing the value of the contracts to the companies, then (unless the
11 companies waived their rights to restitution) the Government must give the companies
12 their money back”³¹ applies in the other direction, as well. Because UCLA Med broke an
13 important contractual promise to the government, UCLA Med must give the United States
14 its money back. In fact, the Supreme Court has applied that principle to matters close to
15 the one at issue here: it ruled that the Secretary of Education was fully authorized to recoup
16 funds already disbursed when New Jersey breached its assurances to comply with Title
17 I.³² The Court should deny UCLA Med’s motion to dismiss the United States’s contract
18 claims or limit the available remedies.

19 **4. Title VI Compliance Is Material to the Contracts**

20 UCLA Med claims that even if it is found to have breached its contractual obligation
21 to adhere to Title VI’s nondiscrimination rules, those assurances (included in all
22 government contracts), and thus their breach, are “not material.”³³ The Supreme Court has
23 determined that under the common law, whether in tort or in contract, “materiality looks

24 ²⁹ [*Lynch v. United States*, 292 U.S. 571, 579 \(1934\).](#)

25 ³⁰ [*Amber Res. Co. v. United States*, 538 F.3d 1358, 1378 \(Fed. Cir. 2008\).](#)

26 ³¹ [*Mobil Oil Expl. & Producing Se. v. United States*, 530 U.S. 604, 608 \(2000\)](#) (internal
citation omitted).

27 ³² *See*, [*Bell v. New Jersey*, 461 U.S. 773 \(1983\)](#)

28 ³³ MTD 18:9–19.

1 to the effect on the likely or actual behavior of the recipient of the alleged
2 misrepresentation. Resembling a but-for standard, materiality asks whether the
3 misrepresentation constituted an inducement or motive to enter into a transaction.”³⁴ As
4 the implementing regulations provide, “an assurance that the program will be conducted
5 or the facility operated in compliance with all requirements imposed by or pursuant to”
6 Title VI is a precondition to “the extension of any Federal financial assistance pursuant to
7 the application.”³⁵ In other words, had UCLA Med attempted to strike the clause or
8 withhold assurance, the United States would have rejected its applications. Far from being
9 “not material,” clauses implementing Title VI are a hard “but-for” requirement without
10 which UCLA Med, UCLA, and the University of California system would not and could
11 not have obtained *any* federal funding.

12 UCLA Med further argues that it lacked “notice” of a “condition on federal
13 funds.”³⁶ Yet the applicable regulations provide clear notice addressing *precisely* the point
14 at issue here: “In the case of any application for Federal financial assistance for any
15 purpose to an academic institution, the assurance required by this section shall extend to
16 admission practices and to all other practices relating to the treatment of students.”³⁷ And
17 “[t]he assurance required with respect to an academic institution . . . insofar as the
18 assurance relates to the institution’s practices with respect to admission . . . shall be
19 applicable to the entire institution or facility.”³⁸

20 The United States could not have been clearer in stating *both* that any institutional
21 assurances of Title VI compliance apply to admissions *and* that any assurances made vis-
22 à-vis admissions apply to the entire institution. The United States put UCLA Med, UCLA,
23 and the University of California system on notice that an admissions office non-compliant

24 ³⁴ [*Kousisis v. United States*, 605 U.S. 114, 131 \(2025\)](#) (internal quotation marks and
25 citations omitted).

26 ³⁵ 28 C.F.R. § 42.105(a)(1)

27 ³⁶ MTD 19:25–20:19.

28 ³⁷ 28 C.F.R. § 42.105(c)(1)

³⁸ 28 C.F.R. § 42.105(c)(2)

1 with Title VI renders false any assurances made to obtain any federal funds. Title VI
2 compliance is a material term for these contracts with the United States.

