

No. 25-1529

IN THE UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

AMERICAN ASSOCIATION OF UNIVERSITY PROFESSORS, AMERICAN
FEDERATION OF TEACHERS,

Plaintiffs - Appellants,

v.

UNITED STATES DEPARTMENT OF JUSTICE,
(For Continuation of Caption, See Inside Cover)

Defendants - Appellees.

On Appeal from the United States District Court for the
Southern District of New York
Case No. 1:25-cv-02429-MKV (Hon. Mary Kay Vyskocil)

JOINT APPENDIX (JA477 – JA586)
VOLUME 4 OF 8

Orion Danjuma
Rachel Goodman
Protect Democracy Project
82 Nassau Street, #601
New York, NY 10038
Tel: (202) 579-4582
Fax: (202) 769-3176
orion.danjuma@protectdemocracy.org
rachel.goodman@protectdemocracy.org

*(For Additional Counsel, See Inside
Cover)*

Eve H. Cervantez
Matthew J. Murray
Connie K. Chan
ALTSHULER BERZON LLP
177 Post St., Suite 300
San Francisco, CA 94108
Tel: (415) 421-7151
Fax (415) 362-8064
ecervantez@altber.com
mmurray@altber.com
cchan@altber.com

(Caption Continued) PAMELA BONDI, in her official capacity as the U.S. Attorney General, LEO TERRELL, in his official capacity as Senior Counsel to the Assistant Attorney General for Civil Rights and head of the DOJ Task Force to Combat Anti-Semitism, UNITED STATES DEPARTMENT OF EDUCATION, LINDA MCMAHON, in her official capacity as the U.S. Secretary of Education, THOMAS E. WHEELER, in his official capacity as Acting General Counsel of the U.S. Department of Education, UNITED STATES DEPARTMENT OF HEALTH AND HUMAN SERVICES, ROBERT F. KENNEDY, JR., in his official capacity as the U.S. Secretary of Health and Human Services, SEAN R. KEVENEY, in his official capacity as Acting General Counsel of the U.S. Department of Health and Human Services, NATIONAL INSTITUTES OF HEALTH, MATTHEW J. MEMOLI, in his official capacity as the Acting Director of the National Institutes of Health, UNITED STATES GENERAL SERVICES ADMINISTRATION, STEPHEN EHIKIAN, in his official capacity as Acting Administrator of the U.S. General Services Administration, JOSH GRUENBAUM, in his official capacity as Commissioner of the Federal Acquisition Service,

Defendants - Appellees.

Additional counsel for Plaintiffs-Appellants:

Katie Schwartzmann
Protect Democracy Project
201 St. Charles Avenue, Ste. 114
New Orleans, LA 70170
Tel: (202) 579-4582
Fax: (202) 769-3176
katie.schwartzmann@protectdemocracy.org

Richard Primus
The University of Michigan Law School
(institutional affiliation provided for
identification
purposes only; not representing the
University)
625 S. State Street
Ann Arbor, MI 48109
Tel: (734) 647-5543
Fax: (734) 764-8309
PrimusLaw1859@gmail.com

Juhyung Harold Lee
Jonathan Rosenthal
ALTSHULER BERZON LLP
177 Post St., Suite 300
San Francisco, CA 94108
Tel: (415) 421-7151
Fax (415) 362-8064
hlee@altber.com
jrosenthal@altber.com

**JOINT APPENDIX
TABLE OF CONTENTS**

Tab. No.	Docket No.	Date Filed	Description	Page No.
Volume 1				
1			District Court Docket Sheet	JA1
Volume 2				
2	1	03/25/25	Complaint	JA26
3	27	04/03/25	Declaration of Todd Wolfson	JA113
4	28	04/03/25	Declaration of Julie Schmid & Exhibit A (<i>Condemning Hate and Affirming Freedom of Speech on Campus</i> , American Federation of Teachers (Nov. 9, 2023))	JA121
5	29	04/03/25	Declaration of Reinhold Martin	JA135
6	29-1	04/03/25	Exhibit A to the Declaration of Reinhold Martin (March 7, 2025 Email from Katrina Armstrong)	JA152
7	30	04/03/25	Declaration of Susan Witte	JA155
8	31	04/03/25	Declaration of Victoria Frye	JA164
9	32	04/03/25	Declaration of Jennifer S. Hirsch	JA169
10	45	04/03/25	Declaration of Veena Dubal	JA178
11	45-1	04/03/25	Exhibit A to the Declaration of Veena Dubal (March 24, 2025 Email from Danna Drori)	JA182
12	47	04/04/25	Declaration of Jonathan Rosenthal in Support of Plaintiffs' Motion for Preliminary Injunction	JA187
13	47-1	04/04/25	Exhibit 1 to the Declaration of Jonathan Rosenthal (Lydia Gall, <i>Hungary Continues Attacks on Academic Freedom</i> , Human Rights Watch (Sept. 3, 2020))	JA202

14	47-2	04/04/25	Exhibit 2 to the Declaration of Jonathan Rosenthal (Muzaffer Kaya, <i>Turkey's Purge of Critical Academia</i> , Middle East Report 288 (Fall 2018))	JA205
15	47-3	04/04/25	Exhibit 3 to the Declaration of Jonathan Rosenthal (Pedro Salgado, <i>The Crisis of Brazilian Universities: Higher Education Under Bolsonaro</i> , International Research Group on Authoritarianism and Counter-Strategies (July 22, 2021))	JA217
16	47-4	04/04/25	Exhibit 4 to the Declaration of Jonathan Rosenthal (<i>Agenda47: Protecting Students from the Radical Left and Marxist Maniacs Infecting Educational Institutions</i> , DJTFP 2024 (July 17, 2024))	JA225
17	47-5	04/04/25	Exhibit 5 to the Declaration of Jonathan Rosenthal (<i>Agenda47: The American Academy</i> , DJTFP 2024 (Nov. 1, 2023))	JA229
18	47-6	04/04/25	Exhibit 6 to the Declaration of Jonathan Rosenthal (Henry Reichman, <i>'The Professors Are the Enemy' Right-wing attacks on academic freedom have real repercussions.</i> , The Chronicle of Higher Education (Dec. 14, 2021))	JA233
19	47-7	04/04/25	Exhibit 7 to the Declaration of Jonathan Rosenthal (Rod Dreher, <i>"I would like to see European elites actually listen to their people for a change": An Interview with J.D. Vance</i> , The European Conservative (Feb. 22, 2024))	JA240
20	47-8	04/04/25	Exhibit 8 to the Declaration of Jonathan Rosenthal (Leo Terrell, <i>Senior Counsel to the Attorney General for Civil Rights, On Crushing Anti-Semitism On Campus</i> , HughHewitt & Duane Patterson (March 19, 2025))	JA252
21	47-9	04/04/25	Exhibit 9 to the Declaration of Jonathan Rosenthal (Feb. 17, 2025 Letter to Georgetown Law School from Edward R. Martin, Jr.)	JA259

22	47-10	04/04/25	Exhibit 10 to the Declaration of Jonathan Rosenthal (Jan Claassen, MD, et al., <i>Sleep Patterns May Reveal Comatose Patients with Hidden Consciousness</i> , Columbia University Irving Medical Center (March 3, 2025))	JA262
23	48-1	04/04/25	Exhibit 11 to the Declaration of Jonathan Rosenthal (Timothy Wang, MD, et al., <i>Nerves Electrify Stomach Cancer, Sparking Growth and Spread</i> , Columbia University Irving Medical Center (Feb. 19, 2025))	JA269
24	48-2	04/04/25	Exhibit 12 to the Declaration of Jonathan Rosenthal (Julia Wattacheril, MD, MPH, <i>Training Your Electronic Health Record to Think Like a Liver Doctor</i> , Columbia University Irving Medical Center (Feb. 20, 2025))	JA277
25	48-3	04/04/25	Exhibit 13 to the Declaration of Jonathan Rosenthal (Financial Overview of Columbia University)	JA283
Volume 3				
26	48-4	04/04/25	Exhibit 14 to the Declaration of Jonathan Rosenthal (Economic Impact of Columbia University)	JA290
27	48-5	04/04/25	Exhibit 15 to the Declaration of Jonathan Rosenthal (Ian Bogost, <i>A New Kind of Crisis for American Universities</i> , The Atlantic (Feb. 10, 2025))	JA299
28	48-6	04/04/25	Exhibit 16 to the Declaration of Jonathan Rosenthal (Willem Marx, <i>Campus protests over the war in Gaza have gone international</i> , NPR (May 3, 2024))	JA312
29	48-7	04/04/25	Exhibit 17 to the Declaration of Jonathan Rosenthal (Executive Order 14188 Additional Measures To Combat Anti-Semitism (January 29, 2025))	JA321
30	48-8	04/04/25	Exhibit 18 to the Declaration of Jonathan Rosenthal (Office of Public Affairs, <i>Justice Department Announces Formation of Task Force to Combat</i>	JA324

			<i>Anti-Semitism</i> , U.S. Department of Justice (Feb. 3, 2025))	
31	48-9	04/04/25	Exhibit 19 to the Declaration of Jonathan Rosenthal (Office of Communications and Outreach, <i>Justice Department Announces Formation of Task Force to Combat Anti-Semitism</i> , U.S. Department of Education (Feb. 3, 2025))	JA328
32	48-10	04/04/25	Exhibit 20 to the Declaration of Jonathan Rosenthal (<i>Statement on Notice From U.S. Department of Education Office of Civil Rights</i> , Columbia University Office of Public Affairs (Feb. 3, 2025))	JA331
33	49-1	04/04/25	Exhibit 21 to the Declaration of Jonathan Rosenthal (<i>HHS, ED, and GSA announce additional measures to end anti-Semitic harassment on college campuses</i> , U.S. General Services Administration (March 3, 2025))	JA334
34	49-2	04/04/25	Exhibit 22 to the Declaration of Jonathan Rosenthal (Truth Social Post from Donald J. Trump (March 4, 2025))	JA338
35	49-3	04/04/25	Exhibit 23 to the Declaration of Jonathan Rosenthal (<i>DOJ, HHS, ED, and GSA announce initial cancellation of grants and contracts to Columbia University worth \$400 million</i> , U.S. General Services Administration (March 7, 2025))	JA340
36	49-4	04/04/25	Exhibit 24 to the Declaration of Jonathan Rosenthal (Matthew Haag et al., <i>Decades Ago, Columbia Refused to Pay Trump \$400 Million</i> , The New York Times (March 21, 2025))	JA345
37	49-5	04/04/25	Exhibit 25 to the Declaration of Jonathan Rosenthal (<i>Responding to Federal Action</i> , Columbia Office of the President (March 7, 2025))	JA352
38	49-6	04/04/25	Exhibit 26 to the Declaration of Jonathan Rosenthal (March 13, 2025 Letter to Columbia University	JA356

39	49-7	04/04/25	Exhibit 27 to the Declaration of Jonathan Rosenthal (<i>Advancing Our Work to Combat Discrimination, Harassment, and Antisemitism at Columbia, Columbia University</i>)	JA359
40	49-8	04/04/25	Exhibit 28 to the Declaration of Jonathan Rosenthal (<i>HHS, ED, and GSA Respond to Columbia University's Actions to Comply with Joint Task Force Pre-Conditions</i> , U.S. Department of Health and Human Services (March 24, 2025))	JA364
41	49-9	04/04/25	Exhibit 29 to the Declaration of Jonathan Rosenthal (X Post from NIH (March 10, 2025))	JA369
42	49-10	04/04/25	Exhibit 30 to the Declaration of Jonathan Rosenthal (Caroline Lewis, <i>Hundred of research grants at Columbia canceled following Trump edict, administrator says</i> , Gothamist (March 11, 2025))	JA372
43	50-1	04/04/25	Exhibit 31 to the Declaration of Jonathan Rosenthal (Spreadsheet of Awards)	JA377
44	50-2	04/04/25	Exhibit 32 to the Declaration of Jonathan Rosenthal (Ryan Quinn, <i>Trump's Columbia Cuts Start Hitting Postdocs, Professors</i> , Inside Higher Ed (March 13, 2025))	JA420
45	50-3	04/04/25	Exhibit 33 to the Declaration of Jonathan Rosenthal (Humberto Basilio, <i>'My career is over': Columbia University scientists hit hard by Trump team's cuts</i> , Nature ((March 14, 2025))	JA428
46	50-4	04/04/25	Exhibit 34 to the Declaration of Jonathan Rosenthal (Joseph Goldstein, <i>Medical Research at Columbia Is Imperiled After Trump Terminates Funding</i> , The New York Times (March 18, 2025))	JA435
47	50-5	04/04/25	Exhibit 35 to the Declaration of Jonathan Rosenthal (Jason Mast, <i>Columbia scientists reel as Trump administration cancels grants, hitting broad suite of research</i> , Stat News (March 11, 2025))	JA442

48	50-6	04/04/25	Exhibit 36 to the Declaration of Jonathan Rosenthal (Isabella Cueto, <i>ME/CFS research program shuts down at Columbia after Trump cuts</i> , Stat News (March 19, 2025))	JA448
49	50-7	04/04/25	Exhibit 37 to the Declaration of Jonathan Rosenthal (March 30, 2025 Open letter in response to federal funding cuts at Columbia)	JA453
Volume 4				
50	50-8	04/04/25	Exhibit 38 to the Declaration of Jonathan Rosenthal (Mark Alfred, <i>The Trump Administration Cut Cancer and Alzheimer's Research Funding at Columbia University</i> , Notus (March 18, 2025))	JA477
51	50-9	04/04/25	Exhibit 39 to the Declaration of Jonathan Rosenthal (Thomas Bailey, <i>Update in Light of March 7 Federal Announcement</i> , Teachers College of Columbia University (March 7, 2025))	JA483
52	50-10	04/04/25	Exhibit 40 to the Declaration of Jonathan Rosenthal (Jocelyn Kaiser, <i>After Columbia's 'nightmare,' dozens more universities brace for Trump NIH cuts</i> , Science (March 18, 2025))	JA486
53	51-1	04/04/25	Exhibit 41 to the Declaration of Jonathan Rosenthal (Congressional Record, Senate (April 7, 1964))	JA490
54	51-2	04/04/25	Exhibit 42 to the Declaration of Jonathan Rosenthal (Congressional Record, House of Representatives (Feb. 7, 1964))	JA497
55	51-3	04/04/25	Exhibit 43 to the Declaration of Jonathan Rosenthal (Abigail A. Graber, <i>Religious Discrimination at School: Application of Title VI of the Civil Rights Act of 1964</i> , Congressional Research Service (Sept. 17, 2024))	JA504
56	51-4	04/04/25	Exhibit 44 to the Declaration of Jonathan Rosenthal (Jared P. Cole, <i>Civil Rights at School: Agency Enforcement of Title VI of the Civil Rights Act of</i>	JA511

			1964, Congressional Research Service (April 4, 2019))	
57	51-5	04/04/25	Exhibit 45 to the Declaration of Jonathan Rosenthal (<i>Case Processing Manual</i> , U.S. Department of Education Office for Civil Rights (Feb. 19, 2025))	JA539
58	51-6	04/04/25	Exhibit 46 to the Declaration of Jonathan Rosenthal (<i>Upholding Our Values</i> , Columbia Office of the President (Oct. 18, 2023))	JA572
59	51-7	04/04/25	Exhibit 47 to the Declaration of Jonathan Rosenthal (<i>Standing in Solidarity</i> , Columbia Office of the President (Oct. 27, 2023))	JA575
60	51-8	04/04/25	Exhibit 48 to the Declaration of Jonathan Rosenthal (<i>Task Force on Antisemitism</i> , Columbia University	JA578
Volume 5				
61	51-9	04/04/25	Exhibit 49 to the Declaration of Jonathan Rosenthal (<i>Announcing Task Force on Antisemitism</i> , Columbia Office of the President (Nov. 1, 2023))	JA587
62	51-10	04/04/25	Exhibit 50 to the Declaration of Jonathan Rosenthal (<i>About the Task Force on Antisemitism</i> , Columbia University)	JA590
63	52-1	04/04/25	Exhibit 51 to the Declaration of Jonathan Rosenthal (<i>Report #1: Task Force on Antisemitism Columbia University's Rules on Demonstrations</i> , Columbia University (March 2024))	JA593
64	52-2	04/04/25	Exhibit 52 to the Declaration of Jonathan Rosenthal (<i>President Shafik Welcomes the First Set of Recommendations From the Task Force on Antisemitism</i> , Columbia Office of the President (March 4, 2024))	JA612
65	52-3	04/04/25	Exhibit 53 to the Declaration of Jonathan Rosenthal (<i>Report #2: Task Force on Antisemitism</i> , Columbia University (Aug. 2024))	JA615

66	52-4	04/04/25	Exhibit 54 to the Declaration of Jonathan Rosenthal (<i>Combatting Antisemitism</i> , Columbia Office of the President)	JA620
67	52-5	04/04/25	Exhibit 55 to the Declaration of Jonathan Rosenthal (<i>University Statement Regarding UJB Determinations</i> , Columbia University Office of Public Affairs (March 13, 2025))	JA625
68	52-6	04/04/25	Exhibit 56 to the Declaration of Jonathan Rosenthal (Office of Public Affairs, <i>Federal Task Force to Combat Antisemitism Announces Visits to 10 College Campuses that Experienced Incidents of Antisemitism</i> , U.S. Department of Justice (Feb. 28, 2025))	JA628
69	52-7	04/04/25	Exhibit 57 to the Declaration of Jonathan Rosenthal (Office of Communications and Outreach, <i>U.S. Department of Education's Office for Civil Rights Sends Letters to 60 Universities Under Investigation for Antisemitic Discrimination and Harassment</i> , U.S. Department of Education (March 10, 2025))	JA632
70	52-8	04/04/25	Exhibit 58 to the Declaration of Jonathan Rosenthal (Maya Sulkin, <i>Columbia University Says One Thing to Trump Admin—and Another in Private</i> , The Free Press (March 25, 2025))	JA637
71	52-9	04/04/25	Exhibit 59 to the Declaration of Jonathan Rosenthal (<i>A Message from Dr. Katrina A. Armstrong</i> , Columbia University Office of Public Affairs (March 28, 2025))	JA642
72	52-10	04/04/25	Exhibit 60 to the Declaration of Jonathan Rosenthal (<i>Joint Task Force statement regarding Columbia University's steps to advance negotiations</i> , U.S. General Services Administration (March 28, 2025))	JA645
73	52-11	04/04/25	Exhibit 61 to the Declaration of Jonathan Rosenthal (Eugene Volokh et al., <i>A Statement from</i>	JA648

			<i>Constitutional Law Scholars on Columbia</i> , The New York Review (March 20, 2025))	
74	93	05/01/25	Declaration of Josh Gruenbaum in Opposition to Plaintiffs' Motion for a Preliminary Injunction	JA653
75	93-1	05/01/25	Exhibit A to the Declaration of Josh Gruenbaum (March 3, 2025 Memorandum to Columbia University from Josh Gruenbaum)	JA657
76	94	05/01/25	Declaration of Allison M. Rovner in Opposition to Plaintiffs' Motion for a Preliminary Injunction	JA661
77	94-1	05/01/25	Exhibit A to the Declaration of Allison Rovner (March 7, 2025 Letter to the Trustees of Columbia University from Mark Washington)	JA663
78	94-2	05/01/25	Exhibit B to the Declaration of Allison Rovner (March 7, 2025 Letter to the Teachers College Columbia University from Mark Washington)	JA666
79	94-3	05/01/25	Exhibit C to the Declaration of Allison Rovner (Oral Argument Transcript of Mahmoud Kahil et al., v. The Trustees of Columbia University in the City of New York, et al. (March 25, 2025))	JA669
80	99	05/08/25	Reply Declaration of Jonathan Rosenthal in Support of Plaintiffs' Motion for Preliminary Injunction	JA674
81	99-1	05/08/25	Exhibit 62 to the Reply Declaration of Jonathan Rosenthal (Sara Reardon, <i>Exclusive: NIH freezes all research grants to Columbia University</i> , Science (April 9, 2025))	JA680
82	99-2	05/08/25	Exhibit 63 to the Reply Declaration of Jonathan Rosenthal (Maddie Khaw, <i>All of Columbia's NIH Funding Is Apparently Frozen. Here's What That Looks Like for One Researcher</i> , Chronicle (April 11, 2025))	JA683

83	99-3	05/08/25	Exhibit 64 to the Reply Declaration of Jonathan Rosenthal (April 11, 2025 Letter to Harvard University)	JA690
84	99-4	05/08/25	Exhibit 65 to the Reply Declaration of Jonathan Rosenthal (Michael C. Bender et al., <i>Inside Trump's Pressure Campaign on Universities</i> , The New York Times (April 14, 2025))	JA696
85	99-5	05/08/25	Exhibit 66 to the Reply Declaration of Jonathan Rosenthal (<i>Sustaining Columbia's Vital Mission</i> , Columbia Office of the President (April 14, 2025))	JA714
86	99-6	05/08/25	Exhibit 67 to the Reply Declaration of Jonathan Rosenthal (April 14, 2025 Letter from Harvard University)	JA717
87	99-7	05/08/25	Exhibit 68 to the Reply Declaration of Jonathan Rosenthal (<i>Joint Task Force to Combat Anti-Semitism Statement Regarding Harvard University</i> , U.S. Department of Education (April 14, 2025))	JA720
88	99-8	05/08/25	Exhibit 69 to the Reply Declaration of Jonathan Rosenthal (Liz Essley Whyte et al., <i>The Little-Known Bureaucrats Tearing Through American Universities</i> , The Wall Street Journal (April 14, 2025))	JA722
89	99-9	05/08/25	Exhibit 70 to the Reply Declaration of Jonathan Rosenthal (Alan Blinder, <i>Trump Has Targeted These Universities. Why?</i> , The New York Times (April 15, 2025))	JA732
90	99-10	05/08/25	Exhibit 71 to the Reply Declaration of Jonathan Rosenthal (<i>Miguel S. Urquiola</i> , Columbia Office of the Provost)	JA739
91	99-11	05/08/25	Exhibit 72 to the Reply Declaration of Jonathan Rosenthal (Meghnad Bose et al., <i>Inside Columbia's Betrayal of its Middle Eastern Studies Department</i> , The Intercept (April 16, 2025))	JA742

92	99-12	05/08/25	Exhibit 73 to the Reply Declaration of Jonathan Rosenthal (Truth Social Post from Donald J. Trump (April 16, 2025))	JA755
93	99-13	05/08/25	Exhibit 74 to the Reply Declaration of Jonathan Rosenthal (Anil Oza et al., <i>NIH said to have halted awarding of new grants to more top universities</i> , Stat News (April 18, 2025))	JA757
94	99-14	05/08/25	Exhibit 75 to the Reply Declaration of Jonathan Rosenthal (X Post from Max Kozlov (April 18, 2025))	JA760
95	99-15	05/08/25	Exhibit 76 to the Reply Declaration of Jonathan Rosenthal (Nandika Chatterjee, <i>Trump Takes Personal Revenge on Harvard's Lawyer for Standing Up to Him</i> , Daily Beast (April 24, 2025))	JA762
Volume 6				
96	99-16	05/08/25	Exhibit 77 to the Reply Declaration of Jonathan Rosenthal (May 5, 2025 Letter to Hard University from Linda E. McMahon)	JA769
97	99-17	05/08/25	Exhibit 78 to the Reply Declaration of Jonathan Rosenthal (<i>Preserving Columbia's Critical Research Capabilities</i> , Columbia Office of the President (May 6, 2025))	JA773
98	99-18	05/08/25	Exhibit 79 to the Reply Declaration of Jonathan Rosenthal (Diabetes Prevention Program et al., <i>An open letter to the Columbia administration</i> , Columbia Spectator (May 4, 2025))	JA777
99	99-19	05/08/25	Exhibit 80 to the Reply Declaration of Jonathan Rosenthal (Liz Essley Whyte et al., <i>Trump Administration Proposes Terms for Federal Oversight of Columbia University</i> , The Wall Street Journal (May 5, 2025))	JA781
100	100	05/08/25	Supplemental Declaration of Todd Wolfson	JA785

101	101	05/08/25	Supplemental Declaration of Julie Schmid	JA796
102	102	05/08/25	Supplemental Declaration of Reinhold Martin	JA800
103	103	05/08/25	Declaration of Joshua Jacobs	JA804
104	104	05/08/25	Declaration of Jamie Daw	JA812
105	105	05/08/25	Declaration of Abigail Greenleaf	JA818
106	121	05/20/25	Order Denying Requests to Seal	JA823
107	124	05/23/25	Declaration of Matthew Murray in Support of Plaintiffs' Motion for Preliminary Injunction	JA829
108	124-1	05/23/25	Exhibit A to the Declaration of Matthew Murray (HHS' Civil Rights Office Finds Columbia University in Violation of Federal Civil Rights Law, U.S. Department of Health and Human Services (May 22, 2025))	JA831
109	128	05/23/25	Declaration of Ezra Susser (Witness B)	JA836
110	129	05/23/25	Declaration of Joseph Slaughter (Witness C)	JA844
111	130	05/23/25	Declaration of Joel Swanson (Witness D)	JA849
112	131	05/23/25	Declaration of Andrew Geneslaw (Witness K)	JA857
113	132	05/23/25	Declaration of Alex de Sherbinin (Witness L)	JA863
114	133	05/23/25	Declaration of Mary Beth Terry (Witness M)	JA868
115	134	05/23/25	Declaration of Steven Chillrud (Witness N)	JA873
Volume 7				
116	136	05/23/25	Declaration of Teresa Javenic (Witness O)	JA879
117	137	05/23/25	Supplemental Declaration of Joseph Slaughter (Witness C)	JA886

118	138	05/23/25	Supplemental Declaration of Andrew Geneslaw (Witness K)	JA889
119	139	05/23/25	Amended Declaration of Melanie Wall (Witness A)	JA892
120	140	05/23/25	Amended Declaration of Safia Southey (Witness E)	JA899
121	141	05/23/25	Amended Declaration of Anne Li (Witness I)	JA903
122	142-1	05/23/25	Amended Declaration of Jon Lorsch, Ph.D	JA907
123	142-2	05/23/25	Exhibit A to the Amended Declaration of Jon Lorsch (<i>NIH Grants Policy Statement</i> , National Institutes of Health (April 2024))	JA914
124	142-3	05/23/25	Exhibit B to the Amended Declaration of Jon Lorsch (Dorothy A. Fink, <i>Secretarial Directive on DEI-Related Funding</i> , Department of Health & Human Services (Feb. 10, 2025))	JA921
125	142-4	05/23/25	Exhibit C to the Amended Declaration of Jon Lorsch (Matthew J. Memoli, M.D., <i>Directive on NIH Priorities</i> , National Institutes of Health (Feb. 21, 2025))	JA924
126	142-5	05/23/25	Exhibit D to the Amended Declaration of Jon Lorsch (March 10, 2025 Letter to Angela V. Olinto, Ph.D., from Michelle G. Bulls)	JA927
127	142-6	05/23/25	Exhibit E to the Amended Declaration of Jon Lorsch (March 14, 2025 Letter to Angela V. Olinto, Ph.D., from Michelle G. Bulls)	JA930
128	142-7	05/23/25	Exhibit F to the Amended Declaration of Jon Lorsch (March 7, 2025 Notification of Termination of Multiple Task Orders to the Trustees of Columbia University from Alice Pagán Pereira)	JA933
129	149	06/16/25	Notice of Appeal	JA935
Volume 8				

130	145	05/29/25	Amended Declaration of Witness J (To be filed UNDER SEAL and included in Joint Appendix contingent upon this Court's grant of Plaintiffs' Unopposed Motion to File Under Seal)	JA937

EXHIBIT 38

HEALTH & SCIENCE

The Trump Administration Cut Cancer and Alzheimer's Research Funding at Columbia University

His administration terminated a \$5 million grant to the Herbert Irving Comprehensive Cancer Center — and listed the exact dollar amount among DOGE's "savings."



John McDonnell/AP

By Mark Alfred

March 18, 2025 05:03 AM



President Donald Trump's administration terminated a \$5 million grant to the Herbert Irving Comprehensive Cancer Center amid the White House's sweeping efforts to punish Columbia University for its approach to protests against the war in Gaza.

The terminated grant, which has not been previously reported, appears to be one of the more than 400 National Institutes of Health grants pulled at Columbia University over its handling of alleged antisemitism on campus.

Neither the White House nor Columbia University has said which grants were terminated, but NOTUS identified that grant and hundreds of others not previously reported by analyzing data published by the Department of Government Efficiency and the NIH.

Several of the grants that were cut supported research, including the Alzheimer's Disease Research Center's work toward "early detection, prevention and intervention." Others supported research on HIV, maternal health, cardiovascular disease and drug abuse prevention, along with other programs spread across research centers tied to Columbia University.

The grants affected not only specific research programs but also funding for students' education. Multiple terminated grants, totaling over a million dollars collectively, supported the training of students in the fields of neuroscience research and autoimmune rheumatic diseases.

The exact dollar figure for each of those grants is listed on the DOGE website's "savings" page without a name attached.

The cuts are part of the White House's wider effort to go after Columbia University. Earlier this month, HHS, the Department of Education and other agencies said they would cancel a collective \$400 million worth of federal grants at the campus "due to the school's continued

JA479

inaction in the face of persistent harassment of Jewish students.” The agencies are members of the administration’s Joint Task Force to Combat Anti-Semitism.

A few days later, the NIH, the largest sponsor of biomedical research globally, [said](#) it canceled upward of 400 grants worth over a quarter-billion dollars at Columbia University. The same day, DOGE updated its savings page to include nearly 400 new grants listed as “terminated” by the Department of Health and Human Services, the NIH’s parent agency.

Although the page does not list what each award is for, NOTUS matched the dollar amounts of nearly every HHS grant added that day to corresponding grants previously doled out by the NIH to Columbia University. (Some grants had a listed value of \$0, making them impossible to identify.)

The Herbert Irving Comprehensive Cancer Center, which is part of the Columbia University Irving Medical Center, was granted \$5,302,111 in August 2024. The budget end date was listed as June 30, but it was updated in recent days to be March 12. It was around that time that DOGE listed a \$5,302,111 federal grant issued and terminated by HHS on its savings page.

Columbia’s Irving Medical Center said the campus was still in the process of “reviewing notices and cannot confirm how many grant cancellations have been received from federal agencies since March 7.”

The campus remains “dedicated to our mission to advance lifesaving research and pledge to work with the federal government to restore Columbia’s federal funding,” a spokesperson told NOTUS in a statement.

“From pioneering cancer treatments to innovative heart disease interventions and cutting-edge gene and cell therapies, research conducted by Columbia faculty has helped countless people live healthier, longer, and more productive lives,” the spokesperson said.

The White House did not respond to a request for comment. Neither the NIH nor the National Cancer Institute responded to requests for comment.

“Anti-Semitism – like racism – is a spiritual and moral malady that sickens societies and kills people with lethalties comparable to history’s most deadly plagues,” Secretary Robert F. Kennedy, Jr. said in a [statement](#) announcing HHS’s review of grants at Columbia University.

The Trump administration demanded that Columbia University implement a series of changes to its policies by the end of the day Wednesday. Without those changes, the administration said it would not begin “formal negotiations” with Columbia University to receive continued federal funding.

The demands, outlined in a March 13 letter from the General Services Administration, HHS and Education Department officials, included the “expulsion or multi-year suspension” of those who participated in encampments on campus, the reforming of “undergraduate admissions, international recruiting, and graduate admissions practices” and a ban on face mask use with exceptions for “religious and health reasons.”

While the White House looks to make an example out of Columbia, dozens of other universities could soon see federal funding pulled.

The same day NIH canceled hundreds of grants to Columbia University, the Department of Education’s Office for Civil Rights put 59 other universities [on notice](#). Those included Harvard, Stanford, Northwestern, four University of California campuses and others being investigated for potential Title VI violations “relating to antisemitic harassment and discrimination.”

“U.S. colleges and universities benefit from enormous public investments funded by U.S. taxpayers,” Secretary of Education Linda McMahon wrote. “That support is a privilege and it is contingent on scrupulous adherence to federal antidiscrimination laws.”

JA481

[Mark Alfred](#) is a NOTUS reporter and an Allbritton Journalism Institute fellow. He can be reached on Signal at MarkAlfred.14 or at MarkAlfred@NOTUS.org.

NEW ON NOTUS

- **Courts:** [A New Court Filing Shows How Serious the White House Is About Invoking 'State Secrets' Over Its Deportations](#)
- **Arizona:** [The Arizona Race to Replace Raúl Grijalva Could Show What's Next For the Democratic Party](#)
- **Congress:** [Some Republicans Doubt Congress Will Vote to End the Department of Education](#)
- **Newsletter:** [The Ed Dept. Gets DOGE'd](#)
- **Policy:** [Consumer Protection Groups Plead With Congress to Block Trump's FTC Pick Over Firings](#)

DON'T MISS

- **Health & Science:** [Trump Administration Backtracks on Closing the Field Office That Oversees a Nuclear Waste Site](#)
- **The Influencers:** [If Trump Succeeds, This Man May Be Why](#)
- **Donald Trump:** [When DOGE Hits Red States: Republican Lawmakers Push Back on Trump's NIH Cuts](#)
- **Democrats:** [Democrats Name Their Battlegrounds for the Next Two Years of State-Level Races](#)
- **Defense:** [Hegseth's First Days in the Pentagon Are Marked by Tragedy — And Chaos](#)

EXHIBIT 39

A Graduate School of Education, Health & Psychology**Announcements****Update in Light of March 7 Federal Announcement****Friday, March 7, 2025**

Dear Members of the TC Community,

Earlier today (March 7), the Federal Government announced (<https://www.ed.gov/about/news/press-release/doj-hhs-ed-and-gsa-announce-initial-cancellation-of-grants-and-contracts-columbia-university-worth-400-million>) the immediate cancellation of \$400 million in federal grants and contracts to Columbia University because of what it described as the school's failure to address antisemitism and protect Jewish students from harassment.

Even though Teachers College is an independent institution, guided by a separate Board of Trustees and President, one that enforces its own set of anti-harassment and anti-discrimination policies, we have received notice that a number of our faculty grants are also being cut as part of this effort. We are investigating the scope and legality of these cuts and the impact they will have on our faculty, students, staff, and the communities they serve.

These wholesale cuts to vital research endeavors will have lasting and devastating impacts on the public good, to which our university system is devoted: from public health, to K-12 teachers and students, mental health and counseling, community colleges, and much more. We will fight to restore these critical funds, and will appeal the decision.

Our mission and priority focus remain on the well-being of our students, faculty, staff, and on our contributions to building a smarter, healthier, more just and equitable world.

I am grateful that the TC community is united in this focus and will keep you informed as we move forward.

Sincerely,

Thomas Bailey

President

Teachers College, Columbia University

Tags: Announcements (/newsroom/stories/?news-10749105=1%3A1088%3A%25%3A%25%3A%25)

President (/newsroom/stories/?news-10749105=1%3A%25%3A1502%3A%25%3A%25)

Published Friday, Mar 7, 2025

Contact Us

Teachers College Newsroom

Address: Institutional Advancement 193-197 Grace Dodge Hall

Box: 306 * *Phone:* (212) 678-3231 * *Email:* views@tc.columbia.edu

© 2025, Teachers College, Columbia University, New York, NY 10027.

EXHIBIT 40

ADVERTISEMENT

HOME > NEWS > SCIENCEINSIDER > AFTER COLUMBIA’S ‘NIGHTMARE,’ DOZENS MORE UNIVERSITIES BRACE FOR TRUMP NIH CUTS

SCIENCEINSIDER SCIENTIFIC COMMUNITY

After Columbia’s ‘nightmare,’ dozens more universities brace for Trump NIH cuts

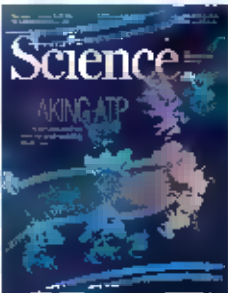
Threats to end funding over alleged antisemitism are rocking medical researchers—and stoking calls for legal action

18 MAR 2025 • 3:40 PM ET • BY JOCELYN KAISER



President Donald Trump’s administration alleges Columbia University mishandled campus protests over the war in Gaza. ANDREA RENAULT/STAR MAX/IPX VIA AP

SHARE:



A version of this story appeared in Science, Vol 387, Issue 6740.



A “nightmare,” “in shock,” “devastating.” Those are some reactions Columbia University researchers had last week after learning that their funding is included in the \$250 million in National Institutes of Health (NIH) grants that President Donald Trump’s administration is terminating because of the university’s alleged “antisemitic harassment.” The cancellation, which covers about one-third of the university’s NIH grants, mostly to Columbia’s Irving Medical Center, has put research projects on hold while the university scrambles to negotiate with Trump officials and find ways to at least temporarily support students, postdocs, and other staff.

Columbia’s situation has rocked major research universities nationwide as the Trump administration has warned it is investigating 59 additional schools for antisemitism. As *Science* went to press, many were waiting to see whether Columbia sues to block the funding elimination, as legal experts say it could do successfully. “They would have a very, very strong likelihood” of winning a court order to “unpause” funding,” says Samuel Bagenstos, a law professor at the University of Michigan and former general counsel of the Department of Health and Human Services (HHS), NIH’s parent agency.

The nightmare began on 3 March, when HHS, the Department of Education, and the General Services Administration notified Columbia that officials were reviewing the school’s federal funding as part of “ongoing investigations” into potential civil rights violations involving antisemitism. White House officials have suggested university officials did not do enough to protect Jewish students at Columbia who felt threatened last year when other students held major demonstrations opposing Israel’s bombing of Gaza in response to the 7 October 2023 attack by Hamas.

SIGN UP FOR THE AWARD-WINNING SCIENCEADVISER NEWSLETTER

The latest news, commentary, and research, free to your inbox daily

SIGN UP >

On 7 March, the administration announced it was terminating \$400 million in grants and contracts to Columbia. That total included 400 NIH grants totaling \$250 million, the agency later claimed on X, the social media company owned by billionaire Elon Musk, who now leads the Department of Government Efficiency (DOGE).

As of 18 March, the university could not confirm how many grants had been killed, a spokesperson said. Among the awards NIH grantees say administrators have told them are terminated are training and research project grants, as well as larger awards to Columbia’s Alzheimer’s disease, autism, and cancer centers. Grantees have been told to cease work. One researcher who received a formal cancellation notice this week from NIH was told their funding was terminated “due to unsafe antisemitic actions that suggest the institution lacks concern for the safety and wellbeing of Jewish students.” Columbia can request funds only “to support patient safety and orderly closeout,” it added.

Immunologist Megan Sykes, in contrast, only learned from Columbia that her \$3.2million grant to study xenotransplantation—transplanting animal organs into humans—in mice, monkeys, and pigs was killed. “I’ve been working with the NIH for 35 years and it’s beyond anything I ever imagined. ... I feel absolutely shattered,” Sykes says. Like many others given the bad news by Columbia, she wonders whether a “diversity” component of her grant—to hire a graduate student from a group underrepresented in science—caught the administration’s attention.

ADVERTISEMENT

The school’s partners are also potential collateral damage. Columbia physician and aging researcher José Luchsinger is a principal investigator for an \$18 million grant that Columbia manages for about two dozen institutions and a couple hundred staff for a study that has been following 1700 people with diabetes for nearly 30 years. The latest phase is exploring mechanisms by which diabetes might cause Alzheimer’s—an alternative to the popular amyloid hypothesis. HHS Secretary Robert F. Kennedy Jr. has expressed support for such Alzheimer’s research, Luchsinger notes. Luchsinger has not yet been formally notified by NIH, but “there’s great concern about job cuts” and participants have been told by Columbia the funding has been eliminated and the study could be ending, he says. “It’s a pity because Columbia is just a fraction of the study.”

Several affected researchers told *Science* the university has said it will provide funding to keep trainees paid and help maintain experiments. But that will be “like trying to stick your finger in the dike,” says physician-scientist Anthony Ferrante, who expects to lose two grants, one a \$1.2 million award that helps support a 44-year-old obesity research center with about 100 researchers at Columbia and a partner school. “To be targeted in this way is demoralizing,” Ferrante says.

Columbia so far has told staff to “stand together” and “we will never stray from open dialogue and free debate of ideas.” But after the NIH announcement, the university said it has expelled or suspended some students involved in last year’s protests. On 13 March, Trump officials sent a list of demands to Columbia that includes banning most mask wearing, adopting a formal definition of antisemitism, and placing one department in “receivership.”

NIH has recently terminated grants on specific topics, such as transgender health and vaccine hesitancy, disfavored by the Trump administration, but the Columbia episode represents an escalation in which a political fight takes out unrelated science funding. There’s worry the damage could spread. Another school on the administration’s investigations list, Johns Hopkins University, has already announced it is laying off about 2200 people, most of them abroad, because it lost \$800 million in multiyear public health funding from the U.S. Agency for International Development. The agency has largely been dismantled by DOGE.

Bagenstos notes the civil rights statute covering discrimination, Title VI, lays out a specific process—including a hearing—for withdrawing funds, which the Trump administration did not follow. “The cutoff of funds is totally illegal,” he says. “If Columbia does not stand up [in court],” he says, “that makes it harder for the next university.”

doi: 10.1126/science.z87okti

RELEVANT TAGS:

- SCIENTIFIC COMMUNITY
- TRUMP ADMINISTRATION

ABOUT THE AUTHOR

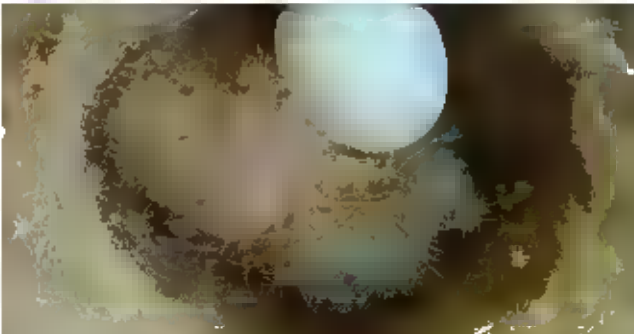


Jocelyn Kaiser

Author

Jocelyn Kaiser writes about biomedical research news and edits *Science’s* online policy news. She can be found on Signal at [jocelynkaiser.51](#).

MORE FROM NEWS



20 MAR 2025

This fuzzy hummingbird chick may be in disguise—as a caterpillar

BY ERIK STOKSTAD



20 MAR 2025

‘Pioneering’ study scans babies’ brains as they form memories

BY SARA REARDON



20 MAR 2025

In Mauritius, research monkeys are big business—and big controversy

BY REFAEL KUBERSKY

[VIEW MORE >](#)

TRUMP TRACKER



20 MAR 2025 BY SCIENCE NEWS STAFF

NIH council meetings back on, questioning scientists, slow payments at USAID: Trump Tracker

[VIEW MORE >](#)

EXHIBIT 41



United States
of America

Congressional Record

PROCEEDINGS AND DEBATES OF THE 88th CONGRESS, SECOND SESSION

SENATE

TUESDAY, APRIL 7, 1964

(Legislative day of Monday, March 30, 1964)

The Senate met at 10 o'clock a.m., on the expiration of the recess, and was called to order by Hon. CLAIBORNE PELL, a Senator from the State of Rhode Island.

Cardinal Franz Koenig, of the Roman Catholic Church, Vienna, Austria, offered the following prayer:

In the words of President George Washington:

"Almighty God:

"We make our earnest prayer that Thou wilt keep the United States in Thy holy protection; that Thou wilt incline the hearts of the citizens to cultivate a spirit of subordination and obedience to government; and entertain a brotherly love and affection for one another and for their fellow citizens of the United States at large. And, finally, that Thou wilt most graciously be pleased to dispose us all to do justice, to love mercy, and to demean ourselves with that charity, humility, and pacific temper of mind which were the characteristics of the Divine Author of our blessed religion, and without a humble imitation of whose example in these things we can never hope to be a happy nation.

"Grant our supplication, we beseech Thee, through Jesus Christ our Lord. Amen."

THE JOURNAL

On request by Mr. HUMPHREY, and by unanimous consent, the reading of the Journal of the proceedings of Monday, April 6, 1964, was dispensed with.

ORDER OF BUSINESS

Mr. HUMPHREY. Mr. President, I ask unanimous consent that there may be a morning hour, with statements therein limited to 3 minutes.

Mr. MORSE. Mr. President, I object.

The PRESIDING OFFICER. Objection is heard.

CALL OF THE ROLL

Mr. HUMPHREY. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The Chief Clerk called the roll, and the following Senators answered to their names:

[No. 118 Leg.]

Aiken	Hickenlooper	Mundt
Allott	Holland	Muskie
Anderson	Hruska	Nelson
Bartlett	Humphrey	Neuberger
Bayh	Inouye	Pastore
Bible	Jackson	Pell
Boggs	Johnston	Proxmire
Brewster	Jordan, N.C.	Ribicoff
Burdick	Jordan, Idaho	Robertson
Cannon	Keating	Saltonstall
Carlson	Kennedy	Scott
Case	Kuchel	Smith
Church	Lausche	Sparkman
Clark	Long, Mo.	Stennis
Cotton	Magnuson	Symington
Curtis	Mansfield	Talmadge
Dirksen	McGovern	Thurmond
Dominick	McIntyre	Walters
Douglas	McNamara	Williams, N.J.
Ellender	Metcalf	Williams, Del.
Gore	Miller	Yarborough
Gruening	Monroney	Young, Ohio
Hart	Morse	
Hayden	Morton	

Mr. HUMPHREY. I announce that the Senator from Connecticut [Mr. Dodd], the Senator from Arkansas [Mr. Fulbright], the Senator from Louisiana [Mr. Long], the Senator from Minnesota [Mr. McCarthy], the Senator from Arkansas [Mr. McClellan], the Senator from Wyoming [Mr. McGee], the Senator from Utah [Mr. Moss], the Senator from Georgia [Mr. Russell], and the Senator from North Carolina [Mr. Ervin] are absent on official business.

I also announce that the Senator from Virginia [Mr. Byrd], the Senator from West Virginia [Mr. Byrd], the Senator from Mississippi [Mr. Eastland], the Senator from Oklahoma [Mr. Edmondson], the Senator from California [Mr. Engle], the Senator from Indiana [Mr. Hartke], the Senator from Alabama [Mr. Hill], and the Senator from Florida [Mr. Smathers] are necessarily absent.

I further announce that the Senator from West Virginia [Mr. Randolph] is absent because of illness.

Mr. KUCHEL. I announce that the Senator from Utah [Mr. Bennett], the Senator from Arizona [Mr. Goldwater], and the Senator from North Dakota [Mr. Young] are necessarily absent.

The Senator from Maryland [Mr. Beall] and the Senator from Vermont [Mr. Prouty] are detained on official business.

I also announce that the Senator from Kentucky [Mr. Cooper], the Senator from Hawaii [Mr. Fong], the Senator from New York [Mr. Javits], the Senator from New Mexico [Mr. Mechem], the Senator from Kansas [Mr. Pearson], the Senator from Wyoming [Mr. Simpson],

and the Senator from Texas [Mr. Tower] are detained on official business.

The PRESIDING OFFICER (Mr. KENNEDY in the chair). A quorum is present.

CIVIL RIGHTS ACT OF 1963

The PRESIDING OFFICER. The Chair lays before the Senate the unfinished business.

The Senate resumed the consideration of the bill (H.R. 7152) to enforce the jurisdiction upon the district courts of the United States to provide injunctive relief against discrimination in public accommodations, to authorize the Attorney General to institute suits to protect constitutional rights in public facilities and public education, to extend the Commission on Civil Rights, to prevent discrimination in federally assisted programs, to establish a Commission on Equal Employment Opportunity, and for other purposes.

Mr. PASTORE obtained the floor.

Mr. HUMPHREY. Mr. President, will the Senator from Rhode Island yield to me without in any way jeopardizing his rights to the floor?

Mr. PASTORE. And with the understanding that it will not be counted as a second speech; I yield.

The PRESIDING OFFICER. Without objection, it is so ordered.

RECESS OF THE SENATE FROM 2 P.M. TO 4 P.M. TOMORROW

Mr. HUMPHREY. Mr. President, I should like to make an announcement.

I ask unanimous consent that tomorrow the Senate stand in recess from 2 o'clock to 4 o'clock, in order that the Senate may pay its respects to the late General MacArthur, and also in order that the members of the Armed Services Committee and the Senate leadership may participate in the ceremonies.

The PRESIDING OFFICER. Is there objection? Without objection, it is so ordered.

ORDER FOR RECESS TO 10 A.M. TOMORROW

Mr. HUMPHREY. I also ask unanimous consent that when the Senate completes its business today, it stand in recess until 10 a.m. tomorrow.

The PRESIDING OFFICER. Without objection, it is so ordered.

CX—443

7045

white institutions in the four States maintaining complete segregation at the higher education level increases the disparity between the public financial support of colleges for white students and colleges for Negroes. In fiscal year 1955, for instance, the amount of Federal funds expended in support of public white institutions, per student enrolled, exceeded the amount expended for public Negro institutions by \$130.89 in Alabama, \$171.93 in Georgia, \$179.56 in Mississippi, and \$141.89 in South Carolina. The effect of this discrepancy is to contribute to the continuation of inferior segregated institutions and to magnify the disparity between the quality of the public higher education offered to white students and that offered to Negro students in such States. The same situation exists in other States, but, owing to desegregation in some degree of one or more public colleges or universities, the effect on a statewide basis is not so great.

Mr. PASTORE. Let me tell Senators how far matters have gone. A short while ago in Alabama an all-Negro program was instituted. Perhaps consciences are justified by saying it is "all-Negro." But what is the program? The program is in embalming and mortuary science. Yet in the same place they do not have any programs to allow Negro doctors to go into hospitals to treat Negro patients. There is a special program to teach Negroes how to embalm people when they die, but there is no program to enable Negro doctors to go into hospitals to treat Negro patients who want their own doctors when they are ill. I cannot, for the life of me, see how anyone can justify that as being morally right.

Another very important area of discrimination in federally financed programs is employment. Here discrimination is omnipresent, though the form it takes varies with the particular Federal program. Thus, for instance, in the State vocational training programs financed in part by Federal grants, markedly different courses are available to Negroes and whites.

The Commission on Civil Rights reports that vocational training programs in segregated public schools typically train Negroes only for the most menial jobs, requiring the lowest level of skills. But these are precisely the jobs for which the economy has less and less need. White schools, on the other hand, offer training in many of the newer skills in increasing demand today.

Thus, disparity in opportunity is perpetuated; but the Federal Government pays the bill.

The apprenticeship programs which are operated in many unions manifest similar discrimination. Typically, Negroes are excluded from these programs altogether or permitted entry only in the most menial trades. Negro apprentices in trades such as ironworkers, plumbers, steamfitters, electricians, sheet metal workers, cabinetmakers, and so forth, are virtually nonexistent.

While the Bureau of Apprenticeship of the Department of Labor provides no direct financial assistance to these programs, many of them reap the benefits of other Federal financial assistance, such as that for related classrooms and instructors' salaries.

There has also been a past record of discrimination and segregation by the country's largest employment agency, the U.S. Employment Service. The State employment security offices, while financed by the U.S. Government, are administered by the States. In the past, different offices, or different entrances and waiting rooms for a single office have been maintained. According to the 1961 report of the Civil Rights Commission:

In 1958, there were 15 cities in 4 States with physically segregated employment offices, 25 cities had offices with separate entrances and separate personnel to process white and Negro applicants, and in over 70 other cities the offices had either separate waiting rooms or separate service points for the different races. In some areas of the South, where the office is too small to support more than one employee, Negro and white applicants sit on different sides of the interviewer's desk.

In addition to offices segregated by law, there are many offices segregated in fact by being located in all-Negro or white neighborhoods, or because the office specialized in processing jobs customarily barred to Negroes. (1961 Report, U.S. Commission on Civil Rights, Employment, pp. 121-122.)

I ask unanimous consent that a portion of the U.S. Commission on Civil Rights 1961 Report on Employment be printed at this point in the Record.

There being no objection, the statement was ordered to be printed in the Record, as follows:

U.S. COMMISSION ON CIVIL RIGHTS 1961
REPORT ON EMPLOYMENT

The availability of training in Atlanta presents a different picture. The public schools are still segregated. Moreover, Atlanta has six other public training facilities which accept only whites, and only one that accepts both white and Negro clients for training. Of the 54 private training facilities, 37 accept only whites and 17 only Negroes. As a result of public and private discrimination in admission to training facilities, there is no local training available to Negroes in Atlanta in colleges of business administration, colleges or institutes of technology, art centers, law schools, schools of cosmetology, or schools of pharmacy. Nor can Negroes in Atlanta obtain training as X-ray or medical technicians, medical records librarians, or in specialized airport occupations. The only local training available to Negroes but not to whites in a specializing facility is in embalming and mortuary science.

Mr. PASTORE. Many State employment offices have declined to hire Negroes altogether or have hired them only as janitors and yardmen. The Negro office generally handles only requests for unskilled labor, while the white office handles requests for all types of jobs. Not only are Negroes sent primarily for unskilled jobs but they are also sent out primarily for 1-day jobs, for short-term jobs, which results in their being unemployed again rapidly.

Discriminatory practices of that type are now prohibited by regulations, but affirmative congressional action is needed to insure that discrimination is ended in employment and in other activities which are federally financed.

This then concludes a sketch—and it is nothing more than a sketch—of the most blatant aspects of discrimination in federally financed programs.

From birth to death, in sickness and in want, in school, in job training, in distribution of surplus food, in program staffing, in job referral, in school lunch programs, and in higher education, the Negro has consistently been subjected to gross and extensive deprivation. And the Federal Government has paid the bill.

Now let us see what title VI provides. The first section, section 601, states a broad nondiscrimination principle which is both constitutionally and morally sound. That section provides that no person shall, on account of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance. It is difficult to understand how anyone could dispute the basic fairness of this policy.

The next section in title VI, section 602, is an authorization and a direction to the Federal agencies administering a financial assistance program to take action to effectuate the basic principles of nondiscrimination stated in section 601.

I note parenthetically that agencies administering programs which consist of contracts of insurance or guarantee are excluded from the scope of section 602.

However, some of those agencies already have statutory authority to impose nondiscrimination provisions in connection with contracts of insurance or guarantee, and pursuant to Executive order, are now exercising that authority. The Veterans' Administration and the Federal Housing Administration are well-known examples. Title VI is not intended to and does not deprive such agencies of authority they have which may derive from any other source. Consequently, the exclusion of contracts of insurance or guarantee from the direction contained in section 602 will in no way affect the programs of nondiscrimination in housing built with federally insured or guaranteed mortgages.

In accordance with the provisions of section 602, each agency affected is required by the term "shall" to take action to eliminate discrimination within the programs under its jurisdiction. By the term "may" each agency is given a certain degree of latitude in the procedure by which it accomplishes the mandate to eliminate discrimination. The agency may take action by or pursuant to rule, regulation, or order of general application.

They are the three categories stated in the act.

Action is mandatory, but the procedure by which that action is accomplished is discretionary, subject, however, to the approval of the President.

Some agencies have already taken action which meets the requirements of section 602. These agencies will be required only to review their past actions to make sure that they effectuate the policy set forth in title VI. Nothing more will be required of them. However, any additional or new action will have to be pursuant to a rule, regulation, or order of general applicability. In this context the word "may" imports a choice only among these three methods. It does not

confer freedom to effectuate section 602 in any other way.

The reason I emphasize it is that this was the question raised by the Senator from Tennessee [Mr. Goetz].

Failure of a recipient to comply with a rule, regulation, or order issued by an agency may ultimately lead to a termination or refusal of Federal assistance. Cutoff of assistance is not the object of title VI, however.

I wish to repeat: Cutoff of assistance is not the objective of title VI.

Fund cutoff is a last resort, to be used only if all else fails to achieve the real objective—the elimination of discrimination in the use and receipt of Federal funds.

The rule or regulation issued by the particular Federal agency would vary, depending on the nature and method of administration of the particular assistance program. There might be rules, for example, governing the conduct of recipients of assistance, or orders specifying a standard form of written assurance or understanding to be given by each applicant for assistance, or perhaps a standard provision-of-assistance contract.

One important thing must be kept in mind. Title VI is not a device to terminate all Federal aid to a State or community because there has been discrimination in one specific program. Therefore, the nondiscrimination requirements must relate directly to the particular program or activity against which they are imposed. Participation in one program would not justify the exaction of a nondiscrimination assurance concerning some other program. Similarly, any fund cutoff, or similar action, can be taken only concerning a program or activity in which discrimination has been practiced. Only the program in which discrimination has been practiced would be affected by title VI.

Mr. RIBICOFF. Mr. President, will the Senator from Rhode Island yield?

Mr. PASTORE. I yield.

Mr. RIBICOFF. I believe the Senator makes an important point. One could cut off any other program, and the cutoff would be confined to the jurisdiction where discrimination was found. In other words, if there were 100 school districts and discrimination was found in 1 school district, the funds would be cut off for only that one school district, but not the funds for the other 99.

Mr. PASTORE. The Senator is absolutely correct. It is not the intention of the framers, the sponsors, or the supporters of title VI of H.R. 7152 to enact punitive statutes. We do not wish to be vindictive. We do not wish to be punitive. We do not wish to be unreasonable. So the section provides that when Federal funds are used, they must be used in the American way—in a constitutional manner. That is its purpose.

With reference to the particular cutoff of Federal funds, as the Senator from Connecticut has brought out, it must be confined to the particular program that is involved. Let us assume that we are considering aid to dependent children. We could not cut off funds for the build-

ing of a road because that is another program, although it is a Federal grant. The action must be confined to the specific program in which discrimination exists, and then only within the particular jurisdiction where the discrimination takes place. There is no intent, no motive, no idea of spreading the tentacles of the Federal Government to choke off all State activity. Not at all.

Mr. RIBICOFF. What we are seeking to accomplish, as the Senator from Rhode Island has so ably pointed out, is to obtain compliance and eliminate discrimination. We do not wish to use punitive measures against any individual, any State, or any part of any State.

Mr. PASTORE. The Senator is absolutely correct. I shall discuss the procedures that must be followed to effectuate that end.

Mr. RIBICOFF. In other words, great safeguards have been built up even to protect an individual or a jurisdiction?

Mr. PASTORE. Frankly, I do not see how we could have gone any further, to be fair. Without title VI—accepting the fact that the President himself, under Presidential powers, has the right to issue directives, which he already has—such directives are much more stringent than the proposed title VI. Section 602 of title VI not only requires the agency to promulgate rules and regulations but all procedure must be in accord with these rules and regulations. They must have broad scope. They must be national. They must apply to all 50 States. We could not draw one rule to apply to the State of Mississippi, another rule to apply to the State of Alabama, and another rule to apply to the State of Rhode Island. There must be only one rule, to apply to every State.

Further, the President must approve the rule. Then, before there can be a cutoff of Federal funds, there must be a hearing. After the hearing, there may be a judicial review. In the meantime, before the agency can stop the money, it must submit a written report giving all the reasons why it wishes to cut off the money. This report must go to the appropriate committees of the Congress. Thereafter, the cutoff would not take effect for 30 days. If any unfairness existed, one can imagine what the repercussions would be on the floor of the Senate within those 30 days. Talk about a filibuster—it would be a Roman holiday.

Mr. RIBICOFF. More safeguards are provided in title VI than many executive agencies now have or have acted upon in the past; in other words, the rights and privileges of those affected would be fully safeguarded.

Mr. PASTORE. The Senator is absolutely correct.

Mr. STENNIS. Mr. President, before the Senator from Rhode Island returns to his text, will he yield to me for a few questions?

Mr. PASTORE. I am glad to yield to the Senator from Mississippi.

Mr. STENNIS. The Senator addressed himself to the powers in title VI. He was clear in his explanation of the extent of those powers, as he sees it. Will

the Senator inform me just what words in title VI confer the power to cut off funds?

Mr. PASTORE. To cut them off?

Mr. STENNIS. Where is the power to cut off funds covered in title VI?

Mr. PASTORE. We start with section 601, which reads:

Notwithstanding any inconsistent provision of any other law, no person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance.

Section 602 provides:

Each Federal department and agency which is empowered to extend Federal financial assistance to any program or activity, by way of grant, loan, or contract other than a contract of insurance or guaranty, shall take action to effectuate the provisions of section 601 with respect to such program or activity. Such action may be taken by or pursuant to rule, regulation, or order of general applicability and shall be consistent with achievement of the objectives of the statute authorizing the financial assistance in connection with which the action is taken. No such rule, regulation, or order shall become effective unless and until approved by the President. After a hearing, compliance with any requirement adopted pursuant to this section may be effected (1) by the termination of or refusal to grant or to continue assistance under such program or activity to any recipient as to whom there has been an express finding of a failure to comply with such requirement.

It is right there.

Mr. STENNIS. Does the power to cut off the Federal assistance relate only to the agency which is administering the program? How far does it extend? I know the Senator wishes to be helpful.

Mr. PASTORE. This is its extent. Many community schools are controlled by county school districts. Let us assume that in one particular State only one school district has been guilty of discrimination. Aid would be cut off as to that one school district only. In other words, funds could not be used in that particular school district. However, the funds of the other school districts would not be cut off.

Mr. STENNIS. That is a good illustration, but suppose a statewide agency was found to be guilty of discrimination.

Mr. PASTORE. Then all assistance would be cut off.

Mr. STENNIS. In the entire State?

Mr. PASTORE. Yes, if discrimination reached that point, the Senator is correct.

Mr. STENNIS. That would, of course, work an injustice on many people.

Mr. PASTORE. If a statewide agency, as the Senator suggests, is guilty of discrimination, it might well be said that there would be an injury to many people if cutoff is applied. That is the cost of State-sponsored discrimination.

Mr. STENNIS. I ask the Senator if he has any suggestions as to how the situation could be handled so as to apply only to a limited area, where they were not all transgressors?

Mr. PASTORE. That would be quite impossible, if it were a program administered statewide, because, after all, I

cannot be expected to continue to pay out tax dollars contributed by all the people to just some of them and to exclude others because of the color of their skin. As I shall develop, there are some statutes now on the books which contemplate Federal assistance to racially segregated institutions.

For example, the Hill-Burton Act which provides for grants for hospital construction, the second Morrill Act which provides for grants to land-grant colleges, and Public Law 815 which authorizes grants for school construction in federally "impacted areas," all contain clauses authorizing—directly or by implication—that Federal aid be furnished under the obsolete separate-but-equal formula. But the Court has already declared that to be unconstitutional.

I ask unanimous consent that excerpts from these two acts to be printed at this point in the Record.

There being no objection, the excerpts were ordered to be printed in the Record, as follows:

PROVISIONS OF EXISTING FEDERAL ASSISTANCE STATUTES RELATING TO RACIAL DISCRIMINATION

The Hill-Burton Act of August 18, 1946 (60 Stat. 1041, 42 U.S.C. 291 et seq.), authorizes construction grants for public and non-profit hospitals. Section 622(f), 42 United States Code 291e(f), provides that the Surgeon General shall by regulation prescribe, inter alia:

"That the State plan shall provide for adequate hospital facilities for the people residing in a State, without discrimination on account of race, creed, or color. . . . Such regulation may require that before approval of any application for a hospital or addition to a hospital is recommended by a State agency, assurance shall be received by the State from the applicant that (1) such hospital or addition to a hospital will be made available to all persons residing in the territorial area of the applicant, without discrimination on account of race, creed, or color but an exception shall be made in cases where separate hospital facilities are provided for separate population groups, if the plan makes equitable provision on the basis of need for facilities and services of like quality for such such group."

The Second Morrill Act of August 30, 1890 (26 Stat. 418, 7 U.S.C. 321 et seq.), provides for annual grants to land-grant colleges. Section 1, 7 United States Code 323, provides in part:

"No money shall be paid out under sections 321-324 and 328 of this title to any State or Territory for the support or maintenance of a college where a distinction of race or color is made in the admission of students, but the establishment and maintenance of such colleges separately for white and colored students shall be held to be a compliance with the provisions of said sections if the funds received in such State or Territory be equitably divided as hereinafter set forth."

Public Law 815 of September 23, 1950 (64 Stat. 972 (re-enacted as permanent legislation by the Act of August 12, 1958, 72 Stat. 661) 20 U.S.C. 831 et seq.), provides for grants for school construction in federally impacted areas. Section 205(b)(1)(f) of the 1950 act (Sec. 5(b)(1)(f) of the 1948 act), 20 U.S.C. 636 (b)(1)(f), provides that each application for grant shall include—

*The provision beginning "but an exception" was held invalid and severable in *Simkins v. Moses H. Cone Hospital* (C.A. 4, No. 8908) decided November 1, 1963.

"Assurance that the school facilities of such agency will be available to the children for whose education contributions are provided in this chapter on the same terms, in accordance with the laws of the State in which the school district of such agency is situated, as they are available to other children in such school district."

Mr. PASTORE. Mr. President, as I have already noted, the separate-but-equal provision of the Hill-Burton Act was involved in litigation before the Court of Appeals for the Fourth Circuit and that court held that the provision was unconstitutional. The court enjoined hospitals involved upon excluding Negro patients and doctors. There has also been litigation involving Public Law 815. There, the Court of Appeals for the Fifth Circuit dismissed suits by the United States to enjoin pupil segregation at schools which received Public Law 815 funds, *United States v. Madison County Board of Education*, 326 F. 2d 237.

Enactment of title VI would eliminate that kind of confusion and override all such separate-but-equal provisions for the future regardless of the ultimate outcome of the pending litigation.

It is, of course, by no means true that in all instances payments to segregated institutions are required by positive command of present law.

Actually—and I want this to be well understood—in many respects title VI would merely clarify and support authority which now exists. For example, President Kennedy issued Executive Order No. 11063—November 20, 1962, P.R. 11627—which requires the appropriate agencies to "take all action necessary and appropriate to prevent discrimination because of race, color, creed, or national origin" in the sale, lease, rental disposition, use or occupancy of housing which is provided in whole or in part with the aid of Federal grants, loans, contributions, guarantees, or insurance.

Similarly racial discrimination in employment on construction in the programs supported by Federal financial assistance is prohibited by Executive Order No. 11114—June 25, 1963, 28 P.R. 6485.

Individual agencies have also taken action to preclude racial discrimination in connection with assistance programs administered by them. For example, the regulations of the Department of Agriculture prohibit schools or other institutions receiving donated agricultural commodities from discriminating against any person receiving food because of his race, creed, or color—8 CFR, section 503.8 (a) and (b).

Mr. President, title VI would serve to provide express statutory approval for this kind of action taken by the executive branch. The executive officers, from the President on down, are sworn to uphold the Constitution. They must see to it that the laws are faithfully executed. Certainly such officers must not engage in any conduct which they believe to be unconstitutional.

In many instances, existing Federal programs have been interpreted by the agencies administering those programs to preclude discrimination. While the executive branch is believed in most cases to have adequate authority to preclude discrimination or segregation by

recipients of Federal assistance, enactment of title VI would clarify and confirm that authority. It would require agencies to act to eliminate racial discrimination, rather than to leave the matter, as now, to individual agency discretion. It would give the nondiscrimination policy express statutory sanction, and thus would tend to insure that the policy would be continued in future years as a permanent part of our national policy.

Another advantage of enactment of title VI would be to remove from the area of legislative debate the question of nondiscrimination every time a Federal assistance program is under consideration by Congress. Repeatedly, in recent years, nondiscrimination amendments have been proposed in Congress to bills providing for, or extending, Federal assistance to education, housing, and other matters. Such amendments have often been opposed by some Members of Congress who favored the principle of nondiscrimination, but feared that to raise the issue of discrimination in the particular legislative context might well result in the defeat of the particular bill.

Title VI enables the Congress to consider the overall issue of racial discrimination separately from the issue of desirability of any particular Federal assistance program. The enactment of this title would avoid for the future the occasion for legislative dilemmas of the type described above. It would also avoid any basis for argument that the failure of Congress to adopt such nondiscrimination amendments in connection with the particular program implied congressional approval of racial discrimination in that program.

Speaking of congressional debate, I should now like to consider a number of objections which have been offered to title VI.

In the House, a concerted attack was made on title VI as "punitive" or "vindictive." These charges are undeserved. These characterizations appear to result from the belief that title VI is intended to deny the South the benefit of social-welfare programs—that it would punish entire States for any act of discrimination committed within them. This argument merely befores the issues. It ignores both the purpose of title VI and all of the limitations that have carefully been written into its language.

As is clear, the purpose of title VI is to make sure that funds of the United States are not used to support racial discrimination. In many instances, the practices of segregation and discrimination, which title VI seeks to end, are unconstitutional.

This is clearly so wherever Federal funds go to a State agency which engages in racial discrimination. It may also be so where Federal funds go to support private, segregated institutions, as the decision in the *Simkins* case teaches. In all cases, racial discrimination is contrary to the national policy and to the moral sensibilities of the people of this Nation. Thus, title VI is simply designed to insure that Federal funds are spent in accordance with the Constitution and our public policy.

Speaking of private institutions, the original draft of title VI referred to religious discrimination. Since there is no history of discrimination on the basis of religion in the administration of Federal aid programs, the reference was eliminated—and wisely so, I believe.

Moreover, as cannot be too often emphasized, the purpose of title VI is not to cut off funds, but to end racial discrimination. This requirement is reflected throughout the act. It is reflected in section 802, which provides that any action taken by the Federal department or agency must be "consistent with achievement of the objectives of the statute authorizing the financial assistance in connection with which the action is taken." As a general rule, cutoff of funds would not be consistent with the objective of the Federal assistance statutes if other effective means of ending discrimination are available.

Section 802, by authorizing the agency to achieve compliance "by any other means authorized by law," encourages agencies to find ways to end discrimination without refusing or terminating assistance. These careful safeguards certainly demonstrate that the proposed statute is not intended to be vindictive or punitive.

Nor does title VI vest any broad authority to cut off all Federal aid to a State just because there are instances of discrimination within that State. Any nondiscrimination requirement an agency adopts must be supportable as tending to end racial discrimination with respect to the particular program or activity to which it applies. Funds can be cut off only on an express finding that the particular recipient has failed to comply with that requirement. Thus, title VI does not authorize any cutoff or limitation of highway funds, for example, by reasons of school segregation.

Nor does it authorize the cutoff or other compliance action on a statewide basis merely because there is discrimination in a particular program. For example, in the case of grants to impacted area schools, separate compliance action would have to be taken with respect to each school district receiving a grant.

There is, finally, one additional feature of title VI which demonstrates beyond doubt that it is not intended to be vindictive or punitive. I am referring to the fact that the authority contained in the title to cut off funds is hedged about with a number of procedural restrictions and requirements. These would hardly be necessary or appropriate if the bill were designed as a punitive or vindictive measure. These restrictions have already been briefly described but let me here again summarize what must be done before funds can be cut off. The following would have to occur:

First. The agency must first adopt a general nondiscrimination rule, regulation, or order.

Second. The President must give his approval.

Third. The agency must seek to secure compliance by voluntary means.

Fourth. A hearing must be held before any formal compliance action is taken.

Fifth. The agency may, and in many cases will, seek to secure compliance by means not involving a cutoff of funds.

Sixth. If the agency determines that a refusal or termination of funds is appropriate, it must make an express finding that the particular person from whom funds are to be cut off is still discriminating.

Seventh. The agency must file a written report with the appropriate congressional committee and 30 days must elapse before further action can be taken.

Eighth. The aid recipient can obtain judicial review and may apply for a stay pending such review.

Let me recount those eight safeguards to show that action under title VI is neither precipitous nor punitive.

Certainly, a piece of legislation that contains this multitude of protections cannot be said to be arbitrary, vindictive, or punitive.

Another objection that has been lodged against title VI is that it would give to the executive branch broad and sweeping powers that it has not heretofore known. This is totally inaccurate. Most Federal agencies extending assistance now have authority to refuse or terminate assistance for failure to comply with a variety of requirements imposed by statute or by administrative action. The difference is that this existing statutory authority is not surrounded by the procedural safeguards provided for in title VI.

For example, the Hill-Burton Act provides that an application for a grant for hospital construction must meet a number of requirements, and if the application fails to meet any of them, the Surgeon General may simply disapprove.

In case of disapproval, the State agency involved in hospital control is entitled to a hearing prior to final disapproval, the hospital applying for a grant is not (42 U.S.C. 291(h)). Likewise, the State agency can obtain judicial review (42 U.S.C. 291(j)).

After a grant-in-aid under the Hill-Burton Act has been approved, the Surgeon General may terminate payments if he makes any one of a number of findings. Again, the State has a right to judicial review (42 U.S.C. 291(j)).

How would title VI affect this procedure? It would, of course, have the effect of a repeal of the substantive provision which authorizes payments for separate-but-equal facilities—a provision which the court of appeals has already held unconstitutional. Thus, there would be no new authority to refuse a grant or terminate payments thereunder. But title VI would first afford the hospital, in addition to the State, a hearing in connection with a refusal or termination of a grant and judicial review under the Hill-Burton Act would, of course, continue to be available; second, require a report of any such refusal or termination to be made to Congress; third, require efforts to achieve voluntary compliance; and fourth, require Presidential approval of the Surgeon General's regulations relating to nondiscrimination.

There are numerous other Federal statutes that are similar in these respects to the Hill-Burton Act. This is true, for example, of the School Construction Act—Public Law 815—and the Library Services Act of 1958 (20 U.S.C. 351).

In most statutes of this type, considerable discretion is lodged in the administrator. When title VI is compared with these enactments, it is evident that the kind and degree of discretion granted here is far narrower and more carefully limited by procedural safeguards than that which Congress has frequently provided in other Federal assistance statutes.

There is another objection to title VI which has been advanced which is designed to foster public fear. It is alleged that title VI will interfere with private business. But title VI is not intended to regulate business. It is merely an exercise of an unquestioned power of the Federal Government. Under Federal assistance programs, the Federal Government is giving something away. Clearly, it should be able to fix the conditions under which money and goods are distributed. In fact, the Supreme Court has confirmed this power in the case of *Oklahoma v. Civil Service Commission*, 330 U.S. 127, 143 (1947), where the Court said that the Federal Government may "fix the terms on which—Federal funds—shall be disbursed."

No one is required to accept Federal assistance or Federal funds. If anyone does so voluntarily he must take it on the conditions on which it is offered. Certainly no one can claim that it is arbitrary for the Federal Government to insist that its funds not be put to a use which is unconstitutional or contrary to public policy.

A California court put it graphically but accurately when it said:

When one dips one's hands into the Federal Treasury a little democracy clings to whatever is withdrawn. *Ming v. Morgan*, 3 F.R.I.R. 993, Superior Court, Sacramento 1958.

The basic fairness of title VI is so clear that I find it difficult to understand why it should create any opposition. When new Federal programs are devised or when Congress is concerned with the appropriation of Federal funds, there is always a clamor to insure that no funds be expended unless adequate safeguards are adopted to prevent their improper use. Certainly, if—to use again the Hill-Burton Act as an example—the Surgeon General can say that he will not authorize money for a particular hospital unless that hospital has a particular type of lavatory facility or a particular type of kitchen, it is hard to believe that private rights are being infringed if the hospital is also that it must serve all of the people in the community without regard to the color of the skin. It seems to me that Congress should be at least as concerned with the latter as with the former.

The principles of our Government are an example for the entire world. This country knows no castes and no classes. The tenet of the Declaration of Independence that all men are created equal has its counterpart in the constitutional

directive that all are entitled to the equal protection of the laws.

With each passing year, our practices approach more clearly our ideals.

Private prejudices, to be sure, cannot be eliminated overnight. However, there is one area where no room at all exists for private prejudices. That is the area of governmental conduct. As the first Mr. Justice Harlan said in his prophetic dissenting opinion in *Plessy v. Ferguson*, 163 U.S. 537, 559.

Our Constitution is colorblind

So—I say to Senators—must be our Government.

The enactment of title VI will insure for all time that the financial resources of this Government will play no part in subsidizing racial discrimination. That part of the bill is right legally; it is right constitutionally, and it is right morally.

Title VI is right—yet it is restrained—almost reluctant to use its powers—not vindictive but seeking voluntary compliance for the common good of all our people.

Title VI closes the gap between our purposes as a democracy and our prejudices as individuals. The cuts of prejudice need healing. The costs of prejudice need understanding. We cannot have hostility between two great parts of our people without tragic loss in our human values—without deep damage to our national decency and dignity—without threat to our manifest destiny in a world we have to accept for what it is—a world which has to accept us for what we are or aim to be.

Title VI offers a place for the meeting of our minds as to Federal money. It can recognize no prejudice. It affords a place for the meeting of our hearts, as prejudice must yield to our common purposes, our common progress, and the common perfection of these United States.

Our conscience as a nation—our consciousness that the world is looking at our deeds as well as listening to our words—our commonsense as neighbors in a democracy that deserves to survive—all these commend title VI and command us to enact it as a vital part of a real civil rights bill.

Mr. HART. Mr. President, will the Senator yield?

Mr. PASTORE. I yield.

Mr. HART. I would hope that every American concerned about the charges that are made with respect to the reach and scope of the pending bill would carefully read the brilliant remarks of the Senator from Rhode Island. I would go out on a limb which is not very long and which is pretty solid. There are few Americans who in broad daylight would argue that the Federal Government should subsidize discrimination. That is what title VI is all about. No Senator could have put the case more eloquently and persuasively than has the Senator from Rhode Island. That is my reaction to a wonderful speech.

Mr. PASTORE. I thank the Senator.

Mr. BOGGS. Mr. President, will the Senator yield?

Mr. PASTORE. I yield to the Senator from Delaware.

Mr. BOGGS. I wish to make only a brief comment. I always enjoy listening to the distinguished senior Senator from Rhode Island, but I have especially appreciated the opportunity to listen to his address on title VI of the pending legislation. It is an outstandingly able and valuable contribution to the legislative history of this title and the proposed legislation, and I thank him for it.

Mr. PASTORE. I thank the Senator from Delaware.

Mr. PELL. Mr. President, will the Senator yield?

Mr. PASTORE. I yield to my colleague from Rhode Island.

Mr. PELL. I rise to congratulate my senior colleague on his eloquent and excellent speech, and also to ask him one question in connection with it.

Is it not true that the philosophy of title VI is already in the law? The authority is permissive. Title VI would merely extend it, but would not bring in a new concept. Is that correct?

Mr. PASTORE. The Senator is correct.

Mr. RIBICOFF. Mr. President, will the Senator yield?

Mr. PASTORE. I yield to the Senator from Connecticut.

Mr. RIBICOFF. I commend the Senator from Rhode Island for a brilliant presentation of title VI. I believe the distinguished Senator from Rhode Island has done a great public service to the Senate and the country.

I deem it a decided privilege to be able to follow the Senator from Rhode Island in further explanation of title VI.

Mr. PASTORE. I thank the Senator. Mr. President, I yield the floor.

Mr. RIBICOFF, Mr. HART, and Mr. STENNIS addressed the Chair.

The PRESIDING OFFICER (Mr. INOUYE in the chair). The Chair recognizes the Senator from Connecticut.

Does the Senator from Connecticut yield?

Mr. HART. Mr. President, my intention was to ask that the Senator from Connecticut yield to me for the purpose of suggesting the absence of a quorum, on condition that he would be recognized at the conclusion thereof.

Mr. RIBICOFF. Mr. President, I yield, provided I do not lose the right to the floor.

The PRESIDING OFFICER. Is there objection to the request? Without objection, it is so ordered.

Mr. HART. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk called the roll, and the following Senators answered to their names:

[No. 118 Leg.]

Aiken	Cotton	Johnston
Allott	Curtis	Jordan, Idaho
Anderson	Dirksen	Keating
Bartlett	Domestic	Kennedy
Bayh	Douglas	Kachel
Brill	Fong	Leahy
Bible	Gore	Long, Miss
Boggs	Hart	Magnuson
Brewster	Hickenlooper	Mansfield
Burdick	Holland	McGovern
Cannon	Frank	McIntyre
Carson	Frommeyer	McNamara
Cass	Inouye	McNinch
Church	Jackson	Metcalf
Clark	Javits	Miller

Monroney
Morton
Mundt
Muskie
Nelson
Neuberger
Pastore
Pearson

Pull
Proxmire
Ribicoff
Robertson
Saltwater
Scott
Smith
Stennis

Symington
Talmadge
Tower
Walters
Williams, Del.
Yarborough
Young, Ohio

The PRESIDING OFFICER. A quorum is present.

Mr. RIBICOFF. Mr. President, of all the provisions of this civil rights bill, none rests on so simple and so sound a principle as does title VI. That principle is taxpayers' money, which is collected without discrimination, shall be spent without discrimination.

This principle requires no argument. It is based on simple justice. It is based on ordinary decency. It is consistent with, if not required by the U.S. Constitution.

In fact, the principle of nondiscrimination in the use of Federal funds is so undeniably sound that to my knowledge there has not been one word said in opposition to this principle during the debate on this bill. Some opponents of this bill have frankly expressed their view, in discussing other titles of the bill, that there is a question in their minds as to whether Negroes should have the right to go to public schools on the same basis as whites, or whether Negroes should have the right to enter places of public accommodation on the same basis as whites, or even whether Negroes should have the right to vote on the same basis as whites. But however ill-founded those views may be—and I deeply believe they are wrong as a matter of law and of morality—I have heard no opponent express the slightest doubt as to whether Negroes should participate in the benefits of federally aided programs on the same basis as whites. If such a point of view exists, I would like to hear it expressed. I would be glad to yield at this point to any opponent of this bill who cares to contend that discrimination in federally aided programs is justified. I have heard no such argument nor do I expect to, for this is a principle on which 100 Senators and indeed every American can and do readily agree.

So unlike other titles in this bill, title VI seeks to protect a right that is universally recognized as being entitled to protection. The only issue is whether there is a need to protect the right and whether the remedies of title VI are reasonable and appropriate.

The need can be demonstrated conclusively. The fact is that discrimination does exist in federally aided programs. This result has been permitted, and until recently required, by Federal statutes such as the Hill-Burton Act for hospital construction, the Morrill Act for land-grant colleges, and Public Law 874 for construction of schools in federally impacted areas. In fiscal year 1962 more than \$13 million of Federal funds was spent to build and operate impacted area schools in 3 States that have 100-percent school segregation. Millions more have gone to school districts in other States that are completely segregated. Since 1948, \$32 million of Federal funds was used to build 76 medical facilities that admit no Negroes. Racial discrimination has occurred in programs

EXHIBIT 42

small bells are hung above the highest platform. In order to achieve a musical balance, the tones of the large bells are slightly subdued by louvres, and a sounding board placed above the other bells amplifies their sound to a certain extent.

Listen once on a quiet summer afternoon in the wooded surroundings to the skillfully played carillon, and you will agree that the music arouses in you remarkable feelings, varying from subtle emotion while the small bells are being played to an almost overpowering feeling during the majestic sounds of the complete carillon when the largest bells are being played.

It is not surprising that a carillon can create such a deep emotion when we realize that of old even the sound of a single bell inspired poets and composers.

The carillon of real bells played by an inspired carillonneur brings us into a mood of heavenly peace and wonderful rest. As these bells ring out, putting music from the Netherlands into our American air, one more voice from beyond the sea will speak to us, and with us. It will have a noble message, for it will remind us of the great unity of the free peoples of this earth.

May the clear tones of the bells of Holland speak to us of the friendship that is possible between separate peoples. May they help us to understand that the forces which tie the people together in freedom and harmony will always be greater than the forces which tend to drive them apart. May we come to see that a broader unity awaits the nations of this earth; and may this music, bespeaking the deep and lasting friendship between two great countries, take its place in our lives as a symbol of the peace and freedom which will someday prevail all across the world.

The Netherlands carillon and the surrounding grounds are administered by the National Capital region, National Park Service.

Mr. HUMPHREY. Mr. President, I have a feeling that with a little more prodding on the part of Congress, the banks of the Potomac may become melodious and that the beautiful music that can inspire the Nation's Capital will be forthcoming.

ADJOURNMENT UNTIL NOON ON MONDAY, FEBRUARY 10, 1964

Mr. HUMPHREY. Mr. President, if there is no further business to be transacted, I move that the Senate adjourn until 12 o'clock noon on Monday next.

The motion was agreed to; and (at 6 o'clock and 55 minutes p.m.) the Senate adjourned until Monday, February 10, 1964, at 12 o'clock meridian.

NOMINATION

Executive nomination received by the Senate February 7, 1964:

G. McMurtrie Godley, of the District of Columbia, a Foreign Service officer of class 1, to be Ambassador Extraordinary and Plenipotentiary of the United States of America to the Republic of the Congo.

HOUSE OF REPRESENTATIVES

FRIDAY, FEBRUARY 7, 1964

The House met at 12 o'clock noon.

The Chaplain, Rev. Bernard Braskamp, D.D., offered the following prayer:

Romans 10: 12: *The same Lord, who is over all is rich unto all who call upon Him.*

Our Heavenly Father, inspire us to enter upon the tasks and responsibilities of this new day with noble desires and lofty purpose surging through our minds and hearts.

May we make the most of every opportunity and invest the best we have of wisdom and understanding, of intelligence and experience, of effort and enthusiasm in solving life's many problems.

Help us to appreciate more fully that the greatness and glory of life consists in doing what we can to make life less difficult for the members of the human family who are finding its struggle so difficult and burdensome.

Grant that we may go forth bravely following in the footsteps of all who have spanned the ages with the glory of service and sacrifice.

Hear us in Christ's name. Amen.

THE JOURNAL

The Journal of the proceedings of yesterday was read and approved.

LOUISIANA STATE SOCIETY OF WASHINGTON

Mr. LONG of Louisiana. Mr. Speaker, I ask unanimous consent to address the House for 1 minute, to revise and extend my remarks, and to include extraneous matter.

The SPEAKER. Is there objection to the request of the gentleman from Louisiana?

There was no objection.

Mr. LONG of Louisiana. Mr. Speaker, this year, as in 16 other years since 1942, the Louisiana State Society of Washington is proud to salute the Nation's Capital on the occasion of Mardi Gras.

This year, I am honored to serve as chairman of the 1964 Mardi Gras ball, which will be held at the Sheraton-Park Hotel tomorrow night, Saturday, February 8.

Louisiana pays tribute to a new chapter in its illustrious history with this year's Mardi Gras ball. To the traditional trappings of Mardi Gras, with its color and pageantry, we have added the marvels of the space age.

The soil where Jean Lafitte once trod is now the home of a vital link in the space crescent, stretching from Cape Kennedy to Houston, Tex.

Our great industries are now joined by new industrial partners, all adding vital components to our Nation's space program.

Only recently, a Saturn rocket lifted the largest payload ever sent into space from our Atlantic testing ground; vital parts of its booster were made in Louisiana.

Mardi Gras also honors a part of Louisiana which has no equal anywhere: beauty. We are proud of our feminine beauty and in the royal court of this year's Mardi Gras ball is a good sampling of our State's feminine blessings.

The royal assemblage of 28 queens, representing our major fairs and festivals, and 13 maids from all sections of the State, is reigned over by Miss Elizabeth M. Bolton, a 21-year-old Alexan-

dria, La., girl who is queen of the Mardi Gras ball.

Her royal consort is a distinguished citizen of our State, Mr. Harvey Peltier, Sr., of Thibodaux, La. Mr. Peltier, as king of the Mardi Gras, joins an honor roll of some of Louisiana's finest men who have served with distinction in the past.

At another part of the RECORD, I will list the visiting queens and maids.

MISSISSIPPI VALLEY ASSOCIATION CALLS FOR WORK ACCELERATION

Mr. EDMONDSON. Mr. Speaker, I ask unanimous consent to extend my remarks at this point in the RECORD and include extraneous matter.

The SPEAKER. Is there objection to the request of the gentleman from Oklahoma?

There was objection.

Mr. EDMONDSON. Mr. Speaker, the Mississippi Valley Association has just completed its annual meeting at New Orleans, with thousands in attendance from across the Nation.

This great association, which has led in the drive to develop America's water resources and inland waterways, has adopted a resolution which will command the attention of all Members of the House.

I am informed that this resolution was adopted unanimously, as an expression of the views of the association.

I am confident that it will not only win the attention of all Members of the Congress, but the President as well.

The text of the resolution follows:

ACCELERATED PUBLIC WORKS PROGRAM

We urge that a significant portion of any Federal funds appropriated for the acceleration of public works in the administration of the war on poverty program be expended on authorized, economically justified, permanent, capital investment programs in water resources and river development in the United States of America.

ARMENIAN REVOLUTIONARY FEDERATION CREDO

Mr. O'HARA of Illinois. Mr. Speaker, I ask unanimous consent to extend my remarks at this point in the RECORD.

The SPEAKER. Is there objection to the request of the gentleman from Illinois?

There was objection.

Mr. O'HARA of Illinois. Mr. Speaker, on many occasions in this Chamber and elsewhere my voice has been raised in the righteous cause of the captive nations. Too long have we been dragging our feet in the matter of the creation of a joint congressional committee to give direction and drive to the efforts of the world of freedom to rescue the captive nations from their unhappy plight.

Armenia is numbered among the captive nations. I am indebted to Arthur Kaprellian, a constituent of Armenian blood residing at 11915 South Wallace Street, Chicago, for a copy of the credo recently adopted by the Armenian Revolutionary Federation. It is an inspiring document worthy of place in the world's literature of freedom. That it may be read by my colleagues, I am extending

The Committee again divided, and the tellers reported that there were—ayes 82, noes 179.

So the amendment was rejected.

AMENDMENT OFFERED BY MR. WILLIS

Mr. WILLIS. Mr. Chairman, I offer an amendment.

The Clerk read as follows:

Amendment offered by Mr. WILLIS. On page 43, line 2, insert the following two new sentences at the end of section 602:

"In the case of any action terminating, or refusing to grant or continue assistance because of failure to comply with a requirement imposed pursuant to this section, the head of the Federal department or agency shall file with the committees of the House and Senate having legislative jurisdiction over the program or activity involved a full written report of the circumstances and the grounds for such action. No such action shall be effective until 30 days have elapsed after the filing of such report."

Mr. WILLIS. Mr. Chairman, section 602 says that each Federal department and agency which is empowered to extend Federal assistance to any program or activity shall take action to effectuate the provisions of the title.

You will see that it is mandatory that each Federal department and agency shall take steps to effectuate the objectives of this particular title. Someone—a man, a human being, a fallible person—is ordered to do what, and what means shall he take or must he employ to enforce his decision? He does it by determination or refusal to grant or continue assistance under such program.

Suppose he does cut off a program. A single man is doing that. What happens in actuality? I merely repeat my colleague from Louisiana (Mr. Boggs), in that respect as it would affect my own State. Suppose the agency head would cut out the school lunch program, who actually would he be primarily hitting? He would be hitting all the people, the young people. Then suppose the distribution of surplus food is cut off, who would he be hitting? He would be hitting primarily the persons who are to be protected. Certainly in my State the colored people are the greatest beneficiaries under this program. Suppose he would cut off the welfare program, who would he be hitting? He would be primarily hitting the colored people because they are the primary and greatest beneficiaries.

Suppose he would cut off funds in connection with the highway program, what would happen? In my State we had a recent experience on that. Something like 85 percent of the manpower employed on highways are colored people. So if they cut them off their jobs and if perchance they cut off welfare and the distribution of food, what would happen then, not only aid to colored people but to aid everybody?

My amendment would bring into play other minds in connection with this question of decision to cut off a Federal assistance program. It would bring in to play committees of Congress having jurisdiction over the programs under consideration. The head of the agency would have to give a report to the committees of Congress having jurisdiction over the subject matter, so that at least

there would be some responsible minds over and beyond the agency head.

Then the last sentence would be that no such action shall become effective until 30 days had elapsed after the filing of such report.

This is a very carefully thought out amendment, it is sensible, and I would hope it might be accepted.

Mr. CELLER. Mr. Chairman, will the gentleman yield?

Mr. WILLIS. I yield to the gentleman from New York.

Mr. CELLER. The amendment is acceptable to myself and most members on the Committee on the Judiciary.

Mr. McCULLOCH. Mr. Chairman, will the gentleman yield?

Mr. WILLIS. I yield to the gentleman from Ohio.

Mr. McCULLOCH. I am pleased to say that the amendment is an improving amendment to this title, and I hope it will be agreed to.

Mr. SELDEN. Mr. Chairman, will the gentleman yield?

Mr. WILLIS. I yield to the gentleman from Alabama.

Mr. SELDEN. Mr. Chairman, title VI of the civil rights bill gives Federal departments and agencies extending Federal financial assistance practically unlimited powers to dictate the implementation of any and all Federal programs within the States. According to my interpretation of title VI, this could include control over many facets of our daily lives including our transportation and communications systems, hospitals, schools, construction companies, and even our farmers who participate in the various federally-sponsored farm programs. Under the guise of antidiscrimination, this section of the bill is little more than a legislative weapon with which Federal bureaucrats can threaten and bludgeon State authorities into surrender of constitutional powers. If enacted into law the provisions of title VI can mean either the hampering and breakdown of Federal-State cooperation in joint programs or the wholesale usurpation of State rights by Federal authorities.

The proponents of H.R. 7152 who believe, however mistakenly, that this section will serve the purposes of American Negroes might well consider what other purposes, in the hands of this or any other President, such broad discretionary powers might serve. The amendment offered by the gentleman from Louisiana (Mr. Willis) makes a small improvement in another extremely dangerous and ill-advised section of this bill, and I urge its adoption.

Mr. RODINO. Mr. Chairman, will the gentleman yield?

Mr. WILLIS. I yield to the gentleman from New Jersey.

Mr. RODINO. In other words, the gentleman's amendment would merely state that there is an additional 30 days which the person allegedly discriminated against would have within which to comply without any cutoff of funds? Is that it?

Mr. WILLIS. The amendment speaks for itself. It is two sentences, that the recommendations would have to be sub-

mitted to the parallel House-Senate committees having jurisdiction over the subject matter, and that the cutoff could not come until 30 days after the submission of those recommendations.

Mr. EDMONDSON. Mr. Chairman, will the gentleman yield?

Mr. WILLIS. I yield to the gentleman from Oklahoma.

Mr. EDMONDSON. In other words, this serves to provide a continuing oversight over the provisions of this title? I think it is a good amendment, and support it.

Mr. LONG of Louisiana. Mr. Speaker, I ask unanimous consent to extend my remarks at this point in the Record.

The CHAIRMAN. Is there objection to the request of the gentleman from Louisiana?

There was no objection.

Mr. LONG of Louisiana. Mr. Chairman, I wish to raise strenuous objections to title VI of this bill, a section which would place in the hands of a Government agency virtual control over the economic life or death of any given region of our Nation.

In section 602, any Federal department and agency which has the power to extend Federal financial assistance to any program or activity would have the right to withdraw those funds to force compliance with section 601, that part of the title which calls for an end to discrimination in any program involving Federal participation.

I am not going to spend a great deal of time of the basic flaw of this title, which should be obvious to anyone. But for those whose judgment may have been swayed by the force of this emotional issue of civil rights, I think I should again point it out. This is, to put it simply, bureaucratic blackmail. This title does not simply give these agencies the right to seek court action because of some alleged violation of the contract under which the funds were granted—it gives the agency the right to withdraw those funds, with what amounts to a "cease and desist" warning before the withdrawal takes effect. Not only does the title allow these unknown bureaucrats to wield this power, unchecked by the Congress; it sets no standards by which proof of noncompliance can be judged.

In the case of our welfare programs, for instance, which receive large amounts of Federal funds under this proposal, the agency—presumably the Department of Health, Education, and Welfare—could make a determination that some form of discrimination exists in a portion of the State system. According to this title, some unknown person in that Department could issue a warning to the State officials, wait a couple of days, then cut off all funds.

There is certainly nothing in the wording of the act to say who shall make this decision; and no standard to establish how this faceless and nameless person shall decide that compliance cannot be secured by voluntary means.

This complete lack of standards violates every precedent, and it certainly should offend any Member of Congress that reads it.

This title, in effect, puts a price tag on every Federal program and says, if you do not dance the proper tune, you will have to pay the piper. If that is not blackmail, I do not know what it is.

This is an alarming precedent, and an insult to the people of the United States.

We have laws, gentlemen, which have been formed over nearly 200 years of compromise and debate. To each one of those laws you are being asked to add a clause which says—

If, in the opinion of unknown persons in the Government, you have used Federal funds in a program which in any way discriminates against any group said unknown person can warn you to desist and after an undesignated period of time take away those funds.

The fact that an ex post facto right for judicial review is held out as a mild protection does not alter the dangers and the insolence of this measure.

Mr. KASTENMEIER. Mr. Chairman, I move to strike out the last word.

Mr. Chairman. I rise reluctantly on this occasion. As a member of the subcommittee that considered this legislation, I have sat here silent for the last 7 long legislative days on this matter. I am only sorry I did not speak sooner last night with relation to what was done on title V.

I rise in opposition to this, and think that perhaps some members of the committee conceded too much at least in this amendment, because this is obviously an open invitation certainly, to every committee chairman from the South to call on the carpet every agency head or department head who has the temerity to file a report with him cutting out funds for any area in his State or any adjacent State. We know this would result. I think what this amendment does is render this full title ineffective. For this reason, I would urge the Committee to reject this amendment.

I am sorry that the Committee last night saw fit, also, to make the permanent section of the Civil Rights Commission now impermanent and temporary again for a period of 4 years. This I think is unfortunate. I think we should resist some of these amendments. These are not clarifying or technical amendments.

In fact, this amendment is not truly a safeguard but really again will be a question of congressional dominance over the timorous executive branch in connection with an area of legislation which is very important in terms of administration.

Actually, in the Committee on the Judiciary there was a proposal to make the program mandatory and not discretionary as it now is. For the very reason that administrative and department heads would scarcely have the courage to implement this title unless it were required of them.

This is a further invitation not to implement the program, and I think, Mr. Chairman, this amendment ought to be defeated.

The CHAIRMAN. The question is on the amendment offered by the gentleman from Louisiana [Mr. WILLIS].

The question was taken, and on a division [demanded by Mr. KASTENMEIER] there were—ayes 129, noes 21.

So the amendment was agreed to.

AMENDMENT OFFERED BY MR. LINDSAY

Mr. LINDSAY. Mr. Chairman, I offer an amendment.

The Clerk read as follows:

Amendment offered by Mr. LINDSAY: On page 62 line 17, after the words "is taken" insert: no such rule, regulation or order shall become effective unless and until approved by the President."

The CHAIRMAN. The gentleman from New York [Mr. LINDSAY] is recognized.

Mr. LINDSAY. Mr. Chairman, this amendment is designed to require that the President shall approve rules and regulations that are promulgated pursuant to section 502 of title VI.

I believe this amendment will be accepted by the chairman of the Committee on the Judiciary and the ranking minority member. The members of your committee feel that the rulemaking power is so important in this area and can be so significant because of the latitude that this title by definition has to give to the executive in drafting rules and regulations that the Chief Executive should be required to put his stamp of approval on such rules and regulations—after, of course, the normal procedures have been followed in promulgating such rules and regulations.

Mr. CELLER. Mr. Chairman, will the gentleman yield?

Mr. LINDSAY. I yield to the chairman of the committee.

Mr. CELLER. As chairman of the Judiciary Committee, I approve the amendment of the gentleman from New York.

Mr. LINDSAY. I thank the chairman.

Mr. McCULLOCH. Mr. Chairman, will the gentleman yield?

Mr. LINDSAY. I yield to the gentleman from Ohio.

Mr. McCULLOCH. The amendment is an acceptable amendment to us.

Mr. SMITH of Virginia. Mr. Chairman, I should like to have a brief explanation of what the amendment would do.

Mr. LINDSAY. I yield to the gentleman from Virginia.

Mr. SMITH of Virginia. I thought the gentleman had yielded the floor.

Mr. LINDSAY. I had not yet yielded the floor. If the gentleman would like the floor on his own time, I shall be glad to yield the floor.

Mr. SMITH of Virginia. No, I should merely like to have a more clear idea as to what the amendment would do.

Is it the gentleman's thought or intent that the President shall personally approve every regulation that is made under this regulatory power?

Mr. LINDSAY. No, it is not.

Mr. SMITH of Virginia. What would it do, then?

Mr. LINDSAY. Pursuant to title VI, rules and regulations will have to be promulgated, as the gentleman will note on lines 14 and 15 on page 62 of the bill. The rules, regulations and orders there required, which will have to be promulgated according to standard procedures, with hearing and the rest, would have to

be approved by the President of the United States.

Mr. SMITH of Virginia. Then he would have to approve every one of these regulations personally.

Mr. LINDSAY. No, I did not say that. Mr. SMITH of Virginia. I thought the gentleman did.

Mr. LINDSAY. The rules and regulations will be promulgated, and will have to be promulgated as indicated on the lines 14 and 15 as I have mentioned, and are to be approved by the President of the United States if they are to be effective.

Mr. SMITH of Virginia. Did the gentleman not just say they had to be approved by the President?

Mr. LINDSAY. That is correct.

Mr. SMITH of Virginia. Then what does that mean? Would he have to approve them or would he not have to approve them?

Mr. LINDSAY. I refer the gentleman again to the language to which I referred, on lines 13 through 17 of page 62.

Such action may be taken by or pursuant to rule, regulation, or order of general applicability and shall be consistent with achievement of the objectives of the statute authorizing the financial assistance in connection with which the action is taken.

It is those rules, regulations, or orders of general applicability the President would be required to approve. Very plainly stated.

Mr. SMITH of Virginia. Perhaps so. I still do not understand what the President would have to do, but I am happy to see any amendment agreed to by the gentleman from New York [Mr. CELLER] and the gentleman from Ohio [Mr. McCULLOCH], so I am disposed to go along with it. I only wish I could get them to agree on my amendment to prohibit slavery.

Mr. POFF. Mr. Chairman, will the gentleman yield?

Mr. LINDSAY. I yield to the gentleman from Virginia.

Mr. POFF. Mr. Chairman, I am inclined to feel that the amendment is constructive in nature. I inquire, for the sake of the public: How will the President document his approval of the orders and regulations? Will his approval appear as an Executive order? Will it be published in the Federal Register?

Mr. LINDSAY. It will be published in the Federal Register.

Mr. POFF. I thank the gentleman.

Mr. JONES of Missouri. Mr. Chairman, I move to strike out the last word, for the purpose of clarifying the statement of the gentleman from New York.

I should like to have the attention of the gentleman from New York [Mr. LINDSAY].

It seems, after you offered your amendment, you started wiggling around. I will read what the amendment says. I got a copy from the Clerk's desk. It says:

No such rule, regulation or order shall become effective unless and until approved by the President.

Does it mean that the President has to approve every rule before it will become effective?

2500

CONGRESSIONAL RECORD — HOUSE

February 7

Mr. LINDSAY That is correct, if it is applicable to this title and is of general applicability.

Mr. JONES of Missouri. The amendment says:

No such rule . . . shall become effective unless and until approved by the President.

Mr. LINDSAY That is correct.

Mr. JONES of Missouri. Is that not what the amendment says?

Mr. LINDSAY. That is correct.

Mr. JONES of Missouri. You ought to be able to answer the question "Yes" or "No."

Mr. LINDSAY. It must be a rule, regulation, or order of general applicability. If it is not a rule, regulation, or order of general applicability, I would assume that the President would not have to put his approval on it.

Mr. JONES of Missouri. The "such" refers back to that, but you were trying to wiggle out of it in the discussion of the amendment.

Mr. LINDSAY. Then, vote against the amendment if you do not like it.

Mr. JONES of Missouri. No. I am like Judge Smith. I want to do anything I can to improve this thing. Of course, I will vote against the bill.

Mr. LINDSAY. If the gentleman will yield further, I am sure he is trying to improve it, and we appreciate it.

Mr. JONES of Missouri. I am trying to make it "less worse."

I yield back the balance of my time.

The CHAIRMAN. The question is on the amendment offered by the gentleman from New York [Mr. LINDSAY].

The amendment was agreed to.

AMENDMENT OFFERED BY MR. CELLER

Mr. CELLER. Mr. Chairman, I offer an amendment.

The Clerk read as follows.

Amendment offered by Mr. CELLER. On page 63 line 11 strike the words "contract, or loan" and insert in lieu thereof the following: "loan or contract other than a contract of insurance or guaranty."

Mr. CELLER. The purport of the amendment is to eliminate all guarantees programs of the Federal Government, all insurance programs of the Federal Government. In other words, title VI would have no effect, if you accept this amendment, on guarantees or insurance. Fears have been expressed by a number of the Members as to the meaning of the word "contract" in the bill before you. The word "contract," it was feared might be stretched to cover insurance or guarantee. To prevent such construction we offer this amendment. I say "we" because I cleared this amendment with the gentleman from Ohio [Mr. McCULLOCH], before offering it. In other words, we nail down the prohibition. We allay all fears that, for example, actions under the Federal Deposit Insurance Corporation, the Federal Savings and Loan Insurance Corporation, and the Federal Housing Administration insurance programs, or any other Federal insurance and guarantee programs are included in the bill. They are excluded because they involve guarantees and insurance. In order to make crystal clear that guarantees and insurance are not in title VI we are offering this amend-

ment, and only contracts not connected with insurance, not connected with guarantees are included.

Mr. McCULLOCH. Mr. Chairman, will the gentleman yield?

Mr. CELLER. I yield to the gentleman from Ohio.

Mr. McCULLOCH. Mr. Chairman, I am glad to join with the chairman of the committee in his explanation of this amendment to make certain the meaning of the bill. It is a needed restrictive amendment and ought to be agreed to. Mr. POFF. Mr. Chairman will the gentleman yield to me?

Mr. CELLER. I yield to the gentleman from Virginia.

Mr. POFF. For the purpose of legislative history, will the gentleman say the amendment is intended as drafted to cure the problem which I addressed on page 379 of the hearings before the Committee on Rules?

Mr. CELLER. I do not remember it precisely, but I will take the gentleman's word for it, because I have always found the gentleman to be thoroughly careful in his remarks and I am sure what he says is accurate.

Mr. O'HARA of Michigan. Mr. Chairman will the gentleman yield to me?

Mr. CELLER. I yield to the gentleman from Michigan.

Mr. O'HARA of Michigan. Would the gentleman please make it clear as to whether or not the amendment he offers, if adopted, will in any way affect the authority now being undertaken under President Kennedy's housing order affecting the operations of the FHA?

Mr. CELLER. No, sir. It has nothing to do with it.

Mr. O'HARA of Michigan. I thank the gentleman.

Mr. SMITH of Virginia. Mr. Chairman will the gentleman yield to me?

Mr. CELLER. Yes. I yield to the gentleman from Virginia.

Mr. SMITH of Virginia. I am a little bit unclear as to what language you are putting in.

Mr. CELLER. The amendment reads as follows:

On line 11 page 63 strike out the words "contract, or loan" and insert in lieu thereof the following: "loan or contract other than a contract of insurance or guaranty."

Mr. SMITH of Virginia. That clarifies it very much, insurance is a contract.

Mr. CELLER. Yes.

Mr. RYAN of Michigan. Mr. Chairman, will the gentleman yield?

Mr. CELLER. I yield to the gentleman.

Mr. RYAN of Michigan. Mr. Chairman, I want to make it doubly crystal clear to the extent that private homes that are covered by FHA and VA loans will not be covered by the terms of this act.

Mr. CELLER. They will not be.

Mr. RYAN of Michigan. Mr. Chairman, I wish to make it very explicit and without there being any doubt whatsoever, that any person or persons owning real estate, whether it be a private home, an income, or flat or apartment, or a farm, that may now be encumbered by a mortgage insured under the Federal

Housing Act, the Veterans' Administration, or other Federal agency, or which may in the future be encumbered by an FHA mortgage or VA mortgage, are not included and do not come within the provisions of title VI, that title VI simply just does not apply to private property with a mortgage insured under the Federal Housing Act, the Veterans' Administration, or other Federal agency.

Mr. WELTNER. Mr. Chairman, will the gentleman yield?

Mr. CELLER. I yield to the gentleman.

Mr. WELTNER. Mr. Chairman, I had prepared an amendment of similar import to this. I am happy to see that the committee has proposed a diminution of the scope of this act to this degree.

Mr. JONES of Missouri. Mr. Chairman, I move to strike out the last word.

Mr. Chairman, I should like to ask the chairman of the committee a question. He did not mention Veterans' Administration loans or contracts. Were they included?

Mr. CELLER. Any direct aid is not involved in this. A veteran would get direct aid from the Government and is not covered by title VI.

Mr. JONES of Missouri. I had a VA housing case and I have been trying to get to the floor, to call attention to a situation that has arisen with a constituent of mine who is a GI, who owned a home in Las Vegas, Nev. He had been transferred to Florida and had made arrangements to sell his home to another GI. The Veterans' Administration had entered into an agreement that they would loan the money for this home. After he had gotten his appraisal, and everything seemed to be in order, someone discovered that there was a racial restriction clause on the property. The Veterans' Administration in answer to my inquiry wrote me a four-page letter telling me that the racial restriction laws under the decision of the Supreme Court were of no effect and nonenforceable and they should not affect this case. They were willing to guarantee the loan except that if it was foreclosed they would not pay any money. That is under the present law. Those are some of the things that I was fearful of under this bill. What I am trying to find out is whether under the amendment the gentleman has offered the exclusion he has indicated, this kind of loan would not be affected by any race or color restriction or anything of that kind.

Mr. CELLER. I would say this. If it involves Veterans' Administration insurance or Veterans' Administration guarantee it is not covered by title VI in any sense or form.

Mr. JONES of Missouri. Would the gentleman be so kind as to tell me if he thinks that it is covered under the present law.

Mr. CELLER. Mr. Chairman, I did not understand all of the nuances or details of the case the gentleman referred to. I just could not hear them all.

Mr. JONES of Missouri. I am not going to take the time of the Committee nor the gentleman's time to repeat them, but I am going to send the gentleman a copy of the letter that I received.

JA501

could go either way, and it is a question of protecting both sides.

Mr EDMONDSON I will agree thoroughly with the gentleman that it would be desirable to have a record of what takes place. It would be my hope that the record would be available for judicial review whichever way the decision went.

Mr TAFT. Unfortunately I think some of us have had such experiences with the agencies and that we do not share the viewpoint of the gentleman that there would be a record of the decision.

Mr WHITTEN. Mr Chairman, will the gentleman yield?

Mr. TAFT I yield to the gentleman.

Mr. WHITTEN I think most of the Members here would agree with me there have been many times and there have been many times in my experience here where we were hard put under severe examination, to determine who made the decision not to act. There have been many cases in the years that I have been here where we have had department heads before us and they have had a terrific job in trying to find out who made the decision. That is one point.

The second point is, I have been here also when for years under the milk marketing orders of the Department of Agriculture, it called for the proponents of the order to give notice to those opposed to it. Of course, you know they did not do it. If you are relying on an agency to take care of these things, I would remind you there have been plenty of experiences in my own service here, and I am sure it is true of the other Members where they just simply do not do it unless you spell it out and require that they go through some procedure to keep a record in writing so that it will be available for those who have to pass judgment on the matter.

Mr. DINGELL. Mr Chairman, I move to strike out the last word.

Mr Chairman, the gentleman from Florida has drafted a very neat amendment. I think we can look at this amendment in the light of our good friend, the attitude of the gentleman from Florida toward this bill. He is a bitter and announced opponent of the bill. Every amendment that has been offered by our good friend, the gentleman from Florida, has had for its sole and exclusive purpose the hamstringing and destruction of this legislation in any way possible.

So once we have established this framework, we can look at this issue now before the House in the light of the established pattern of law.

The fact of the matter is the Administrative Procedure Act is not a new provision in the law. It is simply enunciative of those things which have always been the requirements of due process within the Constitution. And it has been held on many occasions that the due process clause of the Constitution, of which the Administrative Procedure Act is simply enunciative, with regard to the question of hearings and with regard to the procedure of the Federal action, requires that a hearing be held, requires that notice be given to the affected parties; and requires that all procedural fairness and due process

be afforded to persons affected by a ruling or a proposed ruling about a matter before a Federal agency which might later become the subject matter of a hearing.

Implicit in this is the requirement that a hearing be held. Implicit in this is the requirement that a record be kept. Since without an adequate record there can be no review by the courts. The failure by the Agency concerned with regard to section 501, section 502, or section 503 to keep an adequate and full and complete record would certainly be abundant ground for reversal by the courts of any finding by the Agency either with regard to the promulgation of general rules or with regard to the finding or ruling in a specific instance.

So with or without reference to the Administrative Procedure Act in section 501, the rights of parties are fully and completely protected. But because of the requirements of section 503 that review be done by the courts in accordance with section 10 of the Administrative Procedure Act which is the section dealing with judicial review, it becomes very plain that a record must be kept; that notice must be afforded to the parties; that service must be made upon interested parties; and that procedural due process, hearings, and general requirements of fair play which are inherent in our Constitution, and which the Administrative Procedure Act has been held by the courts in many instances simply to be enunciative must be made.

So I say there is no need for the amendment offered by our good friend from Florida. It would serve no purpose other than to beloud the issues.

In view of the fact that the gentleman has repeatedly announced his opposition to this proposed legislation and in view of the fact that he has sought on a number of occasions to hamstring and cripple the legislation, I say that the House of Representatives should not accept the amendment offered by the gentleman from Florida.

Mr McCULLOCH. Mr Chairman, I move to strike the requisite number of words.

It is apparent that we are in a difficult technical situation, from which we wish to get legislation which will meet the approval of the majority of the House. The staff and the Chairman of the Committee are working on a substitute amendment which should clarify our uncertain position.

For many weeks we who serve on the subcommittee tried to find a way agreeable to all, to the end that the action of an administrator could be adequately reviewed. I feel sure some of us have come to the conclusion that the time has been reached, after some 18 years, for the Administrative Procedure Act to be reviewed in its entire breadth and depth. If for the time being we can solve this immediate problem, I have a commitment that the Judiciary Committee will go into a complete review of the Administrative Procedure Act.

I hope, in view of those facts, that the House will accept the substitute now being drafted at the table.

I yield back the remainder of my time.

Mr WHITTEN. Mr. Chairman, I wonder if it would be in order to move that the House do now adjourn, while the coalition works out the substitute amendment? Would it be in order to move that the House do now adjourn?

The CHAIRMAN. A motion to adjourn, of course, does not lie while the House is in the Committee of the Whole House.

Mr WHITTEN. I merely wished to know if it were possible under the circumstances.

Mr Chairman, I move that the Committee do now rise, while the coalition works out a settlement of the differences.

The CHAIRMAN. The question is on the motion of the gentleman from Mississippi (Mr. WHITTEN).

The motion was rejected.

SUBSTITUTE AMENDMENT OFFERED BY MR. LINDSAY

Mr LINDSAY. Mr. Chairman, I offer a substitute amendment for the amendment of the gentleman from Florida.

The Clerk read as follows.

Amendment offered by Mr LINDSAY as a substitute for the amendment offered by Mr. CRAMER: On page 43 line 17 insert before the word "Compliance" "After a hearing."

Mr. LINDSAY. Mr. Chairman, I hope the Committee members will listen carefully.

The proposed substitute would make express what we thought was at least implied, that there is a hearing in connection with the statutory requirement that there be an express finding.

Now, the chairman of the committee (Mr. CELLER) said there would be a hearing, and that is the way the title is contemplated. A hearing is on the record and, in fact, no adjudication could be made, as provided in section 503 of title VI, in the absence of such a record. In fact the court would have full plenary powers to turn the matter over to the agency in order to provide such a record. I do think a hearing, which would be a hearing on the record, is entirely proper, and that is the way the drafters of the language have contemplated it. An express finding could not be made in the absence of such a hearing in any event.

Mr. CELLER. Mr. Chairman, will the gentleman yield?

Mr. LINDSAY. I yield to the gentleman from New York.

Mr. CELLER. I accept the substitute offered by the gentleman from New York (Mr. LINDSAY).

Mr. CRAMER. Mr. Chairman, will the gentleman yield?

Mr. LINDSAY. I yield to the gentleman from Florida.

Mr. CRAMER. I think it would be well to take a minute to clarify exactly what you are doing. Now, if you are going to put my amendment, then I am a little concerned about it, but I sure heard that argument offered often enough against any amendment I have ever offered. Is it the intention and the purpose, in good faith, by the proponents of this substitute to provide for, as provided in the Administrative Procedure Act, a hearing consistent with the Administrative Procedure Act, section 5, "in every case of adjudication required by

statute to be determined on the record after opportunity for an agency hearing." Therefore, all the protections are provided which I have tried to enumerate in my discussion of the constitutional rights of those who are being charged with discrimination. If the gentleman will give me the assurance that that is the purpose and the objective of his substitute amendment, I will be delighted to accept it.

Mr. LINDSAY. I will give the gentleman every assurance that it is our intention that all constitutional rights be meticulously taken care of. I can recall arguing some cases in the Supreme Court for the Government, having been given quite a punching around because the word "hearing" was contained in the statute, and the Supreme Court, as do all Federal courts, surrounded that word with all of the requirements of due process, notice, and everything else. I am sure that the gentleman can be assured that the requirement of the hearing will protect every constitutional right.

Mr. GRIFFIN. Mr. Chairman, will the gentleman yield to me?

Mr. LINDSAY. I yield to the gentleman from Michigan.

Mr. GRIFFIN. Section 603 refers to a judicial review in accordance with section 10 of the Administrative Procedure Act. Section 10 of the Administrative Procedure Act deals with judicial review and provides that a court may set aside a finding of an agency "if the finding is unsupported by substantial evidence in any case subject to the requirements of sections 7 and 8 or otherwise reviewed on the record of an agency hearing provided by statute."

The gentleman from New York, the chairman of the committee, referred to the substantial evidence rule.

Do I understand that this is the kind of a hearing to which they refer?

Mr. LINDSAY. I thank the gentleman from Michigan for his constructive and helpful comment, because it reinforces the statement which I made earlier to the effect that review provided for in section 605, and in that part where the Administrative Procedure Act is referred to, means that substantial evidence is required to support the decision made by the agency below. And, if substantial evidence is not apparent, then there is a reversible error.

Mr. GRIFFIN. May I say to the gentleman the thing about which I am concerned is not to pin down just the application of the substantial evidence rule. I am aware of that. I am concerned about the hearing. I wonder whether it is the kind of requested hearing which would be expedited in accordance with this provision.

The CHAIRMAN. The time of the gentleman from New York has expired.

Mr. LINDSAY. Mr. Chairman, I ask unanimous consent to proceed for 2 additional minutes.

The CHAIRMAN. Is there objection to the request of the gentleman from New York?

There was no objection.

Mr. LINDSAY. In answer to the gentleman from Michigan the hearing has to be on the record and the record

which is made at the hearing has to be sufficient so that the reviewing court can be satisfied that all provisions of the act have been met and that the "substantial evidence" rule has been followed.

Mr. HALEY. Mr. Chairman, will the gentleman yield?

Mr. LINDSAY. I yield to the gentleman from Florida.

Mr. HALEY. May I say to my colleague the gentleman from Florida [Mr. CRAMER] and the gentleman from Michigan [Mr. GRIFFIN] that perhaps the hearing will come after execution. I would suggest to the gentleman that it would be well to find out when you are going to get this hearing.

The CHAIRMAN. The question is on the substitute amendment offered by the gentleman from New York [Mr. LINDSAY] to the amendment offered by the gentleman from Florida [Mr. CRAMER].

The question was taken; and on a division (demanded by Mr. CRAMER) there were—ayes 182, noes none.

So the substitute amendment was agreed to.

The CHAIRMAN. The question now recurs on the amendment offered by the gentleman from Florida [Mr. CRAMER], as amended.

The amendment was agreed to.

AMENDMENT OFFERED BY MR. CRAMER

Mr. CRAMER. Mr. Chairman, I offer an amendment.

The Clerk read as follows:

Amendment offered by Mr. CRAMER. On page 43 line 13 after "Act" insert "except that such action shall be sustained only as supported by a preponderance of the evidence."

Mr. CRAMER. Mr. Chairman, I am going to take as little time as possible. This also involves the basic question of whether or not after an order has been issued a full review of the facts should be had. This is another question which we discussed in the subcommittee.

The Committee on the Judiciary of the House had a tough problem to wrestle with, and I admit it is tough, and I tried to be constructive in this aspect of it, as I was in connection with one of the amendments adopted in the committee. I am trying to do it on the floor of the House in the same spirit.

In the FEPC the issue was raised, and I am the one who raised it—the gentleman from Michigan and a number of others raised it—as to what kind of a review do you get when the effect of the administrative order is as broad as this is. Do you get a right of trial by jury de novo, or do you not? Are you hampered and hamstrung by the administrative procedure rule that there must be an abusive discretion on the part of the agency in order to get any relief in the review section? That is the crucial stage. The final decision is made in the review section. All my amendment does is to say that the party is accused of discrimination on this record which we have now created through hearing. When this hearing and the record comes up for review, that we put all parties on the same basis, the party that has discriminated and the Government agency is on exactly the same ground if you

accept my amendment. That is, for the party discriminated against as represented by the Government. And if the Government can prove by more than 50 percent of the evidence it is right, the decision goes to the Government. If the party who is accused of discriminating can carry the weight of the evidence, the preponderance of the evidence, which means more than 50 percent, then the decision goes to him. What could be fairer than that? But, oh, no. Contrary to what they did in the FEPC, which has the rule of preponderance of evidence that I am trying to write into this section, they said that is all right for this section, but it is not all right for the other section. I want to put both parties on an equal basis when it comes to review. That is what the amendment does. I know the Members are familiar with that fact under the Administrative Procedure Act, otherwise the heavyweight is the Government. This puts everybody on the same even, equitable, fair, square basis.

Mr. POFF. Mr. Chairman, will the gentleman yield?

Mr. CRAMER. I yield to the gentleman from Virginia.

Mr. POFF. I think it would help matters if it were understood why a different quantum of evidence was required for the Administrative Procedure Act as compared with the Federal Government. Ordinarily the rule is preponderance of evidence. In the Administrative Procedure Act as written it was felt substantial evidence would be sufficient because it was felt that the administrative agency which rendered the decision had special expertise in the field. But in this case the gentleman will agree outside the Department of Justice no Federal agency has any special expertise in the field.

Mr. CRAMER. The gentleman has made a very crucial point. There had to be a reason for giving the Government agency the advantage of this rule of evidence against the party charged. The reason was that the agency is assumed to know more about the subject matter than a large number of other people, therefore they were entitled to this rule because they were experts and that if a substantial portion of the evidence supported what they did, the Government agency should not be upset.

Who are the experts on the question of discrimination other than the Attorney General's office? This is not involving the Attorney General's office. This is every agency of the Government across the board that has the right to make these factual determinations on discrimination. Every single agency makes the determination. They are not experts on the question, and everybody ought to have a fair chance.

Mr. RODINO. Mr. Chairman, I rise in opposition to the amendment.

Mr. Chairman, the gentleman's amendment would completely upset the design of the Administrative Procedures Act, which has been in operation for so many years. I recognize what the gentleman is intending to do, and I have some sympathy with his attempt to try to establish some other rules of evidence and procedure. But I think this is not

EXHIBIT 43



**Congressional
Research Service**

Informing the legislative debate since 1914

Legal Sidebar

Religious Discrimination at School: Application of Title VI of the Civil Rights Act of 1964

Updated September 17, 2024

Since the beginning of armed hostilities between Israel and Hamas on October 7, 2023, Congress has focused significant attention on the reaction of students and schools, colleges, and universities to events unfolding in the region. [Congressional hearings](#) have been held and [legislative proposals](#) have been introduced addressing religion-based animus, and in particular antisemitism, at institutions of higher education. A number of [media](#) reports, [complaints](#) filed with the [Department of Education](#) (ED), and [lawsuits](#) allege that Jewish or Muslim students have faced harassment or other discrimination on campus because of their religious beliefs or identities.

These events have prompted questions about whether and how federal antidiscrimination statutes protect students from discrimination on the basis of religion. A trio of statutes enacted pursuant to Congress's authority under the [Spending Clause](#) serve as the primary (though not exclusive) vehicles for students seeking redress for certain kinds of discrimination by their schools: [Title VI of the Civil Rights Act of 1964](#) (Title VI), [Title IX of the Education Amendments of 1972](#) (Title IX), and [Section 504 of the Rehabilitation Act of 1973](#) (Section 504). These laws prohibit discrimination on the basis of race, color, and national origin (Title VI); sex (Title IX); and disability (Section 504) by all or certain recipients of federal financial assistance. None of these laws directly prohibit religious discrimination.

Students facing religious discrimination at public schools may be able to bring claims under the [First](#) or [Fourteenth](#) Amendments, but the Constitution does not provide for the same enforcement mechanisms that Title VI, Title IX, and Section 504 do. The Constitution does not offer any direct recourse to students at private institutions. In addition, federal agencies lack the authority they possess under these other antidiscrimination laws to enforce any prohibition on religious discrimination, including, for example, the authority to issue regulations, undertake compliance reviews, and investigate and resolve complaints.

For several decades, however, ED has [interpreted](#) Title VI to reach religious discrimination when it overlaps with race or national origin discrimination. As ED, Congress, and the courts respond to allegations of religious discrimination at schools, they are considering whether and how Title VI applies to such claims. This Sidebar reviews the state of the law on that question.

Congressional Research Service

<https://crsreports.congress.gov>

LSB11129

Background on Title VI

Title VI of the Civil Rights Act of 1964 prohibits discrimination based on race, color, or national origin in federally funded programs. All public schools, colleges, and universities in the country and many private ones accept federal funding and are [therefore subject to Title VI](#). Each federal agency [enforces](#) Title VI with respect to its own funding recipients. ED, through its [Office for Civil Rights](#) (OCR), is the primary federal agency that enforces Title VI against schools, colleges, and universities.

OCR has broad authority to prevent racial and national origin discrimination by its funding recipients. It issues [formal regulations](#) and [sub-regulatory guidance](#) interpreting and implementing Title VI. OCR regulations impose obligations beyond the basic nondiscrimination mandate, including, for example, [recordkeeping and reporting requirements](#). OCR may secure Title VI compliance via “[any . . . means authorized by law](#).” It [can](#) conduct compliance reviews and investigate complaints. If it finds a violation, it determines the remedy to seek, although it must first [attempt a cooperative resolution](#). Remedies can include agreements or orders to an institution to, for example, [change](#) its policies, [compensate](#) injured students, and [cooperate](#) with OCR monitoring going forward. As a [last resort](#), ED may seek to [terminate federal funding](#), which it can do only after making a finding of noncompliance on the record of a formal administrative hearing and giving Congress a chance to weigh in. OCR can also [refer](#) cases to the Civil Rights Division at the Department of Justice for enforcement in court.