3 **5. The Materiality of a Required Contract Clause is a Question of**
4 **Fact**

5 Setting aside the centrality of eradicating discrimination within educational
6 institutions to the Civil Rights Movement—and thus to Title VI—the immateriality
7 argument is also misplaced. It is misplaced in a 12(b)(6) Motion to Dismiss because
8 “[w]hether a breach is material is generally a question of fact for the jury.”³⁹ UCLA Med
9 is free to argue at trial that the University of California’s representations of a facility free
10 of race discrimination, issued at a time that UCLA Med maintained and planned to
11 continue its discriminatory admissions procedure—a representation without which it
12 would have obtained no federal funding—are “not material.” It is not an appropriate
13 question for resolution, as a matter of law, under 12(b)(6). The Court should dismiss the
14 motion to dismiss.

15 **6. Title VI Applies University-wide**

16 UCLA Med’s arguments about the limitations on Title VI enforcement⁴⁰ rest upon
17 outdated law and ignore the clear language of both the statute and its implementing
18 regulations, and the history of the Civil Rights Restoration Act of 1987. Contrary to the
19 assertions of UCLA Med, its violations of Title VI jeopardize federal financial assistance
20 at the entire university, not just the school of medicine or the admissions office.

21 UCLA Med asserts that the United States is “attempting to leverage its allegations
22 concerning one aspect of one professional school within UCLA ([UCLA Med]
23 admissions) into a basis for terminating all DOJ grants to UCLA regardless of whether the
24 grants are tied to [UCLA Med]’s admissions practices. Title VI does not permit that.”⁴¹

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26 ³⁹ [*Crowley v. EpiCept Corp.*, 883 F.3d 739, 753 \(9th Cir. 2018\)](#) (Wardlaw, J., dissenting
in part)

27 ⁴⁰ MTD 10:16–13:20.

28 ⁴¹ MTD 13:13–16.

1 Title VI does permit that. The United States could find the entire University of
2 California system in violation. “[T]he term ‘program or activity’ and the term ‘program’
3 mean all of the operations of— ... a public system of higher education.”⁴² The United
4 States has limited the remedy it seeks in its Complaint to UCLA. The Title VI violation
5 alleged here also provides a predicate for every other federal agency to follow suit (subject
6 to appropriate administrative procedures).

7 The United States’s position is not even a close call—recalling again, that for the
8 purposes of a 12(b)(6) motion, the allegations in the United States’s well-pleaded
9 complaint are assumed to be true.

10 To begin, UCLA Med claims: “The [United States] may attempt to terminate federal
11 funding only with respect to ‘the particular program, *or part thereof*’ as to which an
12 express finding of noncompliance with Title VI has been made.’ 42 U.S.C. § 2000d-1
13 (emphasis added).”⁴³ UCLA Med’s preferred interpretation of that clause—limiting any
14 remedy to the UCLA Med admissions office—ignores a crystalline definition: “For the
15 purposes of this subchapter, the term ‘program or activity’ and the term ‘program’ mean
16 all of the operations of—a college, university, or other postsecondary institution, or a
17 public system of higher education.”⁴⁴ UCLA is a university, and the University of
18 California system is a public system of higher education. UCLA Med also makes a
19 nonspecific “see also” reference to “28 C.F.R. § 42.108(c) (DOJ implementing
20 regulations).”⁴⁵ Like the statute, however, the regulations also define their terms:
21 “***Program or activity*** means the operation of the agency or organizational unit of
22 government receiving or substantially benefiting from financial assistance awarded, e.g.,
23 a police department or department of corrections.”⁴⁶ The University of California is an
24

25 ⁴² 42 U.S.C. § 2000d-4a(2)(A).

26 ⁴³ MTD 11:20–21. (quotation, emphases, and citation in original).

27 ⁴⁴ 42 U.S.C. § 2000d-4a(2)(A)

28 ⁴⁵ MTD 11:22–23

⁴⁶ 28 C.F.R. § 42.202(k) (italics in original).

1 “agency or organizational unit of government;” UCLA Med is not. The effect of the
2 regulatory limitation is to insulate California’s many other state agencies from Title VI
3 violations occurring at the University of California. It does not insulate the University of
4 California from UCLA Med.