Educational institutions may be liable under Title VI when they treat students differently because of their race or national origin (known as a [disparate treatment](#) claim) and when they fail to respond appropriately to racial or national origin harassment that is so severe, pervasive, and objectively offensive that it deprives students of access to educational benefits or opportunities (known as a [hostile educational environment](#) claim). Not all racially or ethnically offensive conduct rises to the level of actionable harassment. Furthermore, to be liable for harassment, a school must have exhibited deliberate indifference—that is, its response must be clearly unreasonable in light of the known circumstances. (For more information on Title VI harassment claims, see CRS Legal Sidebar LSB11087, *Title VI and Peer-to-Peer Racial Harassment at School: Federal Appellate Decisions*, by Jared P. Cole (2023)). Additionally, ED’s Title VI regulations prohibit [disparate impact discrimination](#), that is, neutral policies that adversely affect a particular racial or national origin group. The Supreme Court has [held](#) that the disparate impact regulation is not enforceable by private litigants, but it has [never directly ruled](#) on the validity of the regulation and whether ED can enforce it.

Students who believe their schools have violated Title VI can file complaints with OCR. They may also [bring suit](#) directly in federal court. Victorious plaintiffs can [receive](#) injunctive relief, that is, a court order directing the institution to change its policies or practices; certain compensatory damages (although likely not damages for [emotional distress](#)); and [attorneys’ fees](#).

An original draft of Title VI included a prohibition on religious discrimination. Congress omitted that language in the final version. One commentator [reads](#) the legislative history to suggest that Congress was concerned that including religion would cut off sectarian colleges and universities from federal funding. Members also expressed the view that religious discrimination in education was not widespread.

For more information about Title VI in general, see CRS Report R46534, *The Civil Rights Act of 1964: An Overview*, by Christine J. Back.

Title VI and Religious Discrimination

Department of Education's Approach

On its face, Title VI does not prohibit discrimination on the basis of religion. However, in 2004, OCR released [guidance](#) explaining that, in OCR's opinion, religious discrimination could, in some circumstances, overlap with racial or national origin discrimination, bringing it within Title VI and ED's purview. OCR has since released [additional guidance documents](#) explaining how it interprets Title VI to apply to claims alleging religious discrimination, including claims by Jewish, Muslim, and Sikh students. As OCR [interprets](#) the law, religious discrimination is illegal under Title VI if it is based on a group's "actual or perceived: (i) shared ancestry or ethnic characteristics; or (ii) citizenship or residency in a country with a dominant religion or distinct religious identity," rather than the group's religious practices. Discrimination may [include](#) "ethnic or ancestral slurs"; harassment based on how students "look, dress, or speak in ways linked to ethnicity or ancestry (e.g., skin color, religious attire, language spoken)"; and actions grounded in "stereotype[s] based on perceived shared ancestral or ethnic characteristics." OCR's examples of religious discrimination overlapping with racial or national origin discrimination [include](#) "Muslim students targeted for wearing a hijab," "Sikh students taunted and called terrorists," and [Jewish students](#) targeted with swastikas, Nazi salutes, and Holocaust jokes.

OCR's interpretation of Title VI to prohibit some forms of religious discrimination is not new, and OCR had investigated institutions of [higher education](#) and [K–12](#) school districts for discrimination against religious groups on the basis of "shared ancestry" before October 7, 2023. In 2021, for example, OCR [investigated](#) the University of Vermont and State Agricultural College in response to complaints of antisemitic harassment including, among other things, that a teaching assistant had published tweets threatening to retaliate academically against "zionist" students. In 2022, OCR resolved an [investigation](#) against an Arizona school district for its failure to respond to student-on-student antisemitic harassment, including pro-Nazi conduct and Holocaust jokes. OCR has opened more than [100 investigations](#) involving national origin discrimination and religion since October 7, 2023.

Judicial Approaches

Case law is sparse on when discrimination ostensibly on the basis of religion may also constitute racial or national origin discrimination under Title VI. [Courts](#) regularly [dismiss](#) Title VI claims based on alleged antagonism toward or failure to accommodate religious beliefs. Few courts, however, have addressed the kinds of harassment highlighted by OCR's guidance, making it difficult to know whether courts would agree with OCR's interpretation of Title VI. One district court [rejected](#) a Title VI claim based on anti-Muslim discrimination that included allegations that school officials equated Muslims with terrorists. Three other district [courts](#) have [allowed](#) Jewish K–12 students to proceed under Title VI on claims that their schools failed to address antisemitic harassment by fellow students, who, among other things, allegedly displayed swastikas, performed Nazi salutes, used antisemitic epithets, and made offensive statements about the Holocaust. One court [explained](#) that such harassment, drawing on "hackneyed stereotypes, bigoted 'jokes,' and painful references to the Holocaust and Naziism," is "rooted in" antagonism to the victims' "actual or perceived national origin or race" and not only their "faith or religious practices." This analysis appears to align with OCR's view of religious harassment that may violate Title VI.

Beyond Title VI, courts recognize that other laws prohibiting racial and national origin discrimination can reach discrimination against certain groups, including religious groups, when, at the time those laws were enacted, members of those groups were considered to share a racial or ethnic background. Thus, the Supreme Court has allowed claims by Arab and Jewish plaintiffs to proceed under [two](#) 19th-century [laws](#)

prohibiting certain racial discrimination [because](#), by 19th-century standards, “[Jews and Arabs were among the peoples then considered to be distinct races and hence within the protection of the statute.](#)” Courts have not analyzed popular ideas of race and ethnicity as applied to religious groups at the time Congress enacted Title VI in the 1960s. Nor has any court weighed in on whether Title VI would protect only those religious groups considered racially distinct in the 1960s, or whether, as OCR would have it, harassment based on the modern perpetrator’s apparent view of a group’s shared ethnic characteristics could suffice.

Executive Order 13,899, the Antisemitism Awareness Act, and Title VI in the Midst of the Israel-Hamas Conflict

Recent congressional attention to Title VI and discrimination at schools has focused particularly on antisemitism. Beyond whether and how Title VI covers religious discrimination at all, another question concerns what kind of conduct constitutes antisemitism. Agencies, courts, and Congress have considered whether and what forms of opposition to Israel can be antisemitic and might be prohibited by Title VI. In 2019, President Trump adopted [Executive Order 13,899](#), which remains in effect, stating the administration’s policy to enforce Title VI against antisemitism. The executive order directed federal agencies to “consider” the “non-legally binding working definition of anti-Semitism adopted . . . by the International Holocaust Remembrance Alliance (IHRA),” as well as the “contemporary examples” cited therein. The [IHRA](#) defines antisemitism as “a certain perception of Jews, which may be expressed as hatred toward Jews.” Examples include, among other things, “[d]enying the Jewish people their right to self-determination, e.g., by claiming that the existence of a State of Israel is a racist endeavor”; “[a]pplying double standards by requiring of [Israel] a behavior not expected or demanded of any other democratic nation”; and “[d]rawing comparisons of contemporary Israeli policy to that of the Nazis.” A [bill](#) introduced in the 118th Congress in both houses, the [Antisemitism Awareness Act](#), would similarly instruct ED to “take into consideration” the IHRA definition of antisemitism and contemporary examples when enforcing Title VI. The Antisemitism Awareness Act [passed](#) the House on May 1, 2024.

Few courts have considered whether Title VI, or other federal antidiscrimination laws, prohibit particular forms of conduct tied to sentiments about Israel or a Palestinian state. CRS has not located any judicial opinion holding that opposition to Israel, or to Jewish claims in Israel, can be antisemitic for purposes of federal antidiscrimination law. Nor has it located any case holding that pro-Israel conduct, or hostility to pro-Palestinian advocacy, constitutes discrimination on the basis of Palestinian, Arab, or Muslim identity. In the few cases that have addressed claims in the former category, courts have [avoided](#) ruling that certain anti-Israel conduct or speech is inherently antisemitic, observing that the issue is “[hotly disputed](#)” and [emphasizing](#) First Amendment protections for political speech. [Courts](#) have also [held](#) that discrimination against people for pro-Palestinian expression is not the same as discrimination on the basis of Palestinian identity. This latter category of case suggests another approach courts may take to the question of whether or when anti-Israel activity discriminates on the basis of Jewish identity.

This issue is presently before several courts. Since October 7, 2023, lawsuits have raised the question of whether opposition to Israel can violate Title VI. For example, groups representing Jewish students [sued](#) Berkeley Law School for, among other things, allowing student groups to refuse membership and speaker invitations to people who “[hold views . . . in support of Zionism.](#)” The plaintiffs [argue](#) that “‘Zionism’ is a proxy term for Jews.” Even if the term is not being used as a “proxy,” the plaintiffs [argue](#), discriminating on the basis of “Zionism” violates Title VI both because Zionism is integral to many Jews’ identity and because it denies the Jewish “ancestral” and “historical” connection to Israel. In urging the court to dismiss the suit, Berkeley contends that disciplining student groups who adopt an “anti-Zionism” policy would violate students’ First Amendment rights. Other lawsuits also claim Title VI violations based on campus “anti-Zionism,” and other universities have raised the First Amendment in response.

Were a court to determine that certain anti-Israel activity discriminated against Jews, that would not fully resolve the question of whether Title VI prohibited such activity—because, as explained above, Title VI does not cover religious discrimination. To find that Title VI applied, a court would also have to find that such actions constituted a form of racial or national origin discrimination, rather than religious discrimination or some other form of discrimination that Title VI does not address.

In the present litigation, many of the defendant schools have not contested that Title VI prohibits antisemitism or that the conduct alleged by plaintiffs is, at least in part, antisemitic. This approach limits the likelihood that the courts in those cases will issue guidance on Title VI's application to religious discrimination. Indeed, while one [court](#) ruled that the plaintiffs in one post-October 7 case pled a Title VI claim, it did not opine on whether and when antisemitism is a form of racial or national origin discrimination.

For its part, [ED](#) differentiates between harassing speech critical of a country's policies versus that which is critical of its people. In [ED's view](#), Title VI does not reach the expression of purely political opinions about a country. On the other hand, Title VI may be implicated, [ED](#) says, if such expression is harassing and “targeted at or infused with discriminatory comments” about a national origin group.

Considerations for Congress

As OCR and a few courts currently interpret the law, the viability of Title VI claims based on animus toward members of a religious group may turn on whether the plaintiffs can show, based on the specific nature of the harassment, that the perpetrators perceived them to share ethnic, racial, or national characteristics. Alternatively, or perhaps additionally, plaintiffs may need to show that they are members of a group considered to share a common race or ethnicity at the time Title VI was enacted.

Congress can amend Title VI to clarify if and when it prohibits religious discrimination. It could, for example, add religion as a protected category or elaborate on when religious discrimination overlaps with racial or national origin discrimination. Congress may consider how other antidiscrimination laws approach prohibitions on religious discrimination, particularly given that a large number of sectarian schools accept federal funding. Other antidiscrimination laws contain [exceptions](#) for certain [conduct](#) by at least some [religious institutions](#), including [sectarian schools](#). Title VI does not.

Since 2016, [lawmakers have introduced a version of the Antisemitism Awareness Act](#) at least eight times, as well as [other bills](#) that could cause schools, colleges, and universities to lose federal funding if they respond inadequately to antisemitism as defined by the IHRA. Congress may consider how these and similar bills interact with Title VI. The versions of the Antisemitism Awareness Act in the 118th Congress, for example, instruct [ED](#) to “take into consideration” the IHRA definition of antisemitism when enforcing Title VI, but they do not amend Title VI itself to explain if and when Title VI covers religious discrimination at all. The Antisemitism Awareness Act also does not specify whether the IHRA definition of antisemitism is to be considered in private lawsuits in addition to OCR enforcement actions.

Various approaches to combating religious discrimination at schools, colleges, and universities may also raise complex constitutional questions. In imposing obligations on sectarian schools, Congress may need to take into account First Amendment [limits](#) on [applying](#) antidiscrimination laws to religious institutions. Furthermore, lower courts have struck down some school policies prohibiting harassment or limiting access to certain speakers as vague, overbroad, or viewpoint discrimination in violation of the First Amendment. The IHRA defines antisemitism broadly—“a certain perception of Jews”—and includes some forms of criticism of Israel that [courts](#) and [commentators](#), including an [author](#) of the IHRA definition, have [suggested](#) enjoy First Amendment protection. There may be other constitutional considerations as well. For example, laws that extend greater protection to people of one faith than to people of other faiths may face [scrutiny](#) under the Equal Protection or [Establishment Clauses](#).

Author Information

Abigail A. Graber
Legislative Attorney

Disclaimer

This document was prepared by the Congressional Research Service (CRS). CRS serves as nonpartisan shared staff to congressional committees and Members of Congress. It operates solely at the behest of and under the direction of Congress. Information in a CRS Report should not be relied upon for purposes other than public understanding of information that has been provided by CRS to Members of Congress in connection with CRS's institutional role. CRS Reports, as a work of the United States Government, are not subject to copyright protection in the United States. Any CRS Report may be reproduced and distributed in its entirety without permission from CRS. However, as a CRS Report may include copyrighted images or material from a third party, you may need to obtain the permission of the copyright holder if you wish to copy or otherwise use copyrighted material.

EXHIBIT 44



Civil Rights at School: Agency Enforcement of Title VI of the Civil Rights Act of 1964

April 4, 2019

Congressional Research Service

<https://crsreports.congress.gov>

R45665



Civil Rights at School: Agency Enforcement of Title VI of the Civil Rights Act of 1964

R45665

April 4, 2019

Jared P. Cole, Coordinator
Legislative Attorney

Title VI of the Civil Rights Act of 1964 prohibits federally funded programs, activities, and institutions from discriminating based on race, color, or national origin. In its current form, largely unchanged since its adoption, Title VI incorporates a number of unique features. Besides barring federally funded programs from discriminating based on race, Title VI also authorizes and directs all federal funding agencies to promulgate rules effectuating that nondiscrimination mandate. Those rules were also made subject to presidential approval, an authority since delegated to the Attorney General by executive order. To enforce Title VI, agencies also have at their disposal a uniquely powerful tool: the termination or refusal to provide federal financial support to an institution or program seeking it. Although this power to withdraw federal funds was envisioned as the primary mechanism for enforcing Title VI, that authority was also hedged with a range of procedural requirements designed to spur agencies to resolve complaints against recipients through voluntary agreements.

In the 50 years since Title VI became law much of the debate over the statute has centered on how the courts have read its two central provisions—Sections 601 and 602—and how federal agencies have gone about enforcing them. In the courts those debates have especially focused on what counts as unlawful “discrimination” under Section 601. The courts have long agreed that Title VI bars federally funded programs from intentionally singling out individuals by race for adverse treatment. In its first case involving Title VI the Supreme Court suggested that Section 601 might also reach beyond intentional discrimination to bar the use of policies with a disparate impact—policies that, irrespective of the intent, impose a discriminatory effect on different racial groups. With its 2001 ruling in *Alexander v Sandoval*, the Court appeared to put that interpretive question to rest: Title VI directly prohibits only intentional discrimination.

For the agencies charged with enforcing Title VI, the primary concerns have tended to be more operational and programmatic—how to go about the business of reviewing and assessing particular practices under Section 602 of the statute. Section 602 authorizes and directs agencies to issue regulations “effectuat[ing]” Section 601. The breadth of that authority has produced a further point of uncertainty about the statute: what limits are there to funding agencies’ rulemaking authority under Title VI? So far, two divergent views have emerged from the Court’s decisions: (1) a largely deferential view that would give agencies leeway to issue prophylactic rules reaching conduct beyond intentional discrimination, and (2) a more exacting view under which agencies may redress only provable cases of intentional discrimination.

Although Title VI’s nondiscrimination prohibition accompanies nearly all awards of federal financial support, much of the statute’s doctrine has been shaped by its use in the public schools. That doctrinal history has centered on one agency in particular: the Office for Civil Rights (OCR) in the U.S. Department of Education (ED). Title VI continues to play a central part in OCR’s mission of protecting civil rights on campuses at all educational levels, and in institutions both public and private. OCR handles a large volume and variety of claims alleging race and national origin discrimination, which it administratively resolves through a series of investigative procedures laid out in its Case Processing Manual. Although the types of allegations OCR investigates vary, three major categories of complaint occupy much of its docket: disparate treatment, retaliation, and racial harassment.

Congress has the ultimate say over how Title VI works—rooted not only in its legislative power but in its authority to oversee the statute’s enforcement. In recent years two questions surrounding Title VI have drawn particular congressional interest: the viability of disparate impact regulations under Section 602 and the possible inclusion of new protected classes in Section 601. No matter how Congress may choose to address those subjects, however, they are likely only to raise further questions about the future of this landmark civil rights law.

Contents

Introduction	1
Title VI of the 1964 Civil Rights Act: Origins and Overview	2
Leveraging the Spending Power: The Origins of Title VI	2
Title VI: An Overview.....	4
Defining “Discrimination” Under Title VI.....	5
Banning Intentional Discrimination (Disparate Treatment).....	6
Disparate Treatment: Direct Evidence	6
Disparate Treatment: Circumstantial Evidence.....	6
Banning Discriminatory Effects (Disparate Impact).....	7
The Origin of Disparate Impact Under Title VI: <i>Lau v. Nichols</i>	7
Limiting <i>Lau</i>	8
Regulating “Discrimination” Under Title VI.....	10
Rulemaking Under Title VI: Section 602.....	10
The Limits to Section 602: Two Views	12
1. The Reasonable-Relation View.....	12
2. The View from <i>Sandoval</i>	14
Unresolved Questions About Disparate Impact Under Section 602	15
Enforcing Title VI at School: The U.S. Department of Education’s Office for Civil Rights	16
OCR’s Enforcement of Title VI	17
Major Areas of Administrative Enforcement	19
Different Treatment: Two Illustrations.....	20
Considerations for Congress.....	22
Conclusion.....	23

Contacts

Author Information.....	24

Introduction

With its adoption as part of the Civil Rights Act of 1964, Title VI invested the federal government with a uniquely powerful role in addressing race and national origin discrimination.¹ Like other statutory provisions in the Civil Rights Act,² Title VI seeks to end race discrimination among institutions and programs whose doors were otherwise open to the public—especially public schools.³ But unlike the Civil Rights Act’s better known and more heavily litigated provisions,⁴ Title VI is concerned specifically with the use of “public funds,” designed to ensure that federal dollars not be “spent in any fashion which encourages, entrenches, subsidizes, or results in racial discrimination.”⁵ And to fulfill that broad mandate, Title VI takes a distinctive approach to policing discrimination by making the promise of nondiscrimination a condition of the federal government’s financial support.

Title VI consequently prohibits all federally funded programs, activities, and institutions from discriminating based on race, color, or national origin.⁶ Although that prohibition accompanies nearly all grants and contracts awarded by the federal government,⁷ much of Title VI’s doctrine has been shaped by its use in the public schools.⁸ That doctrinal story has accordingly centered on one agency in particular: the Office for Civil Rights (OCR) in the U.S. Department of Education (ED). As this report explains, Title VI continues to play a central part in OCR’s mission of protecting civil rights on campuses at all educational levels, and in institutions both public and private.⁹

¹ 42 U.S.C. § 2000d et seq.; see also Olatunde C.A. Johnson, *Lawyering That Has No Name: Title VI and the Meaning of Private Enforcement*, 66 STAN. L. REV. 1293, 1294 (2014) (noting that Title VI has long been regarded as the “sleeping giant” of federal civil rights law, a “powerful but largely unused” antidiscrimination statute). Title VI, by its terms, applies to discrimination based on three distinct categories: race, color, and national origin. To ease exposition, this report generally refers more simply to Title VI’s prohibition on “race discrimination,” which, unless otherwise indicated, is intended to mean discrimination outlawed by Title VI.

² See, e.g., 42 U.S.C. § 2000c-6(a)(1) (empowering the Attorney General to receive and file suit over complaints that a “school board” has deprived students of the “equal protection of the laws”).

³ By the time the Civil Rights Act became law in 1964, fully a decade after the Supreme Court had declared an end to the *de jure* segregation of public schools in *Brown v. Board of Education*, 347 U.S. 483 (1954), “only 1.2 percent of black schoolchildren in the South attended school with whites.” GERALD N. ROSENBERG, *THE HOLLOW HOPE: CAN COURTS BRING ABOUT SOCIAL CHANGE?* 52 (2d ed. 2008). Discounting Tennessee and Texas, that “percentage drops to less than one-half of one percent (0.48 percent).” *Id.*

⁴ See *id.* at 1294-95 (describing Title VI as “largely unknown” to “the general public and even to most lawyers,” likely because “the number of Title VI cases litigated each year has always paled in comparison to most other civil rights statutes, particularly in comparison to the fair employment provisions of the Civil Rights Act of 1964”).

⁵ 110 Cong. Rec. 6543 (1964) (statement of Sen. Humphrey quoting President Kennedy).

⁶ 42 U.S.C. § 2000d.

⁷ The only exceptions are funds disbursed pursuant to “a contract of insurance or guaranty.” See 42 U.S.C. §§ 2000d-1, 2000d-4. Thus, for example, to the extent that a bank “receives federal financial assistance in the form of deposit insurance from the” Federal Deposit Insurance Corporation, it would likely not be bound by Title VI’s nondiscrimination mandate. *Marshall v. Webster Bank, N.A.*, 2011 U.S. Dist. LEXIS 5665, at *20-21 (D.Conn. Jan. 20, 2011) (dismissing a race discrimination complaint on this basis because the alleged “federal assistance [was] in the form of a guaranty or contract for insurance”).

⁸ See generally STEPHEN C. HALPERN, *ON THE LIMITS OF THE LAW: THE IRONIC LEGACY OF TITLE VI OF THE 1964 CIVIL RIGHTS ACT* (1995). See also 110 Cong. Rec. 7068 (1964) (statement of Sen. Ribicoff) (observing that “[u]nquestionably, more programs under HEW would be affected than all other programs put together” by Title VI).

⁹ Given the breadth of institutions that receive federal education money, all public elementary and secondary schools are subject to Title VI, as well as nearly all colleges and universities, public and private. See U.S. Dep’t of Educ., Office for Civil Rights, *Race and National Origin Discrimination: Frequently Asked Questions*,

This report begins by briefly tracing Title VI to its historical and conceptual roots in the federal spending power, and explains how the early understanding of that power shaped the various legislative proposals that ultimately became Title VI. The report then examines the central doctrinal question behind the statute: what exactly Title VI outlawed by prohibiting “discrimination” among federally funded programs, and what agencies are therefore allowed to do in order to enforce that prohibition. The report then turns to ED’s OCR, briefly reviewing how that agency goes about the day-to-day work of enforcing Title VI in schools, and concludes by surveying two recent developments related to Title VI, along with some considerations should Congress wish to revisit this landmark civil rights law. Because this report focuses specifically on how OCR has come to understand and enforce Title VI, it does not directly discuss litigation under the statute, whether filed by a private party or by the U.S. Department of Justice following a referral from OCR,¹⁰ though many of the substantive legal standards overlap.

Title VI of the 1964 Civil Rights Act: Origins and Overview

Leveraging the Spending Power: The Origins of Title VI

By the time Title VI was being seriously debated in 1964, its basic premise—that federal dollars should not go to support programs or institutions that discriminate based on race—was already familiar. In 1947, nearly a decade before the Supreme Court declared an end to the *de jure* segregation of the public schools in *Brown v. Board of Education*,¹¹ President Truman’s Committee on Civil Rights had already sketched out the basic pattern for Title VI, calling for “establishment by act of Congress or executive order” of a federal office to review “the expenditures of all government funds,” so that none would go to subsidize discrimination based on race, color, creed, or national origin.¹² Several years later, in 1953, President Eisenhower was also expressing dismay at the “discrimination in expenditure of [federal] funds as among our citizens.”¹³ And *Brown*, decided the next year, put even more pressure on the federal government to begin leveraging its funds to combat discrimination¹⁴—first in the public schools, but possibly also on a wider scale.

The early years of the Kennedy Administration saw some of the first steps in that direction. Early on in his tenure, for example, Abraham Ribicoff, then the Secretary of Health, Education, and

<https://www2.ed.gov/about/offices/list/ocr/frontpage/faq/race-origin.html> (“All public school districts are covered by Title VI because they receive some federal financial assistance. All public colleges and universities and virtually all private colleges and universities are covered because they receive such assistance by participating in federal student aid programs.”).

¹⁰ See *Alexander v. Sandoval*, 532 U.S. 275, 279-80 (explaining that private parties may sue to enforce Title VI); see also *infra* note 34 and accompanying text.

¹¹ 347 U.S. 483 (1954).

¹² PRESIDENT’S COMM. ON CIVIL RIGHTS, TO SECURE THESE RIGHTS 170 (1947); see also Charles F. Abernathy, *Title VI and the Constitution: A Regulatory Model for Defining “Discrimination,”* 70 GEO. L.J. 4-7 (1981) (recounting this history in greater detail).

¹³ HALPERN, *supra* note 8, at 23.

¹⁴ *Id.* (noting that “the *Brown* decision in 1954 focused even greater attention than ever on the use of federal funds,” leading to several proposals for the government to begin doing so in “housing, education, and other matters”); cf. 110 Cong. Rec. 7068 (1964) (statement of Sen. Ribicoff) (explaining that, since *Brown*, “the executive branch ha[d] been moving, cautiously at first but with firmness in recent years, to carry out the mandate of the Constitution”).

Welfare (HEW), refused to locate the department's summer teacher-training institutes at "any college or university that declined to operate such institutes without discrimination."¹⁵ In a related decision, HEW later moved to withdraw support from segregated schooling on military bases as well.¹⁶ Those steps led others in the Administration, like then-Attorney General Robert Kennedy, to publicly suggest that the federal funds might be used on a wider scale, "to persuade southern states to alter their racial practices" more generally.¹⁷

These early uses of the federal spending power to redress race discrimination had their limits, however. After leaving HEW for the U.S. Senate, Ribicoff explained during the floor debate over Title VI that, while at HEW, he had frequently "found [his] authority to act was questionable, and in some instances ... limited by the explicit wording of congressional enactments."¹⁸ A number of Kennedy Administration officials evidently shared that view, with some publicly questioning whether the executive branch had authority to withhold money appropriated by Congress or condition disbursement on terms not found in underlying funding authorities.¹⁹ This view "did not go unchallenged," as civil rights leaders made clear during the House hearings on the bill;²⁰ nor has it received a definitive judicial ruling since.²¹ But with the risk of a bruising, possibly fatal, legal challenge looming over unilateral executive action,²² it "became clear" to Administration officials "that administrative action alone could not solve the entire problem."²³

Congressional action, by contrast, seemed to face far fewer legal constraints. In several earlier decisions the Supreme Court had established that Congress unambiguously had the right under the Spending Clause²⁴ to condition the receipt of appropriated funds on the terms of its choosing, even in areas traditionally left to the regulation of the states.²⁵ Congress was therefore free to do by legislation what the executive branch could only questionably have done on its own: make nondiscrimination a condition for receiving federal financial support.²⁶

¹⁵ 110 Cong. Rec. 7065 (1964) (statement of Sen. Ribicoff).

¹⁶ HALPERN, *supra* note 8, at 24.

¹⁷ *Id.*; 110 Cong. Rec. 7068 (1964) (statement of Sen. Ribicoff) (explaining that, since *Brown*, "the executive branch ha[d] been moving, cautiously at first but with firmness in recent years, to carry out the mandate of the Constitution").

¹⁸ *Id.* at 7065 (statement of Sen. Ribicoff).

¹⁹ HALPERN, *supra* note 8, at 26-27.

²⁰ *Id.* at 27 (discussing the NAACP and ACLU's view that "the president did not need congressional authorization but had the unilateral authority via executive order to withhold funds from programs that discriminated").

²¹ *Id.* The Supreme Court has yet to rule on the scope of the President's authority to "impose reasonable contractual requirements in the exercise of its procurement" or grant-making authority. *Chrysler Corp. v. Brown*, 441 U.S. 281, 305-06 (1979) (raising but declining to address that question). The question has been raised and analyzed, however, in some federal courts of appeals. *See Contractors Ass'n of Eastern Pa. v. Sec'y of Labor*, 442 F.2d 159 (3d Cir. 1971), *cert. denied*, 404 U.S. 854 (1971) (considering the President's authority to make certain nondiscrimination provisions a condition for federal contracts).

²² *Cf. Contractors Ass'n of Eastern Pa.*, 442 F.2d 159 (discussing this issue in connection with Executive Order 11246, mandating nondiscrimination by federal contractors).

²³ 110 Cong. Rec. 7065 (1964) (statement of Sen. Ribicoff).

²⁴ *See* U.S. CONST., Art. 1, § 8, cl. 1.

²⁵ *See Oklahoma v. U.S. Civil Service Comm'n*, 330 U.S. 127, 143-44 (1947) (concluding that "[t]he offer of benefits to a state by the United States dependent upon cooperation by the state with federal plans, assumedly for the general welfare, is not unusual"). The Supreme Court has since repeatedly reaffirmed Congress's power to condition the expenditure of federal funds, subject to certain limitations. *See South Dakota v. Dole*, 483 U.S. 203, 206-07 (1987) (affirming that under the Spending Clause, "Congress may attach conditions on the receipt of federal funds, and has repeatedly employed the power to further broad policy objectives by conditioning receipt of federal moneys upon compliance by the recipient with federal statutory and administrative directives").

²⁶ HALPERN, *supra* note 8, at 27 (explaining that President Kennedy was "[u]nwilling to accept the political risk and

Title VI: An Overview

The final legislative resolution, reached after a period of protracted debate, was Title VI.²⁷ The legislation went through a number of significant alterations from the measure originally proposed by the Kennedy Administration, many of which sought to address fears of potential administrative abuse by layering agencies' enforcement power with procedural protections for funding recipients.²⁸ But the basic pattern suggested by the Committee on Civil Rights some 20 years earlier—making nondiscrimination a condition for federal financial support—remained the same. In its final form, largely unchanged since its adoption, Title VI incorporates five basic features relevant to this report:

1. **Nondiscrimination Mandate.** Title VI bars any federally funded “program or activity” from discriminating against a “person in the United States” based on his or her “race, color, or national origin.”²⁹
2. **Implementing Rules, Regulations, and Orders.** All federal funding agencies are “authorized and directed” to promulgate rules, regulations, or orders of general applicability “effectuat[ing]” that nondiscrimination mandate.³⁰
3. **Approval of Implementing Rules, Regulations, and Orders.** Any rule, regulation, or order issued under Title VI was made subject to presidential approval,³¹ an authority since delegated to the Attorney General by executive order.³²
4. **Agency Enforcement.** To enforce Title VI an agency could resort to either of two measures:³³ (1) the termination or refusal to provide federal financial assistance to an institution or program seeking it; or (2) “any other means authorized by law,” now understood to be a lawsuit brought by the Attorney General seeking a recipient’s compliance with Title VI.³⁴

confront the controversy that would ensue if he issued an executive order” mandating nondiscrimination as a condition for receiving federal financial assistance).

²⁷ 42 U.S.C. § 2000d et seq. For a comprehensive account of the legislative debate over Title VI, see generally Abernathy, *supra* note 12.

²⁸ HALPERN, *supra* note 8, at 27-41 (concluding that “[i]t would be hard to overestimate the significance of the procedural protections Congress placed in the statute,” which “encumbered those who would have to wield th[e] power” Title VI granted).

²⁹ 42 U.S.C. § 2000d.

³⁰ *Id.* § 2000d-1 (“Each Federal department and agency which is empowered to extend Federal financial assistance to any program or activity, by way of grant, loan, or contract other than a contract of insurance or guaranty, is authorized and directed to effectuate the provisions of section 601 [42 USCS § 2000d] with respect to such program or activity by issuing rules, regulations, or orders of general applicability which shall be consistent with achievement of the objectives of the statute authorizing the financial assistance in connection with which the action is taken.”).

³¹ *Id.* (“No such rule, regulation, or order shall become effective unless and until approved by the President.”).

³² Exec. Order No. 12250, 45 Fed. Reg. 72995 (Nov. 2, 1980) (delegating to the Attorney General the authority vested in the President under Section 602 of Title VI, “relating to the approval of rules, regulations, and orders of general applicability”).

³³ 42 U.S.C. § 2000d-1 (“Compliance with any requirement adopted pursuant to this section may be effected (1) by the termination of or refusal to grant or to continue assistance under such program or activity to any recipient as to whom there has been an express finding on the record, after opportunity for hearing, of a failure to comply with such requirement . . . or (2) by any other means authorized by law.”).

³⁴ See, e.g., Nat’l Black Police Ass’n, Inc. v. Velde, 712 F.2d 569, 575 (D.C. Cir. 1983) (noting that “although fund termination was envisioned as the primary means of enforcement under Title VI,[] . . . Title VI clearly tolerates other enforcement schemes,” including the “referral of cases to the Attorney General, who may bring an action against the

5. **Procedural Requirements Related to Agency Enforcement.** Though an agency's withdrawal of federal funds was envisioned as the primary mechanism for enforcing Title VI, that authority was hedged with a range of procedural requirements designed to spur agencies into seeking consensual resolutions with recipients.³⁵

Each of these statutory features is explained below, including how they have come to be understood since Title VI's passage and the role they play in addressing racial discrimination at school.³⁶

Defining “Discrimination” Under Title VI

Title VI revolves around a single sentence-long prohibition, found in Section 601 of the law, providing that “[n]o person in the United States” may be “subjected to discrimination” by a “program or activity” that receives federal financial assistance based on his or her “race, color, or national origin.”³⁷ Plainly that prohibition outlaws racial “discrimination” in all federally funded programs. It does not define, however, the sorts of practices Title VI thereby excludes.³⁸ And with the legislative history on this point inconclusive at best,³⁹ the task of providing a workable definition has been left to the agencies charged with enforcing Title VI and, ultimately, to the courts.⁴⁰ As explained below, however, with its 2001 decision in *Alexander v. Sandoval*,⁴¹ the Supreme Court appears to have put the basic interpretive question to rest: Section 601 directly prohibits only *intentional discrimination*.

recipient”).

³⁵ Originally those requirements provided that (1) the agency could terminate funds only if it had advised the recipient of its noncompliance and attempted voluntary resolution; (2) the agency had to limit the effect of fund termination to the “program or activity” found to be out of compliance with Title VI; (3) before withdrawing funds the head of the agency had to file “written report of the circumstances and the grounds for such action” with the relevant congressional committees; and (4) the agency had to wait at least 30 days after filing that report before cutting off funds. *See* 42 U.S.C. § 2000d-1. Of those requirements only the first has been amended since Title VI became law. With the adoption of the Civil Rights Restoration Act of 1987 (CRRRA), Pub. L. No. 100–259, 102 Stat. 31 (1988), Congress broadened the definition of “program or activity” to include, in the educational context, “all of the operations” of an elementary or secondary school or institution of higher education when “any part of” those institutions or entities receives federal funding. 42 U.S.C. § 2000d-4a(2). The CRRRA thereby extended Title VI’s coverage “so that it [now] encompasses programs or activities of a recipient of Federal financial assistance on an institution-wide” and system-wide basis. *Cureton v. Nat’l Collegiate Athletic Ass’n*, 198 F.3d 107, 115 (3d Cir. 1999).

³⁶ *See supra* note 9 (explaining the scope of public and private institutions of education that receive federal funding and are subject to Title VI).

³⁷ 42 U.S.C. § 2000d.

³⁸ *Guardians Ass’n v. Civil Serv. Comm’n*, 463 U.S. 582, 592 (1983) (White, J., announcing judgment of the Court) (“The language of Title VI on its face is ambiguous; the word ‘discrimination’ is inherently so.”); *see also* Charles F. Abernathy, *supra* note 12, at 25 (noting that while debating the provision of the House bill that eventually became Section 601 of Title VI, “two members . . . perceptively remarked that the word ‘discrimination’ had no fixed meaning, and was nowhere defined in title VI”).

³⁹ *See Regents of Univ. of Cal. v. Bakke*, 438 U.S. 265, 286 (1978) (Powell, J., announcing the judgment of the Court) (noting the “repeated refusals of [Title VI’s congressional] supporters precisely to define the term ‘discrimination’”); *see also* Abernathy, *supra* note 12; HALPERN, *supra* note 8, at 295 (concluding that Title VI’s “legislative history” did not “provide a workable definition” of “discrimination”).

⁴⁰ *See* HALPERN, *supra* note 8, at 6 (“It was left to the federal courts and to executive branch officials enforcing Title VI to identify the parameters of the legal right blacks had to equal, nondiscriminatory treatment in public schools.”)

⁴¹ 532 U.S. 275 (2001).

Banning Intentional Discrimination (Disparate Treatment)

Despite Title VI's basic ambiguity, the courts have long agreed that, at a minimum, Section 601 bars federally funded programs from *intentionally* singling out individuals for adverse treatment because of their race.⁴² This sort of intentional discrimination is commonly known as *disparate* or *different treatment*. And it can be proved in either of two ways: (1) directly, by pointing to a policy or decision that expressly singles out individuals by race, or (2) indirectly, by providing circumstantial evidence that a discriminatory motive was likelier than not responsible for the alleged mistreatment.⁴³

Disparate Treatment: Direct Evidence

Perhaps the clearest way a program may discriminate along racial lines is by *expressly* singling out individuals by race for adverse treatment. Thus, for example, a school that explicitly excludes students from an assembly by race will clearly have discriminated in this intentional sense.⁴⁴ And because the “discrimination” involved appears on the face of the policy or decision itself, proving a violation of Title VI becomes that much more straightforward: to prevail, the aggrieved party generally need only establish that the discriminatory policy existed and was used against him.⁴⁵

Disparate Treatment: Circumstantial Evidence

Although still litigated, over the years such facially discriminatory policies and decisions have grown less common—a shift widely attributed to laws like the 1964 Civil Rights Act.⁴⁶ As a

⁴² Cf. *Guardians Ass'n v. Civil Serv. Comm'n*, 463 U.S. 582, 589 (1983) (White, J., announcing judgment of the Court) (“The Court squarely held in *Lau v. Nichols* . . . that Title VI forbids the use of federal funds . . . in programs that intentionally discriminate on racial grounds.”); *Regents of Univ. of Cal. v. Bakke*, 438 U.S. 265, 284 (1978) (Powell, J.) (announcing the judgment of the Court) (“Examination of the voluminous legislative history of Title VI reveals a congressional intent to halt federal funding of entities that violate a prohibition of racial discrimination similar to the” intentional discrimination barred by the Constitution.); *id.* at 334 (Brennan, J.) (concurring in the judgment in part and dissenting in part) (“Again and again supporters of Title VI emphasized that the purpose of the statute was to end segregation in federally funded activities and to end other discriminatory uses of race disadvantaging Negroes.”).

⁴³ See, e.g., *De La Cruz v. Tormey*, 582 F.2d 45, 50 (9th Cir. 1978) (distinguishing “government action” which is “‘facially’ discriminatory,” in violation of the Equal Protection Clause, from a “more subtle variety of discrimination focuse[d], not on the form of the governmental action, . . . but rather upon its effects”).

⁴⁴ See U.S. Dep’t of Educ., Office for Civil Rights to Superintendent, Oak Park and River Forest High School District 200, at 3-4 (Sept. 29, 2015) (concluding that a “racially exclusive assembly” constituted intentional discrimination); see also *infra* notes 176-183 and accompanying text.

⁴⁵ Cf. *Cmtys. for Equity v. Mich. High Sch. Ath. Ass’n*, 459 F.3d 676, 694 (6th Cir. 2006) (noting that a complainant need not prove discriminatory animus where the allegation involves a facially discriminatory policy); *accord Parker v. Franklin County Cmty. Sch. Corp.*, 667 F.3d 910, 920 (7th Cir. 2012) (citing *Cmtys. for Equity* for the same). Because Title VI has been read to incorporate constitutional principles, as explained below, even where a recipient has been found to have intentionally discriminated based on race it may still not be liable under Title VI if its discriminatory conduct was narrowly tailored to serve a compelling interest. Generally, however, that is a difficult showing to make. See CRS Report R45481, “*Affirmative Action*” and *Equal Protection in Higher Education*, by Christine J. Back and JD S. Hsin, at 21-24 (Jan. 31, 2019).

⁴⁶ See Tristin K. Green, *The Future of Systemic Disparate Treatment Law*, 32 BERKELEY J. EMP. & LABOR L. 395, 401, 418 (2011) (observing that “after the passage of Title VII of the Civil Rights Act in 1964, most formal, facially discriminatory employment policies ended, even as less formalized discrimination continued,” and that “[o]ver time . . . individuals made fewer blatantly and overtly racist or sexist decisions” as well); GERALD N. ROSENBERG, *THE HOLLOW HOPE: CAN COURTS BRING ABOUT SOCIAL CHANGE?* 52 (2d ed. 2008) (documenting the “extraordinary” impact that the enforcement of Title VI had in unraveling the *de jure* segregation of schools in the South); HALPERN, *supra* note 8, at 80 (“The enforcement of title VI between 1965 and 1968 is widely and rightfully recognized as having produced historic breakthroughs in dismantling the system of [*de jure*] racial segregation in southern schools.”).

result, the more usual case today instead involves allegations of racially motivated mistreatment under a policy or decision that, at least on its face, is race-neutral.⁴⁷

Thus, for example, an African American student might still plausibly allege that a school official discriminated against him based on his race by disciplining him more severely than his white classmates for substantially the same misconduct, even though neither the discipline policy nor the disciplining official made any mention of his race.⁴⁸ In such cases, the “*form* of the governmental action”—the literal wording of the policy used or the decisionmaker’s explanation—is not at issue.⁴⁹ What matters is *why* the individuals alleging mistreatment received the treatment they did; whether, that is, a discriminatory *intent* shaped the allegedly discriminatory decision. Where the surrounding circumstances suggest that some such racial animus was likelier than not what motivated the adverse treatment, that treatment will amount to intentional discrimination, presumptively violating Title VI.⁵⁰

Banning Discriminatory Effects (Disparate Impact)

Title VI has long been understood to bar federally funded programs from intentionally discriminating based on race. At least for the first few decades following its adoption, however, there was considerably more debate about whether Section 601 might also forbid policies that, while not purposefully discriminatory, nonetheless had a disparate effect on persons of different races. And in its first case involving Title VI—*Lau v. Nichols*⁵¹—the Supreme Court seemed to say exactly that.⁵² In its most recent encounter with disparate impact under Title VI, however, in *Alexander v. Sandoval*,⁵³ the Court squarely rejected *Lau*’s ruling on that point.⁵⁴ Today, as a result, the *only* discrimination Title VI directly prohibits is *intentional*.⁵⁵

The Origin of Disparate Impact Under Title VI: *Lau v. Nichols*

Lau was the Court’s first encounter with Title VI, and it set the stage for much of the uncertainty about the statute that has followed. In *Lau*, non-English-speaking Chinese students had sued San Francisco’s school system alleging that its policy of refusing bilingual or remedial English

⁴⁷ See *Rashdan v. Geissberger*, 764 F. 3d 1179, 1182 (9th Cir. 2014) (analyzing circumstantial evidence of discrimination under Title VI according to the same standards as Title VII); see also *Green*, *supra* note 46, at 401 (noting that even as “most formal, facially discriminatory employment policies ended, . . . less formalized discrimination continued”).

⁴⁸ See, e.g., U.S. Dep’t of Educ., Office for Civil Rights to Superintendent, Platteville Public Schools, at 11-12 (Nov. 20, 2013) (analyzing a similar claim under Title VI).

⁴⁹ *Tormey*, 582 F.2d at 50.

⁵⁰ As a formal matter, the federal courts of appeals have generally applied the same “basic allocation of burdens and order of presentation of proof”—widely known as the *McDonnell Douglas* burden-shifting framework—that the Supreme Court has used in reviewing claims of employment discrimination under Title VII of the 1964 Civil Rights Act. *Rashdan*, 764 F. 3d at 1182 (quoting *Tex. Dep’t of Cmty. Affairs v. Burdine*, 450 U.S. 248, 252-53 (1981) and collecting cases). See also *supra* note 45 (noting the constitutional defense).

⁵¹ 414 U.S. 563 (1974).

⁵² See, e.g., *Guardians*, 463 U.S. at 589 (White, J., announcing the judgment of the Court) (“The Court squarely held in *Lau v. Nichols* . . . that Title VI forbids the use of federal funds not only in programs that intentionally discriminate on racial grounds but also in those endeavors that have a disparate impact on racial minorities.”).

⁵³ 532 U.S. 275 (2001).

⁵⁴ *Id.* at 285 (“[W]e have since rejected *Lau*’s interpretation of [Section] 601 as reaching beyond intentional discrimination.”).

⁵⁵ *Id.* at 280.

instruction effectively denied them the educational opportunities provided non-Chinese students, in violation of Title VI as well as the Equal Protection Clause of the Fourteenth Amendment.⁵⁶ And in an unexpectedly unanimous ruling,⁵⁷ the Court agreed—albeit along two different lines of reasoning.

Relying “solely” on Section 601, five of the Justices, led by Justice Douglas, concluded that Section 601 barred discrimination “which has [a discriminatory] *effect* even though no purposeful design is present.”⁵⁸ In that case the effect was clear: “the Chinese-speaking minority receive[d] fewer benefits than the English-speaking majority” from the city’s schools.⁵⁹ As recipients of federal educational dollars subject to Title VI, the school system had “contractually” obligated itself to reform its instructional policies to ensure the Chinese-speaking minority the same educational benefits as the English-speaking majority.⁶⁰

Lau therefore seemed to imply that Section 601 directly outlawed policies with discriminatory effects, irrespective of their motivating intent—a form of discrimination now commonly known as *disparate impact*. But the Court also mixed some uncertainty into that message. Immediately after saying that they were “rely[ing] solely on [Section] 601” in siding with the student plaintiffs, the majority in *Lau* turned to recite a regulation issued by HEW, specifically addressing what recipient school districts had to do under Title VI to ensure students with “linguistic deficiencies” had the same “opportunity to obtain the education generally obtained by other students in the system.”⁶¹ That discussion drew a contrasting concurrence from three other Justices, all of whom agreed that the student should prevail under a disparate impact theory, but believed that the proper basis for that theory—and the result in favor of the students—was HEW’s regulation implementing Title VI, not Section 601 itself.⁶² In all, though, eight Justices in *Lau* put down a marker in favor of disparate impact under Title VI, five seemingly under Section 601. And so, whatever the vagaries in its rationale, *Lau*’s basic message seemed clear: Title VI barred not just intentional discrimination, but policies with a disparate impact as well.

Limiting *Lau*

Only a few years after handing down *Lau*, in its landmark ruling in *Regents of the University of California v. Bakke*,⁶³ the Court appeared to reverse course. *Bakke* involved a white applicant’s challenge to the affirmative action admissions policy then in use at the University of California at Davis’s medical school.⁶⁴ And like the Chinese students in *Lau*, Bakke objected to that policy on

⁵⁶ *Lau*, 414 U.S. at 564-65. The case also involved a claim under the Equal Protection Clause of the Fourteenth Amendment, which the Court declined to address. *See id.*

⁵⁷ *See* Rachel F. Moran, *The Story of Lau v. Nichols: Breaking the Silence in Chinatown*, in *EDUCATION LAW STORIES* 111, 134 (Michael A. Olivas & Ronna Greff Schneider eds. 2008) (observing that, though “some attorneys and scholars had expected the decision in *Lau* to be a close and difficult one, the Court handed down a unanimous opinion in just six weeks after oral argument”).

⁵⁸ *Lau*, 414 U.S. at 566.

⁵⁹ *Id.* at 568.

⁶⁰ *Id.* at 568-69.

⁶¹ *Id.* at 566-67.

⁶² *Id.* at 569-71 (Stewart, J., concurring in the result, and joined by Blackmun, J., and Burger, C.J.). Justice White concurred in the judgment but declined to write or join an opinion. *Id.* at 569.

⁶³ 438 U.S. 265 (1978).

⁶⁴ For a more detailed analysis of Bakke and affirmative action more generally in higher education, see CRS Report R45481, “Affirmative Action” and Equal Protection in Higher Education, by Christine J. Back and JD S. Hsin (Jan. 31, 2019).

both constitutional and statutory grounds.⁶⁵ To dispose of his challenge the Justices therefore had to confront the question they effectively avoided in *Lau*: how does Section 601’s nondiscrimination mandate relate to the Fourteenth Amendment’s Equal Protection Clause? None of the opinions in *Bakke* commanded a clear majority, but in separate opinions, five of the Justices, separately sifting through the legislative record, arrived at the same answer: Title VI’s drafters intended Section 601 to “enact[] constitutional principles,” and nothing more.⁶⁶ Title VI, in their view, therefore “proscribe[d] only those racial classifications that would violate the Equal Protection Clause”⁶⁷—policies that the Court had already said must involve more than just a racially disparate impact, but a provable discriminatory intent as well.⁶⁸

In the decades since *Bakke*, the Court continued to divide over the basic ambiguity in Title VI—over exactly what sort of “discrimination” Section 601 outlawed.⁶⁹ By the time Title VI returned to the Court in 2001, however, with *Alexander v. Sandoval*,⁷⁰ a unified five-Justice majority appeared to settle on a more definite view.

As Justice Scalia explained for the *Sandoval* majority, despite the lingering “uncertainty regarding [Title VI’s] commands,” it seemed “beyond dispute” at that point that a policy with only a disparate impact did not violate Section 601.⁷¹ Tallying the votes in *Bakke* seemed to make that clear enough: on that statutory point, five Justices in *Bakke* explicitly agreed that Title VI should be read coextensively with the Equal Protection Clause.⁷² And as claims under that constitutional provision had already been limited to cases of provable discriminatory intent,⁷³ the *Sandoval* majority thought it stood to reason that claims under Title VI had to be so limited as well.⁷⁴

The difficulty, however, was *Lau*. There, after all, the Court seemed to say that Section 601 *did* prohibit policies with a racially disparate impact, irrespective of whether those effects were intentional.⁷⁵ But as the *Sandoval* majority saw it, *Bakke* had effectively resolved that difficulty as

⁶⁵ *Bakke*, 438 U.S. at 278 (Powell, J., announcing the judgment of the Court).

⁶⁶ *Id.* at 286; *id.* at 328 (Brennan, J., concurring in the judgment in part and dissenting in part) (“In our view, Title VI prohibits only those uses of racial criteria that would violate the Fourteenth Amendment if employed by a State or its agencies; it does not bar the preferential treatment of racial minorities as a means of remedying past societal discrimination to the extent that such action is consistent with the Fourteenth Amendment.”).

⁶⁷ *Id.* at 287 (Powell, J., announcing the judgment of the Court).

⁶⁸ *Arlington Heights v. Metro. Hous. Dev. Corp.*, 429 U.S. 252, 265 (1977) (“Proof of racially discriminatory intent or purpose is required to show a violation of the Equal Protection Clause.”)

⁶⁹ The only other case to squarely present the question was *Guardians Ass’n v. Civil Serv. Comm’n*, 463 U.S. 582 (1983). That case involved a claim brought by black and Hispanic police officers under Title VI, challenging the New York City police department’s use of a written examination as a component of its entry-level hiring. *Id.* at 585 (White, J., announcing the judgment of the Court). The officers argued that the exams had an unjustifiably “discriminatory impact on the scores and pass-rates of blacks and Hispanics,” violating Title VI—a claim which the Court rejected, albeit in a badly fractured judgment, splintered into six different opinions. *See id.* at 584; *see also Alexander v. Choate*, 469 U.S. 287, 293 (1985) (explaining that “[n]o opinion commanded a majority in *Guardians*, and Members of the Court offered widely varying interpretations of Title VI”).

⁷⁰ 532 U.S. 275 (2001).

⁷¹ *Id.* at 279.

⁷² *Id.* at 280-81.

⁷³ *Arlington Heights*, 429 U.S. at 265 (discussing *Washington v. Davis*, 426 U.S. 229, 242 (1976), among other cases).

⁷⁴ *Sandoval*, 532 U.S. at 280-81.

⁷⁵ *Cf. Guardians*, 463 U.S. at 589 (White, J., announcing the judgment of the Court) (“The Court squarely held in *Lau v. Nichols* . . . that Title VI forbids the use of federal funds not only in programs that intentionally discriminate on racial grounds but also in those endeavors that have a disparate impact on racial minorities.”); *cf. Lau*, 414 U.S. at 566

well: to the extent *Lau* rested on Section 601 directly—rather than HEW’s regulations⁷⁶—the majority in *Lau* had simply misread Title VI.⁷⁷ The only discrimination Title VI directly outlawed, according to the votes in *Bakke*, was intentional. As far as the *Sandoval* Court was concerned, to the extent *Lau* disagreed with *Bakke*, *Lau* had already been “rejected.”⁷⁸

Regulating “Discrimination” Under Title VI

In *Sandoval* the Court appeared to resolve the basic ambiguity in Title VI: the statute’s central nondiscrimination mandate—Section 601—outlaws only intentional discrimination. But saying that much, the *Sandoval* majority also acknowledged, did not speak to whether policies with a disparate impact might still be barred by regulations issued under the rulemaking grant found in Section 602 of Title VI. Section 602, as noted, directs agencies to promulgate regulations “to effectuate” the antidiscrimination prohibition of Section 601 “consistent with achievement of the objectives of the statute.”⁷⁹ And pursuant to that directive, all Cabinet-level federal funding agencies, along with many smaller agencies, have since issued rules and guidance under Title VI outlawing disparate impact discrimination.⁸⁰ As this section explains, however, *Sandoval* seems to have placed narrower limits on what funding agencies may redress through regulations under Section 602, arguably constraining them to redress in their rulemakings the same forms of intentional discrimination outlawed by Section 601.

Rulemaking Under Title VI: Section 602

In the courts, and especially the Supreme Court, much of the fight over Title VI has focused on definitions—what in general terms will count as unlawful “discrimination” under Section 601.⁸¹

(relying “solely” on Section 601 to rule for the plaintiffs).

⁷⁶ See *Lau*, 414 U.S. at 567-68 (discussing HEW’s disparate impact regulation).

⁷⁷ *Sandoval*, 532 U.S. at 285 (“[W]e have since rejected *Lau*’s interpretation of [Section] 601 as reaching beyond intentional discrimination.”); cf. *Lau*, 414 U.S. at 569-71 (Stewart, J., concurring in the result).

⁷⁸ *Sandoval*, 532 U.S. at 285.

⁷⁹ 42 U.S.C. § 2000d-1.

⁸⁰ 7 C.F.R. Part 15 (Agriculture); 15 C.F.R. Part 8 (Commerce); 32 C.F.R. Part 195 (Defense); 34 C.F.R. Part 100 (Education); 10 C.F.R. Part 1040 (Energy); 40 C.F.R. Part 7 (Environmental Protection Agency); 45 C.F.R. Part 80 (Health and Human Services); 6 C.F.R. Part 21 (Homeland Security); 24 C.F.R. Part 1 (Housing and Urban Development); 43 C.F.R. Part 17, Subpart A (Interior); 28 C.F.R. Part 42, Subpart C (Justice); 29 C.F.R. Part 31 (Labor); 22 C.F.R. Part 141 (1982) (State); 49 C.F.R. Part 21 (Transportation); 31 C.F.R. Part 22 (Treasury); 38 C.F.R. Part 18, Subpart A (Veterans Affairs). In addition to these Cabinet-level departments, a number of other agencies have also promulgated rules or, in some cases, guidance pursuant to Section 602 of Title VI. See, e.g., 45 C.F.R. Part 1203 (Corporation for National and Community Service); 44 C.F.R. Part 7, Subpart A (FEMA); 41 C.F.R. Subpart 101-6.2 (General Services Administration); 14 C.F.R. Part 1250 (NASA); 13 C.F.R. Part 112 (Small Business Administration); 18 C.F.R. Part 1302 (Tennessee Valley Authority).

⁸¹ Though definitional disputes have loomed large over the federal docket, questions about Title VI’s enforcement have also figured prominently over the years, especially in the federal courts of appeals. Three issues have proved particularly salient: (1) whether private parties may sue to enforce Section 601, see *Sandoval*, 532 U.S. at 279-80 (concluding that they may, based on *Cannon v. Univ. of Chicago*, 441 U.S. 677 (1979)); (2) whether and to what extent the federal courts may oversee funding agencies’ enforcement of Title VI, see *Women’s Equity Action League v. Cavazos*, 906 F.2d 742, 749 (D.C. Cir. 1990) (Ginsburg, J.) (holding that private parties may not “demand across-the-board judicial supervision of continuing federal agency enforcement” of Title VI and are instead limited to “situation-specific suits against [a] federal agency based on federal funding of a particular project or district”); and (3) whether private parties may sue to enforce regulations issued under Section 602, see *Sandoval*, 532 U.S. at 288-91 (finding “no evidence anywhere in the text [of Title VI] to suggest that Congress intended to create a private right to enforce regulations promulgated under [Section] 602”).

But for the agencies charged with actually enforcing that mandate the primary concerns have tended to be more operational and programmatic: how to go about the business of reviewing and assessing particular practices under Title VI.⁸² To address those concerns, funding agencies have therefore had to look beyond the bare substantive standard in Section 601 to their rulemaking authority under Section 602.

Section 602 is at once a source of authority and a command, “authoriz[ing] and direct[ing]” every federal funding agency to “effectuate” Section 601’s nondiscrimination mandate “by issuing rules, regulations, or orders of general applicability consistent with” the “objectives” of its underlying funding authority.⁸³ Every Cabinet-level department, among many other smaller agencies, has since done so.⁸⁴ And given DOJ’s unique coordinating authority over Title VI,⁸⁵ those funding agencies have generally followed the rules DOJ developed for HEW in 1964,⁸⁶ including its regulation outlawing disparate impact discrimination.⁸⁷

Like the nondiscrimination provision in Section 601, the rulemaking authority provided by Section 602 was made deliberately broad.⁸⁸ That breadth has produced a further point of uncertainty about the statute: what limits are there to agencies’ rulemaking authority under Section 602? The Supreme Court, for its part, has never squarely addressed that question, nor the validity of the disparate-impact regulations in particular.⁸⁹ And as explained below, the resulting ambiguity has yielded two contrasting views of what Section 602 will allow an agency to outlaw as unlawful “discrimination” under Title VI: (1) a largely deferential view that would give agencies broad leeway to issue “broad prophylactic rules”⁹⁰ reaching conduct beyond intentional

⁸² The first major steps taken under Title VI—perhaps unsurprisingly given its roots in *Brown v. Board of Education*—emerged with HEW’s efforts to end the *de jure* segregation of public schools, especially in the South. Empowered by the infusion of new grant money appropriated by the Elementary and Secondary Education Act of 1965 (ESEA), HEW issued its first set of Title VI guidelines in April 1965, which made measurable progress toward desegregation a condition for receiving funds under ESEA. See *Singleton v. Jackson Mun. Separate Sch. Dist.*, 348 F.2d 729, 730 (5th Cir. 1965) (describing the “close connection . . . between the judiciary’s standards in enforcing the national policy requiring desegregation of public schools and the executive department’s standards in administering this policy”); see also HALPERN, *supra* note 8, at 45-52 (discussing the background to HEW’s 1965 Guidelines and their reception in the federal courts). Assistance provided under ESEA remains a major source of ED’s enforcement authority today.

⁸³ 42 U.S.C. § 2000d-1.

⁸⁴ See *supra* note 80 (citing regulations of various agencies and departments).

⁸⁵ See Exec. Order No. 12250, *Leadership and Coordination of Nondiscrimination Laws*, reprinted at 45 Fed. Reg. 72, 995 (Nov. 4, 1980) (delegating presidential approval authority under Section 602 of Title VI to the Attorney General).

⁸⁶ Section 602 directs every funding agency to issue its own rules “effectuat[ing]” Section 601’s nondiscrimination mandate. See 42 U.S.C. § 2000d-1. Once President Lyndon Johnson delegated his approval authority under Title VI to the Attorney General, however, DOJ took the lead in “work[ing] out a consistent, enforceable policy” under the statute, beginning with the regulations it crafted for HEW shortly after the law’s passage. *Comment: Title VI of the Civil Rights Act of 1964—Implementation and Impact*, 36 GEO. WASH. L. REV. 824, 844-45 (1968). Those regulations later served as the “standard” by which DOJ reviewed and approved other agencies’ regulations, a fact which explains their general uniformity to this day. *Id.*

⁸⁷ See *Guardians*, 463 U.S. at 619 (Marshall, J., dissenting) (“Following the initial promulgation of regulations adopting an impact standard, every Cabinet Department and about 40 federal agencies adopted standards interpreting Title VI to bar programs with a discriminatory impact.”).

⁸⁸ See Abernathy, *supra* note 12, at 276 (observing that the congressional drafters of Title VI “consciously adopted a compromise that delegated to agency regulators, subject to extraordinary Presidential oversight, the decision” of how to enforce its bar on “discrimination” in federally funded programs).

⁸⁹ Cf. *Sandoval*, 532 U.S. at 308 (Stevens, J., dissenting) (noting that “the question whether [Section] 601 applies to disparate-impact claims has never been analyzed by this Court on the merits”).

⁹⁰ *Sandoval*, 532 U.S. at 305 (Stevens, J., dissenting).

discrimination; and (2) a more exacting view under which agencies would be limited to redressing provable cases of intentional discrimination.

The Limits to Section 602: Two Views

1. The Reasonable-Relation View

The earliest view of Title VI’s rulemaking authority was also the most expansive. In his concurring opinion in *Lau*, Justice Stewart set out the basic theory: because Section 602 allows agencies to promulgate rules “effectuat[ing]” Section 601, HEW had the authority to enact any rule that broadly furthered the purpose of deterring “discrimination” in federally funded programs.⁹¹ All the courts would require, as a formal matter, is that any rules issued under Section 602 be “reasonably related” to the antidiscriminatory ambitions of the statute.⁹² Only two other Justices signed on to Justice Stewart’s view in *Lau*, and it has never been adopted by a majority of the Court.⁹³ But it also has never been squarely rejected by the Court either.⁹⁴

This more expansive view of Section 602 appears nevertheless to rest on two arguable bases. The first comes down to basic principles of administrative law. As Justice Stewart noted in *Lau*, the Court has generally accorded considerable latitude to agencies authoring rules pursuant to generic rulemaking provisions, on the assumption that Congress intended to defer more particular legislative decisions to their expert judgment.⁹⁵ And thus, when presented with such broad delegations—permitting an agency, for example, to make “such rules and regulations as may be necessary to carry out” another statutory mandate⁹⁶—the courts have traditionally been inclined to defer “to the informed experience and judgment of the agency to whom Congress delegated appropriate authority.”⁹⁷

Given its similarly expansive wording, Section 602 could be seen to embody much the same sort of broad rulemaking authority.⁹⁸ In such cases, as Justice Stewart argued, and as some Justices later agreed,⁹⁹ the test should be correspondingly lenient, asking only whether the agency’s rule

⁹¹ *Lau v. Nichols*, 414 U.S. 563, 571 (Stewart, J., concurring).

⁹² *Id.*

⁹³ *Cf. Sandoval*, 532 U.S. at 280-81 (noting that “five Justices in *Guardians* voiced the view” that “regulations promulgated under [Section] 602 of Title VI may proscribe activities that have a disparate impact on racial groups”); *see also* *Alexander v. Choate*, 469 U.S. 287, 294 (1985) (noting that “the Court held [in *Lau*] that actions having an unjustifiable disparate impact on minorities could be redressed through agency regulations designed to implement the purposes of Title VI this case”).

⁹⁴ As explained below, a majority in *Sandoval* seemed to question whether Section 602 could reach discrimination not outlawed by Section 601, but they expressly declined to decide that issue there. *Sandoval*, 532 U.S. at 286 n.6.

⁹⁵ *Lau*, 414 U.S. at 571 (Stewart, J., concurring) (citing *Mourning v. Family Publ’ns Serv.*, 411 U.S. 356 (1973)).

⁹⁶ *Mourning*, 411 U.S. at 369.

⁹⁷ *Id.* at 371-72. As Justice Stevens later pointed out, this reasoning has some resonance with the rule later developed under *Chevron U.S.A. Inc. v. Natural Resources Defense Council, Inc.*, 467 U.S. 837 (1984), generally calling for the courts’ to defer to agencies’ rules when confronted with an ambiguity in their organic statutes. *See Sandoval*, 532 U.S. at 309 (Stevens, J., dissenting) (“[W]hen the agencies charged with administering a broadly-worded statute offer regulations interpreting that statute or giving concrete guidance as to its implementation, we treat their interpretation of the statute’s breadth as controlling unless it presents an unreasonable construction of the statutory text”). For an overview of *Chevron* deference, *see* CRS Report R44954, *Chevron Deference: A Primer*, by Valerie C. Brannon and Jared P. Cole (Sept. 19, 2017).

⁹⁸ 42 U.S.C. § 2000d-1.

⁹⁹ *See Guardians Ass’n v. Civil Serv. Comm’n*, 463 U.S. 582, 643 (1983) (Stevens, J., dissenting) (“It is well settled that when Congress explicitly authorizes an administrative agency to promulgate regulations implementing a federal

bears some reasonable relationship “to the purposes of the enabling legislation.”¹⁰⁰ That leniency would arguably authorize an agency to issue “broad prophylactic rules” so long as they “realiz[e] the vision laid out in” Section 601—as arguably would a rule outlawing policies with racially disparate impacts.¹⁰¹

Apart from principles of administrative law, this more expansive view of Section 602 might also find support in a constitutional analogy, based on two of the Reconstruction Amendments. As Justice Stevens pointed out in his dissent in *Guardians Association v. Civil Service Commission*, the Court had at one time indicated—in a decision dating to “the dawn of [the last] century”—that “an administrative regulation’s conformity to statutory authority was to be measured by the same standard as a statute’s conformity to constitutional authority.”¹⁰² And as it happened, only a few years before *Guardians*, the Court had read the Fifteenth Amendment, despite “only prohibit[ing] purposeful racial discrimination in voting,” to allow “Congress [to] implement that prohibition by banning voting practices that are discriminatory in effect.”¹⁰³ Congress could do that, according to Justice Stevens, because the Fifteenth Amendment—much like Title VI—supplements its prohibition against racially discriminatory voting policies¹⁰⁴ with a provision empowering Congress “to enforce” that prohibition “by appropriate legislation.”¹⁰⁵ Given the structural similarity between the amendment and Title VI, Justice Stevens saw no reason why Section 602 should give federal agencies any less authority than the Fifteenth Amendment offers Congress—including authority to outlaw policies with discriminatory effects.¹⁰⁶

Justice Steven’s view in *Guardians*, like Justice Stewart’s in *Lau*, has never commanded a majority from the Court. That analogy may also have lost some force more recently, following the Court’s arguably more restrictive decisions under the Fifteenth Amendment.¹⁰⁷ But the Court has also never expressly ruled out the analogy, and it appears to be at least consistent with the way the federal courts have read another of the Reconstruction Amendments—the Thirteenth, outlawing

statute that governs completely private conduct, those regulations have the force of law so long as they are ‘reasonably related to the purposes of the enabling legislation.’”); *id.* at 592-93 (White, J., announcing judgment of the Court) (apparently agreeing with Justice Stewart in *Lau*).

¹⁰⁰ *Lau*, 414 U.S. at 571 (Stewart, J., concurring) (quoting *Thorpe v. Hous. Auth. of the City of Durham*, 393 U.S. 268, 280-281 (1969)).

¹⁰¹ *Sandoval*, 532 U.S. at 305 (Stevens, J., dissenting).

¹⁰² *Guardians*, 463 U.S. at 644 (Stevens, J., dissenting) (discussing *Boske v. Comingore*, 177 U.S. 459, 470 (1900)).

¹⁰³ *Id.*

¹⁰⁴ U.S. CONST. amend. XV, § 1.

¹⁰⁵ *Id.* at § 2.

¹⁰⁶ *Cf. Sandoval*, 532 U.S. at 309-10 (Stevens, J., dissenting) (suggesting that under the “well-established principle of administrative law” in *Chevron* that the Court should “read [Section] 602 as granting the federal agencies responsible for distributing federal funds the authority to issue regulations interpreting [Section] 601 on the assumption that their construction will—if reasonable—be incorporated into our understanding of [Section] 601’s meaning”). This analogy presumes, moreover, that the standard under the Thirteenth Amendment will remain what the Court said it was in *Jones v. Alfred H. Mayer Co.* In recent years, however, a number of parties have contested the vitality of *Jones* on that point, arguing that the deferential standard in that case has been eroded by the Court’s more recent decisions under the Fourteenth and Fifteenth Amendments. *See, e.g., United States v. Metcalf*, 881 F.3d 641 (8th Cir. 2018) (rejecting a challenge to the Matthew Shepard and James Byrd, Jr., Hate Crimes Prevention Act of 2009 on this basis); *United States v. Cannon*, 750 F.3d 492 (5th Cir. 2014) (same); *United States v. Hatch*, 722 F.3d 1193 (10th Cir. 2013), *cert. denied*, 134 S.Ct. 1538 (2014) (same).

¹⁰⁷ *See United States v. Cannon*, 750 F.3d 492, 509 (5th Cir. 2014) (Elrod, J., specially concurring) (noting that in *Shelby County v. Holder*, 570 U.S. 529 (2013), the Court appears to have restricted Congress’s power to enact remedial legislation under the Fifteenth Amendment, by requiring it to justify any such legislation with evidence of “current needs” “in our current society”).

slavery and involuntary servitude.¹⁰⁸ Whether that analogy would find favor among the Justices today seems at best uncertain, however, partly for the reasons discussed below.

2. The View from *Sandoval*

In opposition to the early expansive reading of Section 602, a number of other Justices—and arguably a majority in *Sandoval*—have suggested that regulations under Section 602 must instead fit more closely with the particular purpose of Section 601: ridding federally funded programs of intentional discrimination. *Sandoval*, given its posture, did not squarely address disparate impact rules under Title VI; that case concerned the right of private parties to sue under a Title VI disparate impact regulation, not the validity of the underlying regulation itself.¹⁰⁹ But in a suggestive footnote in his opinion for the majority, Justice Scalia expressed some doubt that those regulations could be squared with the majority’s view that Section 601 bars only intentional discrimination.¹¹⁰

The majority’s concern fastened less on the breadth of Section 602 than on the narrowness of Section 601. It seemed “strange,” Justice Scalia explained, that a rule prohibiting disparate impact could “effectuate” the purpose of Section 601 when that provision “permits the very behavior that the regulations forbid.”¹¹¹ Or as Justice O’Connor had put the same point in her concurrence in *Guardians*, also involving a disparate impact claim under Title VI, it was “difficult to fathom how the Court could uphold” regulations outlawing discriminatory *effects* when, to do so, they would have to “go well *beyond*” Title VI’s purpose of proscribing *intentional* discrimination.¹¹²

The majority in *Sandoval*, like Justice O’Connor in *Guardians*, seemed to signal their dissatisfaction with the “reasonably related” test endorsed by Justice Stewart’s concurrence in *Lau*. Neither, however, proposed a test to replace it. To do so, however, they may well have turned to a constitutional analogy of their own—based not on the Fifteenth Amendment but the Fourteenth.

¹⁰⁸ Like Title VI, the Thirteenth Amendment also consists of two basic provisions: a general prohibition—found in Section 1 of the amendment—outlawing “slavery” and “involuntary servitude” “within the United States,” and a separate provision—Section 2—granting Congress “power to enforce” Section 1 “by appropriate legislation.” U.S. CONST. amend. XIII. As the Court has read those provisions, they not only “clothe[] Congress with power to pass all laws necessary and proper for abolishing all badges and incidents of slavery in the United States,” but also with the power to “rationally determine” what those forbidden “badges” or “incidents” of slavery are. *Jones v. Alfred H. Mayer Co.*, 392 U.S. 409, 439 (1968) (quoting *Civil Rights Cases*, 109 U.S. 3, 20 (1883)). It is worth noting, however, that a number of parties have contested the vitality of *Jones* on this point, and pressed for a more constrained view of Congress’s remedial power under the Thirteenth Amendment, arguably in line with the Court’s more recent decisions under the Fourteenth and Fifteenth Amendments. *See, e.g.*, *United States v. Metcalf*, 881 F.3d 641 (8th Cir. 2018) (rejecting a challenge to the Matthew Shepard and James Byrd, Jr., Hate Crimes Prevention Act of 2009 on this basis); *United States v. Cannon*, 750 F.3d 492 (5th Cir. 2014) (same); *United States v. Hatch*, 722 F.3d 1193 (10th Cir. 2013), *cert. denied*, 134 S.Ct. 1538 (2014) (same).

¹⁰⁹ *See Sandoval*, 532 U.S. at 278, 281 (“We must assume for purposes of deciding this case that regulations promulgated under [Section] 602 of Title VI may validly proscribe activities that have a disparate impact on racial groups, even though such activities are permissible under [Section] 601.”).

¹¹⁰ *Id.* at 280–81.

¹¹¹ *Id.* at 286 n.6.

¹¹² *See Guardians Ass’n v. Civil Serv. Comm’n*, 463 U.S. 582, 613 (1983) (O’Connor, J., concurring in the judgment) (emphasis in original). Nor did Justice O’Connor think those regulations could be sustained even under the more lenient “reasonably related” test. As she explained, “‘Reasonably related to’ simply cannot mean inconsistent with.” *Id.* at 614. And yet that, she believed, “would be the effect of upholding the administrative regulations” outlawing disparate impact, when “the expressed will of Congress is that federal funds recipients are prohibited only from purposefully discriminating on the grounds of” race and national origin. *Id.*

Under the Fourteenth Amendment, the Court has held that Congress may legislatively *enforce* that amendment’s guarantees of equal protection and due process of law but in doing so may not *redefine* what would count as violating either.¹¹³ By that analogy, an agency could then clearly seek to enforce Section 601’s bar against intentional discrimination by enacting prophylactic regulation “congruent and proportional” to redressing instances of *different treatment*.¹¹⁴ But the agency could not substantively *amplify* that prohibition by adding to the types of discrimination outlawed by Section 601—as a disparate impact rule arguably would, given the Court’s view in *Sandoval* that Section 601 does not bar a policy simply for having discriminatory effects.¹¹⁵

Unresolved Questions About Disparate Impact Under Section 602

The Court has yet to squarely resolve which of these views of agencies’ rulemaking authority under Section 602 is the right one. Regardless of which they choose, however, an agency arguably may still be able to defend its Title VI disparate impact regulations, depending on how it styles its enforcement under that regulation.

Even if Section 602 is construed narrowly to permit only regulations that address intentional discrimination, it might still be argued that Title VI allows agencies to promulgate regulations addressing disparate impact in at least some circumstances. As Justice Stevens pointed out dissenting in *Sandoval*, one way of looking at Title VI’s disparate impact regulations is as an *indirect* rule against intentional discrimination—only intentional discrimination in a “more subtle form[],” masked by an “ostensibly race-neutral” policy but with “the predictable and perhaps intended consequence of materially benefitting some races at the expense of others.”¹¹⁶ Styled that way, an agency might be able to defend its disparate impact rules as a means of “counteract[ing] unconscious prejudices and disguised animus that escape easy classification as disparate treatment.”¹¹⁷ In that sense, those rules would still be *directed* at “uncovering discriminatory intent,” even if only in subtler forms, such as “covert and illicit stereotyping.”¹¹⁸ And, for that reason, those rules would arguably also comply with *Sandoval*’s more exacting standard for Section 602 regulations, despite their formal focus on racial disparities.

Even if styled in this way, however, a disparate impact rule under Title VI would likely face further constraints. As the Court recently explained in the context of the Fair Housing Act, an agency relying on a disparate impact theory will still need to “point to a defendant’s policy or policies causing” the “statistical disparity” at issue—that the policy actually had racially discriminatory *effects*.¹¹⁹ And to make that showing, the agency may also need to satisfy a “robust causality requirement,” to “ensure[] that [r]acial imbalance [] does not, without more, establish a *prima facie* case of disparate impact,” protecting “defendants from being held liable for racial disparities they did not create.”¹²⁰ What such a causality requirement might entail as a practical

¹¹³ City of Boerne v. Flores, 521 U.S. 507, 519-20 (1997); cf. Gail Heriot and Alison Somin, *The Department of Education’s Obama-Era Initiative on Racial Disparities in School Discipline: Wrong for Students and Teachers, Wrong on the Law*, 22 TEX. REV. L. & POL. 472, 533-44 (2018) (sketching an argument along these lines).

¹¹⁴ Cf. *id.* at 520 (noting that, under the Fourteenth Amendment, “[t]here must be a congruence and proportionality between the injury to be prevented or remedied and the means adopted to that end”).

¹¹⁵ See *supra* note 78 and accompanying text.

¹¹⁶ *Sandoval*, 532 U.S. at 306 (Stevens, J., dissenting).

¹¹⁷ Texas Dep’t of Hous. & Cmty. Affairs v. Inclusive Cmty. Project, Inc., 135 S. Ct. 2507, 2522 (2015).

¹¹⁸ *Id.*

¹¹⁹ *Id.* at 2523. (explaining this requirement for disparate impact liability under the Fair Housing Act).

¹²⁰ *Id.* (internal quotation marks omitted).

matter seems unclear at this point.¹²¹ Nevertheless, recasting the argument over Section 602 in these terms might help sharpen some of the debate around Title VI, by redirecting the discussion away from the abstract concerns about rulemaking authority to the more basic and concrete issue of what disparate impact liability may—or may not—involve.

Enforcing Title VI at School: The U.S. Department of Education’s Office for Civil Rights

Although Title VI applies to funds distributed by every federal agency,¹²² much of the doctrine under the statute has been shaped by its use in the public schools.¹²³ That doctrinal story has accordingly centered on one agency in particular: the Office for Civil Rights (OCR), originally housed in HEW but today located in the U.S. Department of Education (ED).¹²⁴ As the agency primarily responsible for enforcing Title VI in the public schools, as well as nearly all colleges and universities,¹²⁵ OCR handles every year a large volume and variety of claims alleging race and national origin discrimination.¹²⁶ Some of the most common types of those claims are

¹²¹ The U.S. Department of Housing and Urban Development has issued an advance notice of proposed rulemaking to address this very question under the Fair Housing Act. See U.S. Dep’t of Hous. and Urban Dev., *Reconsideration of HUD’s Implementation of the Fair Housing Act’s Disparate Impact Standard*, 83 Fed. Reg. 28560, 28561 (June 20, 2018) (seeking public comment as to whether “the Disparate Impact Rule [should] be amended to clarify the causality standard for stating a prima facie case under *Inclusive Communities* and other Supreme Court rulings”).

¹²² The only exceptions are funds disbursed pursuant to “a contract of insurance or guaranty.” See 42 U.S.C. §§ 2000d-1, 2000d-4. Thus, for example, to the extent that a bank “receives federal financial assistance in the form of deposit insurance from the” Federal Deposit Insurance Corporation, it would likely not be bound by Title VI’s nondiscrimination mandate. *Marshall v. Webster Bank, N.A.*, 2011 U.S. Dist. LEXIS 5665, at *20-21 (D.Conn. Jan. 20, 2011) (dismissing a race discrimination complaint on this basis because the alleged “federal assistance [was] in the form of a guaranty or contract for insurance”).

¹²³ See generally HALPERN, *supra* note 8; see also 110 Cong. Rec. 7068 (1964) (statement of Sen. Ribicoff) (observing that “[u]nquestionably, more programs under HEW would be affected than all other programs put together” by Title VI).

¹²⁴ See HALPERN, *supra* note 8, at 106, 186-87 (describing the organization of OCR under HEW and its later relocation as a part of the newly created Department of Education). ED has played such a pivotal role in Title VI’s history that at least one federal court of appeals has suggested that the department’s interpretation of the statute merits *Chevron* deference. See *Monteiro v. Tempe Union High Sch. Dist.*, 158 F.3d 1022, 1033 (9th Cir. 1998) (“The Department of Education is the agency charged by Congress with enforcing Title VI. As such, its interpretation is entitled to a high degree of deference by the courts so long as it does not conflict with a clearly expressed congressional intent and it is reasonable.”) Whether *Chevron* deference really applies to Title VI, however, is less clear. Cf. *Envirocare of Utah, Inc. v. Nuclear Regulatory Comm’n*, 194 F.3d 72, 79 n.7 (D.C. Cir. 1999) (explaining that for “statutes administered by several different agencies—statutes, that is, like the APA and unlike the standing provision of the Atomic Energy Act—courts do not defer to any one agency’s particular interpretation”); see also *FLRA v. Dep’t of the Treasury, Fin. Management Serv.*, 884 F.2d 1446, 1451 (D.C. Cir. 1989) (declining to defer to an agency’s reading of the Privacy Act and the Freedom of Information Act, because it was “not charged with a special duty to interpret” them).

¹²⁵ See U.S. Dep’t of Educ., Office for Civil Rights, *Race and National Origin Discrimination: Frequently Asked Questions*, <https://www2.ed.gov/about/offices/list/ocr/frontpage/faq/race-origin.html> (“All public school districts are covered by Title VI because they receive some federal financial assistance. All public colleges and universities and virtually all private colleges and universities are covered because they receive such assistance by participating in federal student aid programs.”).

¹²⁶ As of March 1, 2019, OCR listed more than 1,500 pending Title VI cases currently under investigation, some dating as far back as 2005. See U.S. Dep’t of Educ., Office for Civil Rights, *Pending Cases Currently Under Investigation at Elementary-Secondary and Post-Secondary Schools*, <https://www2.ed.gov/about/offices/list/ocr/docs/investigations/open-investigations/tvi.html>.

discussed below, beginning first with a brief overview of how ED, as a matter of policy, processes the complaints it receives under Title VI.¹²⁷

OCR's Enforcement of Title VI

OCR primarily enforces Title VI through its investigation and resolution of complaints.¹²⁸ To guide its review of those complaints, OCR has published a detailed manual of procedures—known as the Case Processing Manual (CPM)—by which it receives, analyzes, and disposes of allegations under Title VI, among other statutes within its jurisdiction.¹²⁹ That guidance document, described below, divides OCR's enforcement into five distinct phases:

Jurisdictional Evaluation. At the first phase of its review, OCR evaluates an allegation for its basic sufficiency—conducting an essentially jurisdictional analysis. As a part of that evaluation, OCR first examines whether an allegation has enough information in it, of the right kind.¹³⁰ If so, OCR has to establish jurisdiction over both the subject matter of the complaint as well as the entity complained of. Thus, the allegation must state enough facts from which to infer race or national origin discrimination (subject matter jurisdiction),¹³¹ and the complainant must allege discrimination by a program or activity that receives ED's financial assistance (personal jurisdiction).¹³² And the allegation must also be timely: a complaint under Title VI generally must be filed with OCR within 180 calendar days of the date when the discrimination allegedly occurred.¹³³ Insufficiency on any of these points may result in an allegation's dismissal without OCR's further investigation or review.¹³⁴

After determining that it has jurisdiction over an allegation and finds it otherwise suitable for review, OCR will formally open its investigation, beginning with the issuance of informational

¹²⁷ As noted earlier, this report does not discuss the two other mechanisms available for enforcing Title VI in the schools: (1) a lawsuit filed by a private party under Title VI's implied right of action or (2) a suit brought in federal court by DOJ, following a referral from OCR. For OCR's referral procedures, see U.S. Dep't of Educ., Office for Civil Rights, *Case Processing Manual* [hereafter CPM], at 23-24 (Nov. 19, 2018).

¹²⁸ In addition to its investigations of complaints, OCR is also required by regulation to conduct "compliance reviews" "from time to time" to assess whether "the practices of recipients . . . are complying" with Title VI. 34 CFR § 100.7(a). OCR may also conduct so-called "directed investigations" whenever "information indicates a possible failure to comply with the laws and regulations enforced by OCR, the matter warrants attention and the compliance concern is not otherwise being addressed through OCR's complaint, compliance review or technical assistance activities." CPM, *supra* note 127, at 22 (citing 34 CFR § 100.7(c)). Information about how frequently these types of review have resulted in investigations, resolutions, and enforcement actions does not appear to be publicly available.

¹²⁹ OCR relies on the CPM when handling complaints raised under all of the statutes it enforces, including Title IX of the Education Amendments of 1972, dealing with sex discrimination, and Section 504 of the Rehabilitation Act, addressing disability discrimination.

¹³⁰ Thus, for example, an allegation communicated only orally, or provided anonymously in correspondence, may be dismissed without further processing. CPM, *supra* note 127, at 4.

¹³¹ *Id.* at 5.

¹³² *Id.* at 6. Under several delegations arrangements ED also has some authority to investigate complaints involving programs or institutions that receive federal funds awarded by other federal agencies. *Id.* OCR has acknowledged, moreover, that statistical evidence will not make a complaint actionable on its own, but that evidence may support an investigation when presented with other facts suggesting disparate treatment. CPM at 6; *accord* *Everett v. Pitt Cty. Bd. of Educ.*, 788 F.3d 132, 149 n.11 (4th Cir. 2015) (finding no abuse of discretion where a district court "refused to consider disparity in student discipline," "because there was not sufficient evidence in the record demonstrating that the school district target[ed] black students for discipline or otherwise treat[ed] them differently in disciplinary matters").

¹³³ CPM, *supra* note 127, at 8.

¹³⁴ OCR does, however, allow appeals from some dismissals. See *id.* at 21.

letters to both the complainant and recipient.¹³⁵ Those letters primarily serve to notify the parties of the allegations OCR intends to investigate and the basis for its jurisdiction, including appropriate statutory and regulatory authority.¹³⁶ The letters also apprise the parties of OCR’s role in the investigation—as a “neutral fact-finder”—as well as the complainant’s right to bring suit in federal court regardless of how OCR administratively resolves the complaint.¹³⁷

Facilitated Resolution. As a part of its opening letter, OCR will also inform the parties of its voluntary resolution process, called a “Facilitated Resolution Between the Parties.”¹³⁸ Under that process, OCR may offer to serve as “an impartial, confidential facilitator between the parties,” to assist them in informally resolving the allegations before OCR formally makes any findings of its own.¹³⁹ During those discussions OCR may accordingly suspend its investigation for up to 30 calendar days to allow negotiations to proceed in good faith; it will reinstate its investigation, however, should the parties fail to reach an agreement within that time.¹⁴⁰ In no case, though, will OCR approve or otherwise endorse an agreement reached under this process, nor monitor a recipient’s compliance with it.¹⁴¹

Investigation. If the parties cannot voluntarily resolve the complaint through facilitated negotiation, OCR will proceed to investigate.¹⁴² At any time during that investigation—which may involve OCR’s review of school data, interviews with students and staff, or other measures—the recipient may still choose to negotiate a voluntary resolution with OCR, and recent resolutions suggest that this is relatively common.¹⁴³ In such cases, OCR will issue a resolution letter memorializing the allegations and its investigation, along with the agreement resolving them.¹⁴⁴ In these cases, however, OCR will generally not make any findings on the underlying allegations.

In the event the recipient declines to negotiate a voluntary resolution, at the completion of its investigation OCR will issue findings on each allegation, resolving them by a preponderance of the evidence. In each case OCR will therefore explain why the evidence likelier than not supports the finding of a violation (“non-compliance determination”) or else explain why it does not (“insufficient evidence”).¹⁴⁵ In cases of non-compliance OCR will also propose a resolution agreement, outlining the steps for the recipient to take to resolve the allegations in question and ensure its future compliance with Title VI.¹⁴⁶ A recipient generally has 90 days in which to consider and negotiate the terms of a final agreement with OCR.¹⁴⁷ If the recipient and OCR fail to reach an agreement within that period, OCR will advise the recipient, by “Letter of Impending

¹³⁵ *Id.* at 12.

¹³⁶ *Id.* at 13.

¹³⁷ *Id.*

¹³⁸ *Id.*

¹³⁹ *Id.*

¹⁴⁰ *Id.*

¹⁴¹ *Id.*

¹⁴² *Id.* at 15.

¹⁴³ *Id.* at 15-16.

¹⁴⁴ *Id.* at 19-20.

¹⁴⁵ *Id.* at 17-18, 19-20. OCR also allows for appeals based on a finding of insufficient evidence. *See id.* at 21.

¹⁴⁶ *Id.* at 19-20.

¹⁴⁷ *Id.* at 18.

Enforcement Action,” that it intends to proceed to enforcement should the parties fail to reach an agreement in short order.¹⁴⁸

Monitoring. Once the sides have reached an acceptable resolution agreement, OCR will monitor, on an ongoing basis, the recipient’s compliance with its terms. To do so, recipients generally must agree to certain reporting requirements, ensuring OCR access to “data and other information in a timely manner” by which it can assure the recipient’s compliance.¹⁴⁹ OCR also reserves the right to “visit the recipient, interview staff and students, and request such additional reports or data as are necessary for OCR to determine whether the recipient has fulfilled the terms and obligations of the resolution agreement.”¹⁵⁰ In some instances OCR may also choose to amend or altogether end a resolution agreement “when it learns that circumstances have arisen that substantially change, fully resolve, or render moot, some or all of the compliance concerns that were addressed by the resolution agreement.”¹⁵¹

Enforcement Action. Where OCR cannot negotiate or secure compliance with an acceptable resolution agreement, it may resort to either of the two enforcement mechanisms allowed by Title VI: (1) an administrative proceeding resulting in the termination or refusal of federal funds; or (2) the referral of a complaint to DOJ for litigation.¹⁵² Fund termination, as noted, was envisioned as the primary mechanism for enforcing Title VI, and was once aggressively used by OCR to enforce the desegregation of southern schools.¹⁵³ Over the past several Administrations its use appears to have waned significantly,¹⁵⁴ perhaps owing to an increased reliance on resolution agreements, voluntary or otherwise, to achieve compliance.

Major Areas of Administrative Enforcement

OCR’s administrative docket for Title VI is considerable, covering a wide variety of allegations involving race and national origin discrimination. Among the issues raised in those complaints, three appear especially common: different treatment, retaliation, and racial harassment. In 2016, for instance, OCR reported receiving some 2,400 total complaints raising issues under 17 general categories of Title VI violations.¹⁵⁵ Of those, 976 alleged some form of different treatment,¹⁵⁶

¹⁴⁸ Depending on the state of their negotiations the window for reaching an agreement may be as short as 10 calendar days, or as long as 30. *Id.* at 20.

¹⁴⁹ *Id.*

¹⁵⁰ *Id.*

¹⁵¹ *Id.* at 23.

¹⁵² *Id.* at 23-24; *see also* 42 U.S.C. § 2000d-1.

¹⁵³ *See* HALPERN, *supra* note 8, at 294 (noting that “during the Johnson era . . . fund termination [was] used with regularity to combat racial discrimination in schools”).

¹⁵⁴ OCR does not appear to publish any data on its use of fund termination proceedings. A CRS search of Westlaw and Lexis databases of OCR administrative proceedings failed to uncover any termination orders issued under Title VI in the last 25 years. *Cf.* HALPERN, *supra* note 8, at 294 (noting that “[t]he termination of federal funds is a most difficult and awkward sanction to invoke,” and that, as of 1995, that sanction had “been used in no more than a handful of cases in the [preceding] two decades”).

¹⁵⁵ U.S. Dep’t of Educ., Office for Civil Rights, *Securing Equal Educational Opportunity: Report to the President and Secretary of Education* [2016 Report], at 17 (2016). As of this writing the 2016 Report remains the most recent that OCR has made publicly available on its website.

¹⁵⁶ As OCR styles this category, it includes allegations that a recipient has excluded individuals, or denied them some benefit, based on their race. *See* 2016 Report at 17; *see also* 34 C.F.R. § 100.3(a) (ED’s regulation under Title VI disallowing any person to be “excluded from participation in, or denied the benefits of . . . any program” “on the ground of race, color, or national origin”).

while another 569 complaints alleged race-based retaliation¹⁵⁷ and a further 548 made claims of racial harassment.¹⁵⁸ In 2015, OCR reported largely similar figures as well.¹⁵⁹ The next section examines two recent examples of how OCR reviews complaints under Title VI, one involving a more typical allegation of indirect “disparate treatment,” and another posing a less typical allegation of direct discrimination.

Different Treatment: Two Illustrations

The single largest category of complaints OCR receives involves allegations of “disparate treatment.”¹⁶⁰ That category covers a wide variety of conduct, covering any complaint that a recipient has singled out an individual or individuals by race for adverse treatment. Of those complaints two types are especially common: “intentionally disciplining students differently based on race”¹⁶¹ or else excluding them in some way.¹⁶² As noted, OCR will seek to confirm those allegations in either of two ways: either directly, by looking to evidence of overt discriminatory intent, or else indirectly, by establishing that any “apparent differences in the treatment of similarly-situated students of different races” have no legitimate, nondiscriminatory basis.¹⁶³ And because Title VI has been read to overlap with the Equal Protection Clause,¹⁶⁴ even where OCR believes a recipient has treated individuals differently by race, it still has to assess whether that treatment was a “narrowly tailored” means of “meet[ing] a compelling governmental interest.”¹⁶⁵

¹⁵⁷ According to OCR, retaliation occurs wherever a recipient “intimidate[s], threaten[s], coerce[s], or discriminate[s] against any individual for the purpose of interfering with any right or privilege secured by [S]ection 601” or ED’s implementing regulations, or because an individual “has made a complaint, testified, assisted, or participated in any manner in an investigation, proceeding or hearing under” the same regulations. 34 C.F.R. 100.7(e).

¹⁵⁸ 2016 Report, *supra* note 155, at 17. Racial harassment involves allegations of “intimidation or abusive behavior toward a student based on race,” whether by a peer or teacher, “that creates a hostile environment by interfering with or denying a student’s participation in or receipt of benefits, services, or opportunities in the institution’s program.” *See* U.S. Dep’t of Educ., Office for Civil Rights to Superintendent, Platteville Public Schools, at 2 (Nov. 20, 2013). Under that theory, OCR holds recipient schools “responsible for taking prompt and effective action to stop racial harassment and prevent its recurrence.” *Id.* at 3. In so doing OCR appears not to follow the prevailing rule in private actions under Title VI, holding a school liable only for teacher- or peer-on-student racial harassment only where the school has acted with “deliberate indifference” to it. *See* *Blunt v. Lower Merion Sch. Dist.*, 767 F.3d 247, 273 (3d Cir. 2014) (collecting cases to this effect under Title VI). Meanwhile, though the same “deliberate indifference” standard applies to private suits under Title IX for sexual harassment, ED has signaled that it intends to enforce the “deliberate indifference” standard for sexual harassment claims as a part of its new package of regulations under Title IX.

¹⁵⁹ *See* U.S. Dep’t of Educ., Office for Civil Rights, *Delivering Justice: Report to the President and Secretary of Education*, at 18 (2015) (reporting 849 complaints of different treatment, 561 of retaliation, and 452 of racial harassment).

¹⁶⁰ *See supra* note 154 and accompanying text.

¹⁶¹ U.S. Dep’t of Educ., Office for Civil Rights to Superintendent, Minneapolis Public Schools, at 2 (Nov. 20, 2014).

¹⁶² *See, e.g.*, U.S. Dep’t of Educ., Office for Civil Rights to Superintendent, Oak Park and River Forest High School District 200 (Sept. 29, 2015) (addressing complaint of racially exclusive assembly).

¹⁶³ U.S. Dep’t of Educ., Office for Civil Rights to Superintendent, Platteville Public Schools [Platteville Letter], at 2 (Nov. 20, 2013).

¹⁶⁴ *Alexander v. Sandoval*, 532 U.S. 280-81 (2001).

¹⁶⁵ U.S. Dep’t of Educ., Office for Civil Rights to Superintendent, Oak Park and River Forest High School District 200, at 2 (Sept. 29, 2015).

Disparate Treatment: Circumstantial Evidence

In one recent example, OCR received a complaint from an African American student, identified only as “Student A,” alleging that he had been disciplined more severely than his white classmates, in violation of Title VI.¹⁶⁶ As in many disciplinary cases, the student did not produce direct evidence of discrimination. And so OCR instead looked to whether there were any “apparent differences” in the way the school treated Student A from the way it handled “similarly-situated students of different races,” and if so, whether those differences had a legitimate, nondiscriminatory basis.¹⁶⁷

In the course of its investigation, OCR uncovered what it believed were four apparent differences in the way the school treated Student A. First, the school had repeatedly recorded disciplinary warnings it gave Student A, but “did not consistently record warnings given to similarly situated white students.”¹⁶⁸ Second, even though “the Principal employed an informal progressive discipline policy” that was applied to Student A, “increasing the severity of the disciplinary consequence after each incident,” a “similarly situated white student who had a more extensive disciplinary history, did not face increasingly severe disciplinary consequences.”¹⁶⁹ Third, the evidence suggested that the school’s principal “responded more favorably” to allegations made by a white student’s mother than Student A’s mother “that other students were teasing him to entice him to engage in misconduct.”¹⁷⁰ And, finally, Student A had pointed to a specific case where a white male student had been treated more leniently for assaulting another student.¹⁷¹

The school, for its part, sought to defend some of those decisions by pointing to differences in the students’ misconduct.¹⁷² OCR, however, disagreed: according to its investigators, the students’ files bore out no meaningful differences besides the students’ race.¹⁷³ Nor did OCR accept the school’s admission that in the other cases it had simply made a mistake: the quantity, frequency, and variety of those mistakes, OCR found, “established a pattern of unjustified, discriminatory treatment on the basis of race in the discipline administered to Student A.”¹⁷⁴ That was enough, OCR concluded, to violate Title VI and its implementing regulations.¹⁷⁵

Disparate Treatment: Direct Evidence

Another recent case, also involving an allegation of disparate treatment, illustrates how OCR reads Title VI against the backdrop of the Equal Protection Clause. That case arose in the wake of events in Ferguson, MO, in 2014, following the fatal police shooting of an 18-year-old African American that provoked widespread protests in Ferguson and elsewhere.¹⁷⁶ In response to the events there, an Illinois public school had decided to convene a special “Black Lives Matter”

¹⁶⁶ Platteville Letter, *supra* note 163, at 11.

¹⁶⁷ *Id.*

¹⁶⁸ *Id.*

¹⁶⁹ *Id.*

¹⁷⁰ *Id.*

¹⁷¹ *Id.* at 12.

¹⁷² *Id.*

¹⁷³ *Id.*

¹⁷⁴ *Id.*

¹⁷⁵ *Id.* (citing 34 C.F.R. § 100.3(a) and 34 C.F.R. §100.3(b)(1)(i)–(iv)).

¹⁷⁶ U.S. Dep’t of Educ., Office for Civil Rights to Superintendent, Oak Park and River Forest High School District 200 [Oak Park Letter], at 3 (Sept. 29, 2015).

assembly, so that “black students [could] express their frustrations” in “a comfortable forum.”¹⁷⁷ To do that, however, the school chose to “limit the assembly to participation by students who self-identified as black.”¹⁷⁸ That decision, as the school district later admitted, clearly amounted to different treatment—excluding some students while admitting others solely based on whether they identified as African American.¹⁷⁹ That finding alone, though, did not decide the school’s liability under Title VI. Instead, OCR had to go on to examine whether the school’s decision would satisfy *constitutional* requirements—whether the school had an “interest in holding a racially exclusive assembly [that] was compelling and that the means [it] used [would] survive strict scrutiny.”¹⁸⁰ Looking to relevant constitutional precedent,¹⁸¹ OCR ultimately sided with the complainant: even though the school did have a compelling interest in holding a racially exclusive assembly, it had nevertheless failed “to assess fully whether there were workable race-neutral alternatives” or to “conduct a flexible and individualized review of potential participants.”¹⁸² The school had therefore violated Title VI, according to OCR. And to resume compliance, the school district agreed not to allow similarly exclusive assemblies again.¹⁸³

Considerations for Congress

Title VI has gone largely unchanged in the 50 years since it became law. As this report has explained, the debates over the statute have therefore centered on how the courts have read its two central provisions—Sections 601 and 602—and how federal agencies have gone about enforcing them. But Congress has the ultimate say over how Title VI works—rooted not only in its legislative power but in its authority to oversee the statute’s use by federal agencies. As this section explains, recently two issues over the statute have drawn particular congressional interest: the viability of disparate impact regulations under Section 602, and the inclusion of new protected classes in Section 601.

As explained earlier, with its 2001 decision in *Alexander v. Sandoval*, the Court seemed to cast doubt on the future of *all* disparate impact liability under Title VI as currently written, even when liability was premised on regulations issued under Section 602. In the last several months, following the release of a widely remarked report on school safety, the Trump Administration signaled that it may be rethinking altogether Title VI regulations that reach beyond intentional discrimination to address policies with a racially disparate impact.¹⁸⁴ Given the continuing debate about the relation of Title VI’s central provisions, Congress could opt to put down its own marker, by definitively clarifying Title VI’s scope in either of two ways. On the one hand, Congress could make clear that Section 601 indeed prohibits only intentional discrimination, and that any rules under Section 602 may not find a recipient liable for discrimination absent proof of

¹⁷⁷ *Id.*

¹⁷⁸ *Id.*

¹⁷⁹ *Id.* (“[T]he District acknowledged holding a racially exclusive program—an assembly entitled “*Black Lives Matter*”—at which District officials turned away students of other races.”).

¹⁸⁰ *Id.* at 3-4.

¹⁸¹ *Id.* (applying *Grutter v. Bollinger*, 539 U.S. 306 (2003)). For a more extensive discussion of the Court’s precedent under the Equal Protection Clause in this area, see CRS Report R45481, “*Affirmative Action*” and *Equal Protection in Higher Education*, by Christine J. Back and JD S. Hsin, at 21-38 (Jan. 31, 2019).

¹⁸² Oak Park Letter, *supra* note 176, at 3.

¹⁸³ *Id.* at 4.

¹⁸⁴ For a more extensive discussion of that report and its implications for Title VI, see CRS Legal Sidebar LSB10254, *Is the Trump Administration Rethinking Title VI?*, by JD S. Hsin (Feb. 4, 2019).

discriminatory intent. Congress, on the other hand, could expressly endorse disparate impact under Title VI by, for example, grafting that standard onto Section 601, as it has done in Title VII of the 1964 Civil Rights Act.¹⁸⁵ That addition would unambiguously allow funding agencies to investigate policies and practices under Title VI based on their discriminatory effects, regardless of the underlying intent.

In addition to clarifying the types of discrimination Title VI outlaws, Congress could also choose to revise the classes of individuals who come within its protection. One recent proposal, for example, would amend Section 601 to include “sex (including sexual orientation and gender identity)” along with race, color, and national origin among its protected classes.¹⁸⁶ Although that or a similar amendment would clearly expand Title VI’s coverage, its effects will likely hinge on how the courts choose to interpret Section 601 in light of such additions. Though a complete analysis lies beyond the scope of this report, at least two readings seem arguable.

On the one hand, the courts could continue to read Section 601 to “enact[] constitutional principles,”¹⁸⁷ in which case they would presumably review claims based on sex discrimination under a heightened standard of review,¹⁸⁸ while in the case of gender identity, possibly only for basic rationality.¹⁸⁹ On the other hand, to the extent that an amendment introduces a statutory protection for a class of individuals not currently recognized by the Court as a constitutionally “suspect classification,” that addition, especially if buttressed by supporting legislative history, could suggest that Congress had decided to amend the reach of Title VI altogether, to “independently proscribe conduct that the Constitution does not.”¹⁹⁰

Conclusion

In the 50 years since becoming law Title VI has played a central role in addressing racial discrimination in the nation’s schools. Title VI provides that protection in a unique way: by making the promise of nondiscrimination a condition for any program or institution that receives federal financial support. For much of its history, the debates over Title VI have fastened on two basic ambiguities in the statute: the kind of “discrimination” Title VI was meant to outlaw and the types of rules a funding agency could issue to effectuate that prohibition. The Supreme Court

¹⁸⁵ 42 U.S.C. § 2000e-2(k)(1)(A).

¹⁸⁶ Equality Act, H.R. 5, 116th Congress, § 6.

¹⁸⁷ *Regents of Univ. of Cal. v. Bakke*, 438 U.S. 265, 285 (1978) (Powell, J., announcing judgment of the Court).

¹⁸⁸ Arguably, as a sex-based classification, a court would apply an intermediate level of review. *See United States v. Virginia*, 518 U.S. 515, 524 (1996) (“[A] party seeking to uphold government action based on sex must establish an ‘exceedingly persuasive justification’ for the classification,” by showing “at least that the classification serves important governmental objectives and that the discriminatory means employed are substantially related to the achievement of those objectives”). At least one federal court of appeals, however, has suggested that where two nondiscrimination provisions “use the same language, they should, as a matter of statutory interpretation, be read to require the same levels of protection and equality.” *Jeldness v. Pearce*, 30 F.3d 1220, 1227-28 (9th Cir. 1994). There the court consequently reviewed a gender discrimination claim under Title IX of the Education Amendments of 1972 just as it would have analyzed a claim of race discrimination under Title VI—that is, under strict scrutiny. *See id.*

¹⁸⁹ *See Johnston v. Univ. of Pittsburgh of Commonwealth Sys. of Higher Educ.*, 97 F. Supp. 3d 657, 668 (W.D. Pa. 2015) (concluding that “neither the United States Supreme Court nor the Third Circuit Court of Appeals has recognized transgender as a suspect classification under the Equal Protection Clause” and accordingly reviewing a claim of discrimination based on gender identity under rational basis); *but see Carcano v. Cooper*, 350 F. Supp. 3d 388, 421 (M.D.N.C. 2018) (“There has been considerable debate at the district and circuit court levels about the applicable standard of scrutiny for classifications based on transgender status, with the majority of courts to have considered the question in recent years finding that ‘heightened’ or ‘intermediate’ scrutiny applies.”).

¹⁹⁰ *Regents of Univ. of Cal. v. Bakke*, 438 U.S. 265, 417 (1978) (Stevens, J., concurring in the judgment in part and dissenting in part).

appears to have definitively resolved the first of those ambiguities: because Title VI simply “enacts constitutional principles,” as currently written, it prohibits *only* intentional discrimination. And on that basis the Court has suggested, but not definitively ruled on, how it might resolve the second ambiguity as well: to effectuate Title VI’s purpose, an agency may outlaw only policies resulting from a provable discriminatory intent, not simply having a racially discriminatory effect.

Whether the Court will turn that suggestion into a holding remains to be seen. Until then, however, federal agencies like OCR will likely continue to enforce Title VI consistent with constitutional standards that the Court has since read into the statute. In OCR’s case, that enforcement work is already considerable, involving thousands of complaints every year culminating in significant resolutions across a wide range of schools and institutions of higher education. And in the background remains ED’s ultimate authority under Title VI—to withdraw its financial support from any program or institution that refuses to comply with the statute’s command that all individuals be treated equally, regardless of their race.

Author Information

Jared P. Cole, Coordinator
Legislative Attorney

Disclaimer

This document was prepared by the Congressional Research Service (CRS). CRS serves as nonpartisan shared staff to congressional committees and Members of Congress. It operates solely at the behest of and under the direction of Congress. Information in a CRS Report should not be relied upon for purposes other than public understanding of information that has been provided by CRS to Members of Congress in connection with CRS’s institutional role. CRS Reports, as a work of the United States Government, are not subject to copyright protection in the United States. Any CRS Report may be reproduced and distributed in its entirety without permission from CRS. However, as a CRS Report may include copyrighted images or material from a third party, you may need to obtain the permission of the copyright holder if you wish to copy or otherwise use copyrighted material.

EXHIBIT 45

U.S. DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS



CASE PROCESSING MANUAL
(CPM)

EFFECTIVE DATE: FEBRUARY 19, 2025

INTRODUCTION

The mission of the Office for Civil Rights (OCR) is to ensure equal access to education and to promote educational excellence throughout the nation through vigorous enforcement of civil rights. The Case Processing Manual (CPM) provides OCR with the procedures to promptly and effectively investigate and resolve complaints, compliance reviews and directed investigations to ensure compliance with the civil rights laws and regulations enforced by OCR.

Table of Contents

ARTICLE I: EVALUATION	4
Section 101 Privacy act and freedom of information act	4
Section 102 Determine Whether the information provided is subject to further processing	4
Section 103 Assign a Case Number and Establish a File	6
Section 104 Acknowledge the Complaint	7
Section 105 Obtain a Consent form	7
Section 106 Determine Whether the Allegations Are Timely	8
Section 107 Determine Whether a Waiver Should Be Granted	8
Section 108 Dismissal of allegations	9
SECTION 109 First Amendment Principles	12
SECTION 110 Rapid resolution process	12
SECTION 111 Opening the complaint allegations for investigation	12
ARTICLE II: MEDIATION	13
Section 201 Mediation	
Section 202 Roles	13
Section 203 Initiation and Termination of mediation	14
Section 204 Confidentiality of mediation	14
Section 205 Successful Conclusion of the mediation	14
Section 206 Breach of mediation Agreements	14
Section 207 Investigative Determination When mediation is unsuccessful	15
ARTICLE III: CASE PLANNING, INVESTIGATION AND RESOLUTION	14
Section 301 Case planning	15
Section 302 Resolution Agreement Reached During an Investigation	16
Section 303 Investigative Determinations	17
Section 304 Guidelines for Resolution Agreements	19
Section 305 Letter of Impending Enforcement Action	20
Section 306 Referrals from the Department of Justice (DOJ) and the Equal Employment Opportunity Commission (EEOC)	21
Section 401 Compliance Reviews	21
Section 402 Directed Investigations	21
ARTICLE V: MONITORING RESOLUTION AGREEMENTS	22
Section 501 Respond to Monitoring Reports and verify Recipient's Implementation	22
Section 502 implementation problems	22
Section 503 Modifications of Agreements	22
Section 504 Conclusion of Monitoring	22
ARTICLE VI: INITIATION OF ENFORCEMENT ACTION	23
Section 601 Initiate administrative proceedings where appropriate	23
Section 602 Refer to DOJ Where Appropriate	23
Section 603 Enforcement for Denial of Access	23
Section 604 Enforcement for failure to comply with the resolution agreement	23
ARTICLE VII: APPENDICES	24
Section 701 Special intake procedures	24
(a) Age Discrimination Complaints	24
(b) Title VI Complaints against Proprietary Schools	25
(c) Title VI and Title IX Employment Complaints (see 29 C.F.R. §§ 1691.1 – 1691.13 and 28 C.F.R. §§ 42.601 – 42.613)	25
(d) Title II ADA Complaints (Other than Employment) (see 28 C.F.R. § 35.171(a)(2)(i))	26
(e) Section 504 and Title II Disability Employment Complaints (see 28 C.F.R. Part 37 and 29 C.F.R. Part 1640)	26
Section 702 Data Collection and Information Gathering	27
(a) Generally	27
(b) OCR's Authority to Obtain Information	27
(c) Requests for Records	28
(d) Interviews	29
1. Introduction	29
2. Notice	29
3. Privacy	29
4. Interviews with Minors (Persons under 18) or Legally Incompetent Individuals	29
5. Records of Interviews	30
Section 703 Freedom of Information Act and Privacy Act	30
Section 704 Recipients Operating Under Federal Court Order	31
(a) United States a Party	31
(b) United States Not a Party	32

ARTICLE I: EVALUATION

Upon receipt, OCR will determine whether the written information provided to the U. S. Department of Education (Department) is subject to further processing pursuant to applicable statutes and regulations and the OCR's *Case Processing Manual*. As appropriate, OCR will provide complainants¹ with assistance regarding the nature of their rights and of the OCR investigation process. Also as appropriate, OCR will provide reasonable assistance to complainants who are persons with disabilities, individuals of limited English proficiency, and persons whose communication skills are otherwise limited. All written information provided to OCR should include the sender's contact information.² Written information may be filed online as well as by mail, electronic mail, or fax.

SECTION 101 PRIVACY ACT AND FREEDOM OF INFORMATION ACT

To investigate a complaint, OCR may collect and analyze personal information. The Privacy Act of 1974, 5 U.S.C. § 552a, Family Educational Rights and Privacy Act (FERPA), 20 U.S.C. § 1232g, and the Freedom of Information Act (FOIA), 5 U.S.C. § 552, govern the use of personal information collected by OCR. Disclosure will only be made as consistent with the Privacy Act, FERPA, and FOIA.

Subject to the restrictions imposed by FOIA and the Privacy Act, OCR may release certain information about a complaint to the press or general public, including the name of the school or institution; the date a complaint was filed; the type of discrimination included in a complaint; the date a complaint was resolved, dismissed or closed; the basic reasons for OCR's decision; or other related information. Under these circumstances, any information OCR releases to the press or general public will not include the complainant's name or the name of the person on whose behalf the complaint was filed except as noted in the paragraph above. All information within case files is subject to FOIA and the Privacy Act. See CPM Section 703.

SECTION 102 DETERMINE WHETHER THE INFORMATION PROVIDED IS SUBJECT TO FURTHER PROCESSING

Upon receipt, OCR will determine whether the information provided to the Department is subject to further processing, as follows:

- (a) Not all information that OCR receives is sufficient to constitute a complaint subject to further processing. The following are generally not subject to further processing, but this determination will be made on an individualized basis, as appropriate:
 - (i) anonymous correspondence;
 - (ii) courtesy copies of correspondence or documentation filed with or otherwise submitted to another person or entity;
 - (iii) inquiries that solely seek advice or information from OCR;
 - (iv) allegations that are communicated to OCR only orally and not in writing.

¹ This manual uses the term "complainant" throughout. Note: The term "complainant" may also refer to the person or group injured by the alleged discriminations on whose behalf a complainant files a complaint.

² Contact information should include, for example, mailing address, phone number, or an electronic mail address.

- (b) OCR must have jurisdiction over the subject matter of the allegation(s). An allegation(s) over which OCR lacks subject matter jurisdiction will not be processed further but will be dismissed pursuant to Section 108.

For OCR to establish subject matter jurisdiction, the written information must allege, or OCR must be able to infer from the facts given, an allegation of: (1) discrimination based on race, color, national origin, sex, disability or age, (2) discrimination in violation of the Boy Scouts of America Equal Access Act of 2001, or (3) retaliation for the purpose of interfering with any right or privilege secured by the civil rights laws and regulations enforced by OCR, or as a result of making a complaint, testifying, or participating in any manner in an OCR proceeding. See 34 C.F.R. §§ 100.7(e), 104.61, 106.71, 108.9, 110.34; and 28 C.F.R. § 35.134.

OCR has jurisdiction pursuant to the following statutory and regulatory authorities:

- **Title VI of the Civil Rights Act of 1964**, 42 U.S.C. §§ 2000d et seq., 34 C.F.R. Part 100.

Under Title VI, OCR has jurisdiction to investigate complaints involving individuals covered by the law (e.g., applicants, students, parents) and certain employment complaints based on race, color, or national origin. With respect to employment, OCR has jurisdiction if: (1) the alleged discrimination could adversely affect program beneficiaries on the basis of race, color, or national origin, or (2) a primary objective of the federal financial assistance is to provide employment. See CPM subsection 701(b) for processing Title VI complaints with respect to proprietary vocational schools. For employment complaints, OCR follows procedures consistent with the employment coordinating regulations at 28 C.F.R. Part 42 and 29 C.F.R. Part 1691, see CPM subsection 701(c).

- **Title IX of the Education Amendments of 1972**, as amended, 20 U.S.C. §§ 1681 et seq., 34 C.F.R. Part 106.

Under Title IX, OCR has jurisdiction to investigate complaints involving individuals covered by the law (e.g., applicants, students, parents) and employment complaints based on sex that involve educational programs and activities. For employment complaints, OCR follows procedures consistent with the employment coordinating regulations at 28 C.F.R. Part 42 and 29 C.F.R. Part 1691. See CPM subsection 701(c).

- **Section 504 of the Rehabilitation Act of 1973**, as amended, 29 U.S.C. § 794, 34 C.F.R. Part 104.

Under Section 504, OCR has jurisdiction to investigate complaints involving individuals covered by the law (e.g., applicants, students, parents) and employment complaints based on disability. For employment complaints, OCR follows procedures consistent with the employment coordination regulations at 28 C.F.R. Part 37 and 29 C.F.R. Part 1640. See CPM subsection 701(e).

- **Age Discrimination Act of 1975**, 42 U.S.C. §§ 6101 et seq., 34 C.F.R. Part 110.

Under the Age Discrimination Act, OCR has jurisdiction to investigate complaints involving individuals covered by the law (e.g., applicants, students, parents). For instructions regarding referral of complaints to the Federal Mediation and Conciliation Service (FMCS) before investigation, see CPM subsection 701(a). OCR does not have jurisdiction over employment under the Age Discrimination Act. See CPM subsection 701(a).

- **Title II of the Americans with Disabilities Act of 1990**, 42 U.S.C. §§ 12131 et seq., 28 C.F.R.

Part 35.

Under Title II, OCR has jurisdiction to investigate complaints involving individuals covered by the law (e.g., applicants, students, parents) and employment complaints based on disability. For employment complaints, OCR follows procedures consistent with the employment coordination regulations at 28 C.F.R. Part 37 and 29 C.F.R. Part 1640, which address coordinating disability employment complaints with DOJ and EEOC. See CPM subsection 701(e).

- **Boy Scouts of America Equal Access Act of 2001**, 20 U.S.C. § 7905, 34 C.F.R. Part 108.

Under the Boy Scouts Act, OCR has jurisdiction to investigate complaints involving the denial of equal access or a fair opportunity to meet to, or discrimination against, any group officially affiliated with the Boy Scouts of America or officially affiliated with any other youth group listed in Title 36 of the United States Code.

- (c) OCR must have personal jurisdiction over the entity alleged to have discriminated. An allegation(s) about an entity over which OCR lacks personal jurisdiction will not be processed further but will be dismissed pursuant to Section 108.

Under Title VI, Title IX, Section 504, and the Age Discrimination Act, OCR has jurisdiction over institutions that receive federal financial assistance from the Department and institutions for which OCR has been delegated authority from other federal agencies. Under Title II, OCR has jurisdiction over public elementary and secondary education systems and institutions, public institutions of higher education and vocational education (other than schools of medicine, dentistry, nursing, and other health-related schools), and public libraries – regardless of whether these institutions receive federal financial assistance. Under the Boy Scouts Act, OCR has jurisdiction over public elementary schools, public secondary schools, local educational agencies, and State educational agencies that receive funds made available through the Department.

Where appropriate, OCR will refer the written information to the appropriate agency. See CPM Section 701.

When OCR determines that the written information provided to the Department pursuant to CPM Section 102 (a), (b), or (c) is not subject to further processing, it will notify the sender in writing of its determination.

- (d) Generally, statistical data alone are not sufficient to warrant opening an investigation, but can serve to support the opening of an investigation when presented in conjunction with other facts and circumstances.

SECTION 103 ASSIGN A CASE NUMBER AND ESTABLISH A FILE

Once OCR determines that written information it has received is appropriate for further processing pursuant to Section 102 (hereinafter referred to as a “complaint”), OCR will assign a case number and establish a file.

The following guidelines will be applied in determining how many case numbers should be assigned:

- When OCR receives written information at or around the same time by the same complainant that raises identical allegations against the same recipient, OCR will assign one case number to the complaints.

- When OCR receives written information alleging discrimination against multiple recipients and OCR has determined that the written information is appropriate for further processing pursuant to CPM Section 102, OCR will assign a separate case number to each recipient³ named. If, during the course of the investigation, OCR determines that other recipients are involved in the alleged acts of discrimination, OCR will assign a separate case number for each such recipient; the case opening date is the date on which OCR determines that other recipients are involved.
- Written information from more than one person against the same recipient that contains different or distinct allegations are assigned separate case numbers.
- Written information from one or more than one person that raises the same or a similar allegation based on the same operative facts against the same recipient may be assigned one case number when OCR makes this determination prior to the docketing. When OCR is currently investigating a case against the same recipient, written information that is filed subsequently and that raises substantially identical allegations will be assigned a separate case number(s) and reviewed to determine whether to consolidate with the existing investigation and dismiss the subsequent case under CPM Section 108.
- New allegations filed by the same person against the same recipient after OCR has begun to investigate the original complaint are reviewed on a case-by-case basis to determine whether the allegations should be added to the open complaint or assigned a separate case number and, if assigned a separate case number, whether to consolidate the investigation of the subsequent complaint with the investigation of the allegation(s) in the original case.

SECTION 104 ACKNOWLEDGE THE COMPLAINT

OCR will promptly acknowledge in writing receipt of the complaint and provide a Consent Form to the complainant. OCR will also inform the complainant that the complaint will be evaluated to determine whether OCR will proceed to investigate the allegations and that further communications about complaint processing will be forthcoming. A Consent Form, a Complaint Form, and *OCR Complaint Processing Procedures* are available online at: (<https://www2.ed.gov/about/offices/list/ocr/docs/howto.html?src=rt>).

SECTION 105 OBTAIN A CONSENT FORM

When disclosure of the identity of the complainant is necessary in order to resolve the complaint, OCR will require written consent before proceeding. The complainant will be informed that the complaint will be dismissed if written consent is necessary in order to resolve the complaint and is not received within 20 calendar days of the date that the Consent Form was provided with the acknowledgement letter or the date OCR requests the Consent Form from the complainant, whichever is earlier. The signed Consent Form may be submitted to OCR by mail, fax, electronic mail, or in person. If OCR does not receive a signed

³ This manual uses the term “recipient” throughout. With respect to Title VI, Title IX, Section 504 and the Age Discrimination Act, a recipient is an entity that receives federal financial assistance. With respect to the Boy Scouts of America Equal Access Act, a recipient is a public elementary or secondary school or local or State educational agency that receives funds made available through the Department and with respect to Title II, the term is intended to include public entities whether or not they receive federal financial assistance. Specifically, the Department of Justice has identified the Department of Education as the designated agency to carry out Title II compliance activities regarding public elementary and secondary education systems and institutions, public institutions of higher education and vocational education (other than schools of medicine, dentistry, nursing, and other health-related schools) and public libraries.

written Consent Form, and it is necessary in order to resolve the complaint, the complaint will be dismissed and the complainant so informed in writing.

A complainant filing on behalf of or pertaining to another person(s) is responsible for securing any necessary written consent from that individual, including when a parent files for a student over the age of 18 or one who becomes 18 while the complaint is under investigation or in monitoring. Where the person is a minor (under the age of 18) or a legally incompetent adult, the Consent Form must be signed by that person's parent or legal guardian. Parental or legal guardian consent may not be required for persons under the age of 18 if they are emancipated under state law and are therefore considered to have obtained majority. Proof of emancipation, incompetence, and/or legal guardianship must be provided if requested by OCR.

SECTION 106 DETERMINE WHETHER THE ALLEGATIONS ARE TIMELY

OCR will take action only with respect to those allegations (except allegations of age discrimination and, in special circumstances, allegations relating to breach of Facilitated Resolution Between the Parties agreements) that have been filed within 180 calendar days of the date of the alleged discrimination, unless the complainant is granted a waiver under CPM Section 107. With respect to allegations of age discrimination, OCR will take action with respect to those complaint allegations that have been filed within 180 days of the date the complainant first had knowledge of the alleged discrimination. OCR may extend this time limit for age discrimination complaints for good cause shown. See CPM subsection 701(a). With respect to the timeliness requirements for allegations relating to the breach of Facilitated Resolution Between the Parties agreements, see CPM Section 205.

The filing date of a complaint for the purpose of determining timeliness is the following:

- The filing date of complaints submitted online or by electronic mail or fax is the date the complaint was sent to OCR.
- The filing date of complaints submitted by mail is the date the complaint is postmarked.
- For Title II complaints referred from DOJ, the filing date is the date the complaint was received by DOJ.

Timely allegations may include those where the complainant alleges a continuing violation and/or a pattern or practice of discrimination.

SECTION 107 DETERMINE WHETHER A WAIVER SHOULD BE GRANTED

If a complaint allegation⁴ is not filed in a timely manner (see CPM Section 106), where appropriate, OCR will notify the complainant of the opportunity to request a waiver.⁵ OCR may grant a waiver of the 180-day filing requirement for reasons such as:

- (a) The complainant could not reasonably be expected to know the act was discriminatory within the 180-day period, and the complaint allegation was filed within 60 days after the complainant could

⁴ Although the manual refers to "complaints" and "complaint allegations," OCR makes a determination as to each allegation in a complaint. For example, in a single complaint, OCR may decide that it is appropriate to proceed to complaint investigation on one or more allegations while dismissing another allegation or other allegations. The complainant will be informed of OCR's decision with respect to each allegation.

⁵ OCR's complaint form notifies the complainant of the opportunity to request a waiver of OCR's timeliness requirement.

reasonably have become aware of the alleged discrimination (note that lack of previous awareness of OCR or the civil rights laws and regulations enforced by OCR is not a basis for a waiver).

- (b) The complainant was unable to file a complaint because of incapacitating illness or other incapacitating circumstances during the 180-day period, and the complaint allegation was filed within 60 days after the period of incapacitation ended.
- (c) The complainant filed a complaint alleging the same or similar allegation based on the same operative facts within the 180-day period with another federal, state, or local civil rights enforcement agency, or federal or state court, and filed a complaint with OCR within 60 days after the other agency had completed its investigation or, in the case of a court, there had been no decision on the merits or settlement of the complaint allegations. Dismissal with prejudice is considered a decision on the merits.
- (d) The complainant filed, within the 180-day period, an internal grievance with the recipient of federal financial assistance, or a due process hearing, alleging the same discriminatory conduct that is the subject of the OCR complaint, and the complaint is filed no later than 60 days after the internal grievance is concluded.
- (e) Unique circumstances generated by OCR's action have adversely affected the complainant.

SECTION 108 DISMISSAL OF ALLEGATIONS

Allegations can be dismissed during the evaluation stage of case processing or after the allegations have been opened for investigation.

As appropriate, in the evaluation stage, OCR will assist the complainant in understanding the information that OCR requires in order to proceed to the investigation of the complainant's allegation(s). This will include explaining OCR's investigation process and the rights of the complainant under the statutes and regulations enforced by OCR. OCR may also specifically identify the information necessary for OCR to proceed to investigation. OCR staff will provide reasonable assistance to complainants who are persons with disabilities, individuals of limited English proficiency, or persons whose communication skills are otherwise limited.

When an allegation(s) is dismissed during the evaluation stage, OCR will issue a letter to the complainant explaining the reason for the decision.⁶ When a complaint allegation is dismissed after the complaint allegation has been opened for investigation, OCR will issue a letter to the complainant and the recipient explaining the reason for the decision. Complainants may elect to refile complaints that were dismissed pursuant to Sections 108(a), (b), (c), (e), (p), and (q) if they have addressed the deficiencies stated by OCR in the dismissal.

Where the Regional Office has approved issuance of a final determination under CPM Section 303 with regard to any allegation(s), OCR will not dismiss the allegation(s), but will proceed in accordance with CPM Section 303.

⁶ In circumstances where the complaint has been referred to the Federal Mediation and Conciliation Service, OCR will also notify the recipient of the dismissal.