5 Next, UCLA Med draws its preferred definition from *Board of Pub. Instruction of*
6 *Taylor Cnty., Fla. v. Finch*, 414 F.2d 1068 (5th Cir. 1969), a Fifth Circuit case decided in
7 1969.⁴⁷ But *Board of Pub. Instruction*’s ruling on this point is no longer good law; it was
8 clearly repudiated and overturned by statute in 1988. UCLA Med’s conclusion would find
9 support in the Supreme Court’s ruling in [*Grove City Coll. v. Bell*, 465 U.S. 555, 557 \(1984\)](#)
10 (superseded by statute)—a ruling that actually reached the conclusion UCLA Med
11 attributed to *Board of Pub. Instruction*. But subsequent legal development rendered UCLA
12 Med’s position unsustainable today.

13 Grove City College is a private, coeducational, liberal arts college with a preference
14 for avoiding federal oversight. It thus declined to seek federal funding—but it did enroll
15 students who received financial aid under a federal Department of Education (“DOE”)
16 program. DOE determined that Grove City was thus a recipient of federal financial
17 assistance and requested its assurance of compliance with Title IX. Grove City refused to
18 sign the assurances.⁴⁸

19 The Supreme Court reached two points of direct relevance to the present dispute.
20 Its first, which proved noncontroversial and remains good law, was that Grove City’s
21 refusal to sign the assurance rendered it ineligible for federal funding, including the
22 indirect tuition aid granted to its students.⁴⁹ This conclusion goes directly to UCLA Med’s
23 assertions about the “materiality” of such assurances, as noted above; it confirms the “but
24 for” nature of the assurances to contract formation.

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26

⁴⁷ MTD 11:24–12:6.

27 ⁴⁸ *Grove City*, 465 U.S. 559–60.

28 ⁴⁹ *Id.* at 563.

1 The Court’s second ruling set off a political firestorm.⁵⁰

2 The Assurance of Compliance regulation itself does not, on its face,
3 impose institution-wide obligations. Recipients must provide
4 assurance only that “each education program or activity operated by .
5 . . [them] *and to which this part applies* will be operated in compliance
6 with this part.” The regulations apply, by their terms, “to every
7 recipient and to *each education program or activity* operated by such
8 recipient *which receives or benefits from Federal financial*
9 *assistance.*” . . . Nor does the Department now claim that its regulations
reach beyond the College’s student aid program. . . . Under this opinion,
consistent with the program-specific requirements of Title IX, the
covered education program is the College's financial aid program.⁵¹

10 In other words, in a case that Congress specifically and explicitly overruled by
11 statute, the Supreme Court ruled *precisely* as UCLA Med is now arguing—that the effects
12 of noncompliance in UCLA Med’s admissions processes cannot ripple beyond UCLA
13 Med. But *Grove City* is no longer good law, and the position UCLA Med takes today is
14 untenable.

15 The history leading to that statutory development is instructive. Opposition to *Grove*
16 *City* began with the National Organization of Women’s claim that by cabining the effects
17 of Title IX noncompliance (or to be more precise, Title IX assurance opt-out) to a specific
18 campus operation, the Court had empowered colleges to discriminate against women.⁵² It
19 snowballed from there, leading to a large coalition of civil rights groups and ultimately to
20 a bipartisan “Grove City Bill” drafted to repudiate and overturned the Court’s ruling.⁵³

21 The political battle raged for four years: a bipartisan majority in the Democratic-led
22 Congress sought to extend the scope of Title IX—along with Title VI and other civil rights
23 laws—from specific offending programs to the entirety of the institution operating such

24 ⁵⁰ See, Graham, Hugh Davis, “The Storm over Grove City College: Civil Rights
25 Regulation, Higher Education, and the Reagan Administration,” 38 *Hist. of Educ. Q.* 4:
26 407–429 (1998).

27 ⁵¹ [*Grove City Coll. v. Bell*, 465 U.S. 555, 574–75 \(1984\)](#) (emphasis in original).

28 ⁵² Graham at 408.

⁵³ Graham at 418–19.

1 programs. The Reagan Administration insisted that the limitation confirmed in the *Grove*
2 *City* decision had been correct and should be preserved. Congress ultimately prevailed,
3 overriding President Reagan’s veto to pass the Civil Rights Restoration Act of 1987 (the
4 formal name of the Grove City Bill).⁵⁴

5 The ongoing relevance of the Grove City Bill is clear. The proper statute defining
6 the current scope of Title VI, namely 42 U.S.C. § 2000d-4a, is sourced to Pub. L. 100-259
7 § 6, enacted March 22, 1988,⁵⁵ (i.e., the Civil Rights Restoration Act of 1987), which
8 introduced the current Title VI statutory wording. The Ninth Circuit has characterized the
9 “explicitly stated purpose” of the Civil Rights Restoration Act of 1987 as “[o]vertturn[ing]
10 the Supreme Court's decision in *Grove City College v. Bell*, which limited the scope of
11 Title IX.”⁵⁶

12 CONCLUSION

13 The likely implications to the University of California of a finding—after trial—
14 that UCLA Med’s admissions process discriminated on the basis of race are profound. The
15 country has not faced the need to correct widespread legacy discrimination requiring
16 judicial intervention since the school desegregation era. There, as here, powerful
17 institutional leaders believed that their discrimination served an important public purpose,
18 and that the legislation and Supreme Court rulings to the contrary were both in error and
19 damaging to society. There, as here, those leaders sought proxies and workarounds to
20 continue discriminating despite the law.

21 At that time, the Courts developed numerous rules that proved necessary and helpful
22 in the fight against racial discrimination. Key among them were presumptions and the
23 shifting of burdens: “a finding of intentionally segregative school board actions ... creates
24 a presumption that other segregated schooling within the system is not adventitious . . .

26 ⁵⁴ Graham at 420.

27 ⁵⁵ <https://www.congress.gov/100/statute/STATUTE-102/STATUTE-102-Pg28.pdf>.

28 ⁵⁶ [*Estate of Reynolds v. Martin*, 985 F.2d 470, 475 n.3 \(9th Cir. 1993\)](#).

1 even if it is determined that different areas of the school district should be viewed
2 independently of each other . . .”⁵⁷

3 The logic of the Supreme Court’s holding vis-à-vis segregation applies with equal
4 force to today’s racial discrimination in the name of “diversity.” The University of
5 California leadership, systemwide, has expressed views supportive of discrimination in
6 the name of diversity. A demonstration of intentional diversity-based discrimination in
7 any part of the University of California system renders it both fair and reasonable to
8 require that these same authorities bear the burden of showing their diversity-driven
9 actions as to other programs or units within the system were not also motivated by
10 discriminatory intent.

11 The exposure of UCLA (and arguably the entire University of California system),
12 is thus not simply a quirk of legislative drafting in the 1980s. It comports fully with the
13 logic and lessons learned during our country’s earlier efforts to root out racial
14 discrimination and create the colorblind society of which Martin Luther King, Jr. dreamed.
15 UCLA Med’s entire argument about the scoping of Title VI enforcement rests upon an
16 outdated interpretation of the statute, based on old case law from another circuit whose
17 primary relevant holding was repudiated and overturned by statute *in a high-profile*
18 *political battle over a Presidential veto*. Congress, the Courts, and the historic logic of the
19 fight against racial discrimination all argue against it.

20 For the foregoing reasons, UCLA Med’s motion to dismiss should be denied in its
21 entirety. The United States’ Complaint provides more than sufficient “well-pleaded facts”
22 to allow this Court to deny this motion to dismiss and proceed towards trial on UCLA
23 Med’s ongoing admissions violations.

24 //

25 //

26 //

27 _____
28 ⁵⁷ [Keyes v. Sch. Dist.](#), 413 U.S. 189, 208 (1973)

1 DATED: August 14, 2026.

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CERTIFICATE OF COMPLIANCE WITH L.R. 11-6.2

The undersigned counsel of record for Plaintiff-Intervenor United States of America certifies that the memorandum of points and authorities contains 17 substantive pages which complies with this Court's Standing Order that overrides the word limit of Local Rule 11-6.1.

/s/ John P. Mertens
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