OCR **will** dismiss an allegation, or, if appropriate, the complaint⁷ in its entirety, when:

- (a) The allegation, on its face or as clarified, fails to state a violation of one of the laws and regulations OCR enforces.
- (b) The allegation, on its face or as clarified, lacks sufficient factual detail (e.g., who, what, where, when, how), or is so speculative, conclusory⁸ or incoherent that OCR cannot infer that discrimination or retaliation may have occurred or may be occurring.

Before dismissing an allegation(s) under CPM subsection 108 (b), OCR will contact the complainant either by telephone or in writing (by letter or electronic mail) to (i) explain the information necessary for OCR to open an investigation of the allegation(s), (ii) request that the information be received within 14 calendar days of the date of the telephone contact, letter, or electronic mail, and (iii) advise the complainant that the allegation(s) will be dismissed if the information is not received by that date. OCR will dismiss the allegation(s) if the requested information is not received within 14 calendar days of the date of the telephonic or written request, unless the complainant has requested additional time to provide the information.

- (c) Based on all of the facts/information provided by the complainant, OCR cannot reasonably conclude that the recipient has violated a law(s) OCR enforces.
- (d) The allegation is not timely filed with OCR pursuant to CPM Section 106 and a waiver was not requested or was requested but not granted pursuant to CPM Section 107.
- (e) OCR determines that a signed Consent Form is required to proceed with an investigation, and the Consent Form has not been provided.
- (f) OCR determines that it lacks jurisdiction over the entity alleged to have discriminated. When appropriate, OCR will refer the complaint to the appropriate agency. See CPM Section 701.
- (g) OCR transfers or refers the complaint to another agency for investigation. See CPM Section 701.

OCR **may** dismiss an allegation, or, if appropriate, the complaint⁷ in its entirety, pursuant to subsections 108(h) through (r) below. However, where OCR determines that the complaint or OCR's investigation indicates that the alleged violative conduct may recur, OCR will not dismiss the complaint and will continue the investigation.

- (h) The same or a similar allegation based on the same operative facts has been filed either by the complainant or someone other than the complainant against the same recipient with another federal, state, or local civil rights enforcement agency⁹ or through a recipient's internal grievance procedures, including due process proceedings, and
 - i. ***The same or similar allegation(s) filed with OCR involve the same operative facts currently pending before another federal, state, or local civil rights enforcement agency or through a recipient's internal grievance procedures, including due process proceedings, and OCR***

⁷The provisions of section 108 do not apply to compliance reviews and directed investigations initiated by OCR pursuant to Article IV.

⁸ This provision applies where the complaint allegation (including any additional information provided by the complainant) does not provide sufficient information to raise the allegation above the level of speculation. The complaint must provide more than bare conclusions of alleged violations of the laws and regulations enforced by OCR.

⁹ Also includes agencies (such as, for example, state educational agencies) that have jurisdiction to investigate such complaints.

anticipates that all allegations will be investigated and that there will be a comparable resolution process pursuant to legal standards that are acceptable to OCR. OCR will advise the complainant that she or he may re-file within 60 days of the completion of the other entity's action. Generally, OCR will not conduct its own investigation; instead, OCR reviews the results of the other entity's determination and decides whether the other entity provided a comparable resolution process pursuant to legal standards that are acceptable to OCR.

- ii. ***The same or similar allegation(s) filed with OCR involve the same operative facts that has been resolved by another federal, state, or local civil rights enforcement agency or through a recipient's internal grievance procedures, including due process proceedings, and all allegations were investigated and there was a comparable resolution process pursuant to legal standards that are acceptable to OCR.***
 - (i) The same or a similar allegation based on the same operative facts has been filed either by the complainant or someone other than the complainant against the same recipient with state or federal court. An OCR complaint may be re-filed within 60 days following termination of the court proceeding if there has been no decision on the merits or settlement of the complaint allegations. Dismissal with prejudice is considered a decision on the merits.
 - (j) OCR obtains credible information indicating that the allegations raised by the complainant are currently resolved and are therefore no longer appropriate for investigation.
 - (k) A class action with the same or a similar allegation(s) with the same operative facts has been filed against the same recipient with state or federal court. An OCR complaint may be re-filed within 60 days following termination of the court proceeding if there has been no decision on the merits or settlement of the state or federal complaint.
 - (l) The complaint filed by the complainant or someone other than the complainant against the same recipient raises the same or similar allegation(s) based on the same operative facts that was previously dismissed or closed by OCR.
 - (m) OCR has recently investigated or is currently investigating the same or similar allegation(s) based on the same operative facts involving the same recipient in a compliance review, directed investigation, or an OCR complaint.
 - (n) The complainant withdraws the complaint.
 - (o) The death of the complainant makes it impossible to investigate the allegations fully, or forecloses the possibility of individual relief.
 - (p) OCR determines that its ability to complete an investigation is substantially impaired by the complainant's refusal to provide information that is reasonably accessible to the complainant and is necessary for investigation of the complaint. OCR will include documentation in the case file of its efforts to contact the complainant by phone, in writing, or via electronic mail to request the necessary information and of the complainant's refusal to provide information.
 - (q) OCR determines that its ability to complete an investigation is substantially impaired by its inability to contact the complainant in order to obtain information that is necessary for investigation of the complaint. OCR will include documentation in the case file of its unsuccessful efforts to contact the complainant by phone, in writing, or via electronic mail to request the necessary information.

- (r) OCR determines that the complaint is moot or unripe.

SECTION 109 FIRST AMENDMENT PRINCIPLES

Although OCR does not have jurisdiction to enforce the First Amendment to the U.S. Constitution, as a threshold issue and throughout the processing of the complaint, OCR interprets its statutes and regulations consistent with the requirements of the First Amendment, and all actions taken by OCR must comport with First Amendment principles. OCR will not interpret any statute or regulation to impinge upon rights protected under the First Amendment or to require recipients to encroach upon the exercise of such rights.

SECTION 110 RAPID RESOLUTION PROCESS

The Rapid Resolution Process (RRP) is an expedited case processing approach that can be used to resolve cases in any of OCR's statutory areas either during the evaluation stage or after issuance of the letter of notification. The outcomes in all RRP cases must meet OCR's standards for legal sufficiency and be consistent with applicable statutory and regulatory authority. Any resolution agreement reached through RRP must be aligned with the allegations in the complaint deemed appropriate for resolution pursuant to RRP. See CPM Article III.

Once OCR has received any necessary signed Consent Form from the complainant (see CPM Section 105) and has determined that the complaint is appropriate for RRP, OCR will promptly attempt to resolve the complaint and obtain information necessary to make a compliance determination. OCR will contact the recipient to determine if the recipient is interested in immediately resolving or has taken action to resolve the complaint allegation(s). Where such interest is expressed, RRP may be used to resolve complaints under the following circumstances:

- (a) Where a recipient has already taken action that will resolve the complaint, the complaint may be resolved without an agreement where compliance is verified and does not require monitoring by OCR. Under this circumstance, OCR will issue a dismissal letter pursuant to CPM Section 108(j).
- (b) Where a recipient has indicated that it is willing to take action in the future to resolve the complaint, or the recipient has already taken action that requires monitoring, the complaint may be resolved by obtaining a resolution agreement, the implementation of which OCR will monitor. See CPM Section 304. Under this circumstance, OCR will issue a resolution letter pursuant to CPM Section 302(c).
- (c) Where OCR obtains sufficient information from the recipient to make a compliance determination pursuant to CPM Section 303, OCR will issue a letter of finding pursuant to CPM subsection 303(a) or OCR will issue a letter of finding and obtain a resolution agreement pursuant to CPM subsection 303(b), the implementation of which OCR will monitor.

For cases in RRP, the Regional Office must ensure expeditious completion in accordance with statute, regulations, and case processing procedures.

SECTION 111 OPENING THE COMPLAINT ALLEGATION(S) FOR INVESTIGATION

When OCR opens a complaint for investigation, it will issue letters of notification to the complainant and the recipient that contain the following information:

- OCR's jurisdiction with applicable statutory and regulatory citations.
- The allegations to be investigated.
- A statement that OCR is a neutral fact-finder and citing the CPM.
- Information about OCR's mediation process.
- A statement that the complainant may have a right to file a private suit in federal court whether or not OCR finds a violation.
- Contact information for the OCR staff person who will serve as the complainant's and the recipient's primary contact during the investigation and resolution of the complaint.

A copy of *OCR Case Processing Procedures* will be included with the letter to the recipient. A copy of the complaint will be provided to the recipient.

ARTICLE II: MEDIATION

SECTION 201 MEDIATION

OCR offers two mediation options that provide an opportunity for the parties involved to voluntarily resolve the allegation(s). OCR will determine, on an individualized basis, whether the allegation(s) are appropriate for resolution pursuant to the mediation options:

- (a) Complainants may request mediation at the time of filing of the complaint. If the allegation(s) is within OCR's jurisdiction, is filed timely (or OCR granted a waiver), provides sufficient detail, states a violation of one of the laws or regulations OCR enforces, and the complainant has provided a signed Consent Form, OCR will contact the recipient and offer this resolution option. If the recipient is interested in mediation, OCR will provide the recipient with a statement of the allegation(s) to be mediated. If the recipient is not interested in mediation, OCR will determine whether to open the complaint for investigation. If the mediation is not successful, OCR will close the original complaint pursuant to this subsection, assign a new docket number to the complaint, and determine whether to open the complaint for investigation.
- (b) If a complainant has not requested mediation but OCR determines during the course of the investigation that a complaint could be appropriate for mediation, OCR will contact the parties and offer this resolution option.

SECTION 202 ROLES

(a) OCR's Role

- To serve as an impartial, confidential facilitator between the parties.
- To inform the parties of mediation procedures, establish a constructive tone, and encourage the parties to work expeditiously and in good faith toward a mutually acceptable resolution.
- To review the allegations with the parties and assist both parties in understanding the pertinent legal standards and possible remedies.
- To facilitate a discussion between the parties regarding possible actions that the parties may consider in working toward a resolution.
- To offer assistance, as appropriate, with regard to reducing any resolution to writing. When an agreement is reached, the parties are informed that OCR will issue a closure letter reflecting the resolution of the complaint by agreement of the parties.

(b) Role of the Participants

- To participate in the discussions in good faith.

- To consider offers or suggestions with an open mind and to work constructively toward a mutually acceptable resolution.
- To implement any agreement in good faith.

OCR does not sign, approve, endorse, or monitor any agreement reached between the parties.

SECTION 203 INITIATION AND TERMINATION OF THE MEDIATION PROCESS

If OCR determines that mediation is appropriate and the complainant and the recipient are willing to proceed with this resolution option, OCR will designate staff to facilitate an agreement between the recipient and

complainant. Staff assigned to conduct mediation of a complaint shall not be staff assigned to the investigation of that complaint.

An Agreement to Participate in mediation must be reviewed and signed, verbally agreed to, or agreed to by electronic mail by the complainant and recipient. In circumstances where verbal agreement is obtained, the mediator shall send a letter or electronic mail to the parties confirming the Agreement.

If a case has been opened for investigation, OCR has the discretion to suspend its investigation for up to 30 calendar days to facilitate an agreement between the parties. If an agreement has not been reached, OCR will resume its investigation if it had been suspended.

SECTION 204 CONFIDENTIALITY OF THE MEDIATION PROCESS

A Confidentiality Agreement must be reviewed and signed, verbally agreed to, or agreed to by electronic mail by the mediator and the parties to the mediation (the complainant or complainant's representative and the recipient or recipient's representative). In circumstances where verbal agreement is obtained, the mediator shall send a letter or electronic mail to the parties confirming this Agreement.

In order to maintain confidentiality of the mediation process, any notes taken during mediation by the facilitator and/or any records or other documents offered by either party to the mediator during mediation will be kept in a separate file and will not be shared with the staff member(s) assigned to investigate the complaint.

SECTION 205 SUCCESSFUL CONCLUSION OF MEDIATION

At the conclusion of mediation, OCR will obtain a copy of a statement that the allegation(s) has been resolved, signed by the complainant, or a copy of any agreement that has been signed by the parties. Once resolution of any allegation has been obtained, OCR will notify the parties in writing that the allegation(s) has been resolved; other outstanding allegations, if any, are to be resolved through the investigation and resolution process. See CPM Article III. A copy of the agreement between the parties or the signed statement from the complainant that the allegation(s) has been resolved will be attached to the closure letter.

SECTION 206 BREACH OF MEDIATION AGREEMENTS

OCR will not monitor or enforce the agreement but will inform the parties that if a breach occurs, the complainant has the right to file another complaint; such new complaint is not subject to dismissal pursuant to subsection 108(m). If a new complaint is filed, OCR will not address the alleged breach of the agreement. Instead, OCR will determine whether to investigate the original allegation. When making this determination, OCR will consider whether the alleged breach is material, its relation to any alleged discrimination and any other factors as appropriate. To be considered timely, the new complaint must be filed either within 180 calendar days of the date of the alleged discrimination or within 60 calendar days of the date the complainant obtains information that a breach occurred, whichever date is later.

SECTION 207 INVESTIGATIVE DETERMINATION WHEN MEDIATION IS NOT SUCCESSFUL

OCR will monitor the mediation to ensure adequate time for completion of the investigation in the event that mediation is unsuccessful.

ARTICLE III: CASE PLANNING, INVESTIGATION, AND RESOLUTION

OCR will ensure that the actions its takes in investigations are legally sufficient, supported by evidence, and dispositive of the allegations. OCR can resolve allegations at any point during the course of the investigation if appropriate. OCR resolution agreements will be drafted to ensure compliance with the civil rights laws and regulations enforced by OCR.

When during the course of the investigation of a complaint, OCR identifies compliance concerns and/or violations involving issues that were not raised in the complaint, OCR may address any compliance concerns and/or identified violations in the resolution letter or letter of findings and the resolution agreement or, depending on the nature of the compliance concerns, provide technical assistance or consider the compliance concerns for a possible compliance review or directed investigation. See CPM Sections 401 and 402.

SECTION 301 CASE PLANNING

Case planning will begin as early as possible, will be thorough, and will be conducted throughout the life of every case to ensure high quality decisions, prompt investigations and efficient use of OCR resources. Planning decisions will reflect sound legal standards and will be adjusted as necessary to take into account information obtained during case processing. See CPM Section 702. The scope of OCR's investigation and resolution activities is governed by the applicable statute(s) and regulations.

Regional Office management and investigative staff are accountable for effective planning and will participate in critical planning decisions commensurate with the nature and complexity of the case, to ensure consistent high quality casework.

The following essential elements of case planning will be addressed in every OCR file (unless inapplicable):

- Allegation(s).
- OCR's Jurisdiction over the subject matter and entity.
- Legal standards, regulatory authority and elements of proof.
- Ensuring OCR's actions comport with First Amendment principles.
- Scope of the investigation.
- Investigative methods (i.e., what data and/or information are necessary to resolve the case and the means and methods OCR will employ to obtain the relevant data and/or information).
- Resolution strategy.

The case file will contain documentation that supports the decisions made. Planning documentation should be organized so that it can be readily located in the case file. Case planning should be documented in the Case Planning Document.

These planning activities will ensure accountability for high quality and consistency and will address:

- required actions to investigate compliance;
- dates for completion of specific actions;
- description of evidence required; and
- all settlement activities.

SECTION 302 RESOLUTION AGREEMENT REACHED DURING AN INVESTIGATION

Allegations under investigation may be resolved at any time when, prior to the point when the Regional Office issues a final determination under CPM Section 303, the recipient expresses an interest in resolving the allegations **and** OCR determines that it is appropriate to resolve them because OCR's investigation has identified issues that can be addressed through a resolution agreement. The provisions of the resolution agreement must be tied to the allegations and the evidence obtained during the investigation, and will be consistent with applicable regulations.

OCR will inform the recipient that this resolution process is voluntary before proceeding to resolution under this section. When OCR determines that it is appropriate to resolve the allegations(s) pursuant to CPM Section 302, OCR will notify the complainant of the recipient's interest in resolution.

(a) Statement of the Case

For cases with allegations proposed for resolution under CPM Section 302, OCR will prepare a Statement of the Case. The Statement of the Case sets forth:

- A statement of OCR's jurisdictional authority, including recipient status and the statutory basis for the investigation.
- An explanation of the pertinent legal standard(s).
- The allegations investigated.
- Relevant background information.
- A summary of the investigation, including an analysis of the evidence obtained to date and the identified concern(s) that support the need for the provisions of the agreement.

The Statement of the Case must address all of the allegations proposed for resolution under CPM Section 302.

(b) Timeframes and Procedures for Negotiations

From the date that the proposed resolution agreement is shared with the recipient, OCR and the recipient will have a period of up to 30 calendar days within which to reach final agreement.

During the negotiations period (which may be less than 30 days, at the discretion of OCR), OCR may suspend its investigation of the case. Where a final agreement is not reached by the 30th day, the investigation will resume no later than on the 31st day after negotiations were initiated; however, negotiations may continue while the investigation resumes. This 30-day period for suspension of the investigation in order to conduct negotiations cannot be restarted.

(c) Resolution Letters

After the recipient signs the resolution agreement, OCR will issue a Resolution Letter, which will address all allegations in the case resolved pursuant to CPM Section 302. The letter must include, at a minimum:

- A statement of OCR's jurisdictional authority, including recipient status and the statutory basis for the investigation.
- A statement of the allegations investigated and an analysis of the evidence obtained to date.
- A statement that the recipient has signed a resolution agreement.
- A statement that, when fully implemented, the resolution agreement will address all of the allegations investigated and that OCR will monitor the implementation of the agreement. See CPM Section 304 and CPM Article V.
- The following statement: "The complainant may have a right to file a private suit in federal court whether or not OCR finds a violation." For service complaints under the Age

Discrimination Act, the complainants may file in federal court only after they have exhausted administrative remedies. See CPM subsection 701(a).

A copy of the signed resolution agreement will be included with the resolution letter. OCR will monitor the implementation of the agreement until the recipient has fulfilled the terms of the agreement. Upon completion of the obligations under the agreement, OCR will close the case. See CPM Article V.

SECTION 303 INVESTIGATIVE DETERMINATIONS

At the conclusion of the investigation, OCR will determine, using a preponderance of the evidence standard, whether:

- There is insufficient evidence to support a conclusion of noncompliance, or
- The evidence supports a conclusion of noncompliance.

(a) Insufficient Evidence Determination

When OCR determines that the preponderance of the evidence does not support a conclusion that the recipient failed to comply with applicable statute(s) and regulation(s), OCR will issue a letter of finding(s) to the parties explaining the reasons for its decision. See CPM Section 303(e).

(b) Non-Compliance Determination

When OCR determines that the preponderance of the evidence supports a conclusion that the recipient failed to comply with applicable statutes(s) and regulation(s), OCR will negotiate a resolution agreement and issue a letter of finding(s). See CPM Sections 303(e) and 304. The agreement must include actions steps that, when implemented, will remedy both the individual discrimination at issue and any similar instances where future violative conduct may recur.

(c) Mixed Determination

A “mixed determination” is appropriate for complaints with multiple allegations, where the allegations will be resolved in different ways (e.g., investigation has found a violation with regard to some allegations and insufficient evidence with regard to other allegations; the investigation has found a violation with regard to some allegations and there are other allegations that are appropriate to resolve prior to the conclusion of the investigation pursuant to CPM Section 302; or OCR has found insufficient evidence with regard to some allegations and determined that other allegations are appropriate to resolve prior to the conclusion of the investigation pursuant to CPM Section 302). In a “mixed determination” case where OCR is making a determination(s) pursuant to Section 303(b), OCR will negotiate a resolution agreement and issue a letter of finding(s). See CPM Sections 303(e) and 304. In a “mixed determination” case where OCR is not making a determination(s) pursuant to 303(b) but is resolving allegations pursuant to Section 302, OCR will issue a resolution letter pursuant to Section 302(c).

(d) Statement of the Case

OCR will prepare a Statement of the Case for investigative determinations under CPM Section 303. The Statement of the Case sets forth:

- Allegations raised in the complaint.
- A statement of OCR’s jurisdictional authority, including recipient status and the statutory basis for the investigation.
- An explanation of the pertinent legal standard(s).
- Relevant background information.
- A statement of each allegation investigated and the findings of fact for each, including analysis of the evidence on which the findings are based.

- Conclusions for each allegation that reference the relevant facts, the applicable regulation(s), and the appropriate legal standards.

(e) Letter of Finding(s)

For insufficient evidence, non-compliance and mixed determinations that include non-compliance determinations, OCR will issue a letter of finding(s) explaining the reason(s) for its decision to both the recipient and the complainant.¹⁰

Letters of finding(s) address all allegations in the case. The letter includes, as appropriate:

- A statement of the allegations in the case.
- A statement of OCR's jurisdictional authority, including recipient status and the statutory basis for the investigation.
- A statement of the findings of fact for each allegation, supported by any necessary explanation and/or analysis of the evidence on which the findings are based.
- Conclusions for each allegation that reference the relevant facts, the applicable regulation(s), and the appropriate legal standards.
- A statement that: "The complainant may have a right to file a private suit in federal court whether or not OCR finds a violation." For service complaints under the Age Discrimination Act, the complainants may file in federal court only after they have exhausted administrative remedies. See CPM subsection 701(a).

(f) Timeframes and Procedures for Negotiations

From the date that the proposed resolution agreement is shared with the recipient, OCR and the recipient will have a period of up to 90 calendar days within which to reach final agreement.

(g) Negotiation Impasse

OCR may end the 90-day negotiations period if no agreement has been reached by the 90th day and may end the negotiations period at any time prior to the expiration of the 90-calendar day period when it is clear that agreement will not be reached (e.g., the recipient has refused to discuss any resolution; the recipient has indicated a refusal to agree to a key resolution term; the recipient has not responded to a proposed resolution agreement and at least 30 calendar days have passed). At such time, OCR shall issue an Impasse Letter that informs the recipient that OCR will issue a letter of impending enforcement action in 10 calendar days if a resolution agreement is not reached within that 10-day period. The letter will include a description of OCR's unsuccessful attempts to resolve the complaint. If the recipient does not enter into a resolution agreement within 10 calendar days of the date of the issuance of the Impasse Letter, OCR must follow the procedures in CPM Section 305 for the issuance of a Letter of Impending Enforcement Action regarding non-compliance determinations.

¹⁰ For recipients operating under federal court order, see CPM Section 704.

In the case of a mixed determination, when the negotiations included allegations that were appropriate to resolve prior to the conclusion of the investigation pursuant to CPM Section 302 and allegations for which OCR made determinations of non-compliance, OCR shall issue a Letter of Impending Enforcement Action in 10 calendar days if a resolution agreement is not reached within that 10-day period. The letter will include a description of OCR's unsuccessful attempts to resolve the complaint. If the recipient does not enter into a resolution agreement within 10 calendar days of the date of the issuance of the Impasse Letter, OCR must follow the procedures in CPM Section 305 for the issuance of a Letter of Impending Enforcement Action regarding non-compliance determinations.

(h) Negotiations On-Going at the End of the 90-day Period

If OCR and the recipient negotiate for 90 calendar days and fail to reach final agreement by the 90th day, but negotiations are on-going, OCR shall inform the recipient that OCR will issue a Letter of Impending Enforcement Action in 30 calendar days if a resolution is not reached within that 30-day period. Negotiations will be considered on-going if the recipient has agreed in principle to the terms of the agreement, but needs a short period of time within which, for example, to obtain approval of the agreement (e.g., by a board of education or president of a college) and/or the appropriate signature on the agreement; or where the recipient has agreed to most of the terms of the agreement but requests a short period of additional time to negotiate other terms. If the recipient does not enter into a resolution agreement within 30 calendar days, OCR will issue a Letter of Impending Enforcement Action regarding non-compliance determinations pursuant to CPM Section 305.

In the case of a mixed determination, when the negotiations included allegations that were appropriate to resolve prior to the conclusion of the investigation pursuant to CPM Section 302, and allegations for which OCR made determinations of non-compliance, OCR shall inform the recipient that OCR will issue a Letter of Impending Enforcement Action in 30 calendar days if a resolution is not reached within that 30-day period. If the recipient does not enter into a resolution agreement within 30 calendar days, OCR will issue a Letter of Impending Enforcement Action regarding non-compliance determinations pursuant to CPM Section 305.

SECTION 304 GUIDELINES FOR RESOLUTION AGREEMENTS

The complaint will be considered resolved and the recipient deemed compliant when the recipient, after negotiating with OCR and reaching agreement on its terms, enters into and fulfills the terms of a resolution agreement.

Resolution Agreements:

- Must be signed by a person with authority to bind the recipient.
- Includes in the agreement itself or through an exchange of letters or other written communications:
 - Specific acts or steps the recipient will take to resolve compliance concerns and/or violations.
 - Dates for implementing each act or step.
 - Dates for submission of reports and documentation.
 - Where appropriate, language requiring submission of documents and/or other information or actions for OCR's review and approval, and timeframes for their submission.

- Timeframes requiring the recipient to implement what OCR has approved, and language requiring documentation verifying implementation.
- The following statements of principle:
 - The recipient understands that by signing the resolution agreement, it agrees to provide data and other information in a timely manner in accordance with the reporting requirements of the resolution agreement. Further, the recipient understands that during the monitoring of the resolution agreement, if necessary, OCR may visit the recipient, interview staff and students, and request such additional reports or data as are necessary for OCR to determine whether the recipient has fulfilled the terms and obligations of the resolution agreement.
 - Upon the recipient's satisfaction of the commitments made under the Agreement, OCR will close the case.
 - The recipient understands and acknowledges that OCR may initiate proceedings to enforce the specific terms and obligations of the resolution agreement and/or the applicable statute(s) and regulation(s). Before initiating such proceedings, OCR will give the recipient written notice of the alleged breach and sixty (60) calendar days to cure the alleged breach.

SECTION 305 LETTER OF IMPENDING ENFORCEMENT ACTION

When following the expiration of the 10 calendar day period referenced in CPM subsection 303(g) or the 30 calendar day period referenced in CPM subsection 303(h), the recipient does not enter into a resolution agreement to resolve the identified areas of non-compliance, OCR will prepare a Letter of Impending Enforcement Action, which will include the following:

- A statement of allegation(s) in the case.
- A statement of OCR's jurisdictional authority, including recipient status and the statutory basis for the investigation.
- A statement of the findings of fact for each allegation supported by any necessary explanation or analysis of the evidence on which the findings are based.
- Conclusions for each allegation that reference the relevant facts, the applicable regulation(s), and the appropriate legal standards.
- Notice that the Letter of Impending Enforcement Action is not intended and should not be construed to cover any other issue regarding the recipient's compliance.
- Notice of the time limit on OCR's resolution process and the consequence of failure to reach agreement.
- A description of OCR's unsuccessful attempts to resolve the case.
- When a decision is made to defer final approval of any applications by the recipient for additional federal financial assistance or, with respect to the Boy Scouts Act, additional funds made available through the Department over what the recipient is presently receiving, the letter also will provide notice of such possible deferral. A separate deferral letter will be prepared if appropriate.
- Title II letters will include the following language: "The complainant may have a right to file a private suit pursuant to Section 203 of the Americans with Disabilities Act, whether or not OCR finds a violation of Title II."

To resolve the case after issuance of the Letter of Impending Enforcement Action, any resolution agreement that the recipient proposes must be approved by OCR.

SECTION 306 REFERRALS FROM THE DEPARTMENT OF JUSTICE (DOJ) AND THE EQUAL EMPLOYMENT OPPORTUNITY COMMISSION (EEOC)

When a Title II complaint is referred to OCR by the Department of Justice, OCR will send a copy of the letter resolving the case to DOJ. When a Title II/504 employment discrimination complaint has been dual-filed with EEOC and OCR, and when a complaint has been referred to OCR, OCR will notify the EEOC once the complaint has been resolved. See 28 C.F.R. Part 37 and 29 C.F.R. Part 1640.

ARTICLE IV: COMPLIANCE REVIEWS AND DIRECTED INVESTIGATIONS

The investigation and resolution options and procedures identified in the CPM will be utilized for compliance reviews and directed investigations, as appropriate. See CPM Articles III, V, and VI. The “initiation date” is the date of the letter notifying the recipient of the compliance review or directed investigation.

SECTION 401 COMPLIANCE REVIEWS

In addition to the regulations implementing Title VI that require OCR to investigate complaints that are filed with the agency, the regulations require OCR to initiate “periodic compliance reviews” to assess the practices of recipients to determine whether they comply with the Title VI regulations. See 34 C.F.R. § 100.7(a). This regulatory provision is incorporated by reference in the regulations implementing other statutes enforced by OCR. See Title IX (34 C.F.R. § 106.71), Section 504 (34 C.F.R. § 104.61), and the Boy Scouts Act (34 C.F.R. § 108.9). For the Age Discrimination Act, see 34 C.F.R. § 110.30. For Title II, see 28 C.F.R. § 35.172(a).

The compliance review regulations afford OCR broad discretion to determine the substantive issues for investigation and the number and frequency of the investigations.

SECTION 402 DIRECTED INVESTIGATIONS

In appropriate circumstances, OCR may conduct a directed investigation when information indicates a possible failure to comply with the laws and regulations enforced by OCR, the matter warrants attention and the compliance concern is not otherwise being addressed through OCR’s complaint, compliance review or technical assistance activities. See 34 C.F.R. § 100.7(c). This regulatory provision is incorporated by reference in the regulations implementing the other statutes enforced by OCR. See Title IX (34 C.F.R. § 106.71), Section 504 (34 C.F.R. § 104.61), and the Boy Scouts Act (34 C.F.R. § 108.9). For the Age Discrimination Act, see 34 C.F.R. § 110.30. For Title II, see 28 C.F.R. Part 35.

A directed investigation is an OCR-initiated process that allows OCR to address possible discrimination that is not currently being addressed through OCR’s complaint, compliance review or technical assistance activities. Depending on the circumstances, a directed investigation may include offering technical assistance to the recipient, and/or conducting an expedited investigation that may result in a resolution agreement that will ensure that recipients come into compliance with the requirements of the civil rights laws and regulations enforced by OCR.

ARTICLE V: MONITORING RESOLUTION AGREEMENTS

SECTION 501 RESPOND TO MONITORING REPORTS AND VERIFY RECIPIENT'S IMPLEMENTATION

OCR will promptly acknowledge receipt of interim and final monitoring reports. OCR will evaluate each report and issue an appropriate response (e.g., where OCR determines actions taken are sufficient or insufficient under the agreement). OCR must obtain sufficient information to determine whether the recipient had complied with the terms and obligations of the resolution agreement. Depending on the nature of the agreement, verification of remedial actions may be accomplished by, for example, review of reports, documentation and other information submitted by recipients and knowledgeable persons, interviews of the recipients and knowledgeable persons and/or site visit(s).

SECTION 502 IMPLEMENTATION PROBLEMS

OCR will promptly provide written notice to the recipient of any deficiencies with respect to implementation of the terms and obligations of the agreement, and will request appropriate action to address such deficiencies. When OCR has determined that a recipient has failed to comply with the agreement or any of the terms and obligations thereof for reasons that do not justify modification of the agreement pursuant to CPM subsection 503(a), OCR will take prompt action pursuant to CPM Section 305 and CPM Article VI to enforce the agreement.

SECTION 503 MODIFICATIONS OF AGREEMENTS

(a) Changed Circumstances Affecting Agreements

OCR may agree to modify or terminate a resolution agreement when it learns that circumstances have arisen that substantially change, fully resolve, or render moot, some or all of the compliance concerns that were addressed by the resolution agreement. OCR may also modify the agreement in response to changes in controlling case law, statutes, and regulations.

(b) New Compliance Issues

OCR may address a new compliance issue(s) identified for the first time during monitoring by providing technical assistance or considering the issue(s) for a possible compliance review or directed investigation. See CPM Section 401 and 402.

(c) Approval of Modifications

OCR must approve modifications to the agreement (e.g., requests to change the substance of any provision in the agreement, requests for extension of time to submit a report or to complete a required action). Approved modifications must be set forth in writing and appended to the original agreement. Requests for modification must be documented in the case file. OCR will send the complainant written notification of approved modification(s) to the substance of the original agreement.

SECTION 504 CONCLUSION OF MONITORING

OCR will conclude the monitoring of a case when it determines that the recipient has fully and effectively implemented the terms and obligations of the resolution agreement, including any subsequent approved modifications to the agreement. OCR will promptly send written notification to the recipient and the complainant of its determination that the terms and obligations of the resolution agreement have been implemented and that OCR is closing the case.

ARTICLE VI: INITIATION OF ENFORCEMENT ACTION

When OCR is unable to negotiate a resolution agreement with the recipient, OCR will initiate enforcement action. OCR will either: (1) initiate administrative proceedings to suspend, terminate, or refuse to grant or continue and defer financial assistance from or, with respect to the Boy Scouts Act, funds made available through the Department to the recipient; or (2) refer the case to DOJ for judicial proceedings to enforce any rights of the United States under any law of the United States.

SECTION 601 INITIATE ADMINISTRATIVE PROCEEDINGS WHERE APPROPRIATE

When post-Letter of Impending Enforcement Action negotiations do not result in a resolution agreement, OCR will where appropriate, request that an administrative proceeding be initiated. OCR will establish a team to prosecute the case. When deferral of funds has been imposed, the Notice of Opportunity for Hearing will be issued within 30 days of the notice of the deferral action.

SECTION 602 REFER TO DOJ WHERE APPROPRIATE

When post-Letter of Impending Enforcement Action negotiations do not result in a resolution agreement, OCR will where appropriate, issue a letter to the recipient stating that the case will be referred to DOJ in 10 days from the date of the letter.

SECTION 603 ENFORCEMENT FOR DENIAL OF ACCESS

A recipient denies access to OCR when it:

- Refuses to permit OCR access during the recipient's normal business hours to information maintained by the recipient that is necessary to determine compliance status of the allegation(s) and issue(s) under investigation, or, during monitoring, recipient's compliance with a resolution agreement. Generally, this includes the access to books, records, accounts, including electronic storage media, microfilm, retrieval systems and photocopies, and other sources of information, including witnesses, and recipient's facilities.
- Refuses to permit OCR access to its employees during the recipient's regular business hours.
- Fails to provide information by virtue of the refusal of one of its employees to do so or to provide access to information maintained exclusively by an employee in his/her official capacity.
- Refuses to complete applicable OMB-approved compliance and survey forms relevant to an investigation.

Where the recipient has refused to provide OCR access orally, either in person, over the telephone or through use of other media, OCR must attempt to ascertain the exact basis for the recipient's refusal and explain OCR's authority to obtain the evidence. Where attempts to persuade the recipient to provide access have failed, OCR must send a letter to the recipient that sets forth in detail the evidence (e.g., documents, data, other information, witnesses) to which the recipient denied OCR access and specifies the efforts that OCR has made to obtain the evidence. If the recipient does not voluntarily provide OCR with access to the requested evidence within 30 calendar days of OCR's issuance of the letter to recipient, OCR will issue a Letter of Impending Enforcement Action. If the recipient continues to deny OCR access to the requested evidence, OCR will issue a letter to the recipient stating OCR's intention to take enforcement action.

SECTION 604 ENFORCEMENT FOR FAILURE TO COMPLY WITH OCR AGREEMENT

Where the recipient has failed to comply with the terms of a resolution agreement OCR will issue a Letter of Impending Enforcement Action pursuant to CPM Section 305. If the recipient does not come into compliance after issuance of the Letter of Impending Enforcement Action, OCR will initiate enforcement action pursuant to either CPM Section 601 or CPM Section 602.

ARTICLE VII: APPENDICES

SECTION 701 SPECIAL INTAKE PROCEDURES

(a) Age Discrimination Complaints

An age discrimination complaint is timely when it is filed within 180 days of the date the complainant first had knowledge of the alleged discrimination. For good cause shown, OCR may extend this time limit.

For service complaints under the Age Discrimination Act, the complainant may file a civil action under the Age Discrimination Act in federal court but only after he or she has exhausted administrative remedies. Administrative remedies are exhausted when either of the following has occurred: (1) 180 days have elapsed since the filing of a complaint with OCR and OCR has made no finding, or (2) OCR issues a finding in favor of the recipient. If OCR fails to make a finding within 180 days or issues a finding in favor of the recipient, OCR will promptly notify the complainant of this fact and of his or her right to bring a civil action for injunctive relief. OCR's notice must also contain the following information: that a civil action can be brought only in a United States district court for the district in which the recipient is found or transacts business; that a complainant prevailing in a civil action has the right to be awarded the costs of the action, including reasonable attorney's fees, but that these costs must be demanded in the complaint filed with the court; that before commencing the action, the complainant shall give 30 days' notice by registered mail to the Secretary, the Secretary of Health and Human Services, the Attorney General of the United States, and the recipient; that the notice shall state the alleged violation of the Age Discrimination Act, the relief requested, the court in which the action will be brought, and whether or not attorney's fees are demanded in the event the complainant prevails; and that the complainant may not bring an action if the same alleged violation of the Age Discrimination Act by the same recipient is the subject of a pending action in any court of the United States.

1. Employment Complaints

OCR does not have jurisdiction over employment complaints under the Age Discrimination Act. Employment complaints filed by persons 40 and older are referred to the appropriate EEOC office, and the OCR complaint is dismissed. Employment complaints filed by persons under 40 are not within the jurisdiction of EEOC and may be closed with notice to the complainant that there is no jurisdiction under the Act. If the complaint alleges age discrimination in employment that is within EEOC's jurisdiction and also contains allegations of discrimination in services within the jurisdiction of OCR, the complaint is split into two separate cases. Each is given its own case number, the age employment complaint is referred to EEOC with the OCR age employment case being closed, and OCR proceeds with the age services complaint.

2. Service Complaints

OCR will offer to mediate all complete and timely complaints (see 34 C.F.R. §§ 110.31 and 110.32) containing an allegation of age discrimination in services.

Where OCR receives a complaint containing both allegations of age discrimination in services and allegations under Title VI, Title IX, Title II, Section 504, and/or the Boy Scouts Act, and OCR determines that the non-age allegation(s) is independent and separable from the age allegation, OCR will mediate only the age portion of the complaint. OCR will proceed to investigate the additional allegations over which OCR has jurisdiction.

If OCR's mediation does not resolve the complaint within 60 days from the date of filing with OCR, OCR will resume processing the age aspects of the complaint. The date that OCR initiated mediation of the complaint or any portion of a complaint shall be entered in CMS; the date that the mediation of the complaint is terminated shall also be entered in CMS. The time involved in OCR's mediation will, therefore, not be included in OCR's case processing time.

(b) Title VI Complaints against Proprietary Schools

Authority to process Title VI complaints against proprietary vocational schools (privately owned, profit-making enterprises that teach a trade or skill) has, with certain exceptions, been delegated to the U.S. Department of Veterans Affairs. Such complaints must be forwarded to:

U.S. Department of Veterans Affairs
Office of Resolution Management
810 Vermont Avenue, N.W.
Washington, D.C. 20420

OCR must refer to the U.S. Department of Health and Human Services Title VI complaints filed against a proprietary school operated by a hospital. The complainant must be notified of the referral, and the complaint is dismissed.

The following exceptions apply:

- OCR remains responsible for enforcement of Title VI where a proprietary vocational school is operated by a college or university. See 38 C.F.R. § 18a.1(a).
- OCR remains responsible for enforcement of Title VI where a proprietary vocational school offers non-degree courses for which credit is given and which, on transfer, would be accepted toward a baccalaureate or higher degree by a degree-granting institution. See 38 C.F.R. § 18a.1 (b).

(c) Title VI and Title IX Employment Complaints (see 29 C.F.R. §§ 1691.1 – 1691.13 and 28 C.F.R. §§ 42.601 – 42.613)

Race, color, national origin and sex discrimination in employment complaints will be processed in accordance with the government-wide regulations. OCR will:

1. Within ten days of receipt, notify the complainant and the recipient that OCR has received the complaint, including the date, place and circumstances of the alleged unlawful employment practice.
2. Within 30 days of receipt:
 - i. Determine whether OCR has jurisdiction over the complaint under Title VI and/or Title IX.
 - ii. Determine whether EEOC may have jurisdiction over the complaint.
 - iii. Transfer to the EEOC all complaints over which OCR does not have jurisdiction but over which EEOC may have jurisdiction. Notify the complainant and the recipient of the transfer, the reason for the transfer, the location of the EEOC office to which the complaint was transferred and that the date the agency received the complaint will be deemed the date it was received by EEOC.

- iv. Refer to the EEOC certain complaints over which both OCR and EEOC appear to have jurisdiction (“joint complaints”), consistent with the following guidance:

Absent special circumstances, OCR will refer a joint complaint that solely alleges employment discrimination against an individual.

Absent special circumstances, OCR will not refer a joint complaint alleging a pattern or practice of employment discrimination.

Absent special circumstances, OCR will not refer a joint complaint that alleges discrimination in employment and includes allegations regarding other practices of a recipient. If, because of special circumstances, the employment allegations of such a complaint are referred to EEOC, OCR will assign a new case number to the allegations that are retained.

OCR will notify the complainant and recipient of the action taken on the joint complaint. In the case of a referral to EEOC, the notice will include the location of the EEOC office to which the complaint was referred, the civil rights provision(s) involved, the authority of EEOC under this regulation and that the date the agency received the complaint will be deemed the date it was received by EEOC.

For those joint complaints retained for OCR investigation, OCR will contact the EEOC to ensure that, in the event EEOC has also received the complaint, EEOC defers its investigation.

(d) Title II ADA Complaints (Other than Employment) (see 28 C.F.R. § 35.171(a)(2)(i))

OCR has jurisdiction to investigate Title II complaints against public elementary and secondary education systems and institutions, public institutions of higher education and vocational education (other than schools of medicine, dentistry, nursing, and other health-related schools), and public libraries. When OCR receives an ADA-only complaint over which it does not have jurisdiction, it will be referred to the DOJ and then dismissed. The complainant will be notified of the referral.

(e) Section 504 and Title II Disability Employment Complaints (see 28 C.F.R. Part 37 and 29 C.F.R. Part 1640)

1. Referral or Deferral

- i. Disability employment complaints shall be referred to the DOJ Civil Rights Division if OCR has no jurisdiction under either Title II of the ADA or Section 504 of the Rehabilitation Act of 1973, and EEOC does not have jurisdiction under Title I (*i.e.*, recipient has fewer than 15 employees). If EEOC has jurisdiction under Title I (recipient has 15 or more employees) the complaint shall be referred to the EEOC.
- ii. OCR shall defer individual complaints unless the complainant elects to have OCR process the charge. OCR must notify the complainant in writing that he or she may choose whether to have OCR or the EEOC process the complaint and that if the complainant would like OCR to process the complaint, OCR must receive such written request within 20 calendar days of the date of the letter. See 28 C.F.R. § 37.8 (a)(1). If special circumstances make deferral inappropriate, OCR and the appropriate agency may jointly determine to reallocate investigation responsibilities. See 28 C.F.R. § 37.8 (e).

2. Retention

- i. When OCR has jurisdiction over a disability employment complaint under Section 504, OCR shall retain the complaint if:
 - The EEOC does not have jurisdiction under Title I (i.e., if fewer than 15 employees).
 - The EEOC has jurisdiction, but the complainant elects to have OCR process the complaint.
 - The complaint alleges discrimination in both employment and in other practices or services covered by Section 504.
 - The complaint alleges a pattern or practice of employment discrimination. See 28 C.F.R. § 37.6(d)(1).
- ii. When OCR has jurisdiction under Title II of the ADA but not under Section 504, OCR shall retain jurisdiction over a complaint when it determines that EEOC does not have jurisdiction under Title I. See 28 C.F.R. §§ 37.6 (d)(2) and (3).

SECTION 702 DATA COLLECTION AND INFORMATION GATHERING

(a) Generally

OCR's data collection and information gathering activities will depend upon the particular case, applicable legal standards, and investigative/resolution strategy. The data/information collection and other investigative activities will vary from case to case depending on the extent to which relevant data are in the control of the recipient or others, and investigation strategies. Some general investigative principles and practices include:

- Obtain independent written documentation to corroborate oral statements.
- Label all evidence, documents, electronic media, and written records of contact, with information identifying the case being investigated and the circumstances under which the evidence was obtained (e.g., where and when an interview was conducted, and who provided a given document).
- Document efforts to obtain access to recipient data and witnesses.
- Undertake a robust outreach to the recipient community to increase access to relevant information in the conduct of an investigation (e.g., by publicizing OCR's presence and availability in onsite investigations for individual interviews and focus groups as well as OCR's availability for discussion with interested individuals before and subsequent to the onsite), as appropriate.
- Determine whether it is appropriate to obtain interim relief for the complainant. As soon as OCR identifies the need for such relief, OCR will contact the recipient to secure it.
- Collect data resulting from any methods that OCR or recipients use to track and evaluate recipient's compliance with their legal responsibilities (e.g., data from OCR's Civil Rights Data Collection, recipient public websites, climate surveys, and other self-assessment tools).

(b) OCR's Authority to Obtain Information

OCR has the right of access during a recipient's regular business hours to the recipient's facilities and to information maintained by the recipient that is necessary to determine compliance status on those issues under investigation. See e.g., 34 C.F.R. § 100.6 (c), 34 C.F.R. § 99.31(a)(3)(iii) and 34 C.F.R. § 110.22. Generally, this includes access to such of the recipient's books, records, accounts, including electronic storage media, microfilming, retrieval systems and photocopies maintained by the recipient, and other sources of information, including witnesses, and its facilities as may be relevant in OCR's judgment to ascertain compliance.

(c) Requests for Records

1. Data Requests

A data request seeks information from the recipient relevant to the investigation. It can be used to initiate information collection or to request further information, as necessary.

2. Timeframes for Recipient's Response

Depending upon the nature and extent of OCR's data request, the recipient will be given an appropriate amount of time to submit the information required. The timeframe will be established at OCR's discretion, depending on the nature and extent of data requested and/or other special circumstances, including factors affecting feasibility of the timeframe brought to OCR's attention by the recipient.

3. Data Provided by Recipient

A recipient must submit information as necessary for OCR's compliance activities. However, other federal regulations and policies may restrict OCR's information requests:

- i. For example, in the context of an ongoing complaint, compliance review, or directed investigation, OCR may require recipients to record information in such form and containing such information as OCR may determine is necessary to assess compliance, without obtaining prior approval for its use by the Office of Management and Budget.¹¹ See 34 C.F.R. § 100.6(b).
- ii. OCR must consider federal policies concerning paperwork burdens when requesting a recipient to do more than provide OCR access to normally maintained information. Requests that a recipient manipulate or compile information to meet an OCR need must be reasonable and take into consideration the burden placed on the recipient. Recipients that maintain data in an electronic format must provide the data in that format to OCR in a file type that can be accessed by OCR. Recipients that do not maintain data in an electronic format are encouraged to provide the requested information in an electronic format that can be accessed by OCR.

If a recipient invites OCR to come onsite and collect the requested information, including the interview of witnesses and provides OCR with sufficient access to files, records, logs, and appropriate indexes for OCR to obtain the needed information, then the recipient has provided OCR with the requisite access.

4. Confidentiality

OCR has the right of access to a recipient's records, even if those records identify individuals by name. To protect the confidential nature of the records, OCR, for example, may permit the recipient to replace names with a code and retain a key to the code. However, OCR should inform the recipient that if at any time such a procedure impedes the timely investigation of the case, OCR

¹¹ The Paperwork Reduction Act only applies to collections directed at 10 or more respondents, but with one important exception. Any information requirement in a "rule of general applicability" is presumed to affect or potentially affect at least 10 respondents.

shall have access to the unmodified records. See also 20 U.S.C. §§ 1232g (b)(1) and 1232g (b)(3) regarding the applicable provisions of the Family Educational Rights and Privacy Act.

(d) Interviews

1. Introduction

Interviews are an integral part of investigations. The objective of interviews is to gain an understanding of the records and data relevant to the issues in the case; to obtain information from and assess the credibility of witnesses; and to evaluate recipient defenses. OCR may conduct individual interviews and focus groups, as appropriate, as part of its investigations. OCR will make efforts to work with recipients to conduct interviews in a manner that minimizes disruptions to the recipient's educational environment.

2. Notice

Prior to initiating an interview, OCR should inform the witness of the following:

- i. The general purpose of the interview, including OCR's role, what law or laws may be pertinent to the investigation, and where appropriate, a brief explanation of what is under investigation.
- ii. The potential uses of the information to be obtained from the witness and the Freedom of Information Act. A witness who wants a more thorough explanation should be given a copy of the "OCR Notice of Witness Rights." This Notice is available at: <http://www2.ed.gov/about/offices/list/ocr/docs/witness-notice-mw.pdf>
- iii. The witness's right to personal representation during the interview by a person of his or her choice.
- iv. When the witness is an employee of a recipient, his or her right to refuse to have anyone else present during the interview and his or her right to refuse to reveal the content of an interview.
- v. The regulatory provision(s) concerning prohibition of intimidating or retaliatory acts by a recipient.
- vi. In most cases, the recipient's counsel will be allowed to be present during upper level management interviews.

3. Privacy

OCR interviews witnesses under circumstances that assure privacy. An interpreter may be used when safeguards are taken to ensure the competence of the interpreter and to protect the witness's privacy.

4. Interviews with Minors (Persons under 18) or Legally Incompetent Individuals

OCR shall obtain written consent from a parent or guardian prior to conducting an interview of any person under 18 years of age or otherwise adjudicated legally incompetent, for example, mentally impaired. Parental or legal guardian consent may not be required for persons under 18 if they are emancipated under state law and are therefore considered to have obtained majority. For persons under 18 who state they are emancipated, OCR should obtain proof of emancipation.

Parental or legal guardian consent may not be necessary where the questions asked are of a general nature, not related to any specific events in which the minor was involved, and there are no records kept to identify the student. Where a recipient refuses to allow minor students to be interviewed without consent where the questions asked are of a general nature, not related to any

specific events in which the minor was involved, and there are no records kept to identify the student, written consent must be obtained.

Where parents or guardians refuse to provide consent for an interview, and OCR determines that the child's information is critical, OCR may attempt to secure parental or guardian consent by inviting the parent or guardian to be present during the interview. Where consent is denied, OCR will not interview the child.

5. Records of Interviews

A written record of interviews (i.e., in-person, telephonic, or through use of other electronic media) must be kept. Interviewers will notify interviewees when a tape recording is used and tape recording will be done only with the consent of the interviewee. When interviewers use tape recording, the tape becomes part of the case record along with the written record. Regardless of the technique used during the interview, a written record of the interview must be created.

The record of the interview to be placed in the case file must contain the following information:

- i. Case identification (name and case number).
- ii. Name and identification of the interviewee, interviewer, and any other person present (include an explanation for the presence of any other persons).
- iii. Date, time, and location of interview (including whether the interview was conducted in person or through use of media (e.g., telephone, videoconferencing).
- iv. A record of whether the interviewee was informed of required notifications.
- v. Written record reflecting the questions and responses obtained during the interview (this need not be a verbatim transcript but must accurately reflect the responses of the witness).

SECTION 703 FREEDOM OF INFORMATION ACT AND PRIVACY ACT

The information OCR collects is analyzed by authorized personnel within the agency and is used only for authorized civil rights compliance and enforcement activities. In order to resolve a complaint OCR may need to reveal certain information to persons outside the agency to verify facts or gather additional information. Such information could include the name, the age or physical condition of a complainant. The Privacy Act of 1974, 5 U.S.C. § 552a, and the Freedom of Information Act (FOIA), 5 U.S.C. § 552, govern the use of personal information submitted to all federal agencies and their individual components, including OCR.

The Privacy Act of 1974, 5 U.S.C. § 552a, regulates the collection, maintenance, use, and dissemination of certain personal information in federal agency files. OCR's investigation files have been exempted from the provisions of the Privacy Act that provide individuals with access to records maintained on them. The Department has published a Privacy Act system of records notice entitled "Complaint Files and Log", (18-08-01). Third parties may not gain access to records about individuals within a system of records without the consent of the subject individual except as required by FOIA or pursuant to other statutory exceptions contained in the Privacy Act. See 5 U.S.C. § 552a(b).

FOIA gives the public a right of access to records of federal agencies. The FOIA is implemented by Department regulations. See 34 C.F.R. Part 5.

Any requests for copies of documents or other access to information contained in OCR's case files should be referred to the Regional Office staff responsible for handling FOIA and Privacy Act requests.

Although each request will be reviewed on a case-by-case basis, generally, OCR is not required to release documents during the case resolution and investigation process or enforcement proceedings if the release could reasonably be expected to interfere with OCR's law enforcement activities. See 5 U.S.C. § 552(b)(7)(A). Also, a federal agency is not required to release records if they are pre-decisional documents that would be subject to certain privileges in litigation. See 5 U.S.C. § 552(b)(5). Finally, a federal agency is not required to release documents if their release would or could result in an unwarranted invasion of privacy of an individual. See 5 U.S.C. §§ 552(b)(6) and (7)(C). Disclosure will only be made as consistent with the Privacy Act and FERPA. OCR will only reveal the name or identifying information about an individual if such disclosure is consistent with the Privacy Act and FERPA.

In addition, OCR can release certain information about the complaint to the press or general public, including the name of the school or institution; the date the complaint was filed; the type of discrimination included in the complaint; the date the complaint was resolved, dismissed, or closed; the basic reasons for OCR's decision; or other related information. Any information OCR releases to the press or general public will not include the complainant's name or the name of the person on whose behalf the complaint was filed, except as noted in the paragraph above.

SECTION 704 RECIPIENTS OPERATING UNDER FEDERAL COURT ORDER

(a) United States a Party

When OCR receives a complaint alleging discrimination by a recipient against which the DOJ represents the United States as a party in pending litigation, the following procedures will apply:

1. **OCR notification to DOJ:** The Regional Office Director will forward the complaint to DOJ by electronic mail immediately and ask whether DOJ wants OCR to refer the complaint to DOJ. This will occur before any OCR evaluation of the complaint begins and even if it is clear on the face of the complaint that OCR would not open it for investigation.
2. **DOJ response:** DOJ will have seven calendar days after the date of OCR's electronic mail notification to determine whether (1) DOJ wants OCR to refer the complaint to DOJ, or (2) DOJ does not want OCR to refer the complaint to DOJ. There are no additional options. For example, a complaint cannot be conditionally referred or conditionally declined, nor may DOJ request referral of only a portion of a complaint.
3. **No referral to DOJ:** When DOJ indicates that it does not want OCR to refer the complaint, or DOJ does not respond within seven calendar days of the date of OCR's electronic mail notification, OCR, in its sole authority, will immediately process the complaint.
4. **Referral to DOJ:** When DOJ indicates that it wants OCR to refer the complaint, then:
 - i. OCR will refer the entire complaint to DOJ.
 - ii. OCR will close the complaint and notify the complainant that the complaint has been referred to DOJ.
 - iii. Once a complaint is referred to DOJ, DOJ will be responsible for investigating and resolving the entire complaint. OCR will forward all communications it receives from the complainant relating to the complaint to DOJ and DOJ will be responsible for addressing all such communications. OCR will not accept any type of return or re-referral of the complaint from DOJ.

(b) United States Not a Party

As part of evaluation of the complaint OCR will consult with parties about the current status of the court order.

EXHIBIT 46



[Home](#) » [Announcements](#) » Upholding Our Values

[ANNOUNCEMENTS](#)

Upholding Our Values

October 18, 2023

Dear fellow members of the Columbia community,

Many of our students, faculty, staff, and colleagues are suffering great distress over the terror attacks on Israel and the humanitarian crisis in Gaza. Let me first say that there are no words to describe the fear and anxiety people experience when lives are at risk. To those who are struggling, you are never far from my thoughts, and Columbia will do everything possible to support you.

As we grapple with these challenging circumstances, it is important to clarify and reaffirm several guiding principles for how Columbia can stay true to its mission while upholding important values in our interactions with one another.

During any crisis in the world, our priority is providing immediate support to Columbia community members whose lives have been directly affected. Our day-to-day duty of care for the security and well-being of our students, faculty, and staff is paramount. Some students may need special accommodations as they cope with fear and grief, and those arrangements can be made through advisors or deans of students.

We know that the atmosphere on campus is extremely charged, and some of you have expressed concern about your personal security. Let me reassure you that the University will take all available steps to help you. We have increased public safety presence across all of our campuses. We are also working with outside security firms for additional support and are in regular contact with the New York City Police Department. We have added resources to our [existing hotline and escort service](#)  and I encourage anyone who is concerned about their safety to use it.

Debate, advocacy, and protest are essential ways for students to address and process political and social turmoil, and we are duty-bound to ensure they can gather and express themselves. We will continue to observe all necessary safeguards around these activities and will work closely with students to ensure that they adhere to our event guidelines.

Unfortunately, some are using this moment to spread antisemitism, Islamophobia, bigotry against Palestinians and Israelis, and various other forms of hate. I have been disheartened that some of this abhorrent rhetoric is coming from members of our community, including members of our faculty and staff. Especially at a time of pain and anger, we must avoid language that vilifies, threatens, or stereotypes entire groups of people. It is antithetical to Columbia's values and can lead to acts of harassment or violence. When this type of speech is unlawful or violates University rules, it will not be tolerated.

Some students, including at Columbia, have been victims of doxing. This form of online harassment, involving the public posting of names and personal information, has been used by extremists to target communities and individuals. This kind of behavior also will not be tolerated and should be reported through appropriate school

JA573

channels. When applicable, we will refer these cases to external authorities.

Universities play a vital role in society by fostering critical thinking, scholarship, and, ideally, opening minds to different points of view. But for universities to be effective, we must use our voices differently than other institutions. Unlike a political organization or advocacy group, Columbia's role is to create space for our scholars and students to fill with their own moral and intellectual conversations, an essential function in a world in which that space is narrowing.

That doesn't mean we don't have values. A shared commitment to civility, respect, and empathy must guide how we interact with one another. It is not what we believe, but how we treat people who don't share our views, that shapes the character of our community and ultimately educates and empowers new generations of engaged citizens. Our focus must be de-escalating tensions, modeling respectful behavior, and finding common ground in our shared humanity.

On a personal note, I want to thank all those who have shown great compassion, leadership, and kindness in recent days. Whether this has been providing spiritual or emotional care for students, supporting friends and colleagues in distress, taking part in thoughtful classroom discussions or seminars—you are exemplars of the best of Columbia.

Sincerely,

Minouche Shafik
President, Columbia University in the City of New York

News

March 25, 2025

[Statement Regarding Columbia's Commitments](#)

March 21, 2025

[Sharing Progress on Our Priorities](#)

March 19, 2025

[Our Next Steps](#)

March 15, 2025

[Standing Together for Columbia](#)

March 13, 2025

[Update to Our Community Regarding DHS Activity Tonight](#)

EXHIBIT 47



[Home](#) » [Announcements](#) » Standing in Solidarity

[ANNOUNCEMENTS](#)

Standing in Solidarity

October 27, 2023

Dear fellow members of the Columbia community:

I have been shocked to hear of several antisemitic incidents in just the last couple of days.

The perpetrators of these incidents are not only attacking members of our community, they are attacking the values it is built on—respect for our shared humanity. I want to reiterate that antisemitism, like any form of bigotry, is an assault on everything we stand for at Columbia. Palestinian, Muslim, or Arab students have also been subjected to harassment and targeted by doxing, a dangerous form of intimidation. We take these incidents seriously and they are being investigated.

When hate speech or incidents violate University rules, it will not be tolerated and will be referred for disciplinary action in accordance with our policies. These disciplinary actions are already underway and we will continue to use every available tool to keep our community safe.

Just as we defend the right to free speech, we are duty-bound to be vigilant when we see discourse devolve into hate speech which can be a prelude to harassment or violence. No political debate or division can justify antisemitism or any form of bigotry based on the religious, racial, national, or ethnic identity of anyone.

I am appealing to everyone to hold each other closer during these distressing times. I know that these hateful acts come from a small minority of the Columbia community. Each of us has a role to play in standing in solidarity against hate that targets any member of our community and to call it out whenever we see it.

In these difficult days each of us can renew our resolve to be a community that rejects all forms of bigotry and respects the fundamental dignity and human rights of all our members.

Sincerely,

Minouche Shafik
President, Columbia University in the City of New York

March 19, 2025

[Our Next Steps](#)

March 15, 2025

[Standing Together for Columbia](#)

March 13, 2025

[Standing Together for Columbia, March 15, 2025](#)

March 13, 2025

[Update to Our Community Regarding DHS Activity Tonight](#)

March 13, 2025

[Columbia's Commitment to Our International Community](#)

EXHIBIT 48

[Home](#) » Task Force on Antisemitism

Task Force on Antisemitism

The [Columbia Task Force on Antisemitism was created](#) by Columbia University President Minouche Shafik, Barnard College President Laura Ann Rosenbury, and Teachers College President Thomas R. Bailey to address the harmful impact of rising antisemitism on Columbia's Jewish community and to ensure that protection, respect, and belonging extends to everyone.

The task force is being led by Ester R. Fuchs, Professor of International and Public Affairs and Political Science and Director of the Urban and Social Policy Program at SIPA; Nicholas Lemann, Joseph Pulitzer II and Edith Pulitzer Moore Professor of Journalism and Dean Emeritus of Columbia Journalism School; and David M. Schizer, Harvey R. Miller Professor of Law and Economics and Dean Emeritus of Columbia Law School.

In the coming months, the task force will identify practical ways for our safety and inclusion work to enhance support for all members of the Columbia, Barnard, and Teachers College communities, particularly our Jewish students. Longer term, it will recommend more ambitious changes related to academic and extracurricular offerings and student, faculty, and staff training programs.

The Task Force on Antisemitism can be reached at AntisemitismTaskForce@columbia.edu.

About the Task Force on Antisemitism

[Members of the Task Force on Antisemitism](#)[Report #1](#)[Report #2](#)

TASK FORCE CO-CHAIRS



[Ester R. Fuchs](#)

Professor of International and Public Affairs and
Political Science; Director, Urban and Social Policy
Program



[Nicholas Lemann](#)

Joseph Pulitzer II and Edith Pulitzer Moore Professor of
Journalism; Dean Emeritus



[David M. Schizer](#)

Harvey R. Miller Professor of Law and Economics and
Dean Emeritus

Members of the Task Force on Antisemitism

NEWS AND ANNOUNCEMENTS



[Task Force on Antisemitism Releases Its Second Report](#)

August 30, 2024

The report focuses on student experiences, and offers recommendations on training, reporting, and student group governance.



[Opinion: We hear you](#)

Columbia Daily Spectator, May 16, 2024

Opinion column by the Task Force on Antisemitism.



[Statements From the April 17 Congressional Committee Hearing](#)

April 18, 2024



[Opinion: To combat antisemitism, start by following the law](#)

CNN, April 17, 2024

Opinion column by David Schizer.

Statements from President Shafik, Task Force on Antisemitism Chair David Schizer, and Columbia University Board Co-Chairs Claire Shipman and David Greenwald.



[President Shafik Welcomes the First Set of Recommendations From the Task Force on Antisemitism](#)

March 4, 2024

President Shafik welcomes this first in a series of reports that will come from the task force.

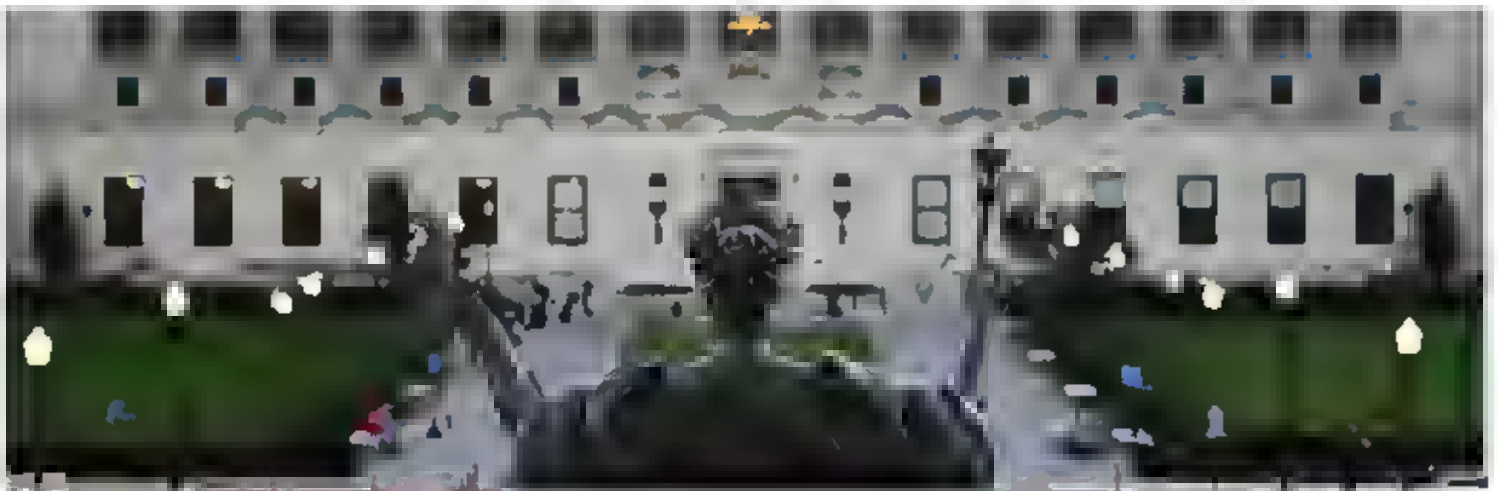


[Columbia Launches a Reinvestment in Its Values and Mission](#)

December 20, 2023

The goal is to foster a community where debates are rooted in academic rigor and civil discourse through work that includes professional development, resources, and other activities.

News



Resources Dedicated to Supporting Your Emotional Health, Well-being, and Safety

Supporting Jewish Communities

University Services and Resources

Resources to Assist After Online Targeting/Doxing



"This is an opportunity for every academic department, every faculty member and teaching assistant, every member of the administration, and every member of the Columbia, Barnard, and Teachers College student family to bring their ideas, life experiences, and spirit to help us emerge as a stronger and more cohesive community."

Contact Us

AntisemitismTaskForce@columbia.edu

CERTIFICATE OF SERVICE

I hereby certify that on September 22, 2025, I electronically filed the foregoing Joint Appendix with the Clerk of Court for the United States Court of Appeals for the Second Circuit using the ACMS system, which will send notice of such filing to all counsel of record in compliance with Local Rule 25.1(h)(2).

Dated: September 22, 2025

By: s/ Rachel Goodman

Rachel Goodman

Protect Democracy Project

82 Nassau Street, #601

New York, NY 10038

Tel: (202) 579-4582

Fax: (202) 769-3176

rachel.goodman@protectdemocracy.org

Counsel for Plaintiffs-Appellants

No. 25-1529

IN THE UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

AMERICAN ASSOCIATION OF UNIVERSITY PROFESSORS, AMERICAN
FEDERATION OF TEACHERS,

Plaintiffs - Appellants,

v.

UNITED STATES DEPARTMENT OF JUSTICE,
(For Continuation of Caption, See Inside Cover)

Defendants - Appellees.

On Appeal from the United States District Court for the
Southern District of New York
Case No. 1:25-cv-02429-MKV (Hon. Mary Kay Vyskocil)

JOINT APPENDIX (JA587 – JA768)
VOLUME 5 OF 8

Orion Danjuma
Rachel Goodman
Protect Democracy Project
82 Nassau Street, #601
New York, NY 10038
Tel: (202) 579-4582
Fax: (202) 769-3176
orion.danjuma@protectdemocracy.org
rachel.goodman@protectdemocracy.org

*(For Additional Counsel, See Inside
Cover)*

Eve H. Cervantez
Matthew J. Murray
Connie K. Chan
ALTSHULER BERZON LLP
177 Post St., Suite 300
San Francisco, CA 94108
Tel: (415) 421-7151
Fax (415) 362-8064
ecervantez@altber.com
mmurray@altber.com
cchan@altber.com

(Caption Continued) PAMELA BONDI, in her official capacity as the U.S. Attorney General, LEO TERRELL, in his official capacity as Senior Counsel to the Assistant Attorney General for Civil Rights and head of the DOJ Task Force to Combat Anti-Semitism, UNITED STATES DEPARTMENT OF EDUCATION, LINDA MCMAHON, in her official capacity as the U.S. Secretary of Education, THOMAS E. WHEELER, in his official capacity as Acting General Counsel of the U.S. Department of Education, UNITED STATES DEPARTMENT OF HEALTH AND HUMAN SERVICES, ROBERT F. KENNEDY, JR., in his official capacity as the U.S. Secretary of Health and Human Services, SEAN R. KEVENEY, in his official capacity as Acting General Counsel of the U.S. Department of Health and Human Services, NATIONAL INSTITUTES OF HEALTH, MATTHEW J. MEMOLI, in his official capacity as the Acting Director of the National Institutes of Health, UNITED STATES GENERAL SERVICES ADMINISTRATION, STEPHEN EHIKIAN, in his official capacity as Acting Administrator of the U.S. General Services Administration, JOSH GRUENBAUM, in his official capacity as Commissioner of the Federal Acquisition Service,

Defendants - Appellees.

Additional counsel for Plaintiffs-Appellants:

Katie Schwartzmann
Protect Democracy Project
201 St. Charles Avenue, Ste. 114
New Orleans, LA 70170
Tel: (202) 579-4582
Fax: (202) 769-3176
katie.schwartzmann@protectdemocracy.org

Richard Primus
The University of Michigan Law School
(institutional affiliation provided for
identification
purposes only; not representing the
University)
625 S. State Street
Ann Arbor, MI 48109
Tel: (734) 647-5543
Fax: (734) 764-8309
PrimusLaw1859@gmail.com

Juhyung Harold Lee
Jonathan Rosenthal
ALTSHULER BERZON LLP
177 Post St., Suite 300
San Francisco, CA 94108
Tel: (415) 421-7151
Fax (415) 362-8064
hlee@altber.com
jrosenthal@altber.com

**JOINT APPENDIX
TABLE OF CONTENTS**

Tab. No.	Docket No.	Date Filed	Description	Page No.
Volume 1				
1			District Court Docket Sheet	JA1
Volume 2				
2	1	03/25/25	Complaint	JA26
3	27	04/03/25	Declaration of Todd Wolfson	JA113
4	28	04/03/25	Declaration of Julie Schmid & Exhibit A (<i>Condemning Hate and Affirming Freedom of Speech on Campus</i> , American Federation of Teachers (Nov. 9, 2023))	JA121
5	29	04/03/25	Declaration of Reinhold Martin	JA135
6	29-1	04/03/25	Exhibit A to the Declaration of Reinhold Martin (March 7, 2025 Email from Katrina Armstrong)	JA152
7	30	04/03/25	Declaration of Susan Witte	JA155
8	31	04/03/25	Declaration of Victoria Frye	JA164
9	32	04/03/25	Declaration of Jennifer S. Hirsch	JA169
10	45	04/03/25	Declaration of Veena Dubal	JA178
11	45-1	04/03/25	Exhibit A to the Declaration of Veena Dubal (March 24, 2025 Email from Danna Drori)	JA182
12	47	04/04/25	Declaration of Jonathan Rosenthal in Support of Plaintiffs' Motion for Preliminary Injunction	JA187
13	47-1	04/04/25	Exhibit 1 to the Declaration of Jonathan Rosenthal (Lydia Gall, <i>Hungary Continues Attacks on Academic Freedom</i> , Human Rights Watch (Sept. 3, 2020))	JA202

14	47-2	04/04/25	Exhibit 2 to the Declaration of Jonathan Rosenthal (Muzaffer Kaya, <i>Turkey's Purge of Critical Academia</i> , Middle East Report 288 (Fall 2018))	JA205
15	47-3	04/04/25	Exhibit 3 to the Declaration of Jonathan Rosenthal (Pedro Salgado, <i>The Crisis of Brazilian Universities: Higher Education Under Bolsonaro</i> , International Research Group on Authoritarianism and Counter-Strategies (July 22, 2021))	JA217
16	47-4	04/04/25	Exhibit 4 to the Declaration of Jonathan Rosenthal (<i>Agenda47: Protecting Students from the Radical Left and Marxist Maniacs Infecting Educational Institutions</i> , DJTFP 2024 (July 17, 2024))	JA225
17	47-5	04/04/25	Exhibit 5 to the Declaration of Jonathan Rosenthal (<i>Agenda47: The American Academy</i> , DJTFP 2024 (Nov. 1, 2023))	JA229
18	47-6	04/04/25	Exhibit 6 to the Declaration of Jonathan Rosenthal (Henry Reichman, <i>'The Professors Are the Enemy' Right-wing attacks on academic freedom have real repercussions.</i> , The Chronicle of Higher Education (Dec. 14, 2021))	JA233
19	47-7	04/04/25	Exhibit 7 to the Declaration of Jonathan Rosenthal (Rod Dreher, <i>"I would like to see European elites actually listen to their people for a change": An Interview with J.D. Vance</i> , The European Conservative (Feb. 22, 2024))	JA240
20	47-8	04/04/25	Exhibit 8 to the Declaration of Jonathan Rosenthal (Leo Terrell, <i>Senior Counsel to the Attorney General for Civil Rights, On Crushing Anti-Semitism On Campus</i> , HughHewitt & Duane Patterson (March 19, 2025))	JA252
21	47-9	04/04/25	Exhibit 9 to the Declaration of Jonathan Rosenthal (Feb. 17, 2025 Letter to Georgetown Law School from Edward R. Martin, Jr.)	JA259

22	47-10	04/04/25	Exhibit 10 to the Declaration of Jonathan Rosenthal (Jan Claassen, MD, et al., <i>Sleep Patterns May Reveal Comatose Patients with Hidden Consciousness</i> , Columbia University Irving Medical Center (March 3, 2025))	JA262
23	48-1	04/04/25	Exhibit 11 to the Declaration of Jonathan Rosenthal (Timothy Wang, MD, et al., <i>Nerves Electrify Stomach Cancer, Sparking Growth and Spread</i> , Columbia University Irving Medical Center (Feb. 19, 2025))	JA269
24	48-2	04/04/25	Exhibit 12 to the Declaration of Jonathan Rosenthal (Julia Wattacheril, MD, MPH, <i>Training Your Electronic Health Record to Think Like a Liver Doctor</i> , Columbia University Irving Medical Center (Feb. 20, 2025))	JA277
25	48-3	04/04/25	Exhibit 13 to the Declaration of Jonathan Rosenthal (Financial Overview of Columbia University)	JA283
Volume 3				
26	48-4	04/04/25	Exhibit 14 to the Declaration of Jonathan Rosenthal (Economic Impact of Columbia University)	JA290
27	48-5	04/04/25	Exhibit 15 to the Declaration of Jonathan Rosenthal (Ian Bogost, <i>A New Kind of Crisis for American Universities</i> , The Atlantic (Feb. 10, 2025))	JA299
28	48-6	04/04/25	Exhibit 16 to the Declaration of Jonathan Rosenthal (Willem Marx, <i>Campus protests over the war in Gaza have gone international</i> , NPR (May 3, 2024))	JA312
29	48-7	04/04/25	Exhibit 17 to the Declaration of Jonathan Rosenthal (Executive Order 14188 Additional Measures To Combat Anti-Semitism (January 29, 2025))	JA321
30	48-8	04/04/25	Exhibit 18 to the Declaration of Jonathan Rosenthal (Office of Public Affairs, <i>Justice Department Announces Formation of Task Force to Combat</i>	JA324

			<i>Anti-Semitism</i> , U.S. Department of Justice (Feb. 3, 2025))	
31	48-9	04/04/25	Exhibit 19 to the Declaration of Jonathan Rosenthal (Office of Communications and Outreach, <i>Justice Department Announces Formation of Task Force to Combat Anti-Semitism</i> , U.S. Department of Education (Feb. 3, 2025))	JA328
32	48-10	04/04/25	Exhibit 20 to the Declaration of Jonathan Rosenthal (<i>Statement on Notice From U.S. Department of Education Office of Civil Rights</i> , Columbia University Office of Public Affairs (Feb. 3, 2025))	JA331
33	49-1	04/04/25	Exhibit 21 to the Declaration of Jonathan Rosenthal (<i>HHS, ED, and GSA announce additional measures to end anti-Semitic harassment on college campuses</i> , U.S. General Services Administration (March 3, 2025))	JA334
34	49-2	04/04/25	Exhibit 22 to the Declaration of Jonathan Rosenthal (Truth Social Post from Donald J. Trump (March 4, 2025))	JA338
35	49-3	04/04/25	Exhibit 23 to the Declaration of Jonathan Rosenthal (<i>DOJ, HHS, ED, and GSA announce initial cancellation of grants and contracts to Columbia University worth \$400 million</i> , U.S. General Services Administration (March 7, 2025))	JA340
36	49-4	04/04/25	Exhibit 24 to the Declaration of Jonathan Rosenthal (Matthew Haag et al., <i>Decades Ago, Columbia Refused to Pay Trump \$400 Million</i> , The New York Times (March 21, 2025))	JA345
37	49-5	04/04/25	Exhibit 25 to the Declaration of Jonathan Rosenthal (<i>Responding to Federal Action</i> , Columbia Office of the President (March 7, 2025))	JA352
38	49-6	04/04/25	Exhibit 26 to the Declaration of Jonathan Rosenthal (March 13, 2025 Letter to Columbia University	JA356

39	49-7	04/04/25	Exhibit 27 to the Declaration of Jonathan Rosenthal (<i>Advancing Our Work to Combat Discrimination, Harassment, and Antisemitism at Columbia, Columbia University</i>)	JA359
40	49-8	04/04/25	Exhibit 28 to the Declaration of Jonathan Rosenthal (<i>HHS, ED, and GSA Respond to Columbia University's Actions to Comply with Joint Task Force Pre-Conditions</i> , U.S. Department of Health and Human Services (March 24, 2025))	JA364
41	49-9	04/04/25	Exhibit 29 to the Declaration of Jonathan Rosenthal (X Post from NIH (March 10, 2025))	JA369
42	49-10	04/04/25	Exhibit 30 to the Declaration of Jonathan Rosenthal (Caroline Lewis, <i>Hundred of research grants at Columbia canceled following Trump edict, administrator says</i> , Gothamist (March 11, 2025))	JA372
43	50-1	04/04/25	Exhibit 31 to the Declaration of Jonathan Rosenthal (Spreadsheet of Awards)	JA377
44	50-2	04/04/25	Exhibit 32 to the Declaration of Jonathan Rosenthal (Ryan Quinn, <i>Trump's Columbia Cuts Start Hitting Postdocs, Professors</i> , Inside Higher Ed (March 13, 2025))	JA420
45	50-3	04/04/25	Exhibit 33 to the Declaration of Jonathan Rosenthal (Humberto Basilio, <i>'My career is over': Columbia University scientists hit hard by Trump team's cuts</i> , Nature ((March 14, 2025))	JA428
46	50-4	04/04/25	Exhibit 34 to the Declaration of Jonathan Rosenthal (Joseph Goldstein, <i>Medical Research at Columbia Is Imperiled After Trump Terminates Funding</i> , The New York Times (March 18, 2025))	JA435
47	50-5	04/04/25	Exhibit 35 to the Declaration of Jonathan Rosenthal (Jason Mast, <i>Columbia scientists reel as Trump administration cancels grants, hitting broad suite of research</i> , Stat News (March 11, 2025))	JA442

48	50-6	04/04/25	Exhibit 36 to the Declaration of Jonathan Rosenthal (Isabella Cueto, <i>ME/CFS research program shuts down at Columbia after Trump cuts</i> , Stat News (March 19, 2025))	JA448
49	50-7	04/04/25	Exhibit 37 to the Declaration of Jonathan Rosenthal (March 30, 2025 Open letter in response to federal funding cuts at Columbia)	JA453
Volume 4				
50	50-8	04/04/25	Exhibit 38 to the Declaration of Jonathan Rosenthal (Mark Alfred, <i>The Trump Administration Cut Cancer and Alzheimer's Research Funding at Columbia University</i> , Notus (March 18, 2025))	JA477
51	50-9	04/04/25	Exhibit 39 to the Declaration of Jonathan Rosenthal (Thomas Bailey, <i>Update in Light of March 7 Federal Announcement</i> , Teachers College of Columbia University (March 7, 2025))	JA483
52	50-10	04/04/25	Exhibit 40 to the Declaration of Jonathan Rosenthal (Jocelyn Kaiser, <i>After Columbia's 'nightmare,' dozens more universities brace for Trump NIH cuts</i> , Science (March 18, 2025))	JA486
53	51-1	04/04/25	Exhibit 41 to the Declaration of Jonathan Rosenthal (Congressional Record, Senate (April 7, 1964))	JA490
54	51-2	04/04/25	Exhibit 42 to the Declaration of Jonathan Rosenthal (Congressional Record, House of Representatives (Feb. 7, 1964))	JA497
55	51-3	04/04/25	Exhibit 43 to the Declaration of Jonathan Rosenthal (Abigail A. Graber, <i>Religious Discrimination at School: Application of Title VI of the Civil Rights Act of 1964</i> , Congressional Research Service (Sept. 17, 2024))	JA504
56	51-4	04/04/25	Exhibit 44 to the Declaration of Jonathan Rosenthal (Jared P. Cole, <i>Civil Rights at School: Agency Enforcement of Title VI of the Civil Rights Act of</i>	JA511

			1964, Congressional Research Service (April 4, 2019))	
57	51-5	04/04/25	Exhibit 45 to the Declaration of Jonathan Rosenthal (<i>Case Processing Manual</i> , U.S. Department of Education Office for Civil Rights (Feb. 19, 2025))	JA539
58	51-6	04/04/25	Exhibit 46 to the Declaration of Jonathan Rosenthal (<i>Upholding Our Values</i> , Columbia Office of the President (Oct. 18, 2023))	JA572
59	51-7	04/04/25	Exhibit 47 to the Declaration of Jonathan Rosenthal (<i>Standing in Solidarity</i> , Columbia Office of the President (Oct. 27, 2023))	JA575
60	51-8	04/04/25	Exhibit 48 to the Declaration of Jonathan Rosenthal (<i>Task Force on Antisemitism</i> , Columbia University	JA578
Volume 5				
61	51-9	04/04/25	Exhibit 49 to the Declaration of Jonathan Rosenthal (<i>Announcing Task Force on Antisemitism</i> , Columbia Office of the President (Nov. 1, 2023))	JA587
62	51-10	04/04/25	Exhibit 50 to the Declaration of Jonathan Rosenthal (<i>About the Task Force on Antisemitism</i> , Columbia University)	JA590
63	52-1	04/04/25	Exhibit 51 to the Declaration of Jonathan Rosenthal (<i>Report #1: Task Force on Antisemitism Columbia University's Rules on Demonstrations</i> , Columbia University (March 2024))	JA593
64	52-2	04/04/25	Exhibit 52 to the Declaration of Jonathan Rosenthal (<i>President Shafik Welcomes the First Set of Recommendations From the Task Force on Antisemitism</i> , Columbia Office of the President (March 4, 2024))	JA612
65	52-3	04/04/25	Exhibit 53 to the Declaration of Jonathan Rosenthal (<i>Report #2: Task Force on Antisemitism</i> , Columbia University (Aug. 2024))	JA615

66	52-4	04/04/25	Exhibit 54 to the Declaration of Jonathan Rosenthal (<i>Combatting Antisemitism</i> , Columbia Office of the President)	JA620
67	52-5	04/04/25	Exhibit 55 to the Declaration of Jonathan Rosenthal (<i>University Statement Regarding UJB Determinations</i> , Columbia University Office of Public Affairs (March 13, 2025))	JA625
68	52-6	04/04/25	Exhibit 56 to the Declaration of Jonathan Rosenthal (Office of Public Affairs, <i>Federal Task Force to Combat Antisemitism Announces Visits to 10 College Campuses that Experienced Incidents of Antisemitism</i> , U.S. Department of Justice (Feb. 28, 2025))	JA628
69	52-7	04/04/25	Exhibit 57 to the Declaration of Jonathan Rosenthal (Office of Communications and Outreach, <i>U.S. Department of Education's Office for Civil Rights Sends Letters to 60 Universities Under Investigation for Antisemitic Discrimination and Harassment</i> , U.S. Department of Education (March 10, 2025))	JA632
70	52-8	04/04/25	Exhibit 58 to the Declaration of Jonathan Rosenthal (Maya Sulkin, <i>Columbia University Says One Thing to Trump Admin—and Another in Private</i> , The Free Press (March 25, 2025))	JA637
71	52-9	04/04/25	Exhibit 59 to the Declaration of Jonathan Rosenthal (<i>A Message from Dr. Katrina A. Armstrong</i> , Columbia University Office of Public Affairs (March 28, 2025))	JA642
72	52-10	04/04/25	Exhibit 60 to the Declaration of Jonathan Rosenthal (<i>Joint Task Force statement regarding Columbia University's steps to advance negotiations</i> , U.S. General Services Administration (March 28, 2025))	JA645
73	52-11	04/04/25	Exhibit 61 to the Declaration of Jonathan Rosenthal (Eugene Volokh et al., <i>A Statement from</i>	JA648

			<i>Constitutional Law Scholars on Columbia</i> , The New York Review (March 20, 2025))	
74	93	05/01/25	Declaration of Josh Gruenbaum in Opposition to Plaintiffs' Motion for a Preliminary Injunction	JA653
75	93-1	05/01/25	Exhibit A to the Declaration of Josh Gruenbaum (March 3, 2025 Memorandum to Columbia University from Josh Gruenbaum)	JA657
76	94	05/01/25	Declaration of Allison M. Rovner in Opposition to Plaintiffs' Motion for a Preliminary Injunction	JA661
77	94-1	05/01/25	Exhibit A to the Declaration of Allison Rovner (March 7, 2025 Letter to the Trustees of Columbia University from Mark Washington)	JA663
78	94-2	05/01/25	Exhibit B to the Declaration of Allison Rovner (March 7, 2025 Letter to the Teachers College Columbia University from Mark Washington)	JA666
79	94-3	05/01/25	Exhibit C to the Declaration of Allison Rovner (Oral Argument Transcript of Mahmoud Kahil et al., v. The Trustees of Columbia University in the City of New York, et al. (March 25, 2025))	JA669
80	99	05/08/25	Reply Declaration of Jonathan Rosenthal in Support of Plaintiffs' Motion for Preliminary Injunction	JA674
81	99-1	05/08/25	Exhibit 62 to the Reply Declaration of Jonathan Rosenthal (Sara Reardon, <i>Exclusive: NIH freezes all research grants to Columbia University</i> , Science (April 9, 2025))	JA680
82	99-2	05/08/25	Exhibit 63 to the Reply Declaration of Jonathan Rosenthal (Maddie Khaw, <i>All of Columbia's NIH Funding Is Apparently Frozen. Here's What That Looks Like for One Researcher</i> , Chronicle (April 11, 2025))	JA683

83	99-3	05/08/25	Exhibit 64 to the Reply Declaration of Jonathan Rosenthal (April 11, 2025 Letter to Harvard University)	JA690
84	99-4	05/08/25	Exhibit 65 to the Reply Declaration of Jonathan Rosenthal (Michael C. Bender et al., <i>Inside Trump's Pressure Campaign on Universities</i> , The New York Times (April 14, 2025))	JA696
85	99-5	05/08/25	Exhibit 66 to the Reply Declaration of Jonathan Rosenthal (<i>Sustaining Columbia's Vital Mission</i> , Columbia Office of the President (April 14, 2025))	JA714
86	99-6	05/08/25	Exhibit 67 to the Reply Declaration of Jonathan Rosenthal (April 14, 2025 Letter from Harvard University)	JA717
87	99-7	05/08/25	Exhibit 68 to the Reply Declaration of Jonathan Rosenthal (<i>Joint Task Force to Combat Anti-Semitism Statement Regarding Harvard University</i> , U.S. Department of Education (April 14, 2025))	JA720
88	99-8	05/08/25	Exhibit 69 to the Reply Declaration of Jonathan Rosenthal (Liz Essley Whyte et al., <i>The Little-Known Bureaucrats Tearing Through American Universities</i> , The Wall Street Journal (April 14, 2025))	JA722
89	99-9	05/08/25	Exhibit 70 to the Reply Declaration of Jonathan Rosenthal (Alan Blinder, <i>Trump Has Targeted These Universities. Why?</i> , The New York Times (April 15, 2025))	JA732
90	99-10	05/08/25	Exhibit 71 to the Reply Declaration of Jonathan Rosenthal (<i>Miguel S. Urquiola</i> , Columbia Office of the Provost)	JA739
91	99-11	05/08/25	Exhibit 72 to the Reply Declaration of Jonathan Rosenthal (Meghnad Bose et al., <i>Inside Columbia's Betrayal of its Middle Eastern Studies Department</i> , The Intercept (April 16, 2025))	JA742

92	99-12	05/08/25	Exhibit 73 to the Reply Declaration of Jonathan Rosenthal (Truth Social Post from Donald J. Trump (April 16, 2025))	JA755
93	99-13	05/08/25	Exhibit 74 to the Reply Declaration of Jonathan Rosenthal (Anil Oza et al., <i>NIH said to have halted awarding of new grants to more top universities</i> , Stat News (April 18, 2025))	JA757
94	99-14	05/08/25	Exhibit 75 to the Reply Declaration of Jonathan Rosenthal (X Post from Max Kozlov (April 18, 2025))	JA760
95	99-15	05/08/25	Exhibit 76 to the Reply Declaration of Jonathan Rosenthal (Nandika Chatterjee, <i>Trump Takes Personal Revenge on Harvard's Lawyer for Standing Up to Him</i> , Daily Beast (April 24, 2025))	JA762
Volume 6				
96	99-16	05/08/25	Exhibit 77 to the Reply Declaration of Jonathan Rosenthal (May 5, 2025 Letter to Hard University from Linda E. McMahon)	JA769
97	99-17	05/08/25	Exhibit 78 to the Reply Declaration of Jonathan Rosenthal (<i>Preserving Columbia's Critical Research Capabilities</i> , Columbia Office of the President (May 6, 2025))	JA773
98	99-18	05/08/25	Exhibit 79 to the Reply Declaration of Jonathan Rosenthal (Diabetes Prevention Program et al., <i>An open letter to the Columbia administration</i> , Columbia Spectator (May 4, 2025))	JA777
99	99-19	05/08/25	Exhibit 80 to the Reply Declaration of Jonathan Rosenthal (Liz Essley Whyte et al., <i>Trump Administration Proposes Terms for Federal Oversight of Columbia University</i> , The Wall Street Journal (May 5, 2025))	JA781
100	100	05/08/25	Supplemental Declaration of Todd Wolfson	JA785

101	101	05/08/25	Supplemental Declaration of Julie Schmid	JA796
102	102	05/08/25	Supplemental Declaration of Reinhold Martin	JA800
103	103	05/08/25	Declaration of Joshua Jacobs	JA804
104	104	05/08/25	Declaration of Jamie Daw	JA812
105	105	05/08/25	Declaration of Abigail Greenleaf	JA818
106	121	05/20/25	Order Denying Requests to Seal	JA823
107	124	05/23/25	Declaration of Matthew Murray in Support of Plaintiffs' Motion for Preliminary Injunction	JA829
108	124-1	05/23/25	Exhibit A to the Declaration of Matthew Murray (HHS' Civil Rights Office Finds Columbia University in Violation of Federal Civil Rights Law, U.S. Department of Health and Human Services (May 22, 2025))	JA831
109	128	05/23/25	Declaration of Ezra Susser (Witness B)	JA836
110	129	05/23/25	Declaration of Joseph Slaughter (Witness C)	JA844
111	130	05/23/25	Declaration of Joel Swanson (Witness D)	JA849
112	131	05/23/25	Declaration of Andrew Geneslaw (Witness K)	JA857
113	132	05/23/25	Declaration of Alex de Sherbinin (Witness L)	JA863
114	133	05/23/25	Declaration of Mary Beth Terry (Witness M)	JA868
115	134	05/23/25	Declaration of Steven Chillrud (Witness N)	JA873
Volume 7				
116	136	05/23/25	Declaration of Teresa Javenic (Witness O)	JA879
117	137	05/23/25	Supplemental Declaration of Joseph Slaughter (Witness C)	JA886

118	138	05/23/25	Supplemental Declaration of Andrew Geneslaw (Witness K)	JA889
119	139	05/23/25	Amended Declaration of Melanie Wall (Witness A)	JA892
120	140	05/23/25	Amended Declaration of Safia Southey (Witness E)	JA899
121	141	05/23/25	Amended Declaration of Anne Li (Witness I)	JA903
122	142-1	05/23/25	Amended Declaration of Jon Lorsch, Ph.D	JA907
123	142-2	05/23/25	Exhibit A to the Amended Declaration of Jon Lorsch (<i>NIH Grants Policy Statement</i> , National Institutes of Health (April 2024))	JA914
124	142-3	05/23/25	Exhibit B to the Amended Declaration of Jon Lorsch (Dorothy A. Fink, <i>Secretarial Directive on DEI-Related Funding</i> , Department of Health & Human Services (Feb. 10, 2025))	JA921
125	142-4	05/23/25	Exhibit C to the Amended Declaration of Jon Lorsch (Matthew J. Memoli, M.D., <i>Directive on NIH Priorities</i> , National Institutes of Health (Feb. 21, 2025))	JA924
126	142-5	05/23/25	Exhibit D to the Amended Declaration of Jon Lorsch (March 10, 2025 Letter to Angela V. Olinto, Ph.D., from Michelle G. Bulls)	JA927
127	142-6	05/23/25	Exhibit E to the Amended Declaration of Jon Lorsch (March 14, 2025 Letter to Angela V. Olinto, Ph.D., from Michelle G. Bulls)	JA930
128	142-7	05/23/25	Exhibit F to the Amended Declaration of Jon Lorsch (March 7, 2025 Notification of Termination of Multiple Task Orders to the Trustees of Columbia University from Alice Pagán Pereira)	JA933
129	149	06/16/25	Notice of Appeal	JA935
Volume 8				

130	145	05/29/25	Amended Declaration of Witness J (To be filed UNDER SEAL and included in Joint Appendix contingent upon this Court's grant of Plaintiffs' Unopposed Motion to File Under Seal)	JA937

EXHIBIT 49



[Home](#) » [Announcements](#) » Announcing Task Force on Antisemitism

[ANNOUNCEMENTS](#)

Announcing Task Force on Antisemitism

November 01, 2023

Dear fellow members of the Columbia, Barnard, and Teachers College communities,

Today we are announcing the formation of a Task Force on Antisemitism to enhance our ability to address this ancient, but terribly resilient, form of hatred. We are taking this step as part of a commitment to ensuring that our campuses are safe, welcoming, and inclusive for Jewish students, faculty, and staff, and all of us.

One would hope that by the twenty-first century, antisemitism would have been relegated to the dustbin of history. But it has been rising here in New York City, across the country, and around the world in recent years. We also know that antisemitism can escalate during conflicts far from our campuses, translating into hateful speech and acts directed at Jewish people here at Columbia, Barnard, and Teachers College. We have been distressed that a series of antisemitic incidents on campus have been reported in the three weeks following the October 7 terror attack in Israel and outbreak of war in Gaza.

We want to reiterate that we will not tolerate such actions and are moving forcefully against antisemitic threats, images, and other violations as they are reported, and we will continue to provide additional resources to protect our campuses. But we also need to address the root causes. The Task Force on Antisemitism will be a critical tool for making our institutions more inclusive and compassionate.

In the coming months, the task force will identify practical ways for our safety and inclusion work to enhance support for all members of the Columbia, Barnard, and Teachers College communities, particularly our Jewish students. Longer term, it will recommend more ambitious changes related to academic and extracurricular offerings and student, faculty, and staff training programs.

We are pleased that the task force will be led by Ester Fuchs, Professor of International and Public Affairs and Political Science and Director of the Urban and Social Policy Program at SIPA; Nicholas Lemann, Joseph Pulitzer II and Edith Pulitzer Moore Professor of Journalism and Dean Emeritus of Columbia Journalism School; and David M. Schizer, Harvey R. Miller Professor of Law and Economics and Dean Emeritus of Columbia Law School. In the coming days, we will appoint Barnard and Teachers College co-chairs along with additional diverse task force members from the three institutions, and build the foundation for a thoughtful, rigorous, and impactful process.

Community and values don't stand on their own. We must constantly reaffirm and reinforce them with action. The Task Force on Antisemitism represents the first in a series of steps we will be announcing in the coming days to reinvigorate community-building, develop robust support networks, and tackle head-on the destructive forces that seek to undermine our values and divide us across a range of issues. This is an opportunity for every academic

department, every faculty member and teaching assistant, every member of the administration, and every member of the Columbia, Barnard, and Teachers College student family to bring their ideas, life experiences, and spirit to help us emerge as a stronger and more cohesive community.

Sincerely,

Minouche Shafik
President, Columbia University in the City of New York

Laura Ann Rosenbury
President, Barnard College

Thomas R. Bailey
President, Teachers College

News

March 19, 2025
[Our Next Steps](#)

March 15, 2025
[Standing Together for Columbia](#)

March 13, 2025
[Standing Together for Columbia, March 15, 2025](#)

March 13, 2025
[Update to Our Community Regarding DHS Activity Tonight](#)

March 13, 2025
[Columbia's Commitment to Our International Community](#)

EXHIBIT 50

[Home](#) » [About the Task Force on Antisemitism](#)



About the Task Force on Antisemitism

The [Columbia Task Force on Antisemitism was created](#) by Columbia University President Minouche Shafik, Barnard College President Laura Ann Rosenbury, and Teachers College President Thomas R. Bailey to address the harmful impact of rising antisemitism on Columbia's Jewish community and to ensure that protection, respect, and belonging extends to everyone. Antisemitism has been rising around the world, around the country, and in New York City, and Columbia is far from immune. We must urgently address the reality that Jewish members of our three interconnected institutions feel vulnerable to antisemitic bias and harassment and lack the sense of belonging that should be shared by all of us.

The task force is being led by Ester R. Fuchs, Professor of International and Public Affairs and Political Science and Director of the Urban and Social Policy Program at SIPA; Nicholas Lemann, Joseph Pulitzer II and Edith Pulitzer Moore Professor of Journalism and Dean Emeritus of Columbia Journalism School; and David M. Schizer, Harvey R. Miller Professor of Law and Economics and Dean Emeritus of Columbia Law School. The task force members are a diverse group of faculty from across the University equipped to assess where policies, practices and other tools and programs can be enhanced to improve the ability of Jewish students to learn and thrive on campus free from bias and harassment.

Task Force on Antisemitism Homepage

[Members of the Task Force on Antisemitism](#)

[Report #1](#)

[Report #2](#)

Scope

The task force is focused on understanding how antisemitism manifests on campus and ways to improve the climate for Jewish students, faculty, and staff. Antisemitism most directly threatens the Jewish community. But it is also an affront to the core values of our community. And fighting it should not be the responsibility of Jews alone nor can progress be achieved by the administration alone. Every member of the Columbia community has a role to play in helping Jews and all communities feel safe and included. We expect that many task force findings and recommendations will also bolster efforts to prevent and mitigate all forms of hate, bigotry, and bias—and to improve the health of our campus as a welcoming place to learn and thrive.

The task force will work on three broad initiatives. First, it will engage in a serious and honest assessment of the sources and extent of the discomfort that many Jewish members of the Columbia community feel. This will take the form of listening sessions with students, faculty, staff, and others most directly affected. In this initiative, the task force will also seek insights and perspectives from a broad array of professionals who touch the lives of students, from faculty to teaching assistants to Residential Life professionals. The task force will document these various experiences and perspectives, so everyone in the Columbia community can gain a deeper understanding of the relevant challenges and the dynamics contributing to them.

Second, the Task Force on Antisemitism will review University policies, rules, and practices that impact the campus climate to make sure they protect the University's core commitment to free speech, as well as to a safe and inclusive environment for all Columbians, including Columbia's Jewish community. This work will be done in consultation with the University Senate and other governing bodies.

Third, the task force will also propose various other ways to sensitize the entire community to antisemitism, to counter it more effectively, and to support Jews at Columbia. It will also consider ways that academic and intellectual life can be enhanced to promote Jewish studies and ensure that it fully embodies the principles of free expression and viewpoint diversity.

The task force will make recommendations in stages, beginning in early 2024 in effort to have the most immediate possible impact. Longer term, it will recommend more ambitious changes that will help institutionalize and sustain progress toward an improved campus climate.

Areas of Focus

Review University policies, rules and practices that impact campus climate to make sure they are consistent, well-aligned and that they are being applied fairly and consistently in ways that protect students and honor Columbia's bedrock commitment to academic freedom and free expression.

Building awareness, understanding, and solidarity. The task force will propose approaches to better sensitize the entire community about antisemitism, how it functions and ways to counter it and to support Jews at Columbia. Extracurricular offerings and many facets of campus life can help strengthen social support networks by fostering cross community conversations, solidarity and understanding.

Academic and intellectual life can be enhanced to promote Jewish studies as well as to ensure that it fully embodies the principles of free expression and viewpoint diversity.

EXHIBIT 51

[Home](#) » Report #1: Task Force on Antisemitism

Report #1: Task Force on Antisemitism

Columbia University's Rules on Demonstrations ⁽¹⁾

March 2024



(1) This report reflects the research and analysis of members of the Task Force's rules working group: David M. Schizer (Co-Chair, Law School), who drafted the report, as well as R. Glenn Hubbard (Business School), Magda Schaler-Haynes (Mailman School of Public Health), Matthew C. Waxman (Law School), and Gil Zussman (Fu Foundation School of Engineering and Applied Science). Extensive input also was provided by the other members of the Task Force: Clémence Boulouque (Department of Religion), Peter Coleman (Affiliate Co-Chair, Teachers College), Jeremy A. Dauber (Department of Germanic Languages), Ester Fuchs (Co-Chair, SIPA), Rebecca Kobrin (Department of History), Jennifer Lee (Department of Sociology), Nicholas Lemann (Co-Chair, Journalism School), Lisa Rosen-Metsch (General Studies), Nir Uriel (Columbia University Irving Medical Center), and Deborah Valenze (Affiliate Co-Chair, Barnard College).

On November 1, 2023, Presidents Minouche Shafik (Columbia University), Laura Rosenbury (Barnard College), and Thomas Bailey (Teachers College) announced the formation of a Task Force on Antisemitism (“the Task Force”) “as part of a commitment to ensuring that our campuses are safe, welcoming, and inclusive for Jewish students, faculty, and staff, and all of us.” (2)

[VIEW THE PDF VERSION](#)

[Report #1: Columbia University’s Rules on Demonstrations](#)

The Task Force is part of a broader series of campus-wide initiatives “to foster a community,” as President Shafik put it, “where debates and disagreements are rooted in academic rigor and civil discourse.” Another product of this “[our community, our values](#)” initiative is a pair of new interim policies for safe demonstrations (the “Interim Demonstration Policies”) from [Columbia University](#) (“the University”) and [Barnard College](#), which were issued on February 19 and 20th, respectively. The Task Force was pleased to provide input on these policies and, as discussed below, we strongly endorse them.

In the course of its work, the Task Force has heard of the isolation and pain many Jewish and Israeli Columbia affiliates (3) have experienced in recent months. While mourning Hamas’s unspeakable atrocities on October 7, some Jewish and Israeli Columbia affiliates have been the object of racist epithets and graffiti, antisemitic tropes, and confrontational and unwelcome questions, while others have found their participation in some student groups that have nothing to do with politics to be increasingly uncomfortable. Israeli Columbia affiliates have been criticized and stereotyped for serving in the military, something most Israelis are required to do. Some Jewish students have felt isolated in supporting Israel, while others have felt isolated in criticizing Israel. While there is strong support among Jewish and Israeli Columbia affiliates for the right to protest, as well as widespread heartbreak about the tragic loss of civilian life in Gaza, many have heard chants at protests like “Globalize the Intifada” and “Death to the Zionist State” as calls for violence against them and their families.

Across Columbia University, there also have been repeated violations of the rules on protests. Although peaceful demonstrations are permitted at Columbia and Barnard—and, indeed, are an indispensable element of civic life in a free society—the University has rules to keep them from interfering with our academic mission. Unfortunately, these rules often have been violated in recent months. Protesters have disrupted classes and events, taken over spaces in academic buildings, held unauthorized demonstrations, and used ugly language to berate individuals who were filming these protests or just walking by. There also have been reports of physical harm to students, including Columbia affiliates who were protesting against Hamas and Columbia affiliates who were protesting against Israel. Needless to say, the University must guarantee the physical safety of all Columbia affiliates, and a welcoming environment for everyone is essential.

In the coming months, the Task Force will issue a series of reports, examining various aspects of this difficult situation. We are conducting research on the experiences and views of members of the Columbia community and are analyzing a range of university policies and practices. This first report considers Columbia’s rules on demonstrations. (4) We focus on Columbia’s rules, since our work on Barnard and Teachers Colleges’ rules is still at an early stage. (5)

Even though our charge is antisemitism, we know that Jews and Israelis are not the only ones targeted in this difficult time. Heartbreak, fear, and loss are widely shared experiences both on and off campus. Although our report focuses on antisemitism, our recommendations can also bolster efforts to combat Islamophobia, anti-Arab racism,

and other types of bigotry. We condemn all these toxic forms of hate and look forward to working with colleagues, and partnering on initiatives, to counter it across the University. Together, we must strengthen the fabric of our University community for all.

▼ Footnotes

(2) [Announcing Task Force on Antisemitism](#), Nov. 1, 2023.

(3) The phrase “Columbia affiliate” in this report includes students, faculty, and staff of Columbia University (including Columbia University Medical Center), Barnard College and Teachers College.

(4) Columbia University defines “demonstrations” as “a group of people coming together in an event of public expression on campus.” See the [Interim University Policy for Safe Demonstrations](#).

(5) Teachers College and Barnard College are affiliates of Columbia University and separate 501(c)(3) entities.

LEARN MORE

[About the Task Force on Antisemitism](#)

[About the Members of the Task Force on Antisemitism](#)

[About the Second Report](#)

I. Executive Summary

The University’s rules on demonstrations must accomplish three critical goals: first, safeguarding every Columbia affiliate’s right to protest, regardless of their viewpoint; second, ensuring that protests do not interfere with the rights of other Columbia affiliates to speak, teach, research, and learn; and, third, combating discrimination and harassment, including antisemitic harassment.

To protect every Columbia affiliate’s right to protest, while also ensuring that protests do not interfere with the free speech rights and academic freedom of others, the University must regulate the timing and location of protests. We support a “speaker’s corner” approach that permits protests in designated areas like the Sundial, South Lawn, and Futter Field, but not in academic buildings, libraries, dining halls, or dormitories. Every Columbia affiliate should have the right to protest in these designated areas, regardless of their cause or viewpoint. This is the approach of the new Interim Demonstrations Policies, and we consider them a major step forward. We also recommend clearer limits on the use of noise amplification and banners, as well as a minimum distance between competing protests.

Although we generally agree with the language of the University’s rules, we have serious concerns about their enforcement. The University generally has not tried to stop violations as they have occurred, and instead has focused on imposing discipline after the fact. The priority during protests has been to avoid violence and escalation. In our view, avoiding violence is necessary, but not sufficient. The University also needs to keep protests from interfering with the rights of others to speak, teach, research, and learn. So the University should do more to stop

JA596

unauthorized protests as they occur, using approaches that are effective but not confrontational. For example, if protesters gather in an academic building, they should be told that they are violating the rules and given the opportunity to leave within a specified period of time (e.g., ten minutes). Those who remain should be required to show IDs and given a warning, followed by discipline for subsequent violations.

In addition to doing more to stop rule violations as they occur, the University needs to be more effective at investigating and enforcing violations after the fact. We recommend a simpler process for filing complaints, more flexible deadlines for adjudicating them, more effective use of informal processes, and aggregate reporting on the results. Unlike most other universities, Columbia uses a separate disciplinary process for rules on protests, which is coordinated by the University Senate. Since this process has rarely been used, robust efforts are needed to make sure it works, including rigorous training, safeguards to ensure consistent treatment, and periodic reviews of the process.

In addition to free speech rights and free speech responsibilities, the University's rules ban discrimination and harassment, as required under Title VI (6) and other laws. Since the University's legal team is responsible for legal compliance, they should clarify what speech contributes to a hostile learning or working environment. Like in the [gender-based misconduct rules](#), the University should offer "scenarios." These clear cases should illustrate what violates our rules and what does not, so adjudicators can consider whether a particular incident, which may be harder to classify, is more like the "good" or "bad" scenarios. These scenarios should be about all protected classes, not just Israelis and Jews.

Indeed, to comply with the law, the University must be consistent in its treatment of different protected classes. For example, if members of a protected class say that particular phrases or comments interfere with their ability to learn and work, should the University defer to them? Or should the University focus instead—not on how the protected class *hears* these words—but on what the speakers *intend* in saying them? In recent years, it has become increasingly common at Columbia to defer to a protected class's views. But when some Israeli and Jewish Columbia affiliates have complained about phrases or comments in recent months, the response has been different, defending the intentions and free speech rights of the speakers. While there are important reasons to value the perspective of both the speaker and the audience, the University must be consistent in its approach.

Finally, it is worth emphasizing that even when offensive words are permissible under the University's rules, they may still be disappointing or even reprehensible. In discussing difficult issues, we should always strive to state our position with civility and collegially.

Part II of this report identifies key principles the rules need to uphold. Part III emphasizes the critical role of content- and viewpoint-neutral "time, place, and manner" restrictions, and recommends ways to make them more effective. Part IV focuses on antidiscrimination rules, analyzing how the University can effectively combat harassment while also protecting free speech rights.

In writing this report, the Task Force has benefited enormously from repeated consultations with the Office of the President, the Office of the Provost, University Life, faculty members of the University Senate, the Kraft Center, and members of task forces at other universities, as well as deans, senior administrators, faculty members, alumni, staff, and students from across the University, including in listening sessions we have been holding across the campus. We are deeply grateful for the valuable insights so many have shared, and appreciate their staunch commitment to addressing the challenges considered in this report.

Before turning to our analysis, we should clarify its scope. This report discusses general issues of policy, not specific protests or other incidents from recent months. This focus reflects the Task Force's charge. We were convened to perform an important but limited task: to gain a deeper understanding of the situation on campus and to make

JA597

recommendations about how the University should respond. We do not have management authority, and we are not an adjudicative body. Therefore, we do not offer public comments “in real time.” For the same reason, this report addresses broad challenges, instead of particular events.

A number of rules are not analyzed in this report, including those governing the recognition and discipline of student groups, classroom conduct, off-campus activity, and social media. In future reports, we will consider some of these other rules, as well as other issues.

▼ Footnotes

(6) As the Department of Justice has explained, “Title VI, 42 U.S.C. § 2000d et seq., was enacted as part of the landmark Civil Rights Act of 1964. It prohibits discrimination on the basis of race, color, and national origin in programs and activities receiving federal financial assistance.” Civil Rights Division U.S. Dep’t of Justice, [Title VI of the Civil Rights Act of 1964](#).

II. Three Fundamental Principles

Before turning to the specifics of our rules, we begin with basic principles. Our rules must embody an unshakeable commitment to three core ideas: first, the right to free speech and academic freedom; second, the responsibility to respect the free speech rights and academic freedom of others; and, third, our communal commitment to antidiscrimination.

A. Free Speech Rights

The mission of a great university is to expand the frontiers of knowledge and to educate future generations. This mission requires uncompromising rigor in uncovering facts and analyzing ideas. Truth is found not by seeking to justify what we want to believe, but by constantly testing, and then updating, our knowledge and understanding.

This timeless process can function effectively only if our minds remain open. There can be no orthodoxies. The fact that an idea is widely accepted should not exempt it from scrutiny. The fact that an idea is controversial, or even offensive, should not render it off limits. “The right of members of our university to share views that may be unpopular or deemed offensive,” observed the seventeen deans of our faculties and schools in a [recent statement](#), “is protected and fundamental to an academic community that depends on the free exchange of views and ideas.”

(7) In the words of Section 440 of the Senate’s [Rules of University Conduct](#), “the University is a place for received wisdom and firmly held views to be tested, and tested again, so that members of the University community can listen, challenge each other, and be challenged in return.” This bedrock principle of academic freedom must never be compromised.

B. Free Speech Responsibilities

Just as we all have the right to speak our minds in pursuit of truth, we also have the responsibility to respect—indeed, to protect—this right for other Columbia affiliates. Needless to say, violence, threats, and intimidation also have no place at a great university.

In addition, our right to speak must not come at the expense of the right of others to speak, teach, research, and learn. We must not use the “heckler’s veto” to shout down other speakers, tear down or deface posters, disrupt classrooms, or impede other essential functions of the University. These “rules of the road,” which are known as “time, place, and manner” restrictions, are essential to the academic enterprise. Intellectual inquiry cannot proceed without them.

These limits, which protect all of us, are not about *what* we say, but about *where*, *when*, and *how* we say it. Every Columbia affiliate has the right to explore and defend the causes they cherish. But no one has the right to drown out other voices or interfere with the University’s teaching mission. As Section 440 of the [Rules of University Conduct](#) explains, “The right to demonstrate, for example, cannot come at the expense of the right of others to counter-demonstrate, to teach, or to engage in academic pursuits requiring uninterrupted attention.”

These limits must be applied consistently and evenhandedly. It would be unacceptable for them to be invoked selectively to silence particular voices. Rather, time, place, and manner restrictions must be content- and viewpoint-neutral.

C. Antidiscrimination

Just as we cherish and nurture the pursuit of truth, we also are committed to treating all members of our community with respect. Every Columbia affiliate deserves to feel safe. They must know that they belong here. The University must be a welcoming home to all students, faculty, and staff, regardless of their race, national origin, gender, religion, sexual orientation, age, disability, military service, or other legally protected status. This obligation flows not only from our values, but also from Title VI, Title IX, and other federal, state, and local laws.

To discharge this obligation, the University does not guarantee that others will always agree with us. This surely will not happen and, in a place of intellectual ferment, it *should not* happen. Each of us will encounter ideas and perspectives we reject—indeed, even ones we find offensive. This is part of the compact we make with each other: everyone can express their views.

But harassment and discrimination cannot be tolerated. Nor should anyone be free to engage in violence or to call for violence against members of our community or groups to which they belong. This reprehensible conduct denies members of our community the experience they deserve.

▼ Footnotes

(7) [Deans’ Message on Columbia and Community](#), Dec. 20, 2023.

III. Enhancing the University’s Time, Place, and Manner Restrictions

To operationalize these three essential commitments—free speech rights, free speech responsibilities, and antidiscrimination—the University needs effective rules of the road. These “time, place, and manner” restrictions are an essential protection for every member of our community, so the University has to ensure that they are effective.

A. Timing & Location of Demonstrations

Every Columbia affiliate must have the right to engage in peaceful protests. But although this is a proud tradition at Columbia, it must not interfere with the rights of other Columbia affiliates to speak, teach, research, and learn. To protect this right for everyone, the University needs to specify when and where demonstrations are permitted.

In our view, demonstrations should not be allowed in academic buildings, libraries, dormitories, or dining halls, as well as too close to the entrances to these buildings. (8) Unfortunately, this has not always been the practice in recent months.

The right place for demonstrations is in outdoor spaces like the South Lawn and the Sundial in Columbia's Morningside campus, Futter Field in Barnard's campus, and comparable locations on other campuses. (9) The locations should be prominent. Our goal is not to consign demonstrations to remote locales where they will go unnoticed. Yet the location must ensure that demonstrations do not interfere with classroom learning and other essential functions of the University.

In this spirit, Section 443(14) of the [Rules of University Conduct](#) renders it a violation when someone "incident to a demonstration . . . disrupts a University function or renders its continuation impossible." This is the right principle.

To operationalize this principle more effectively, we recommend focusing more explicitly on location. After all, a standard based solely on "disruption" can be ambiguous, and can require more nuanced fact-finding. For example, some participants in a demonstration in an academic building might claim that, unlike others, they were speaking in a low voice and thus were not disruptive. Sorting out these facts is not always easy. In contrast, the question of *where* a protest was, and whether someone *actually attended it*, is easier to answer. (10)

As a result, we are pleased that Columbia and Barnard's new Interim Demonstrations Policies adopt this location-based approach, requiring demonstrations to be in "Demonstration Areas" (East South Lawn, West South Lawn, and the Sundial on Columbia's Morningside campus and Futter Field on Barnard's campus) at designated times, inviting members of the community to reserve these spaces, and guaranteeing access to them regardless of the views expressed in the demonstration. We consider this a major step forward in Columbia and Barnard's efforts to protect the free speech rights and academic freedom of every member of our community.

B. Sound Enhancement

Keeping demonstrations outside academic buildings protects everyone's rights by putting distance between demonstrations and academic work. Yet sound amplification systems and megaphones can negate this distance. As a result, "a noise that substantially hinders others in their normal academic activities" is a violation under Section 443(12) of the [Rules of University Conduct](#), and rightly so.

More specific guidance should be offered about what sound enhancement (if any) is permitted. (11) While it can help protesters hear speakers, it also can disturb Columbia affiliates in nearby classrooms, dormitories, or libraries. For this reason, Barnard's Interim Demonstration Policy provides that "those participating in registered Demonstrations may not use noise amplification (e.g., megaphones, bull horns, etc.) or sound machines (e.g., pots, pans, instruments, etc.) during Demonstrations."

C. Safety, Notice, and Physical Separation

The University's highest priority must always be physical safety. When members of our community exercise their right to protest, they must be free to do so in safety and without fear. Unfortunately, this has not always been the case in recent months, and this is not acceptable.

To be fully prepared to guarantee safety during demonstrations, the University requires notice of when they will take place. The new Interim Demonstrations Policies generally require two business days, which we think is reasonable.

The rules also must ensure a minimum distance between competing protests. While Section 443(18) of the [Rules of University Conduct](#) authorizes rules delegates to give reasonable orders to keep protests apart, we recommend also specifying a minimum distance and rigorously enforcing this rule.

D. Banners

Like the location of protests, the location of signs and banners should be subject to viewpoint- and content-neutral time, place, and manner rules. In general, holding signs and banners in authorized demonstrations should be permitted. But hanging banners on any interior or exterior surface of a building should be prohibited unless the administration of the relevant school has approved it.

E. Limiting Access to Campus

Columbia affiliates must be allowed to demonstrate on campus, as well as to invite speakers and a reasonable number of guests to participate in the demonstration. But aside from these invited guests, non-affiliates are not entitled to this privilege. Unfortunately, their participation can come at a cost, if only because they do not know the University's rules and have less reason to abide by them. We realize that the need to present IDs can be inconvenient for Columbia affiliates and can affect the atmosphere on campus, but on balance we think the University generally should limit demonstrations to affiliates.

F. Enforcement During Demonstrations

While we generally agree with the *language* of the University's rules, we have serious concerns about their *enforcement*. To the University's credit, a senior team of administrators with different expertise and responsibilities has been meeting regularly to prepare for demonstrations, making daily (and at times even more frequent) judgments about staffing and other aspects of the University's response. This degree of coordination is impressive. It signals how seriously the University takes these issues.

Nevertheless, enforcement has fallen short in two ways. First, the University has regularly failed to stop violations of rules as they occur. Second, there also have been challenges in imposing discipline after the fact. We discuss these two issues in turn.

1. "Real Time" Efforts to Prevent Protests in Academic Buildings

First, when an unauthorized demonstration is taking place, representatives of the University should intervene more proactively "in real time." Obviously, these interventions are especially important to protect physical safety. In addition, we would prioritize interventions to prevent disruption of classes and other academic work, for instance, when there is an unauthorized demonstration in an academic building.

We recognize how challenging it can be for the University to manage and respond to demonstrations, and we truly appreciate the strenuous efforts of rules delegates and public safety officers in recent months. The volume of protests has spiked, and the campus climate is more tense than at any time in recent memory. Enforcing our rules, while also avoiding confrontation, is no easy task.

Even so, we urge these colleagues to be more ambitious. They should not be content just to “wait out” a demonstration and prevent violence. This sort of deescalatory posture is necessary, to be sure, but it is not sufficient. The University also has to prevent the disruption of classes and, more generally, to protect the academic freedom and free speech rights of the rest of the Columbia community.

2. Avoiding Physical Confrontation

To be clear, we are not recommending the forcible removal of protesters or routine reliance on the NYPD. On the contrary, the University should not repeat its overly aggressive response to protests over half a century ago in 1968. Physical interventions are appropriate only to break up fights and protect protesters and bystanders from violence. Our understanding is that this is the only circumstance in which public safety officers initiate physical contact, and we agree.

3. Better Nonconfrontational Approaches

Instead, the focus should be on developing better nonconfrontational options. We stand ready to offer input in analyzing alternatives. In that spirit, we recommend that rules delegates should tell demonstrators they are violating the rules, offer a card with the relevant rules, and ask them to disperse within a specified period of time (e.g., ten minutes). Protesters should also be told that names will have to be taken and disciplinary processes will have to be initiated for anyone who is still there after the specified time has elapsed. After this time has passed, if any protesters are still in the academic building, public safety officers should ask for their IDs. If the protesters refuse—a rule violation in and of itself—public safety officers should take their photos, a step that can help identify them even if they are masked.

Section 443(16)–(18) of the [Rules of University Conduct](#) authorize delegates of the University to regulate demonstrations in these and other ways. We understand that other universities have had some success with these sorts of steps. Fortunately, some of these steps are starting to be taken more frequently on our campus.

As long as this effort during a demonstration is paired with effective investigation and adjudication after it is over, as discussed below, we expect that most protesters will choose to comply with the rules. This should be all the more true because they can still hold demonstrations: these protests simply have to be during designated hours in authorized locations (e.g., on South Lawn or Futter Field), and not in academic buildings, libraries, dorms, and the like.

4. Expertise, Conflicts of Interest, and the Number of Rules Delegates

The steps suggested above should be assigned to professionals with the right expertise. In recent years, our rules delegates have been student affairs professionals. They are well suited to make an initial approach, gently reminding students of the rules, as well as of the prospect of discipline for protests in academic buildings. In contrast, public safety officers have a comparative advantage in the subsequent steps of asking for IDs and taking photographs.

In assigning roles, the University should consider how responsibilities at protests interact with a rules delegate’s other responsibilities. For example, student affairs professionals may be wary of confronting student protesters, worrying that a negative encounter may undercut their effectiveness in other work with these students. Unfortunately, student affairs professionals also face another risk: *failure* to intervene—and, indeed, the perception that they implicitly endorse rules violations—can undermine their relationship with other students.

One way to address this challenge is to staff protests with rules delegates from other schools. For example, if there is an unauthorized protest at the law school, the rules delegates assigned to it could be from the business school, and vice versa. Our understanding is that this already is the University's practice.

Another solution is to broaden the pool of rules delegates, so they include colleagues whose other responsibilities do not create this potential tension. Another advantage of broadening the pool in this way is that rules delegates may benefit from having a wider range of expertise within their ranks.

The University should also invest more resources in this effort. Currently, the compensation for rules delegates is a modest stipend, so more may be warranted in the current climate. We also need more of them, at least in the current environment. The increased number of protests poses the risk of burnout for a small group. In addition, the more proactive approach recommended here may require a larger presence at unauthorized protests.

5. Communal Support for This Effort

While rules delegates and public safety officers play a central role in enforcing time, place, and manner restrictions, they cannot do this alone. The rest of our community must support them in this effort. Every Columbia affiliate has a stake in protecting the right to protest, while also ensuring that protests do not interfere with the free-speech rights and academic freedom of others.

Unfortunately, some faculty and administrators have failed to convey this message. When they speak at unauthorized demonstrations, or when they help shield the identity of students who are violating the University's rules, their apparent endorsement of unauthorized protests sends a confusing signal to students. In response, we encourage deans and department chairs to communicate the importance of time, place, and manner rules, while also discouraging colleagues from undercutting these rules.

G. Enforcement After Demonstrations

In addition to intervening "in real time," the University also must take the right steps after the fact. The University must investigate incidents, initiate disciplinary processes, and impose sanctions when warranted. Yet unfortunately, we are concerned that these efforts after an incident are falling short in four ways, which we discuss in turn. We would be pleased to work with the Administration and the Senate to explore alternatives for addressing these problems.

1. Identifying Masked Demonstrators

First, our understanding is that investigating incidents has been a challenge in part because many demonstrators have been masked. A more proactive effort is needed to identify them during demonstrations, as noted above.

2. Deadlines

Second, Columbia's deadlines in the [Rules of University Conduct](#) are too tight. "Generally, . . . [i]nvestigation begins within five (5) business days after an incident" and is supposed to be "completed within fifteen (15) business days after the investigation begins." (12)

We understand why the drafters of this timetable did not want unnecessary delays. Speed ensures that memories are fresh, respondents are not subjected to a protracted process, and any necessary discipline is administered promptly.

4. An Untested Process

Unlike most other universities, Columbia uses a separate process, coordinated by the University Senate, when individuals are charged with violating rules governing protests. Although a version of this process has existed for many years, it has been used only a handful of times since it was significantly modified in 2015, and not at all during the Fall Semester. In contrast, the University's other disciplinary processes are used much more regularly. (15)

Since this process is largely untested—with all the downsides that entails—strenuous efforts are needed to ensure that it is effective. For one thing, rigorous training is essential. After all, unlike the experienced decisionmakers in the University's other disciplinary processes, a number of the members of the Senate's Judicial Board—a body that includes faculty, students, and administrators—presumably have relatively little experience adjudicating disputes.

Clear delineation of institutional roles is also important. For example, the Senate Rules Committee is responsible for drafting and revising rules, while the Judicial Board is responsible for adjudicating matters under the rules. It is important not to blur the lines between legislative and adjudicatory functions.

Sharing information internally also is critical. Unlike in the U.S. court system, where outcomes are publicly available, student discipline generally is confidential under the Family Educational Rights Privacy Act ("FERPA"). (16) Since there are no reported precedents, respondents cannot confirm that they have been treated the same way as similarly situated respondents. This must not be the case with members of the Judicial Board. They must have access to the necessary information, and we have been told that they do. This is essential, so members of the Judicial Board will know how similar incidents have been treated and treat them the same way. Indeed, consistency is not just a moral imperative, but also a legal requirement (e.g., since singling out a protected class for different treatment can violate Title VI).

As the Judicial Board gains experience, it is essential to review their decisions and address any issues that are identified. For example, we endorse the Senate Executive Committee's commitment to conduct periodic reviews of Judicial Board decisions under Columbia's Interim Demonstrations Policy.

H. Education About the Rules

To ensure that everyone complies with the rules, we need not just better enforcement, but also better education. A concerted effort is required to ensure that Columbia affiliates know the rules, as well as the rationale for them.

As we have emphasized, time, place, and manner restrictions are there to *protect* speech, not to *suppress* it. In a community where academic freedom and free speech are bedrock values, we should all comply with these restrictions not just to avoid discipline, but to honor our values and show respect for the rights of others.

Interim Provost Mitchell's [January message](#), summarizing key features of the rules governing demonstrations, was a productive step. We recommend additional efforts within every school and department to educate members of our community about the right way (and the wrong way) to exercise their free speech rights.

I. Simpler Process for Reporting

Under Columbia's rules, filing a report is a key way to initiate investigations and disciplinary processes. Yet although Columbia affiliates are supposed to file a report when they witness a rule violation, many are not doing so. The University has already taken productive steps to address this problem, but more should still be done.

First, many Columbia affiliates do not understand the function of these reports. For example, some mistakenly assume that there is no reason to report something that administrators also witnessed. The (understandable) assumption is that if these administrators already know about a situation, there is no need to report it. But reports should be filed not just to inform those administrators, but also to initiate an investigation of (and, potentially, discipline for) the relevant incident. Administrators can ask for an investigation, and we encourage them to do so when one is warranted. But every Columbia affiliate has this power—not just administrators—and we should all use it.

Second, in addition to knowing *why* they should file, Columbia affiliates also need to know *how* to do it. This process should be simplified. At the moment, different forms are required for different types of violations. There are separate links for academic violations, discrimination by students, discrimination by faculty and staff, gender-based misconduct by students, gender-based misconduct by faculty and staff, and general concerns (including violations of the rules governing protests).

To help Columbia affiliates navigate this maze of reporting requirements, the University has put all of these links on a [single webpage](#). They also have introduced a helpline, as well as a help desk, to guide members of our community in this process.

While these are productive steps, we recommend something more ambitious: the University should consolidate the various links and forms to a single one. After affiliates fill it out, an administrator should review it and route it to the appropriate department. This administrator will know—far more readily than a student—which rules and policies are implicated, as well as who should investigate and adjudicate it. By relieving the complainant of this obligation, the University can make filing a report easier, faster, and less daunting.

Finally, the University also should help Columbia affiliates understand what happens after they file a report, including what else may be expected of them. This process is not well understood, and there has been only limited communication after reports are filed.

J. Aggregate Reporting on Discipline

Another reason why some are not reporting violations is that they believe nothing will happen. This is problematic not only in discouraging reporting, but also in shaping perceptions of the University among important stakeholders, including current and potential students, faculty, staff, alumni, and parents. Even more importantly, this perception may induce students to violate rules. As a result, the University needs to share more information about the results of disciplinary processes.

Under FERPA, the University cannot share information about specific individuals. But there is no bar on aggregate reporting. On a regular basis, the University should share information about the number of disciplinary investigations underway, the number of adjudications, and the range of consequences administered, while also ensuring that this reporting is done in a way that respects the privacy of the individuals involved. Consistent with FERPA, the University also should communicate with those who have filed complaints, reassuring them that their concerns have been taken seriously.

▼ Footnotes

(8) The University has legal obligations to ensure that entrances to these buildings are clear. For example, the University has to ensure that Columbia affiliates with disabilities have ready access to these entrances, as well as an obligation under Title VI to ensure that protected groups have access to educational opportunities, and thus to

these buildings.

(9) In choosing the right locations in the health sciences campus, the University must also account for the needs of patients.

(10) Some nondisruptive forms of expression should be permitted in an academic building, such as wearing a particular T-shirt or pin.

(11) This guidance could appear either in an updated version of the Demonstrations Policy or as an addition to Rule 443(12).

(12) Section 446, [Rules of University Conduct](#).

(13) [Rules of University Conduct](#), Sec. 445(a) (authorizing Rules Delegate to “organize informal settlements”); see also Sec. 447 (providing for informal resolutions).

(14) [Rules of University Conduct](#), Sec. 446 (“A respondent may decline to participate in the investigative or adjudicative process.”).

(15) [Dean’s discipline](#)” is used for academic, behavioral, and other student misconduct (e.g., plagiarism, vandalism, discrimination, harassment, etc.). The University also has other processes for student gender-based misconduct. Misconduct, including discrimination, involving faculty and other employees is addressed through a separate track.

(16) Department of Education, [The Family Educational Rights Privacy Act](#).

IV. Antidiscrimination

In addition to free speech rights and free speech responsibilities, our rules also advance a third principle: our collective opposition to discrimination and harassment. [Columbia University’s Non-discrimination Statement and Policy](#) bans discrimination based on a number of protected statuses, including “citizenship status; . . .color; . . . disability; familial status; gender (sex); gender identity; . . . national origin; . . . race; religion; . . . sexual orientation; . . . veteran or active military status; or any other applicable, legally protected status.”

A. Discrimination and Harassment are Not Protected Speech

So although the University must protect speech vigorously, it does not do so absolutely. While we all pledge to tolerate speech that we consider misguided or even offensive—in a collective commitment to protect everyone’s right to speak their minds and pursue the truth—the University does not tolerate speech that constitutes discrimination or harassment against protected classes. This commitment is grounded not only in our collective values, but also in the law.

Indeed, a key function of the University’s antidiscrimination rules is to comply with Title VI, as well as with other federal, state, and local laws. While the University has latitude to offer *more* protection against discrimination than the law requires, it cannot offer less.

So even as the [Rules of University Conduct](#) protect free speech rights, the Affirmative Statement in Rule 440 acknowledges that “the University may restrict expression that constitutes a genuine threat of harassment,” recognizing that harassment does “little if anything to advance the University’s truth-seeking function” and “impair[s] the ability of individuals at the University to participate in that function.”

Under federal, state, and local law, discrimination and harassment can be caused not just by conduct, but also by speech. Applying these rules, the University defines “discriminatory harassment” to include “unwelcome conduct” that is “verbal” as well as “physical”:

“Subjecting an individual to unwelcome conduct, whether *verbal* or physical, that creates an intimidating, hostile, or abusive working, learning or campus living environment; that alters the conditions of employment or education; or unreasonably interferes with an individual’s work or academic performance on the basis of the individual’s membership in a protected class is harassment which is a form of discrimination.” (Emphasis added.) (17)

Applying Title VI and other applicable laws, University policies include speech of various kinds in their definition of harassment:

Harassment may include, but is not limited to: verbal abuse, epithets, or slurs; negative stereotyping; threatening, intimidating, and hostile acts; denigrating jokes; insulting or obscene comments or gestures; and the display or circulation of written or graphic material (including in hard copy, by email or text; or through social media) that denigrates or shows hostility or aversion toward an individual or group members of a protected class. (18)

The University’s antidiscrimination rules are administered by the University’s general disciplinary processes (“dean’s discipline” for students, and human resources processes for faculty and staff under the Equal Opportunity and Affirmative Action Office or “EOAA”), not the special rules for protests (such as the Senate’s [Rules of University Conduct](#) and the new Interim Demonstrations Policy). This division of labor reflects the reality that antidiscrimination rules enforce federal, state, and local law, so the Office of the General Counsel and the Administration need to take the lead in drafting and administering them. The same is true of the University’s [rules policing gender-based misconduct](#) under Title IX. As a result, the student conduct standards expressly provide that “behavior listed in this section [including discriminatory harassment] that occurs in conjunction with” alleged violations of rules governing protests “may be adjudicated” through dean’s discipline. (19)

B. Need for Guidance On What Constitutes Discriminatory Harassment

We urge the University to provide more guidance on the meaning of “discriminatory harassment,” including antisemitic harassment. What kind of speech “creates an intimidating, hostile, or abusive working, learning or campus living environment” under Title VI?

The University’s definition of harassment states that “epithets or slurs” clearly can contribute to a hostile learning and working environment. Obviously, it violates the rules to approach a Jewish student and say, “F*** the Jews,” just as it would violate the rules to make this sort of offensive comment to a member of any protected class.

The definition of harassment also includes “negative stereotyping” and “insulting . . . comments.” So when Jewish students walk by a group that is protesting against policies of the Israeli government, the rules are violated if the protesters heckle these students by attributing Israel’s policies to them (e.g., “you bomb hospitals”).

The same is true when assumptions are made about Israeli faculty members, students, and staff, including those in joint programs with Israeli universities, just because these Columbia affiliates have served in the military. Since most Israelis are required to serve in the military, calls to exclude Israeli veterans from campus apply to nearly all Israeli

Columbia affiliates. Making assumptions about Columbia affiliates based solely on their country of origin or military service can constitute discrimination based on national origin or military service under the University's rules.

The University also has said that calls for genocide, like other incitement to violence, violate the rules:

"Calls for genocide against the Jewish community or any other group are abhorrent, inconsistent with our values and against our rules. Incitement to violence against members of our community will not be tolerated." (20)

While we agree with this principle, the application of it should be clarified. Obviously, the chants "gas the Jews" and "Hitler was right" are calls to genocide, but fortunately no one at Columbia has been shouting these phrases (though there are reports that these chants were used at another university). (21) Rather, many of the chants at recent Columbia protests are viewed differently by different members of the Columbia community: some feel strongly that these are calls to genocide, while others feel strongly that they are not.

At some point, courts and the Department of Education are likely to offer additional guidance illuminating the Title VI implications of these chants, as well as other speech and conduct at protests. (22) This would be helpful. In the interim, the University's legal team should provide more guidance on this issue. Since this ultimately is a matter of legal compliance, we do not offer a detailed analysis here. Instead, we emphasize a few key points.

First, the University's commitments to ban discrimination and to protect free speech are both foundational, so managing potential tensions between these commitments is not easy. Even as the University strives to protect free speech rights, it must also ensure compliance with antidiscrimination laws.

In addition, in pursuing these critically important goals, the University should aim to make the lines it draws as clear as possible, while recognizing that perfect clarity about every conceivable circumstance is not always possible. Even so, efforts to provide greater clarity help to provide fair notice, so Columbia affiliates have more of a sense of what is permissible (even if offensive) and what is not. Clearer guidance also helps colleagues who investigate potential incidents, so they know when alleged facts violate the rules. Likewise, greater clarity helps ensure that different adjudicators treat similar conduct the same way.

Recognizing the importance of clarity, the University's rules on gender-based misconduct include "scenarios," which illustrate what is permitted and what is not. (23) While these scenarios cannot govern every conceivable circumstance, and focus on relatively clear cases, they still lend clarity by illustrating general principles and inviting decisionmakers to consider whether a particular incident is more like one scenario (e.g., that is permitted) than another (e.g., that is not). To ensure that members of our community are aware of these rules, the University requires periodic online training for all members of the community. We recommend a similar effort for other types of discrimination, including antisemitic harassment. In the coming weeks, we would be pleased to work with the General Counsel's office, University Life, and other colleagues to analyze these issues in more detail.

C. Consistency in the Treatment of Protected Classes

Needless to say, Jews and Israelis are not the only groups that could experience discriminatory harassment. The rules must defend all protected classes.

In applying the rules to different groups, the University has to make consistent judgments. Indeed, consistency is necessary as a way not just to keep faith with our values, but also to comply with Title VI and other applicable laws. In general, the University must provide the same level of protection to different protected classes. By affording vigorous protection to some, but not others, the University would violate Title VI.

As a result, speech or conduct that would constitute harassment if directed against one protected class must also be treated as harassment if directed against another protected class. This must be true not only in the way rules are written, but also in the way they are enforced.

In this spirit, the University needs to use the same methodology when deciding whether speech constitutes harassment. Should the focus be on the audience or the speaker? If members of a protected class say that particular phrases or comments cause them pain, should the University defer to them? Or should the University focus instead—not on how the protected class *hears* these words—but on what the speakers *intend* in saying them?

In recent years, it has become increasingly common at Columbia to defer to protected classes in defining which statements are considered biased or hateful, prioritizing the concerns of the audience (i.e., the protected class) over the intentions of the speaker. This approach has been evident, for instance, in discussions of policing, affirmative action, sexual assault, transgender rights, and other important issues.

But a different norm has applied to many Jewish and Israeli Columbia affiliates in recent months. When they have complained about phrases and statements that cause them pain, some students, faculty members, and staff have not deferred to their concerns. Instead, they have responded that the speakers actually mean something else, which is not offensive, or that the speakers have the right to speak their minds.

This is a challenging issue, since there are important reasons to value the perspective of both the speaker and the audience. But regardless of how this issue is resolved, the University needs to be consistent in its approach.

D. Consistency and Expertise in Investigation and Adjudication

The University has an office that investigates and adjudicates gender-based harassment and discrimination under Title IX (the Office of Gender-Based Misconduct), and different offices that investigate and adjudicate harassment and discrimination under Title VI (the EOAA process for faculty and staff and the dean's discipline process for students). It is important to ensure that comparably rigorous levels of training are provided to these colleagues, and that consistent standards are used for different protected classes.

In pursuing these goals, the University should draw on its experience in administering Title IX. For example, the University can consider using a similar structure (e.g., a separate office), as well as similar training and staffing strategies. There may also be synergies in closer coordination of these efforts.

E. Values as Well as Rules

Finally, it is important to emphasize that the question of what *the rules allow* is not the same as the question of what members of our community actually *should say and do*. We all have the right to take controversial positions, and rightly so. We even have the right to say offensive things.

But with rights of free expression come responsibilities, including to consider the effects of our expression on others. We should never be indifferent to the pain and discomfort our words cause, regardless of the ideas we seek to advance. Indeed, whether we are passionate in defending the rights of Israelis, Palestinians, or anyone else, we should recognize that others have convictions that are just as heartfelt. Even as we disagree, we should still respect each other's feelings. An institution of higher learning is an appropriate place to learn these responsibilities.

Columbia affiliates must never shy away from the great issues of the day. Our University must always strive to shed the light of reason on the defining challenges of our time. To advance our mission, we must be willing to express strong views, follow evidence and arguments where they lead, and confront painful truths. As part of this process,

members of our community inevitably will disagree.

But even as we express competing views, the University is at its best when we all strive to state our position with civility and collegially. Making the case in this way shows not only skill as an advocate, but also human decency and respect for shared values. As Columbia's [seventeen deans](#) recently said, "the grace of compassionate engagement should be extended to all members of our community in equal measure."

▼ Footnotes

(17) [EOAA Discrimination and Harassment Policies](#), at 7.

(18) See [id](#) at 7.

(19) [Standards & Discipline](#) at 9 n.2.

(20) [Event Policy and Campus Resources FAQs](#) (What is Columbia doing to address antisemitism on campus, and what is Columbia's reaction to calls for genocide against Jews?).

(21) Reuters, [NYU is sued by Jewish students who allege antisemitism on campus](#), Jerusalem Post, Nov. 15, 2023; see also Olivia Land, [Reprehensible anti-Israel protesters chant 'Gas the Jews' outside Sydney Opera House: video](#), Oct. 10, 2023.

(22) The Department of Education has already indicated that even speech protected under the First Amendment can still create a hostile learning environment under Title VI. In these circumstances, if universities cannot stop this speech, they are expected to condemn it.

(23) Gender Based Misconduct Office, [Gender-Based Misconduct and Interim Title IX Policies and Procedures for Students](#) 23-26.

EXHIBIT 52



[Home](#) [Announcements](#) President Shafik Welcomes the First Set of Recommendations From the Task Force on An
» »

[STATEMENTS](#)

President Shafik Welcomes the First Set of Recommendations From the Task Force on Antisemitism

March 04, 2024



I welcome the [initial report of the Task Force on Antisemitism](#) and am grateful to the co-chairs and task force members from Columbia, Barnard College, and Teachers College for their hard and thoughtful work. As the task force makes clear, it is essential to ensure that debates and disagreements across Columbia are rooted in academic rigor and civil discourse, and that Jewish students, faculty, and staff, and all members of our community, feel safe, supported, and included. The task force's important work will continue across a number of fronts as the University works to address this ancient, but sadly persistent, form of hate.

LEARN MORE

[Read the Report](#)

[Columbia's Task Force on Antisemitism Releases Its First Set of Recommendations](#) [↗](#)

I am pleased that the task force strongly endorses the new [Interim University Policy for Safe Demonstrations](#) [↗](#) that was [announced](#) [↗](#) last month, and appreciate the task force's many other suggestions about reporting, enforcement, anti-discrimination, and other issues.

We will review the interim policy at the end of this semester. Collaborating with the University Senate, student leaders, faculty, and other members of the community, we are committed to ensuring that our rules both protect free speech and foster inclusivity at Columbia. As always, we encourage feedback from all members of our community. We have created a [new form](#) [↗](#) for students, faculty, and staff to share their ideas and suggestions, anonymously if they prefer.

Minouche Shafik
President, Columbia University in the City of New York

Tags: [Administration](#) [Diversity](#)

News

March 19, 2025

[Our Next Steps](#)

March 15, 2025

[Standing Together for Columbia](#)

March 13, 2025

[Standing Together for Columbia, March 15, 2025](#)

March 13, 2025

[Update to Our Community Regarding DHS Activity Tonight](#)

March 13, 2025

[Columbia's Commitment to Our International Community](#)

EXHIBIT 53

[Home](#) » [Report #2: Task Force on Antisemitism](#)

Report #2: Task Force on Antisemitism

Columbia University Student Experiences of Antisemitism and Recommendations for Promoting Shared Values and Inclusion¹

August 2024



Executive Summary

The demonstrations that roiled our campuses during the past academic year uncovered deep disagreements about the mission of our University. During those months, consensus around the University's formal rules and informal norms of behavior broke down, interfering with our charge to educate students and engage in research.

In addition, the testimonies of hundreds of Jewish and Israeli students have made clear that the University community has not treated them with the standards of civility, respect, and fairness it promises to all its students.

[VIEW THE FULL REPORT \(PDF\)](#)

[Report #2: Columbia University Student Experiences of Antisemitism and Recommen...](#)

LEARN MORE

[About the Task Force on Antisemitism](#)

[About the Members of the Task Force on Antisemitism](#)

[About the First Report](#)

This working definition draws on experiences of many Jewish and Israeli students, who were on the receiving end of ethnic slurs, stereotypes about supposedly dangerous Israeli veterans, antisemitic tropes about Jewish wealth and hidden power, threats and physical assaults, exclusion of Zionists from student groups, and inconsistent standards. We propose this definition for use in training and education, not for discipline or as a means for limiting free speech or academic freedom.

This report also identifies significant problems in university policy and practice and makes recommendations for fixing flawed administrative systems, improving campus climate, and building consensus for a more inclusive and pluralistic university. Specifically, we recommend anti-bias and inclusion trainings for students, resident advisers, resident assistants, teaching assistants, student-facing staff, and faculty. In a community dedicated to freedom of speech and pluralism, we must prepare students with different views and backgrounds to engage with each other. We must encourage mutual respect, tolerance, civility, and an open learning environment.

We also recommend in-person workshops about antisemitism and Islamophobia, as well as a range of optional training and workshops for others in our community, including on implicit bias and stereotypes, bystander interventions, and having difficult conversations.

Given the urgent need to train administrators who play critical roles in responding to student needs, we also suggest a range of trainings in dispute resolution.

As part of this effort, we recommend that the Interim President and Provost establish a Cross-School Committee that includes all schools at Columbia, along with Barnard College and Teachers College, to share information and establish a baseline standard for trainings, workshops, and website information for all schools. The Committee should aim to overcome the problem of decentralization within Columbia, which is a barrier to maintaining common objectives across the many spaces shared by undergraduate and graduate students.

We also recommend that the University establish a repository for best practices in anti-bias and inclusion trainings and that it develop a plan for evaluating these programs.

Customized trainings aimed at specific constituencies are particularly important, including first year orientation and new student orientation for graduate programs—a recent area of focus for University Life—and new faculty orientation at all Columbia schools, including affiliate schools, Barnard College, and Teachers College. We recognize that University Life has been working to update and improve its training for student orientation.

We call attention to the need to train teaching assistants (TAs) in sensitivity to bias, exclusion, and antisemitism. Currently, the online course required for all Columbia TAs, available through the Equal Opportunity and Affirmative Action (EOAA) website, lacks guidelines on diversity, inclusion, and bias. TAs need guidance on how to respond to classroom scenarios that stray into discrimination and bias; currently, they are told that no single best practice exists. We recommend giving attention to topics related to race, religion, and national origin in all their complexity. We point to several excellent models offered by other universities in guiding TAs and first-time instructors.

Resident assistants and advisers (RAs) are another group in need of customized training; we offer suggestions for how RAs can foster better attention to inclusion, identification of bias, and elimination of harmful behavior signaling derision and hatred. RAs must fully understand their role as leaders in inclusion: they need to be prepared to listen with respect and to mediate conflicts.

In place of the confusing multiplicity of reporting structures that currently exist, we suggest ways of revamping procedures so that students are not discouraged from speaking with advisors and administrators about prejudicial treatment. Transparency and consistency in how we handle student reports of bias and exclusion are of the utmost importance if we want students to share their experiences. Our aim is for students to engage with faculty or staff who can resolve conflicts before situations rise to the level of legal violations. Antisemitism complaints deserve careful attention from deans and administrators, alongside all forms of bigotry and discrimination.

We also recommend ways to ensure that student groups contribute to the University's pluralist mission and comply with anti-discrimination law. Unfortunately, we have heard from many Jewish and Israeli students who have been excluded from student groups because of their Zionist beliefs. This is not acceptable. Student groups must be inclusive, with membership limited only for reasons connected to their mission. Student groups generally should not issue statements unrelated to their missions, so they can welcome students with diverse views and backgrounds. Groups also should have a robust consultation process before issuing statements or joining coalitions. To be clear, there should not be any limits on the free speech rights of a group's *members*. They must be free to speak about any issue as long as they are speaking *for themselves*, not for the group.

1. This report reflects the research, analysis and drafting of members of the Task Force's policy working group: Ester Fuchs (Co-Chair, SIPA and Political Science), Clémence Boulouque (Department of Religion), Jeremy A. Dauber (Department of Germanic Languages), Rebecca Kobrin (Department of History), and Deborah Valenze (Affiliate Co-Chair, Barnard College). Extensive analysis and input also was provided by the other members of the Task Force: Nicholas Lemann (Co-Chair, Journalism School), David M. Schizer (Co-Chair, Law School), Peter Coleman (Affiliate Co-Chair, Teachers College), R. Glenn Hubbard (Business School), Magda Schaler-Haynes (Mailman School of Public Health), Nir Uriel (Columbia University Irving Medical Center), Matthew C. Waxman (Law School), and Gil Zussman (Fu Foundation School of Engineering and Applied Science).

EXHIBIT 54



[Home](#) » Combating Antisemitism

Combating Antisemitism

Under Interim President Armstrong's leadership, Columbia University has undertaken a multipronged approach to combat antisemitism, through increasing clarity and education around University rules, appointing a new Rules Administrator, establishing a centralized Office of Institutional Equity to swiftly address reports of antisemitism, discrimination and harassment, strengthening the capabilities and resources of the University's Public Safety team, and acting to quickly condemn and investigate recent incidents of vandalism, antisemitic imagery, and classroom disruption.

The following is a comprehensive overview of the ongoing efforts taking place at Columbia to combat antisemitism and nurture a campus environment that is welcoming to all students and free from harassment and discrimination.

Addressing Antisemitism at Columbia University

Columbia has initiated a comprehensive strategy to address antisemitism, grounded in the belief that the University's mission depends on an environment free of harassment and discrimination. The University's efforts are guided by the recommendations of faculty, students, staff and other members of our community as well as best practices suggested by nationally recognized Jewish organizations.

Public Safety

- The University added more Public Safety officers, increasing the size of the Public Safety force by 117 full-time employees in the past sixteen months (approximately 24% larger than the Public Safety force in October 2023) and its visible presence on campus.
- Increased staffing enabled Public Safety to conduct more frequent patrols on campus including round-the-clock monitoring of the University's perimeter, critical infrastructure, and facilities.
- The University provided additional Public Safety coverage at the Kraft Center for Jewish Student Life, the International Affairs Building, and patrols on campus and in various buildings.
- To help ensure that its efforts to augment the Public Safety department have a sustained effect, the University increased its investment in recruiting, training, and workforce development for all Public Safety officers and individuals who act as delegates under the Rules of University Conduct. The trainings included a training on interacting with student populations, the enforcement of the University's Rules, and peace officer training, which covered crowd management, crisis management and negotiation, and strengthened rapid response capabilities.

- Public Safety installed upgraded cameras to existing monitoring systems to assist in the identification of those engaging in unsanctioned conduct. The University installed cameras in critical, more public areas. The school monitors cameras around-the-clock. Public Safety investigators review the camera footage to assist in the identification process for any conduct matters.
- Columbia has continued to restrict access to the Morningside campus to individuals with Columbia IDs, and it has instituted mandatory ID checks at all access points.
- The University operates a 24/7 vehicle and walking escort program.
- Public Safety created an incident management center, which has been critical in monitoring protest situations and verifying access at the gates, and Public Safety formed response teams for each shift for immediate response to disruptions or other activity.
- Public Safety reviews several social media monitoring platforms to gather information on potential demonstration activity.
 - The University partnered with law enforcement and others to monitor social media and gather intelligence on potential disruptions for increased Public Safety preparation and response times.
- The University is committed to best practices and continuous improvement of the safety culture on campus and has dedicated new resources intended to ensure that members of the Columbia community can provide feedback on potential safety issues.

Modifications to the Disciplinary Processes

Under the new leadership, the University reviewed existing University policies to identify necessary updates and implementation challenges. As a part of the reassessment, the University sought to identify key improvements in the discipline process and determine best practices and strategies to minimize response times and efficiencies. As a result of this review, this fall Columbia implemented many changes across Columbia's core disciplinary processes that enforce the University's Rules and policies for students, faculty, and staff. For example, Columbia strengthened its complaint and disciplinary processes in an effort to ensure that the processes are enforced on a timely basis, and it increased and improved the transparency and communications to the University community about those processes. Columbia's disciplinary processes function faster and better than it did before.

Office of Institutional Equity

- Columbia redesigned the University's framework, protocols, and organization for handling antidiscrimination, and harassment issues, including alleged violations of Title VI of the Civil Rights Act of 1964, which encompasses issues of antisemitism.
- Columbia's new Office of Institutional Equity serves as the central resource and department for reviewing discrimination complaints, regardless of whether the incident involves students, faculty, or staff.
- The Office of Institutional Equity seeks to ensure that reports are handled in a fair, efficient, and timely manner for all parties involved.
- To encourage reporting and streamline processes for complaint handling, Columbia simplified the online reporting process and created a new "one-click" method to file a complaint from all Columbia websites,

JA622

including the Office of Institutional Equity's website.

- The University provided a team of fifty-seven full-time employees—including full-time professional investigators—more than double the previous staff dedicated to handling these issues.
- The increase in personnel has enabled the Office to enhance case resolution efficiency, expand training opportunities, and improve data-driven decision-making to inform policy.
- The Office of Institutional Equity also substantially revised the University's antidiscrimination and discriminatory harassment policy for students and groups, and clarified the application of the policy to scenarios that Columbia has encountered over the past two years, including that antizionism can be antisemitism.
- The Office of Institutional Equity's new website consolidates information on key changes and includes content across all disciplinary divisions in one place.

Rules of University Conduct

- The Rules of University Conduct govern conduct related to or occurring at demonstrations and protests. The University Judicial Board, which is part of the University Senate, is responsible for adjudications and sanctions for violations of the Rules. Each University Judicial Board matter is overseen by a panel of five members of the community. These panelists include faculty, students, and staff that are selected by the University Senate. Each panel is uniquely composed for an individual matter. In the event of any conflicts of interest, a panelist may be replaced with another individual selected by the Senate.
- Historically, the Rules of University Conduct process handled few cases. Recent events on campus led to a substantial increase in the number of cases, and as a result, the University supplemented resources for the Office of the Rules Administrator to enable efficient disposition of matters. This process is overseen by a new Rules Administrator, who has a team of full-time staff (with active hiring taking place for more employees) that make determinations about potential violations.
- The Rules Administrator has primary responsibility for investigating complaints, filing charges, and presenting evidence in support of charges to the Rules of University Conduct hearing panels. These bolstered resources enable the Rules Administrator to investigate and pursue potential Rules violations fully.
- The Rules process has adopted new procedures designed to ensure that documents and materials are stored on a centralized database for more efficient record-keeping and student follow-up.
- During protests, the University uses trained Delegates—members of the University community who choose to be trained for such a role—to enforce the Rules.
- In partnership with University Life, the Rules Administrator expanded the delegate pool and enhanced Delegate training to improve on-the-ground management of protest and demonstration activities and minimize disruptions.

Center for Student Success and Intervention

- Columbia has added staff members to the Center for Student Success and Intervention and that office has returned to its original purpose of assessing potential violations of academic standards or student conduct policies and imposing Dean's Discipline.
- The University appointed new leadership focused on strengthening and improving processes for investigating reports of student misconduct through the Center.

Communication on Discipline and Conduct Expectations

- The University has expanded its public affairs capabilities to respond rapidly to events and issues as they arise, quickly posting statements regarding these matters on Columbia's website and using social media and internal channels to disseminate statements widely. When prohibited conduct is occurring, the University endeavors to alert the campus community quickly and outline the specific consequences for participation.
- When the University has been made aware of antisemitic rhetoric or actions, we have promptly condemned that conduct and restated our commitment to a community free of harassment and discrimination.

Education and Community Building

- Columbia launched its Campus Climate Collaborative, which facilitates small discussions between students and their respective schools and creates opportunities for student groups to meet with President Armstrong and senior leaders. As part of the Collaborative, students and leaders discuss current opportunities and challenges and develop a set of ideas to strengthen Columbia's ability to deliver on its mission.
- The University required its community to complete training on Columbia's commitment to protecting fairness and equal opportunity for all on campus. 32,243 faculty/staff, contractors and other affiliates have completed the Title VI mandatory training. On February 13, 2025, all students were assigned a mandatory training module on the Discrimination and Discriminatory Harassment Policy and Procedures for Students and Student Groups. To date, 5,232 students have completed the mandatory training, which is due by March 24, 2025.

EXHIBIT 55



COLUMBIA UNIVERSITY

OFFICE OF PUBLIC AFFAIRS

[Home](#) » [University Statements and Announcements](#) » University Statement Regarding UJB Determinations

STATEMENT

University Statement Regarding UJB Determinations

March 13, 2025



Today, the Columbia University Judicial Board determined findings and issued sanctions to students ranging from multi-year suspensions, temporary degree revocations, and expulsions related to the occupation of Hamilton Hall last spring. With respect to other events taking place last spring, the UJB's determinations recognized previously imposed disciplinary action. The return of suspended students will be overseen by Columbia's University Life Office. Columbia is committed to enforcing the University's Rules and Policies and improving our disciplinary processes.

News

March 19, 2025

[Our Next Steps](#)

March 15, 2025

[Standing Together for Columbia](#)

March 13, 2025

[Update to Our Community Regarding DHS Activity Tonight](#)

March 13, 2025

[University Statement Regarding UJB Determinations](#)

March 10, 2025

[Leading Through This Challenging Time](#)

EXHIBIT 56



PRESS RELEASE

Federal Task Force to Combat Antisemitism Announces Visits to 10 College Campuses that Experienced Incidents of Antisemitism

Friday, February 28, 2025

For Immediate Release

Office of Public Affairs

The Federal Task Force to Combat Anti-Semitism announced that it will be visiting 10 university campuses that have experienced antisemitic incidents since October 2023. Created pursuant to President Trump's Executive Order on Additional Measures to Combat Anti-Semitism, the Task Force set as its first priority to eradicate antisemitic harassment in schools and on college campuses.

Leading Task Force member and Senior Counsel to the Assistant Attorney General for Civil Rights Leo Terrell informed the 10 universities yesterday that the Task Force was aware of allegations that the schools may have failed to protect Jewish students and faculty members from unlawful discrimination, in potential violation of federal law. Mr. Terrell said he intends for the Task Force to meet with university leadership, impacted students and staff, local law enforcement, and community members as it gathers information about these incidents and considers whether remedial action is warranted.

"The President, Attorney General Pamela Bondi, and the entire Administration are committed to ensuring that no one should feel unsafe or unwelcome on campus because of their religion," said Mr. Terrell. "The Task Force's mandate is to bring the full force of the federal government to bear in our effort to eradicate Anti-Semitism, particularly in schools. These visits are just one of many steps this Administration is taking to deliver on that commitment."

JA629

The 10 universities identified by the Task Force are: Columbia University; George Washington University; Harvard University; Johns Hopkins University; New York University; Northwestern University; the University of California, Los Angeles; the University of California, Berkeley; the University of Minnesota; and the University of Southern California.

If you have been discriminated against, you can file a complaint with the Civil Rights Division at civilrights.justice.gov. President Trump's Executive Order can be found at www.whitehouse.gov/presidential-actions/2025/01/additional-measures-to-combat-anti-semitism/.

Updated February 28, 2025

Topic

CIVIL RIGHTS

Component

[Civil Rights Division](#)

Press Release Number: 25-202

Related Content

PRESS RELEASE

U.S. Department of Justice Announces Second Amendment Pattern-or-Practice Investigation into California's Los Angeles County

Protecting the Second Amendment rights of ordinary, law-abiding Americans is a high priority for this Administration.

March 27, 2025

PRESS RELEASE

Mississippi Man Indicted for Federal Civil Rights and Arson Charges for Setting Fire to Mormon Church

A federal grand jury in Gulfport, Mississippi, returned a six-count superseding indictment today charging Stefan Day, also known as Stefan Pete Day Rowold, with federal civil rights and arson violations...

March 19, 2025

PRESS RELEASE

Justice Department Files Statement of Interest Supporting Equal Access to Educational Opportunities and Facilities for Jewish UCLA Students

The Federal Task Force to Combat Antisemitism announced that the Justice Department filed a [statement of interest](#) in the Central District of California to advance the appropriate interpretation of federal...

March 18, 2025



Office of Public Affairs

U.S. Department of Justice
950 Pennsylvania Avenue, NW
Washington DC 20530



Office of Public Affairs Direct Line
202-514-2007

Department of Justice Main Switchboard
202-514-2000

EXHIBIT 57



U.S. Department of Education

[HOME](#) / [ABOUT US](#) / [NEWSROOM](#) / [PRESS RELEASES](#)

PRESS RELEASE

U.S. Department of Education's Office for Civil Rights Sends Letters to 60 Universities Under Investigation for Antisemitic Discrimination and Harassment

Letters warn of potential enforcement actions if institutions do not fulfill their obligations under Title VI of the Civil Rights Act to protect Jewish students on campus.

MARCH 10, 2025

WASHINGTON – Today, the U.S. Department of Education's Office for Civil Rights (OCR) sent letters to 60 institutions of higher education warning them of potential enforcement actions if they do not fulfill their obligations under Title VI of the Civil Rights Act to protect Jewish students on campus, including uninterrupted access to campus facilities and educational opportunities. The letters are addressed to all U.S. universities that are presently under investigation for Title VI violations relating to antisemitic harassment and discrimination.

"The Department is deeply disappointed that Jewish students studying on elite U.S. campuses continue to fear for their safety amid the relentless antisemitic eruptions that have severely disrupted campus life for more than a year. University leaders must do better," said **Secretary of Education Linda McMahon**. "U.S. colleges and universities benefit from enormous public investments funded by U.S. taxpayers. That support is a privilege and it is contingent on scrupulous adherence to federal antidiscrimination laws."

The schools that received letters from the Office for Civil Rights include:

1. American University
2. Arizona State University
3. Boston University
4. Brown University
5. California State University, Sacramento
6. Chapman University
7. Columbia University
8. Cornell University
9. Drexel University
10. Eastern Washington University
11. Emerson College
12. George Mason University
13. Harvard University
14. Illinois Wesleyan University
15. Indiana University, Bloomington
16. Johns Hopkins University
17. Lafayette College
18. Lehigh University
19. Middlebury College
20. Muhlenberg College
21. Northwestern University
22. Ohio State University
23. Pacific Lutheran University
24. Pomona College
25. Portland State University
26. Princeton University
27. Rutgers University
28. Rutgers University-Newark
29. Santa Monica College
30. Sarah Lawrence College
31. Stanford University
32. State University of New York Binghamton
33. State University of New York Rockland
34. State University of New York, Purchase
35. Swarthmore College
36. Temple University
37. The New School
38. Tufts University
39. Tulane University
40. Union College

41. University of California Davis
42. University of California San Diego
43. University of California Santa Barbara
44. University of California, Berkeley
45. University of Cincinnati
46. University of Hawaii at Manoa
47. University of Massachusetts Amherst
48. University of Michigan
49. University of Minnesota, Twin Cities
50. University of North Carolina
51. University of South Florida
52. University of Southern California
53. University of Tampa
54. University of Tennessee
55. University of Virginia
56. University of Washington-Seattle
57. University of Wisconsin, Madison
58. Wellesley College
59. Whitman College
60. Yale University

Background:

The Department's OCR sent these letters under its authority to enforce Title VI of the Civil Rights Act (1964), which prohibits any institution that receives federal funds from discriminating on the basis of race, color, and national origin. National origin includes shared (Jewish) ancestry.

Pursuant to Title VI and in furtherance of President Trump's [Executive Order](#) "Additional Measures to Combat Antisemitism," the Department [launched directed investigations](#) into five universities where widespread antisemitic harassment has been reported. The 55 additional universities are under investigation or monitoring in response to complaints filed with OCR. Last week, the Department, alongside fellow members of the Joint Task Force to Combat Antisemitism including the Department of Justice, the Department of Health and Human Services, and the U.S. General Services Administration, [announced the immediate cancelation](#) of \$400 million in federal grants and contracts to Columbia University due to the school's continued inaction to protect Jewish students from discrimination. Last Friday, OCR [directed its](#)

[enforcement staff](#) to make resolving the backlog of complaints alleging antisemitic violence and harassment, many which were allowed to languish unresolved under the previous administration, an immediate priority.

CONTACT

Press Office | press@ed.gov | (202) 401-1576 |
Office of Communications and Outreach (OCO)

Office of Communications and Outreach (OCO)

Page Last Reviewed: March 10, 2025

Pay for College

[Fill out the FAFSA](#)

[529 Plans](#)

[Loan Forgiveness](#)

[1098 Tax Forms](#)

Educational Resources

[504 Plans](#)

[FERPA](#)

[IEPs \(Individualized Education Program\)](#)

Teaching Resources

[Become a Teacher](#)

[Professional Resources](#)

[School Safety and Security](#)

EXHIBIT 58

Columbia President Says One Thing to Trump Admin—and Another in Private



(PHOTO BY SPENCER PLATT/GETTY IMAGES)

In a call with faculty, Katrina Armstrong says the school plans not to stick to some of its agreements with the Trump administration.

By Maya Sulkin

03.25.25 — Education

416 221



UPGRADE TO LISTEN

5 MINS

In a private Zoom call over the weekend, interim Columbia president Katrina Armstrong told approximately 75 faculty members that, contrary to her public statements, the school has no plans to meet some key demands made by the Trump administration for Columbia to win back \$400 million worth of federal funding.

According to a transcript of the call obtained by *The Free Press*, Armstrong promised that there would be “no change to masking,” and “no change to our admissions procedures,” both of which the administration has demanded. What’s more, she said the school would not put its [Middle Eastern, South Asian, and African Studies](#) (MESAAS) department under “academic receivership” for a minimum of five years—another Trump demand. She also told faculty members that “discipline remains independent” and “has not been moved to my office,” as the Trump administration’s antisemitism task force had insisted.

This is in direct contradiction to Columbia’s public promises to the White House.

After the school was [stripped of \\$400 million worth of federal funding](#) earlier this month for having “failed to protect American students and faculty from antisemitic violence and harassment,” the task force sent a letter to the university [detailing how it could earn back](#) the federal money. Last week, in a memo to the Trump administration, Columbia agreed to the task force’s demands—which also included the adoption of the International Holocaust Remembrance Alliance’s [definition of antisemitism](#).

A source close to the antisemitism task force told *The Free Press* that the revelations from Armstrong’s call could blow up its deal with the administration. “Columbia should not test the administration’s resolve in

holding them to every action they've agreed to take to protect their students and faculty," the source said. "We expect full compliance and good faith negotiations if Columbia wants to have a productive relationship with the federal government."

For now, however, Secretary of Education Linda McMahon says that she believes Armstrong will keep her word. Asked about the possibility that Columbia might ignore the terms of the deal it just agreed to, McMahon told *The Free Press* she "believed [Armstrong] is absolutely dedicated and committed to making sure that students on her campus are safe and that civil rights are not in any way being impacted."



KATRINA ARMSTRONG VIA COLUMBIA.EDU

She added: "They have to abide and comply with the terms that we have sat down and talked with them [about] and that they've agreed to."

A Columbia spokesperson told *The Free Press* that Armstrong "has been clear that she wants to constructively engage with our regulators" and "is fully committed to the actions announced on Friday to combat antisemitism and all forms of discrimination which have no place in our community."

The spokesperson also told *The Free Press* that "individuals participating in demonstrations, including those who wear face masks or face coverings, must present their University ID when asked by a University official. Face coverings used to conceal one's identity while violating university rules, policies, or the law are not allowed on campus."

In a statement [published Tuesday](#), Armstrong said, "I regret any confusion and inconsistent statements and want to make sure our position is clear as we go forward." Armstrong restated the action the school claims to be taking to combat antisemitism and added: "Let there be no confusion: I commit to seeing these changes implemented, with the full support of Columbia's senior leadership team and the Board of Trustees."

The transcript reveals the depth of the faculty's frustration with Armstrong's effort to get Columbia's funding restored. Many on the call argued that she should not have made any concessions to the administration, with some faculty members saying they were "appalled" and "profoundly disappointed" with Armstrong, and wondered why the school capitulated to "an authoritarian government." Some questioned why the university hadn't sued the administration to restore its funding.

"This is a crisis not just for Columbia, its biggest crisis since the founding of the republic, but for all universities in this great country," said one faculty member during the call.

Armstrong warned colleagues of the possibility of further funding cuts. “The ability of the federal administration to leverage other forms of federal funding about us in an immediate fashion is really potentially devastating to our students in particular,” she said. “I think [this] is a really critical risk for us to understand.”

At multiple points during the call, Armstrong reiterated her position that the school would not enact the reforms it has committed to publicly.

Later on in the meeting, when describing a new hire to help with the MESAAS department, Columbia provost Angela Olinto clarified that “this is not a receivership. . . . The provost will not be writing or controlling anything. It’s the faculty. Our goal is to just coordinate.” After some pushback, Armstrong doubled down: “There’s no receivership, no intent for receivership.”

Armstrong and Olinto said they would refuse to accept five of the [nine demands](#) made by the administration’s antisemitism task force, according to the transcript. The demands they said they would adhere to related to discipline enforcement; so-called “time, place, and manner rules,” which would restrict protests on campus; internal law enforcement; and a plan to hold student groups accountable.

The conditions for Columbia to win back its funding, which were laid out in a letter earlier this month, were the “bare minimum” the government was insisting upon, one person familiar with the matter [told The Free Press at the time](#). “This is what’s required for Columbia to even be invited to a negotiating table.”

Columbia is one of 60 colleges and universities [under investigation](#) by the administration for failing to control antisemitism on its campus. It is the first institution to have its funding cut. In the 18 months since October 7, 2023, protesters at Columbia have [taken over](#) buildings, set up [encampments](#), interrupted classes, and assaulted janitors. Jewish students at the school say they have been subjected to antisemitic violence and harassment.

When one faculty member pointed out the difference between Armstrong’s public statements and what she was telling them in private, the transcript shows no recorded response from Armstrong. Later on in the meeting, Armstrong said that she just wants “everybody to understand the process gets subverted by things that happen sometimes outside the institutional voice.”

Lawyers from the Department of Health and Human Services Office of Civil Rights are due to visit Columbia’s campus this week to investigate potential violations of federal civil rights law, *The Wall Street Journal* [reported](#) Monday.

Also on Monday, a letter [was released](#) signed by over 600 Jewish faculty members, scholars, and students across various U.S. universities outlining their strong opposition to the funding cuts. “Harming U.S. Universities does not protect Jewish people,” the letter reads. “Cutting funding for research does not protect Jewish people. Punishing researchers and scholars does not protect Jewish people. These actions do, however, limit opportunities for students and scholars—within the Jewish community and beyond—to receive training, conduct research, and engage in free expression.”

At the end of the meeting, Armstrong said to her colleagues: “I think us all kind of taking a moment to walk in each other’s shoes is really what makes me proudest of this university and it’s just been an extraordinary experience to watch people be able to do that and commit to doing that.”



Become a Paid Subscriber

Get access to our comments section, special columns like TGIF and Things Worth Remembering, tickets in advance to our live events, and more.

ENTER YOUR EMAIL

SIGN UP

ALREADY A PAID SUBSCRIBER? [SWITCH ACCOUNTS](#)

Maya Sulkin

Maya Sulkin is a reporter and assistant editor. Before that, Maya was chief of staff at *The Free Press*. She started as an intern in 2021 while a student at Columbia University.

TAGS: [COLUMBIA](#) [CAMPUS WARS](#)

 MAKE A COMMENT

 LIKE ARTICLE

 SHARE ARTICLE

Comments

Join the conversation

Share your thoughts and connect with other readers by becoming a paid subscriber!

UPGRADE TODAY

ALREADY A PAID SUBSCRIBER? [SIGN IN](#)

More in Columbia

EXHIBIT 59



[Home](#) » [University Statements and Announcements](#) » A Message from Dr. Katrina A. Armstrong

STATEMENT

A Message from Dr. Katrina A. Armstrong

March 28, 2025



Dear Colleagues,

As I planned when I took on this interim position, and with the support of the Board of Trustees, I am returning to my role as Chief Executive Officer of Columbia University's Irving Medical Center, Executive Vice President for Health and Biomedical Sciences, and Dean of the Faculties of Health Sciences and Medicine and the Vagelos College of Physicians and Surgeons. The Board has now appointed Co-Chair Claire Shipman as the Acting President, effective immediately.

It has been a singular honor to lead Columbia University in this important and challenging time. This is one of the world's great universities, in its most vital city, and I am proud to have worked with extraordinary faculty, students, and alumni. But my heart is with science, and my passion is with healing. That is where I can best serve this University and our community moving forward.

JA643

Columbia University is a special place. What we do on our campuses every day changes lives around the world. Our students are transformed by their experiences here, our faculty represent the best of teaching and scholarship, our dedicated staff bring the university to life in so many ways, and we get to serve New York, in all its messy glory.

Over the last few months, I appreciate having had the opportunity to play a small part in navigating this vast enterprise through some of the most difficult moments in its history. The world needs Columbia University, and you can be assured that I will do everything I can to tell that story.

Standing together for Columbia,
Dr. Katrina A. Armstrong

News

March 28, 2025

[A Message from Dr. Katrina A. Armstrong](#)

March 28, 2025

[Shipman Named Acting President](#)

March 25, 2025

[Statement Regarding Columbia's Commitments](#)

March 21, 2025

[A Message from the Board of Trustees](#)

March 21, 2025

[Sharing Progress on Our Priorities](#)

EXHIBIT 60



An official website of the United States government



U.S. General Services Administration

Joint Task Force statement regarding Columbia University's steps to advance negotiations

March 28, 2025





Today, the Task Force to Combat Anti-Semitism released the following statement:

The action taken by Columbia's trustees today, especially in light of this week's concerning revelation, is an important step toward advancing negotiations as set forth in the pre-conditional understanding reached last Friday between the University and the Task Force to Combat Anti-Semitism.

Contact

press@gsa.gov

Last updated: Mar 28, 2025

EXHIBIT 61

A Statement from Constitutional Law Scholars on Columbia

Eugene Volokh, Michael C. Dorf, David Cole, and 15 other scholars

The government may not threaten funding cuts as a tool to pressure recipients into suppressing First Amendment–protected speech.

March 20, 2025



Geo. P. Hall & Son/The New York Historical Society/Getty Images

A lecture hall at Columbia University photographed by the commercial studio George P. Hall & Son, New York City, 1895

We write as constitutional scholars—some liberal and some conservative—who seek to defend academic freedom and the First Amendment in the wake of the federal government’s recent treatment of Columbia University.

The First Amendment protects speech many of us find wrongheaded or deeply offensive, including anti-Israel advocacy and even antisemitic advocacy. The government may not threaten funding cuts

as a tool to pressure recipients into suppressing such viewpoints. This is especially so for universities, which should be committed to respecting free speech.

At the same time, the First Amendment of course doesn't protect antisemitic violence, true threats of violence, or certain kinds of speech that may properly be labeled "harassment." Title VI rightly requires universities to protect their students and other community members from such behavior. But the lines between legally unprotected harassment on the one hand and protected speech on the other are notoriously difficult to draw and are often fact-specific. In part because of that, any sanctions imposed on universities for Title VI violations must follow that statute's well-established procedural rules, which help make clear what speech is sanctionable and what speech is constitutionally protected.

Yet the administration's March 7 cancellation of \$400 million in federal funding to Columbia University did not adhere to such procedural safeguards. Neither did its March 13 ultimatum stipulating that Columbia make numerous changes to its academic policies—including the demand that, within one week, it "provide a full plan" to place an entire "department under academic receivership for a minimum of five years"—as "a precondition for formal negotiations regarding Columbia University's continued financial relationship with the United States government."

Under Title VI, the government may not cut off funds until it has

- conducted a program-by-program evaluation of the alleged violations;
- provided recipients with notice and "an opportunity for hearing";
- limited any funding cutoff "to the particular program, or part thereof, in which...noncompliance has been...found"; and
- submitted a report explaining its actions to the relevant committees in Congress at least thirty days before any funds can be stopped.

These requirements aim to ensure that any withdrawal of funds is based on genuine misbehavior on the university's part—on illegal toleration of discriminatory conduct, not just on allowance of First Amendment-protected expression. The requirements aim to make clear to recipients of federal funds just what behavior can form the basis for sanctions. And each of the requirements aims to make sure that the sanction fits the offense.

Yet here the sanction was imposed without any agency or court finding that Columbia violated Title VI in its response to antisemitic harassment or discrimination. Even to the extent that some protesters' behavior amounted to illegal harassment of Jewish students, no

Case: 25-1529, 10/24/2025, DktEntry: 82-1, Page 81 of 199
Case 1:25-cv-02429-MKV Document 52-11 Filed 04/04/25 Page 4 of 5

agency and no court has concluded that Columbia illegally failed to reasonably respond to such discriminatory behavior—much less failed to act at a level justifying withdrawal of nearly half a billion dollars in funds. The government’s action therefore risks deterring and suppressing constitutionally protected speech—not just illegal discriminatory conduct.

And this danger extends beyond universities. The safeguards and limits that the administration has ignored are designed to protect all recipients of federal funding from unwarranted or excessive sanctions. They protect recipients of federal funding across the ideological spectrum, including K-12 schools, hospitals, nursing homes, and business and agricultural initiatives. The administration’s failure to honor the Title VI safeguards creates a dangerous precedent for every recipient of federal financial assistance.

Steven G. Calabresi
Clayton J. and Henry R. Barber Professor of Law, Northwestern Law School

Erwin Chemerinsky
Dean and Jesse H. Choper Distinguished Professor of Law, Berkeley Law School

David Cole
Hon. George J. Mitchell Professor in Law and Public Policy, Georgetown University Law Center

Michael C. Dorf
Robert S. Stevens Professor of Law, Cornell Law School

Richard Epstein
Laurence A. Tisch Professor of Law, NYU School of Law

Owen Fiss
Sterling Professor Emeritus of Law, Yale Law School

Aziz Huq
Frank and Bernice J. Greenberg Professor of Law, University of Chicago Law School

Pamela Karlan
Kenneth and Harle Montgomery Professor of Public Interest Law, Stanford Law School

Randall Kennedy
Michael R. Klein Professor of Law, Harvard Law School

Genevieve Lakier
Professor of Law, Herbert and Marjorie Fried Teaching Scholar, University of Chicago Law School

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

AMERICAN ASSOCIATION OF UNIVERSITY
PROFESSORS, *et al.*,

Plaintiffs,

v.

UNITED STATES DEPARTMENT OF JUSTICE, *et al.*,

Defendants.

No. 25 Civ. 2429 (MKV)

**DECLARATION OF JOSH GRUENBAUM IN OPPOSITION TO PLAINTIFFS’
MOTION FOR A PRELIMINARY INJUNCTION**

I, Josh Gruenbaum, pursuant to 28 U.S.C. § 1746, declare under penalty of perjury as follows:

1. I am the Commissioner of the Federal Acquisition Service (“FAS”) at the General Services Administration (“GSA”) headquartered in Washington, D.C. I make this declaration based on my own personal knowledge, information contained in the records of GSA, and information provided to me by GSA employees or other federal government employees. I have served in my current position since January 2025.

2. GSA serves as the acquisition and procurement arm of the federal government, offering equipment, supplies, telecommunications, and integrated information technology solutions to federal agencies. GSA maintains information regarding federal government contracting actions in multiple databases, including the Federal Procurement Data System (“FPDS”), which feeds into a database available at USASpending.gov.

3. In my role at GSA, I am responsible for overseeing FAS programs to assist other federal agencies in acquiring goods and services in areas such as technology, travel, and motor

vehicle management. I assist in ensuring that these procurement actions comply with federal law and provide the best value for the government and the American people

4. On January 29, 2025, President Trump issued Executive Order 14188, “Additional Measures to Combat Anti-Semitism,” instructing federal government agencies to combat anti-Semitism vigorously, using all available appropriate legal tools, particularly with regard to harassment at schools and on university and college campuses.

5. On or about February 3, 2025, I was named as a member of a Federal Task Force to Combat Anti-Semitism (the “Task Force”), coordinated through the Department of Justice’s (“DOJ”) Civil Rights Division, and including members of other Federal agencies such as the U.S. Department of Education (“ED”) and the U.S. Department of Health and Human Services (“HHS”).

6. On March 3, 2025, I issued a Memorandum to Columbia’s then Interim President, Dr. Katrina Armstrong, and the Co-Chairs of Columbia’s Board of Trustees, David Greenwald and Claire Shipman. A true and correct copy of that Memorandum is attached as Exhibit A.

7. This Memorandum included a list of 27 contracts between the federal government and Columbia, totaling \$51.4 million of contract ceiling value, for which “the Federal Government [was] ready to work with each appropriate contracting agency on the potential issuance of Stop Work Orders.” This list was compiled based on information found on USASpending.gov. The contract ceiling value is the full amount of potential payment to the contractor, if services rendered under the contract require such payment. The Memorandum asserted the Federal Government’s right to terminate for convenience any of these contracts at any time during the period of performance.

8. As an expert in facilitating Federal procurements, GSA, on behalf of the Task Force, identified these contracts between the Federal Government and Columbia as potentially suitable for termination. None of the contracts listed in the March 3, 2025, Memorandum to Columbia were between GSA and Columbia.

9. On March 7, 2025, DOJ, HHS, ED, and GSA issued a press release announcing the immediate cancellation of approximately \$400 million in federal grants and contracts to Columbia. The press release stated that GSA would assist other agencies, including HHS and ED, in issuing stop work orders and terminations for contracts held by Columbia.

10. Since March 3, 2025, my understanding is that at least 19 Government contracts with Columbia, with a contract ceiling value of approximately \$48 million, have been closed or terminated by federal agencies. None of the contracts were GSA contracts. Each contracting Federal agency made its own determination as to whether to cancel funding for each contract based on agency priorities. For the contracts that were terminated, my understanding is that these contracts were terminated for convenience in light of Columbia University's insufficient response to antisemitism at the University, and they were not terminated pursuant to Title VI of the Civil Rights Act.

11. Per Section 49.101 of the FAR, Federal agency contracting officers have authority to terminate contracts for convenience when it is in the Government's interest. Under the so-called "Christian Doctrine," *G.L. Christian & Associates v. United States*, 312 F.2d 418 (Ct. Cl. 1963), certain mandatory contract clauses, including the termination for convenience clause, are incorporated by law into government contracts, even if not explicitly included in the contract itself. Where a contract is terminated for convenience, the contractor may nevertheless be entitled to

some amount of costs. The Court of Federal Claims is responsible for adjudicating disputes over allowable costs.

12. The Task Force's negotiations with Columbia regarding Federal funding are ongoing and could potentially result in restoration of at least some of the terminated funding.

I declare under penalty of perjury that the foregoing is true and correct.

Dated: Washington, DC
May 1, 2025

Signed by:

gruenbaum, josh
2E0F9ABC0FC249F...

JOSH GRUENBAUM

EXHIBIT A



U.S. General Services Administration

3/3/2025

MEMORANDUM FOR: DR. KATRINA ARMSTRONG
INTERIM PRESIDENT
COLUMBIA UNIVERSITY
OFFICE OF THE PRESIDENT
202 LOW LIBRARY
535 W. 116 ST, MC 4309
NEW YORK, NY 10027

DAVID GREENWALD
CLAIRE SHIPMAN
CO-CHAIRS
COLUMBIA BOARD OF TRUSTEES
202 LOW LIBRARY
535 W. 116 ST, MC 4309
NEW YORK, NY 10027

FROM: JOSH GRUENBAUM
COMMISSIONER, FEDERAL ACQUISITION SERVICE
U.S. GENERAL SERVICES ADMINISTRATION (GSA)

Signed by:

A handwritten signature in black ink that reads "Josh Gruenbaum".

2E0F9ABC0FC249F...

SUBJECT: Review of Federal Government Contracts

According to the [U.S. House of Representatives Staff Report on Antisemitism](#), "Columbia University explicitly acknowledged that its campus became a hostile environment in violation of Title VI [of the Civil Rights Act of 1964]" following the Hamas terrorist attacks on Israel on October 7, 2023.¹ Pursuant to President Trump's [Executive Order, "Additional Measures to Combat Anti-Semitism"](#), on February 3, 2025, a multi-agency Task Force to Combat Anti-Semitism was created. On that same date, based on continuing anti-Semitic harassment at Columbia University and other educational institutions, the Departments of Education and Health and Human Services initiated civil rights investigations, which included investigations into anti-Semitic harassment at Columbia University. Notwithstanding the pendency of these investigations, on February 26, 2025, anti-Semitic protesters once again took over a Columbia building and engaged in conduct that appears to violate Title VI.²

In response, and in coordination with other Federal agencies, the GSA is leading a Task Force comprehensive review of its Federal contracts with certain institutions of higher education that are being investigated for potential infractions and dereliction of duties to curb or combat anti-Semitic harassment, including Columbia University.

JA658

In light of this review, the Federal Government is ready to work with each appropriate contracting agency on the potential issuance of Stop Work Orders for all contracts identified in the attached schedule, which total \$51.4 million of contract ceiling value. In addition, we are requiring you to send a list of all other contracts between the Federal Government and Columbia University or its affiliates which are not listed on the schedule to GSA's Federal Acquisition Service Commissioner and Task Force member, Josh Gruenbaum. Commissioner Gruenbaum will lead GSA's review. All materials should be sent to: universitycontracts@gsa.gov. Please be advised that alongside our fellow agencies, we will also be reviewing the greater than \$5 billion of active grants between Columbia University, its affiliates and the Federal Government for potential compliance concerns, false claims or other infractions.

The Federal Government reserves the right to terminate for convenience any contracts it has with your institution at any time during the period of performance. Additionally, the Federal Government reserves the right to take any relevant administrative action it deems necessary in response to any wrongdoing identified during the pendency of the investigations.

¹The Report states that: "Columbia stands out for its egregious failure to combat antisemitism on its campus, despite its president acknowledging that the University was in violation of its Title VI obligations. On April 29, 2024, Columbia's then-President Minouche Shafik publicly stated that an encampment established on April 17, and related incidents 'create[d] a hostile environment in violation of Title VI, especially around our gates, that is unsafe for everyone.' This statement came after an April 21, Committee letter to the University documenting numerous disturbing incidents at and around the encampment, and warning that Columbia was in 'major breach' of its Title VI obligations. Yet, Columbia's leadership failed to restore order to the campus until May 1, after a group of students and others criminally took over a campus building, Hamilton Hall. These were not isolated incidents. Rather, they were part of an extensive pattern of Columbia's failures to enforce University rules to address antisemitic conduct. In a disturbing August 2024 report, Columbia's presidentially appointed Task Force on Antisemitism detailed an atmosphere of pervasive civil rights violations at the University. The Task Force wrote, '[Jewish students] consider the University bound by duty and by law to ensure students are able to learn and live in a neutral environment in which discrimination is not tolerated, without fear for their safety' but '[w]hat we heard makes clear that hundreds of Jewish and Israeli students did not have this experience at Columbia University in the academic year 2023-2024.' The Task Force found Israeli students were frequently targeted on the basis of their national origin in violation of federal antidiscrimination law, explaining that 'hatred toward Israelis has reached alarming levels on campus and that 'Israeli students found the pervasive hostility made it difficult to access necessary services, such as healthcare.' The Task Force also found '[v]isibly observant [Jewish] students, like ones who wear traditional head coverings, have been frequently met with extreme hostility.'"

²"Dozens of keffiyeh-clad anti-Israel protesters took over a building at Barnard College for several hours Wednesday evening, assaulting a school employee while protesting the expulsions of two students who stormed a Columbia University class in January and threw around flyers loaded with hateful rhetoric. Videos circulating online, posted by Columbia Students for Justice in Palestine on X, show the masked students lining a hallway in Milbank Hall, the oldest building on campus, beating drums and loudly chanting through megaphones." [Pro-Hamas protesters seize control of historic Barnard academic building and assault college employee.](#)

Columbia University Contracts

PIID	Total
75N93023C00041	\$2,501,040.00
75F40124C00081	\$1,050,310.00
75D30124F00002	\$774,425.00
80ARC023CA004	\$2,000,000.00
75F40124C00087	\$243,473.00
75N92024F00001	\$1,656,603.00
W913E524C0028	\$598,834.00
75D30122F00007	\$730,877.00
33317425P00517034	\$38,000.00
75F40124F19003	\$1,974,744.12
75F40123C00211	\$1,721,851.00
75D30123F00001	\$300,905.00
H9224024F0437	\$30,472.50
75N93024P01130	\$41,250.00
W912HZ24C0052	\$251,487.00
HR001123C0132	\$883,979.00
80GSFC23CA001	\$29,953,052.00
75N94020F00001	\$97,659.00
75N94018F00005	\$512,070.00
N0622A25F0032	\$562,660.00
75D30124P18698	\$249,000.00
1305M322PNRMJ0338	\$199,160.00
75F40121F19002	\$3,567,988.74
36C24E24N0122	\$799,000.00
75N92025F00001	\$247,574.00
75N94023F00001	\$87,270.00
693JJ323P000053	\$205,311.00

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

AMERICAN ASSOCIATION OF UNIVERSITY
PROFESSORS, *et al.*,

Plaintiffs,

v.

UNITED STATES DEPARTMENT OF JUSTICE, *et al.*,

Defendants.

No. 25 Civ. 2429 (MKV)

DECLARATION OF ALLISON M. ROVNER

I, ALLISON M. ROVNER, pursuant to 28 U.S.C. § 1746, declare under penalty of perjury, as follows:

1. I am an Assistant United States Attorney in the Southern District of New York representing the Defendants in the above-captioned case.

2. Attached to this declaration as Exhibit A is a true and correct copy of a March 7, 2025 letter from the United States Department of Education (“ED”) Office of Secondary and Elementary Education’s Office of Administration to the Trustees of Columbia University in the City of New York regarding federal award P015A220111.

3. Attached to this declaration as Exhibit B is a true and correct copy of a March 7, 2025 letter from the United States Department of Education (“ED”) Office of Secondary and Elementary Education’s Office of Administration to the Teacher’s College of Columbia University regarding federal award R305X220022.

4. Attached to this declaration as Exhibit C is a true and correct copy of excerpts from the transcript of the March 25, 2025 proceeding before Judge Subramanian in *Khalil v. Trustees of Columbia University*, 25 Civ. 2079.

Dated: May 1, 2025
New York, New York

/s/ Allison M. Rovner
ALLISON M. ROVNER
Assistant United States Attorney

EXHIBIT A



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE OF SECONDARY AND ELEMENTARY EDUCATION
OFFICE OF ADMINISTRATION

3/7/2025

[REDACTED]
Project Director

THE TRUSTEES OF COLUMBIA UNIVERSITY IN THE CITY OF NEW YORK
606 W. 122nd Street

[REDACTED]
NYC, NY 10027

RE: Grant Award Termination

Dear [REDACTED]:

This letter provides notice that the United States Department of Education is terminating your federal award, P015A220111. See 2 C.F.R. § 200.340-43; see also 34 C.F.R. § 75.253.

It is a priority of the Department of Education to eliminate discrimination in all forms of education throughout the United States. The Acting Secretary of Education has determined that, per the Department's obligations to the constitutional and statutory law of the United States, this priority includes ensuring that the Department's grants do not support programs or organizations that promote or take part in initiatives that unlawfully discriminate on the basis of race, color, religion, sex, national origin, or another protected characteristic. Illegal policies and practices can violate both the letter and purpose of Federal civil rights law and conflict with the Department's policy of prioritizing merit, fairness, and excellence in education. In addition to complying with the civil rights laws, it is vital that the Department assess whether all grant payments are free from fraud, abuse, and duplication, as well as to assess whether current grants are in the best interests of the United States.

The grant specified above provides funding for programs that promote or take part in initiatives that unlawfully discriminate on the basis of race, color, religion, sex, national origin, or another protected characteristic; that violate either the letter or purpose of Federal civil rights law; that conflict with the Department's policy of prioritizing merit, fairness, and excellence in education; that are not free from fraud, abuse, or duplication; or that otherwise fail to serve the best interests of the United States. The grant is therefore inconsistent with, and no longer effectuates, Department priorities. See 2 C.F.R. § 200.340(a)(4); see also 34 C.F.R. § 75.253. Therefore, pursuant to, among other authorities, 2 C.F.R. § 200.339-43, 34 C.F.R. § 75.253, and the termination provisions in your grant award, the Department hereby terminates grant No. P015A220111 in its entirety effective 3/7/2025.

400 MARYLAND AVE., S.W., WASHINGTON, DC 20202
www.ed.gov

The Department of Education's mission is to promote student achievement and preparation for global competitiveness by fostering educational excellence and ensuring equal access.

JA664

If you wish to object to or challenge this termination decision, you must submit information and documentation supporting your position in writing within 30 calendar days of the date of this termination notice. Objections and challenges must be sent by email and first-class mail and addressed to the component head that oversees the grantmaking unit, which will typically be the Assistant Secretary of that unit. In this case, please address your objection or challenge to Ruth Ryder, Deputy Assistant Secretary For Policy & Programs; Office of Elementary and Secondary Education; 400 Maryland Ave., SW; Washington, D.C. 20202; ruth.ryder@ed.gov.

Your appeal should contain the following:

1. a copy of the written notice of termination;
2. the date you received written notice of termination;
3. a brief statement of your argument and the disputed factual, legal, or other issues;
4. the amount of funds or costs in dispute, if any; and
5. any other relevant documents.

See id. § 200.342.

Costs incurred by you after this termination are allowable only if (a) those costs were properly incurred by you before the effective date of this termination, and not in anticipation of it; and (b) those costs would be allowable if your federal award was not suspended or expired normally at the end of the period of performance in which the termination takes effect. *See* 2 C.F.R. § 200.343. You are encouraged to carefully review and discharge your closeout responsibilities set forth in 2 C.F.R. § 200.344-45 and your award agreement. Those responsibilities include, but are not limited to, your obligation to “promptly refund any unobligated funds” that have been paid out but “are not authorized to be retained.” *See* 2 C.F.R. § 200.344(g). Failure to do so will result in the Department filing a report documenting your “material failure to comply with the terms and conditions of” this award on SAM.gov and taking any other appropriate enforcement actions. *See id.* § 200.344(i).

Finally, you are reminded of your duties under your agreement and Department of Education guidance regarding retention of grant records for at least three years.

Respectfully,



Mark Washington

Deputy Assistant Secretary for Management and Planning

cc: Ruth Ryder

400 MARYLAND AVE., S.W., WASHINGTON, DC 20202
www.ed.gov

EXHIBIT B



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE OF SECONDARY AND ELEMENTARY EDUCATION
OFFICE OF ADMINISTRATION

3/7/2025

[REDACTED]
Project Director
TEACHERS COLLEGE COLUMBIA UNIVERSITY
525 West 120th Street
[REDACTED]
New York, NY 10027

RE: Grant Award Termination

Dear [REDACTED]:

This letter provides notice that the United States Department of Education is terminating your federal award, R305X220022. See 2 C.F.R. § 200.340-43; see also 34 C.F.R. § 75.253.

It is a priority of the Department of Education to eliminate discrimination in all forms of education throughout the United States. The Acting Secretary of Education has determined that, per the Department's obligations to the constitutional and statutory law of the United States, this priority includes ensuring that the Department's grants do not support programs or organizations that promote or take part in initiatives that unlawfully discriminate on the basis of race, color, religion, sex, national origin, or another protected characteristic. Illegal policies and practices can violate both the letter and purpose of Federal civil rights law and conflict with the Department's policy of prioritizing merit, fairness, and excellence in education. In addition to complying with the civil rights laws, it is vital that the Department assess whether all grant payments are free from fraud, abuse, and duplication, as well as to assess whether current grants are in the best interests of the United States.

The grant specified above provides funding for programs that promote or take part in initiatives that unlawfully discriminate on the basis of race, color, religion, sex, national origin, or another protected characteristic; that violate either the letter or purpose of Federal civil rights law; that conflict with the Department's policy of prioritizing merit, fairness, and excellence in education; that are not free from fraud, abuse, or duplication; or that otherwise fail to serve the best interests of the United States. The grant is therefore inconsistent with, and no longer effectuates, Department priorities. See 2 C.F.R. § 200.340(a)(4); see also 34 C.F.R. § 75.253. Therefore, pursuant to, among other authorities, 2 C.F.R. § 200.339-43, 34 C.F.R. § 75.253, and the termination provisions in your grant award, the Department hereby terminates grant No. R305X220022 in its entirety effective 3/7/2025.

400 MARYLAND AVE., S.W., WASHINGTON, DC 20202
www.ed.gov

The Department of Education's mission is to promote student achievement and preparation for global competitiveness by fostering educational excellence and ensuring equal access.

JA667

If you wish to object to or challenge this termination decision, you must submit information and documentation supporting your position in writing within 30 calendar days of the date of this termination notice. Objections and challenges must be sent by email and first-class mail and addressed to the component head that oversees the grantmaking unit, which will typically be the Assistant Secretary of that unit. In this case, please address your objection or challenge to Ruth Ryder, Deputy Assistant Secretary For Policy & Programs; Office of Elementary and Secondary Education; 400 Maryland Ave., SW; Washington, D.C. 20202; ruth.ryder@ed.gov.

Your appeal should contain the following:

1. a copy of the written notice of termination;
2. the date you received written notice of termination;
3. a brief statement of your argument and the disputed factual, legal, or other issues;
4. the amount of funds or costs in dispute, if any; and
5. any other relevant documents.

See id. § 200.342.

Costs incurred by you after this termination are allowable only if (a) those costs were properly incurred by you before the effective date of this termination, and not in anticipation of it; and (b) those costs would be allowable if your federal award was not suspended or expired normally at the end of the period of performance in which the termination takes effect. *See* 2 C.F.R. § 200.343. You are encouraged to carefully review and discharge your closeout responsibilities set forth in 2 C.F.R. § 200.344-45 and your award agreement. Those responsibilities include, but are not limited to, your obligation to “promptly refund any unobligated funds” that have been paid out but “are not authorized to be retained.” *See* 2 C.F.R. § 200.344(g). Failure to do so will result in the Department filing a report documenting your “material failure to comply with the terms and conditions of” this award on SAM.gov and taking any other appropriate enforcement actions. *See id.* § 200.344(i).

Finally, you are reminded of your duties under your agreement and Department of Education guidance regarding retention of grant records for at least three years.

Respectfully,



Mark Washington

Deputy Assistant Secretary for Management and Planning

cc: Ruth Ryder

400 MARYLAND AVE., S.W., WASHINGTON, DC 20202
www.ed.gov

EXHIBIT C

P3PNKHAO

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----x

MAHMOUD KHALIL, *et al.*,

Plaintiffs,

v.

25 Civ. 2079 (AS)

THE TRUSTEES OF COLUMBIA
UNIVERSITY IN THE CITY OF NEW
YORK, *et al.*,

Defendants.

Oral Argument

-----x

New York, N.Y.
March 25, 2025
2:00 p.m.

Before:

HON. ARUN SUBRAMANIAN,

District Judge

APPEARANCES

DRATEL & LEWIS
Attorneys for Plaintiffs

BY: AMY E. GREER
and

CAIR LEGAL DEFENSE FUND
Attorneys for Plaintiffs

BY: GADEIR E. ABBAS

HECKER FINK LLP
Attorneys for Columbia Defendants

BY: GABRIELLE TENZER
MARSHALL L. MILLER
ZACHARY J. PIAKER
TRISHA ANDERSON

OFFICE OF GENERAL COUNSEL, U.S. HOUSE OF REPRESENTATIVES
Attorneys for House Defendants

BY: MATTHEW B. BERRY
ANDY WANG
TODD B. TATELMAN

P3PNKHAO

1 suggestions that funding would be either withdrawn or paused if
2 those measures were not taken by March 20?

3 MR. MILLER: Your Honor, many of those measures were
4 the product of months and months of work. I think it is also
5 important for the record that everyone understands that these
6 things don't match up one to one.

7 THE COURT: That's why I said it the way I did.

8 Is it the university's position that it would have
9 taken the steps outlined in the March 21 announcement whether
10 or not there had been any indication that federal funding would
11 have been withdrawn?

12 Yes or no.

13 MR. MILLER: Well, your Honor, I mean, it is a
14 hypothetical that I think I would want to make sure --

15 THE COURT: I don't think it is a hypothetical. It's
16 just asking what the university's position is on what actually
17 happened.

18 There was the March 21 announcement of those steps.

19 Would that have been done whether or not there had
20 been any indication from the Executive Branch defendants that
21 funding would be withdrawn?

22 MR. MILLER: May I have a moment, your Honor.

23 THE COURT: You may.

24 (Pause)

25 MR. MILLER: I think, your Honor, the best way to put

P3PNKHAO

1 it was that all the 18 actions that were announced on March 21
2 were actions that were under review and work and development
3 for many months.

4 I think the letter from the government essentially
5 crystallized those lines of effort and affected timing. But
6 all of those lines of effort were in play and were ongoing for
7 some significant periods of time before the March 13 letter and
8 ultimate March 21 announcement.

9 THE COURT: Right.

10 So it is at least Columbia's position here that the
11 steps outlined in the March 21 announcement would have been
12 taken regardless of any suggestion relating to funding?

13 MR. MILLER: I think it's -- I think that -- I just
14 want to be careful about the timing particularly, your Honor.

15 The university recognized that actions needed to be
16 taken. The university engaged in a significant amount of work.
17 I would be happy to -- I think it would be useful to talk about
18 the definition, for example --

19 THE COURT: I don't want to get -- I will let you
20 speak to that. Let me just make sure I understand.

21 You are saying that we were talking about a lot of
22 these things. It may be that the timing and the precise
23 substance of these things were related to the March 13 letter
24 and the suggestion about funding. That might have sped up how
25 we were doing things. It may have affected the particular

P3PNKHAO

1 inquiries that we had. But, generally speaking, the university
2 was looking into some of these issues.

3 Is that a fair characterization?

4 MR. MILLER: Yes. And looking into it with a degree
5 of urgency as well.

6 I don't want to make it seem like the university was
7 dithering. It wasn't. It was looking at them with diligence
8 and with care.

9 But in terms of the precise timing of the announcement
10 of them and the crystallization of them into these actions, I
11 do want to be, you know, clear that the March 13 letter did
12 have an impact.

13 THE COURT: All right. Okay.

14 So, Mr. Abbas, I will throw it back to you. Then we
15 will cycle around and give each -- let's try to do it five
16 minutes or so.

17 And I'll let you cover anything you need to, just so
18 we can try to wrap up by 4 p.m.

19 And I will have some next steps for everybody.

20 MR. ABBAS: Yes, your Honor.

21 Ms. Greer is going take from it here.

22 MS. GREER: I had prepared some remarks here, but I
23 won't read all of it because I think it will take us a little
24 too long.

25 But I would like to take a moment to think about the

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

AMERICAN ASSOCIATION OF
UNIVERSITY PROFESSORS,

and

AMERICAN FEDERATION OF
TEACHERS

Plaintiffs,

v.

UNITED STATES DEPARTMENT OF
JUSTICE, *et al.*

Defendants.

Case No.: 1:25-cv-02429-MKV

**REPLY DECLARATION OF
JONATHAN ROSENTHAL IN
SUPPORT OF PLAINTIFFS' MOTION
FOR PRELIMINARY INJUNCTION**

I, Jonathan Rosenthal, hereby declare as follows:

1. I am an attorney at the law firm Altshuler Berzon LLP in San Francisco, CA, and am a member of the State Bar of California. I am co-counsel for Plaintiffs in this matter, and have been admitted to practice *pro hac vice* in this case. I make this statement based on personal knowledge, and if called as a witness could and would testify competently thereto.

2. This declaration is submitted in support of Plaintiffs' Reply in support of their motion for a preliminary injunction.

3. Attached hereto as **Exhibit 62** is a true and correct copy of the following article: Sara Reardon, *Exclusive: NIH freezes all research grants to Columbia University*, ScienceInsider (Apr. 9, 2025), downloaded from <https://www.science.org/content/article/nih-freezes-all-research-grants-columbia-university>.

4. Attached hereto as **Exhibit 63** is a true and correct copy of the following article: Maddie Khaw, *All of Columbia's NIH Funding Is Apparently Frozen. Here's What That Looks Like for One Researcher.*, Chronicle of Higher Education (Apr. 11, 2025), downloaded from <https://www.chronicle.com/article/all-of-columbias-nih-funding-is-apparently-frozen-heres-what-that-looks-like-for-one-researcher>.

5. Attached hereto as **Exhibit 64** is a true and correct copy of a letter from Josh Gruenbaum, Sean R. Keveney and Thomas E. Wheeler, to Alan M. Garber, President of Harvard University (Apr. 11, 2025), downloaded from <https://www.harvard.edu/research-funding/wp-content/uploads/sites/16/2025/04/Letter-Sent-to-Harvard-2025-04-11.pdf>, and available at <https://perma.cc/NH46-XV98>.

6. Attached hereto as **Exhibit 65** is a true and correct copy of the following article: Michael C. Bender, Alan Blinder, and Jonathan Swan, *Inside Trump's Pressure Campaign on*

Universities, New York Times (Apr. 14, 2025), downloaded from

<https://www.nytimes.com/2025/04/14/us/politics/trump-pressure-universities.html>.

7. Attached hereto as **Exhibit 66** is a true and correct copy of the following statement: *Sustaining Columbia's Vital Mission*, Columbia University Office of the President (Apr. 14, 2025), downloaded from <https://president.columbia.edu/news/sustaining-columbias-vital-mission>.

8. Attached hereto as **Exhibit 67** is a true and correct copy of a letter from William A. Burck and Robert K. Hur, to Josh Gruenbaum, Sean R. Keveney and Thomas E. Wheeler (Apr. 14, 2025), downloaded from <https://www.harvard.edu/research-funding/wp-content/uploads/sites/16/2025/04/Harvard-Response-2025-04-14.pdf>, and available at <https://perma.cc/TB3P-W6QE>.

9. Attached hereto as **Exhibit 68** is a true and correct copy of the following press release: *Joint Task Force to Combat Anti-Semitism Statement Regarding Harvard University*, U.S. Dep't of Education (Apr. 14, 2025), downloaded from <https://www.ed.gov/about/news/press-release/joint-task-force-combat-anti-semitism-statement-regarding-harvard-university>, and available at <https://perma.cc/A5ZW-VFYQ>.

10. Attached hereto as **Exhibit 69** is a true and correct copy of the following article: Liz Essley Whyte, Douglas Belkin, and Sara Randazzo, *The Little-Known Bureaucrats Tearing Through American Universities*, Wall Street Journal (Apr. 14, 2025), downloaded from <https://www.wsj.com/us-news/education/anti-semitism-task-force-who-247c234e>.

11. Attached hereto as **Exhibit 70** is a true and correct copy of the following article: Alan Blinder, *Trump Has Targeted These Universities. Why?*, New York Times (April 15, 2025), downloaded from <https://www.nytimes.com/article/trump-university-college.html>.

12. Attached hereto as **Exhibit 71** is a true and correct copy of the following webpage: *Miguel S. Urquiola*, Columbia University, Office of the Provost, downloaded from <https://provost.columbia.edu/people/miguel-s-urquiola>, last accessed on May 1, 2025.

13. Attached hereto as **Exhibit 72** is a true and correct copy of the following article: Meghnad Bose and Sacha Biazzo, *Inside Columbia's Betrayal of its Middle Eastern Studies Department*, *The Intercept* (Apr. 16, 2025), downloaded from <https://theintercept.com/2025/04/16/columbia-middle-eastern-studies-trump-attacks/>, and available at <https://perma.cc/6WH8-AXUY>.

14. Attached hereto as **Exhibit 73** is a true and correct copy of a social media post of President Donald Trump (@realDonaldTrump), from Truth Social, posted on Apr. 16, 2025, 7:05AM, downloaded from <https://truthsocial.com/@realDonaldTrump/posts/114347313852363347>.

15. Attached hereto as **Exhibit 74** is a true and correct copy of the following article: Anil Oza and Megan Molteni, *NIH said to have halted awarding of new grants to top universities*, *STAT News* (Apr. 18, 2025), downloaded from <https://www.statnews.com/2025/04/18/nih-halts-grants-to-universities-with-frozen-funds-harvard-columbia-northwestern-cornell/>, and available at <https://perma.cc/6A4R-S63S>.

16. Attached hereto as **Exhibit 75** is a true and correct copy of a social media post of Max Kozlov (@maxdkozlov), from X.com, posted on Apr. 18, 2025, 3:24PM, downloaded from <https://x.com/maxdkozlov/status/1913327818873700556>, and available at <https://perma.cc/H9M5-J6YA>.

17. Attached hereto as **Exhibit 76** is a true and correct copy of the following article: Nandika Chatterjee, *Trump Takes Personal Revenge on Harvard's Lawyer for Standing Up to*

Him, The Daily Beast (Apr. 24, 2025), downloaded from <https://www.thedailybeast.com/trump-takes-personal-revenge-on-harvards-lawyer-for-standing-up-to-him/>, and available at <https://perma.cc/GN5D-MKED>.

18. Attached hereto as **Exhibit 77** is a true and correct copy of a letter from Linda E. McMahon, to Alan M. Garber, President of Harvard University (May 5, 2025), downloaded from <https://x.com/EDSecMcMahon/status/1919517481313427594>, and available at <https://perma.cc/7QGC-WYE7>.

19. Attached hereto as **Exhibit 78** is a true and correct copy of the following statement: *Preserving Columbia's Critical Research Capabilities*, Columbia University Office of the President (May 6, 2025), downloaded from <https://president.columbia.edu/news/preserving-columbias-critical-research-capabilities>.

20. Attached hereto as **Exhibit 79** is a true and correct copy of the following article: DPP/DPPOS Research Group, *An open letter to the Columbia administration*, Columbia Spectator (May 4, 2025), downloaded from <https://www.columbiaspectator.com/opinion/2025/05/04/an-open-letter-to-the-columbia-administration/>.

21. Attached hereto as **Exhibit 80** is a true and correct copy of the following article: Liz Essley Whyte and Douglas Belkin, *Trump Administration Proposes Terms for Federal Oversight of Columbia University*, Wall Street Journal (May 5, 2025), downloaded from <https://www.wsj.com/us-news/education/trump-columbia-university-consent-decree-proposal-d21830f2>.

I declare under penalty of perjury that the foregoing is true and correct.

Dated: May 8, 2025

Signed: /s/



Jonathan Rosenthal

Counsel for Plaintiffs

EXHIBIT 62

ADVERTISEMENT

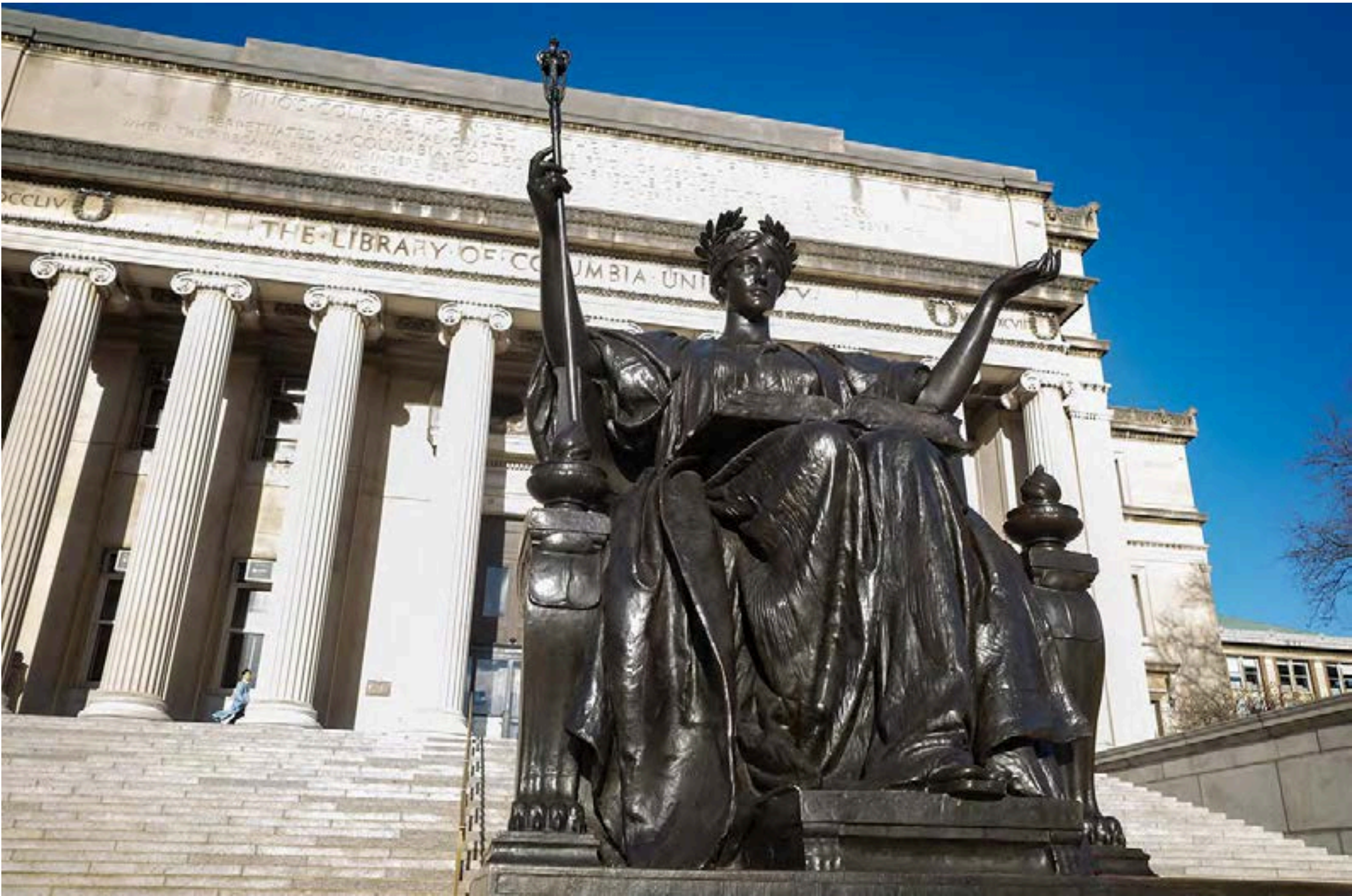
HOME > NEWS > SCIENCEINSIDER > NIH FREEZES ALL RESEARCH GRANTS TO COLUMBIA UNIVERSITY

SCIENCEINSIDER SCIENCE AND POLICY

Exclusive: NIH freezes all research grants to Columbia University

Amid negotiations with Trump, the university could risk losing nearly \$700 million

9 APR 2025 • 2:40 PM ET • BY SARA REARDON



So far unable to satisfy the demands of President Donald Trump’s administration, Columbia University stands to lose even more of its funding from the National Institutes of Health. TAIDGH BARRON/ZUMA

SHARE:        

RELATED ARTICLE

After Columbia’s ‘nightmare,’ dozens more universities brace for Trump NIH cuts

BY JOCELYN KAISER • NEWS • 18 MAR 2025

LISTEN TO THIS ARTICLE



Weeks after President Donald Trump’s administration ordered the U.S. National Institutes of Health (NIH) to pull \$250 million in biomedical research grants to Columbia University, the agency is freezing all remaining grant money owed to the university until further notice, according to internal documents seen by *Science*.

Last month, White House began to pressure Columbia over its handling of anti-Israel protests and other allegations of antisemitism at the university, saying it was killing \$400 million in federal grants to the school, including the NIH money. [NIH terminated approximately 400 grants to Columbia on 12 March and ordered their researchers to stop work on them.](#)

Yesterday, NIH raised the stakes: At the behest of its parent agency, the U.S. Department of Health and Human Services (HHS), NIH will not only block new funding for the university, but also stop paying investigators working on all existing NIH projects. Although these researchers will not be ordered to stop work, they will need prior approval from NIH to draw from existing disbursements, according to an NIH source. At this time, Columbia has not received notice from NIH about additional cancellations. "The University remains in active dialogue with the Federal Government to restore its critical research funding," the school said in a statement.

SIGN UP FOR THE AWARD-WINNING SCIENCEADVISER NEWSLETTER

The latest news, commentary, and research, free to your inbox daily

SIGN UP >

In an 8 April email seen by *Science*, NIH’s Office of Policy for Extramural Research Administration Director Michelle Bulls told grant administrators that HHS had initially ordered NIH to terminate the first “wave” of grants to Columbia and hold others while the school negotiated with the government. Now, she said, no NIH awards can be made to Columbia until the restriction is lifted. In 2024, Columbia received about \$690 million in grant funding from NIH.

It’s not yet clear whether other federal science agencies are also killing additional Columbia grants, but NIH’s latest action comes as the university has acquiesced to some administration demands while still negotiating on others. The White House also announced yesterday it was freezing \$1 billion in federal funding at Cornell University and \$750 million at Northwestern University.

The Trump administration has released [a list of 60 universities](#) it claims have not done enough to quell “antisemitic” speech amid student protests against Israel’s campaign in Gaza. The administration also accuses the universities of racism through their diversity, equity, and inclusion programs, although it has not yet brought any formal civil rights actions against the schools.

ADVERTISEMENT

Brown University also had its NIH grants frozen, and the agency is reviewing its funding to Harvard University as part of a broader Trump administration review of some \$9 billion in federal funding to the Massachusetts school.

Update, 10 April, 5:10 p.m.: This story has been updated with a response from Columbia.

Update, 11 April, 1:50 p.m.: This story originally said Princeton had NIH grants frozen but it’s grants from other federal agencies that were halted. Princeton says it has no knowledge of any frozen NIH grants.

doi: 10.1126/science.zvvtq5o

RELEVANT TAGS:

- SCIENCE AND POLICY
- SCIENTIFIC COMMUNITY

EXHIBIT 63

'A PERFECT STORM'

All of Columbia's NIH Funding Is Apparently Frozen. Here's What That Looks Like for One Researcher.

By [Maddie Khaw](#) April 11, 2025



M. SCOTT BRAUER FOR THE CHRONICLE

When Donna Farber saw [a Science article](#) on Wednesday reporting that Columbia University's National Institutes of Health grants had been frozen, it confirmed what she

[Back to Top](#)

already knew. But Farber, a professor of microbiology and immunology at Columbia, was still shaken.

In an interview after the news broke, Farber said there was little clarity for researchers on how to move forward. She's wondering if she'll have the money to order more reagents for lab tests, to keep her grad students on payroll, and to obtain the cell-tissue samples she studies.

From the Chronicle Store



ARTICLE COLLECTION

The Future of Regional Publics

Stand out in a crowded playing field

[Visit The Store](#)

According to *Science*, an NIH director sent an email to staffers last Tuesday instructing them not to award any new grants to Columbia until a restriction is lifted. Principal investigators reportedly can't draw down on existing grants, either, unless they get approval from the agency.

Farber is far from alone in facing funding woes. Many researchers nationwide have permanently lost their grants as the NIH under President Trump takes a sledgehammer to projects it deems "[no longer effectuate agency priorities](#)," such as those focused on topics like [LGBTQ+ health](#), minority populations, and Covid-19. Projects that are not political targets have also become [collateral damage](#). Many of Farber's Columbia colleagues have already lost grants for good, amid Trump's [cancellation of \\$400 million](#) in federal funding to the institution last month.

But Farber's situation illustrates a unique experience amid the broader storm: what it's like to try to keep a federally funded lab afloat when your institution has seemingly been singled out by the government as Public Enemy No. 1.

The Trump administration's mass withdrawal of funding to Columbia last month included awards from the Department of Health and Human Services, which oversees the NIH. That kicked off a campaign to enact similar freezes and reviews of funding to numerous other universities, including most of the Ivy League and Northwestern University. At nearly all of those institutions, the government has argued that punishment is warranted because campus officials haven't done enough to combat antisemitism.

[Columbia acquiesced](#) to a laundry list of demands from the administration in an attempt to win back that funding. Now apparently the university's entire NIH budget is on ice.

Columbia has still not received notice from the NIH about an across-the-board funding pause, a university spokesperson wrote in an email to *The Chronicle*: "The university remains in active dialogue with the federal government to restore its critical research funding."

When reached by *The Chronicle*, an NIH official did not confirm whether it had paused all grants. "NIH is taking action to review and, in some cases freeze or terminate, research funding that is not aligned with NIH and HHS priorities," the statement said. "We remain dedicated to restoring our agency to its tradition of upholding gold-standard, evidence-based science."

Difficult Decisions

Farber's work relies almost entirely on grants from the NIH, which pays for researchers' wages, equipment, and keeping the lights on in their labs.

Farber recently applied for a noncompetitive renewal of the largest grant she receives, which funnels \$2.3 million a year to her research on immune cells in human tissue. This would have been the ninth year in a row that Farber received this particular grant, through the National Institute of Allergy and Infectious Diseases. It funds the most expensive and essential parts of her lab's work, along with nine other investigators working on the same program in other labs.

For Farber, that money covers the salaries of some of her grad students and postdocs, as well as the costs of acquiring tissue samples and running sophisticated tests on those samples.

NIH grants are often awarded in five-year cycles, but investigators must submit progress reports to unlock funding each year. Farber submitted her report in January, as she has the past nine years. Typically, she'd hear back by February that the award was approved, then receive funding by early March.

This year, the money was more than a month late when Farber began to inquire.

Last week, Farber heard during a phone call with an "undisclosed source" that the NIH won't award grants to Columbia, she said. That broader freeze was confirmed by the *Science* article, which is how most Columbia researchers learned their grants were stalled. Columbia received about \$690 million from the NIH in 2024, according to *Science*.

"Every time you think your head is a little bit more above water, another wave comes to push you down. It's not sustainable."

Usually, Farber said, her lab obtains new tissue samples each week from organ donors. But after that phone call last week, Farber pressed pause. She will now have to make difficult decisions about how to proceed.

"It's a bit of a gamble right now," she said. Should she continue normal operations with the hope and assumption that funding will materialize eventually, or slim down on spending — thus delaying her lab's progress — for fear that the grant might never come?

"[The grant is] still on the books, but it has to be released," Farber said. "There's just many ways that I guess you don't fund something — cancel it, freeze it, never fund it. So is this just one of the different ways that they're just not going to fund things?"

This time last year, Farber had 26 people in her lab. She's now down to 15. By June, that number will be 10. She's had to terminate some employees and not renew others, and she won't be able to replace graduate students who are moving on.

Disruption and Destruction

For Farber, the trouble started in December, when the Department of Defense terminated a different, vaccine-related grant, she said. She laid off some staff, couldn't fill vacant positions, and scrambled to move funds around.

By the time the Trump administration in March announced its first wave of funding cancellations at Columbia, slashing the training grants that fund the wages of some of the students and postdocs in her lab, her funds were already spread thin. She had to scrounge up additional money from other grants to cover those workers' salaries for the remaining months in their contracts. She let some of them know those contracts would not be renewed.

The news this week of the sweeping grant pauses and the administration's [plans to try to put Columbia under federal oversight](#) was another one-two punch, Farber said. She's worried she might not be able to stretch funds for much longer. She doesn't know if she can even spend on existing grant accounts.

"You can maybe handle one disruption or another disruption," Farber said. "It's become a perfect storm. Every time you think your head is a little bit more above water, another wave comes to push you down. It's not sustainable."

Farber has applied for other NIH grants, but now, everything is uncertain, including her own salary.

"Will they even review grants from Columbia?" she said. "Even if they review them and they get a fundable score, will they fund them? How long will this last? Where are we headed? We don't know."

What Will Trump's Presidency Mean For Higher Ed?



THE CHRONICLE
OF HIGHER EDUCATION



[Keep up to date](#) on the latest news and information, and contact our journalists covering this ongoing story.

She could try to apply for more funding from private foundations, she said, but that wouldn't come close to matching what public grants have covered since she started running her lab in 1996. "There's no other way," she said. "Nothing is like NIH."

Farber said Columbia leadership has not communicated with research professors on what comes next.

"But the only thing is, I don't know what they want in the end, except to destroy us," she said of the federal government. "That's the problem."

We welcome your thoughts and questions about this article. Please [email the editors](#) or [submit a letter](#) for publication.

Tags

Scholarship & Research

Finance & Operations

Law & Policy

JA689

EXHIBIT 64



April 11, 2025

Dr. Alan M. Garber
President
Harvard University
Office of the President
Massachusetts Hall
Cambridge, MA 02138

Penny Pritzker
Lead Member, Harvard Corporation
Harvard Corporation
Massachusetts Hall
Cambridge, MA 02138

Dear Dr. Garber:

The United States has invested in Harvard University's operations because of the value to the country of scholarly discovery and academic excellence. But an investment is not an entitlement. It depends on Harvard upholding federal civil rights laws, and it only makes sense if Harvard fosters the kind of environment that produces intellectual creativity and scholarly rigor, both of which are antithetical to ideological capture.

Harvard has in recent years failed to live up to both the intellectual and civil rights conditions that justify federal investment. But we appreciate your expression of commitment to repairing those failures and welcome your collaboration in restoring the University to its promise. We therefore present the below provisions as the basis for an agreement in principle that will maintain Harvard's financial relationship with the federal government.

If acceptable to Harvard, this document will constitute an agreement in principle, which the parties will work in good faith to translate into a more thorough, binding settlement agreement. As you will see, this letter incorporates and supersedes the terms of the federal government's prior letter of April 3, 2025.

- **Governance and leadership reforms.** By August 2025, Harvard must make meaningful governance reform and restructuring to make possible major change consistent with this letter, including: fostering clear lines of authority and accountability; empowering tenured professors and senior leadership, and, from among the tenured professoriate and senior leadership, exclusively those most devoted to the scholarly mission of the University and committed to the changes indicated in this letter; reducing the power held by students and untenured faculty; reducing the power held by faculty (whether tenured or untenured) and administrators more committed to activism than scholarship; and reducing forms of

governance bloat, duplication, or decentralization that interfere with the possibility of the reforms indicated in this letter.

- **Merit-Based Hiring Reform.** By August 2025, the University must adopt and implement merit-based hiring policies, and cease all preferences based on race, color, religion, sex, or national origin throughout its hiring, promotion, compensation, and related practices among faculty, staff, and leadership. Such adoption and implementation must be durable and demonstrated through structural and personnel changes. All existing and prospective faculty shall be reviewed for plagiarism and Harvard's plagiarism policy consistently enforced. All hiring and related data shall be shared with the federal government and subjected to a comprehensive audit by the federal government during the period in which reforms are being implemented, which shall be at least until the end of 2028.
- **Merit-Based Admissions Reform.** By August 2025, the University must adopt and implement merit-based admissions policies and cease all preferences based on race, color, national origin, or proxies thereof, throughout its undergraduate program, each graduate program individually, each of its professional schools, and other programs. Such adoption and implementation must be durable and demonstrated through structural and personnel changes. All admissions data shall be shared with the federal government and subjected to a comprehensive audit by the federal government—and non-individualized, statistical information regarding admissions shall be made available to the public, including information about rejected and admitted students broken down by race, color, national origin, grade point average, and performance on standardized tests—during the period in which reforms are being implemented, which shall be at least until the end of 2028. During this same period, the dean of admissions for each program or school must sign a public statement after each admissions cycle certifying that these rules have been upheld.
- **International Admissions Reform.** By August 2025, the University must reform its recruitment, screening, and admissions of international students to prevent admitting students hostile to the American values and institutions inscribed in the U.S. Constitution and Declaration of Independence, including students supportive of terrorism or anti-Semitism. Harvard will immediately report to federal authorities, including the Department of Homeland Security and State Department, any foreign student, including those on visas and with green cards, who commits a conduct violation. As above, these reforms must be durable and demonstrated through structural and personnel changes; comprehensive throughout all of Harvard's programs; and, during the reform period, shared with the federal government for audit, shared on a non-individualized basis with the public, and certified by deans of admissions.
- **Viewpoint Diversity in Admissions and Hiring.** By August 2025, the University shall commission an external party, which shall satisfy the federal government as to its competence and good faith, to audit the student body, faculty, staff, and leadership for viewpoint diversity, such that each department, field, or teaching unit must be individually viewpoint diverse. This audit shall begin no later than the summer of 2025 and shall proceed on a department-by-department, field-by-field, or teaching-unit-by-teaching-unit basis as appropriate. The report of the external party shall be submitted to University leadership and

the federal government no later than the end of 2025. Harvard must abolish all criteria, preferences, and practices, whether mandatory or optional, throughout its admissions and hiring practices, that function as ideological litmus tests. Every department or field found to lack viewpoint diversity must be reformed by hiring a critical mass of new faculty within that department or field who will provide viewpoint diversity; every teaching unit found to lack viewpoint diversity must be reformed by admitting a critical mass of students who will provide viewpoint diversity. If the review finds that the existing faculty in the relevant department or field are not capable of hiring for viewpoint diversity, or that the relevant teaching unit is not capable of admitting a critical mass of students with diverse viewpoints, hiring or admissions within that department, field, or teaching unit shall be transferred to the closest cognate department, field, or teaching unit that is capable of achieving viewpoint diversity. This audit shall be performed and the same steps taken to establish viewpoint diversity every year during the period in which reforms are being implemented, which shall be at least until the end of 2028.

- **Reforming Programs with Egregious Records of Antisemitism or Other Bias.** By August 2025, the University shall commission an external party, which shall satisfy the federal government as to its competence and good faith, to audit those programs and departments that most fuel antisemitic harassment or reflect ideological capture.
 - The programs, schools, and centers of concern include but are not limited to the Divinity School, Graduate School of Education, School of Public Health, Medical School, Religion and Public Life Program, FXB Center for Health & Human Rights, Center for Middle Eastern Studies, Carr Center for Human Rights at the Harvard Kennedy School, Department of Near Eastern Languages and Cultures, and the Harvard Law School International Human Rights Clinic.
 - The report of the external party shall include information as to individual faculty members who discriminated against Jewish or Israeli students or incited students to violate Harvard's rules following October 7, and the University and federal government will cooperate to determine appropriate sanctions for those faculty members within the bounds of academic freedom and the First Amendment.
 - The report of the external party shall be submitted to University leadership and the federal government no later than the end of 2025 and reforms undertaken to repair the problems. This audit shall be performed and the same steps taken to make repairs every year during the period in which reforms are being implemented, which shall be at least until the end of 2028.
- **Discontinuation of DEI.** The University must immediately shutter all diversity, equity, and inclusion (DEI) programs, offices, committees, positions, and initiatives, under whatever name, and stop all DEI-based policies, including DEI-based disciplinary or speech control policies, under whatever name; demonstrate that it has done so to the satisfaction of the federal government; and demonstrate to the satisfaction of the federal government that these reforms are durable and effective through structural and personnel changes. By August

2025, the University must submit to the government a report—certified for accuracy—that confirms these reforms.

- **Student Discipline Reform and Accountability.** Harvard must immediately reform its student discipline policies and procedures so as to swiftly and transparently enforce its existing disciplinary policies with consistency and impartiality, and without double standards based on identity or ideology. Where those policies are insufficient to prevent the disruption of scholarship, classroom learning and teaching, or other aspects of normal campus life, Harvard must develop and implement disciplinary policies sufficient to prevent those disruptions. This includes but is not limited to the following:
 - Discipline at Harvard must include immediate intervention and stoppage of disruptions or deplatforming, including by the Harvard police when necessary to stop a disruption or deplatforming; robust enforcement and reinstatement of existing time, place, and manner rules on campus, including ordering the Harvard police to stop incidents that violate time, place, and manner rules when necessary; a disciplinary process housed in one body that is accountable to Harvard’s president or other capstone official; and removing or reforming institutional bodies and practices that delay and obstruct enforcement, including the relevant Administrative Boards and FAS Faculty Council.
 - Harvard must adopt a new policy on student groups or clubs that forbids the recognition and funding of, or provision of accommodations to, any student group or club that endorses or promotes criminal activity, illegal violence, or illegal harassment; invites non-students onto campus who regularly violate campus rules; or acts as a front for a student club that has been banned from campus. The leaders or organizers of recognized and unrecognized student groups that violate these policies must be held accountable as a matter of student discipline and made ineligible to serve as officers in other recognized student organizations. In the future, funding decisions for student groups or clubs must be made exclusively by a body of University faculty accountable to senior University leadership. In particular, Harvard must end support and recognition of those student groups or clubs that engaged in anti-Semitic activity since October 7th, 2023, including the Harvard Palestine Solidarity Committee, Harvard Graduates Students 4 Palestine, Law Students 4 Palestine, Students for Justice in Palestine, and the National Lawyers Guild, and discipline and render ineligible the officers and active members of those student organizations.
 - Harvard must implement a comprehensive mask ban with serious and immediate penalties for violation, not less than suspension.
 - Harvard must investigate and carry out meaningful discipline for all violations that occurred during the 2023-2024 and 2024-2025 academic years, including the Harvard Business School protest of October 2023, the University Hall sit-in of November 2023, and the spring encampment of 2024. This must include permanently expelling the students involved in the October 18 assault of an Israeli

Harvard Business School student, and suspending students involved in occupying university buildings, as warranted by the facts of individual cases.

- o The Harvard president and police chief must publicly clarify that the Harvard University Police Department will enforce University rules and the law. Harvard must also commit to cooperating in good faith with law enforcement.
- **Whistleblower Reporting and Protections.** The University must immediately establish procedures by which any Harvard affiliate can report noncompliance with the reforms detailed in this letter to both university leadership and the federal government. Any such reporter shall be fully protected from any adverse actions for so reporting.
- **Transparency and Monitoring.** The University shall make organizational changes to ensure full transparency and cooperation with all federal regulators. No later than June 30, 2025, and every quarter thereafter during the period in which reforms are being implemented, which shall be at least until the end of 2028, the University shall submit to the federal government a report—certified for accuracy—that documents its progress on the implementation of the reforms detailed in this letter. The University must also, to the satisfaction of the federal government, disclose the source and purpose of all foreign funds; cooperate with the federal government in a forensic audit of foreign funding sources and uses, including how that money was used by Harvard, its agents, and, to the extent available, third parties acting on Harvard's campus; report all requested immigration and related information to the United States Department of Homeland Security; and comply with all requirements relating to the SEVIS system.

We expect your immediate cooperation in implementing these critical reforms that will enable Harvard to return to its original mission of innovative research and academic excellence.

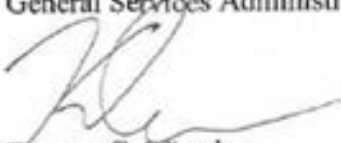
Sincerely,



Josh Gruenbaum
Comm'r of the Fed. Acquisition Serv.
General Services Administration



Sean R. Keveney
Acting General Counsel
U.S. Dep't Health & Human Servs.



Thomas E. Wheeler
Acting General Counsel
U.S. Dept. of Education

EXHIBIT 65

Inside Trump's Pressure Campaign on Universities



The opaque process, part of a strategy by conservatives to realign the liberal tilt of elite universities, has upended higher education.



Listen to this article · 16:39 min [Learn more](#)



By Michael C. Bender, Alan Blinder and Jonathan Swan

Published April 14, 2025 Updated April 15, 2025, 8:07 a.m. ET

As he finished lunch in the private dining room outside the Oval Office on April 1, President Trump floated an astounding proposal: What if the government simply canceled every dollar of the nearly \$9 billion promised to Harvard University?

The administration's campaign to expunge "woke" ideology from college campuses had already forced Columbia University to strike a deal. Now, the White House was eyeing the nation's oldest and wealthiest university.

"What if we never pay them?" Mr. Trump casually asked, according to a person familiar with the conversation, who spoke on the condition of anonymity to describe the private discussion. "Wouldn't that be cool?"

The moment underscored the aggressive, ad hoc approach continuing to shape one of the new administration's most consequential policies.

Mr. Trump and his top aides are exerting control of huge sums of federal research money to shift the ideological tilt of the higher education system, which they see as hostile to conservatives and intent on perpetuating liberalism.

Their effort was energized by the campus protests against Israel's response to the October 2023 terrorist attack by Hamas, demonstrations during which Jewish students were sometimes harassed. Soon after taking office, Mr. Trump formed the Task Force to Combat Antisemitism, which is scrutinizing leading universities for potential civil rights violations and serving as an entry point to pressure schools to reassess their policies.

It is backed by the influence of Stephen Miller, who is Mr. Trump's deputy chief of staff for policy and the architect of much of the president's domestic agenda.

The opaque process is upending campuses nationwide, leaving elite institutions, long accustomed to operating with relative freedom from Washington, reeling from a blunt-force political attack that is at the leading edge of a bigger cultural battle.

The task force includes about 20 administration officials, most of whom the government has not publicly identified, citing potential security risks. They meet each week inside a rotating list of federal agency headquarters in Washington to discuss reports of discrimination on college campuses, review grants to universities and write up discoveries and recommendations for Mr. Trump.

On a parallel track, a few powerful aides in the West Wing, including Mr. Miller, have separately moved to stymie funding for major institutions without formally going through the task force.

These aides have spoken privately of toppling a high-profile university to signal their seriousness, said two people familiar with the conversations. And they have already partially suspended research funding for more than twice as many schools as has the task force, according to those familiar with their work.

This account of the inner workings of the higher education pressure campaign is based on interviews with more than two dozen senior administration officials, university leaders and outside advisers for both sides. Many spoke on the condition of anonymity to discuss private conversations or because they feared retribution against their campuses.

The White House scored an early win with Columbia's capitulation last month to a list of demands that included tightening disciplinary policies and installing new oversight of the university's Middle Eastern, South Asian and African studies department.

Since then, the Trump administration expanded its focus to six more of the nation's most exclusive universities, including Harvard.

By the time Mr. Trump privately discussed stopping all payments to Harvard, the task force had opened a funding review. That led the administration to send the university a list of demands on Friday, including that it bring in an outsider “to audit those programs and departments that most fuel antisemitic harassment or reflect ideological capture.” The government also insisted that Harvard change hiring and admissions in departments that “lack viewpoint diversity” and “immediately shutter” any programs related to diversity, equity and inclusion.

Harvard said on Monday that it would not acquiesce. The university’s president, Alan M. Garber, wrote in an open letter that most of the administration’s demands “represent direct governmental regulation of the ‘intellectual conditions’ at Harvard.” The university, Dr. Garber added, “will not surrender its independence or relinquish its constitutional rights.”

In a separate letter, two outside lawyers representing Harvard told administration officials that the university “is not prepared to agree to demands that go beyond the lawful authority of this or any administration.”

Hours later, the task force announced a freeze of more than \$2.2 billion in grants and contracts for Harvard.

The scope of the administration’s campaign is now poised to widen. The Education Department has warned 60 universities that they could face repercussions from pending investigations into accusations of antisemitism.

The push comes as public confidence in higher education has plummeted in the past decade, according to a Gallup poll in July. The decline was driven mostly by concerns of colleges pushing political agendas, not teaching relevant skills, and the costs, the survey showed.

Still, university leaders have been stunned by the swift assault, with no clear sense of how the Trump administration chooses its targets, on what basis it is formulating penalties, or how to push back. Many see the effort as a widespread attack on academic freedom aimed at crushing the influence of higher education.

“I’ve never seen this degree of government intrusion, encroachment into academic decision-making — nothing like this,” said Lee C. Bollinger, who spent 21 years as Columbia’s president and more than five years leading the University of Michigan.

For their part, Trump administration officials and their allies say they are trying to hold accountable a system that each year receives about \$60 billion in federal research funds while educating about 15 million undergraduates.

“We’re not looking to just file lawsuits — we want to compel a cultural change in how Jewish Americans are treated on college campuses,” Attorney General Pam Bondi, a member of the task force, said in an interview.

But the effort has gone beyond addressing antisemitism, with schools targeted for diversity programs and supporting transgender athletes. In the view of some of Mr. Trump’s closest advisers and key donors, leftists have seized control of America’s most powerful institutions, including pillars of higher education, and wresting back power is key to the future of Western civilization.

“The universities seem all powerful and they have acted as if they were all powerful, and we’re finally revealing that we can hit that where it hurts,” Christopher F. Rufo, a conservative activist who has championed the strategy, said in an interview.

‘Vanquish the Radicals’



During a rally last May in Waukesha, Wis., President Trump asked college presidents to “vanquish the radicals and take back our campuses for all of the normal students.” Doug Mills/The New York Times

During last year’s presidential campaign, Mr. Trump looked out from his rally stages and described a nation he viewed as rife with discrimination against conservatives.

And for him, nowhere was political injustice as pervasive as on college campuses run by “Marxist maniacs and lunatics.”

Weeks after opening his third presidential bid, Mr. Trump had announced a “free speech policy initiative,” promising to strip federal research dollars and student loan support from universities involved in what he generalized as “censorship activities or election interferences.”

Six months later, he complained about “racial discrimination” in higher education, suggesting universities were increasingly hostile to white students. He vowed to open civil rights investigations into schools that promoted diversity, and he doubled down on those threats when the Supreme Court rejected affirmative action in college admissions.

At the same time, Mr. Miller, the longtime Trump adviser, was working on similar issues at America First Legal, the nonprofit he started during the Biden administration. The group has sued New York University and Northwestern University, accusing them of discriminating against white men.

Mr. Trump turned more forcefully to combating antisemitism as a political rallying cry after Oct. 7, 2023, when Hamas militants led an attack that killed more than 1,200 people in Israel in what was the deadliest day for Jews since the Holocaust. War in Gaza followed, and so did months of protests, particularly among pro-Palestinian students on college campuses. Thousands were arrested as they occupied presidents’ offices, harassed Jewish students, erected makeshift encampments and disrupted graduation ceremonies.



A protest over the war in Gaza on the campus of the University of Southern California, one of 10 universities the task force is scrutinizing. Mark Abramson for The New York Times

From the campaign trail, Mr. Trump cast the protests in personal terms, claiming that “raging lunatics” were demonstrating on campuses to distract from immigration issues central to his campaign.

“To every college president,” Mr. Trump said at a rally in Waukesha, Wis., “vanquish the radicals and take back our campuses for all of the normal students.”

The Key Players

Linda McMahon, the education secretary, has largely been the public face of the Trump administration's task force to combat antisemitism. Haiyun Jiang for The New York Times

The task force to combat antisemitism was announced on Feb. 1, with the stated goal to “eradicate antisemitic harassment in schools and on college campuses.” The exact metrics to measure that progress remain unclear.

The administration has declined to identify all members of the group, but its titular head is Leo Terrell, the senior counsel in the Justice Department's civil rights division. A fixture on social media and Fox News's “Hannity” show, Mr. Terrell is a Trump favorite.

The public face of the task force has largely been Linda McMahon, the education secretary. Other identified members include Josh Gruenbaum, a top official at the General Services Administration, and Sean Keveney, the acting general counsel at the health department.

Leo Terrell, an assistant attorney general for civil rights, is the head of the task force to combat antisemitism. Win McNamee/Getty Images

Sean Keveney, the acting general counsel at the health department, is also a member of the task force. Ross D. Franklin/Associated Press

JA705

Coordinated through the Justice Department's civil rights division, the task force also includes officials from the Equal Employment Opportunity Commission. The commission is investigating "dozens" of antisemitism complaints on college campuses that could become part of the task force's investigation, according to two task force members. The group also includes data specialists, civil rights lawyers and former academics in the government.

In February, task force members announced a special focus on 10 universities: Columbia; George Washington University; Harvard; Johns Hopkins University; N.Y.U.; Northwestern; the University of California, Berkeley; the University of California, Los Angeles; the University of Minnesota; and the University of Southern California.

The task force said it planned to visit each school and hold meetings with administrators, students, local law enforcement officials and community members.

By going after Columbia and Harvard early, the task force set the tone.

The goal, one senior administration official said, was to make examples of elite schools to intimidate other universities.

The White House also zeroed in on another five schools — Brown University, Cornell University, Northwestern, the University of Pennsylvania and Princeton University, according to people familiar with the process.

All have had millions in federal funding suspended, threatening projects, laboratories and jobs, and upending a multigenerational pact between the government and universities. Since around World War II, colleges have been at the heart of the American research system.



Katrina Armstrong stepped down as interim president of Columbia University after the school bowed to a list of demands. Erick Berlanga Vazquez/Columbia Daily Spectator

The amount of research funding that has been targeted at each university has varied widely, and there have been few indications of how officials are landing on specific dollar amounts.

One task force member said the figures were determined as part of the group's deliberations, which weighed the volume of grants and contracts promised to a school, the disparities in disciplinary policies, and the institution's willingness to adopt changes and progress toward those goals.

Ultimately, the group recommends to Mr. Trump whether the government should cut funding, as it did before canceling contracts with Columbia last month, according to people familiar with the process.

In that case, the task force notified the school on March 3 that it was reviewing grants. Four days later, on March 7, it cited Columbia's "continued failure to end the persistent harassment of Jewish students" and canceled \$400 million in contracts and grants.

Ms. McMahon delivered the news in person that day to Katrina Armstrong, who has since left her post as Columbia's interim president. Soon after, Ms. McMahon said, leaders of schools such as Harvard and Yale scheduled meetings with her.

"They wanted to make sure we knew they were reviewing their policies," Ms. McMahon said in an interview. "The presidents that I've spoken to have been very cordial, but very sincere in their effort to make sure that they were doing everything that they needed on their campus to protect students."

A Scramble to Respond

The government made no official announcement when it paused \$210 million in federal funding to Princeton. Hannah Beier for The New York Times

Some universities got wind that their institutions were under scrutiny only when stop-work orders for federally funded research trickled in. On one campus, a faculty member heard from a government program officer that a cut to research money was imminent — a warning that sent campus leaders scrambling.

J. Larry Jameson, Penn's president, said last month that the university learned "through various news outlets" that the Trump administration was suspending about \$175 million for research projects. Brown's provost sent a memo about "troubling rumors" shortly before White House officials said, with little fanfare, that the administration planned to stop \$510 million in funding.

After The Daily Caller, a conservative media outlet, reported that \$210 million in research funding to Princeton was suspended, the university's president, Christopher L. Eisgruber, wrote in a campus email that "the full rationale for this action is not yet clear." When The New York Times asked the White House for comment, a spokeswoman replied with a link to a Daily Caller reporter's social media post and only three words: "This is accurate."



J. Larry Jameson, Penn's president, said the university learned "through various news outlets" that the Trump administration was suspending about \$175 million in support to the school. Sam Deitch/BFA, via Shutterstock



Princeton's president, Christopher L. Eisgruber, told students, faculty and staff members that "the full rationale" for the suspension of \$210 million in research funding to the school had not been made clear. Christopher Goodney/Bloombreg

Some school administrators have said that murkiness has complicated considerations of court challenges.

They are left feeling in the dark, one university official said.

Mr. Eisgruber wrote in *The Atlantic* last month that the Trump administration's moves against Columbia were creating "the greatest threat to American universities since the Red Scare of the 1950s."

"There is a pattern here of intrusions in academic freedom of strong universities that should be of concern to every American," he said in an interview on "The Daily," a podcast from *The Times*.

In the scramble for self-defense, some university leaders have reached out to Jewish activists to push back on what they view as the administration's overly broad definition of antisemitism.

Other schools have focused on outreach to Mr. Trump through his allies. Harvard hired as a lobbyist Brian Ballard, a former Trump campaign finance chairman whose firm once employed Susie Wiles, Mr. Trump's chief of staff, and Ms. Bondi, the attorney general. Dartmouth installed a former chief counsel at the Republican National Committee as the college's top lawyer.

But it is unclear how much these connections will help. The key staff members on the issue inside the West Wing are Mr. Miller; Vince Haley, the head of the domestic policy council; and May Mailman, senior policy strategist — all three of whom are seen as hard-line culture warriors resistant to lobbying.

Seeking Generational Change

Stephen Miller, the White House deputy chief of staff for policy, has helped shape much of the administration's domestic agenda. Eric Lee/The New York Times

In the long run, the goal of Mr. Trump and his allies is to permanently disrupt the elite world of higher education.

“We want to set them back a generation or two,” Mr. Rufo said.

The conservative activist Christopher F. Rufo has championed the strategy to take on universities. Chona Kasinger for The New York Times

The administration's zeal has flummoxed even some close Trump allies concerned that the pressure campaign could set a troubling precedent for future administrations that, for example, decide to “eradicate” sexism from college

campuses or bigots from the faculty. Who gets to decide which people fall into what category and when?

Inside the White House, such worries are dismissed. That kind of thinking held back the first Trump administration, officials said. They are not concerned about what the political left might do in the future, they said, but instead are focused on setting in motion long-term change.

Michael C. Bender is a Times political correspondent covering Donald J. Trump, the Make America Great Again movement and other federal and state elections.

Alan Blinder is a national correspondent for The Times, covering education.

Jonathan Swan is a White House reporter for The Times, covering the administration of Donald J. Trump.

EXHIBIT 66

COLUMBIA | OFFICE OF THE PRESIDENT

[Home](#) » [Announcements](#) » Sustaining Columbia's Vital Mission

ANNOUNCEMENTS

Sustaining Columbia's Vital Mission

April 14, 2025



Dear Members of the Columbia Community:

Over the past few weeks, days, indeed over the past few hours, you have no doubt seen and heard much about Columbia and the future of higher education. This is an extraordinary and difficult time for our University. We face unprecedented pressures, with no easy answers and many uncertainties. That combination is creating significant anxiety for our community, and we must, as we navigate this moment, stay true to our core mission as an educational and research institution, and true to our community.

I've heard deep concern about when and whether we will get our research funding back, what form an agreement with the government would take, whether we would have to compromise our values to reach such an agreement, and what we're doing to support our international students right now. Let me attempt to address each of these issues.

As we have shared before, the University has been engaged in what we continue to believe to be good faith discussions with the Federal Task Force to Combat Antisemitism. We have sought to address allegations of antisemitism, harassment, and discrimination on our campuses, and provide a path to restoring a partnership

JA715

with the federal government that supports our vital research mission, while also protecting the University's academic and operational integrity and independence.

Those discussions have not concluded, and we have not reached any agreement with the government at this point. Some of the government's requests have aligned with policies and practices that we believe are important to advancing our mission, particularly to provide a safe and inclusive campus community. I stand firmly behind the commitments we outlined on March 21, and all the work that has been done to date. Other ideas, including overly prescriptive requests about our governance, how we conduct our presidential search process, and how specifically to address viewpoint diversity issues are not subject to negotiation.

To be clear, our institution may decide at any point, on its own, to make difficult decisions that are in Columbia's best interests. Any good institution must do that. Where the government – or any stakeholder – has legitimate interest in critical issues for our healthy functioning, we will listen and respond. But we would reject heavy-handed orchestration from the government that could potentially damage our institution and undermine useful reforms that serve the best interests of our students and community. We would reject any agreement in which the government dictates what we teach, research, or who we hire. And yes, to put minds at ease, though we seek to continue constructive dialogue with the government, we would reject any agreement that would require us to relinquish our independence and autonomy as an educational institution.

Like many of you, I read with great interest the message from Harvard refusing the federal government's demands for changes to policies and practices that would strike at the very heart of that university's venerable mission. In this moment, a continued public conversation about the value and principles of higher education is enormously useful. I am especially concerned that many Americans have lost faith and trust in higher education. We should continue the hard work of understanding why. At the same time, we must more clearly explain what we here, at Columbia, know instinctively about the vital contributions we make to the world.

I want to turn to our international students, who are essential to our unique and powerful ecosystem, and who are experiencing enormous distress. We have been following with great concern the various actions being taken by the federal government toward members of our community. We know this has provoked not only anxiety, but multiple new, day-to-day challenges for our international student community. For that reason, the University launched a [new University fund](#) , supported by my office, our Board of Trustees, and generous alumni, to assist students who need help managing unanticipated expenses and other challenges right now.

This comes alongside our recently announced commitment of additional resources to our International Students and Scholars Office (ISSO) to expand their ability to help our international students, through logistical, legal, and mental health support, including a significant expansion of hours and staff resources. I'm pleased to announce a [new website](#)  dedicated to these efforts.

We are navigating a turbulent time for higher education. The challenges ahead of us are formidable. Knowing Columbia as I do, and as you do, I am confident that we *will* get through this to serve our students, faculty, staff, and society for centuries to come.

Sincerely,

Claire Shipman
Acting President, Columbia University in the City of New York

EXHIBIT 67



KING & SPALDING

April 14, 2025

VIA ELECTRONIC MAIL

Josh Gruenbaum
Commissioner of the Federal Acquisition Service
General Services Administration

Sean R. Keveney
Acting General Counsel
U.S. Department of Health & Human Services

Thomas E. Wheeler
Acting General Counsel
U.S. Department of Education

Dear Messrs. Gruenbaum, Keveney, and Wheeler:

We represent Harvard University. We are writing in response to your letter dated April 11, 2025, addressed to Dr. Alan Garber, Harvard's President, and Penny Pritzker, Senior Fellow of the Harvard Corporation.

Harvard is committed to fighting antisemitism and other forms of bigotry in its community. Antisemitism and discrimination of any kind not only are abhorrent and antithetical to Harvard's values but also threaten its academic mission.

To that end, Harvard has made, and will continue to make, lasting and robust structural, policy, and programmatic changes to ensure that the university is a welcoming and supportive learning environment for all students and continues to abide in all respects with federal law across its academic programs and operations, while fostering open inquiry in a pluralistic community free from intimidation and open to challenging orthodoxies, whatever their source.

Over the past 15 months, Harvard has undertaken substantial policy and programmatic measures. It has made changes to its campus use policies; adopted new accountability procedures; imposed meaningful discipline for those who violate university policies; enhanced programs designed to address bias and promote ideological diversity and civil discourse; hired staff to support these programs and support students; changed partnerships; dedicated resources to combat hate and bias; and enhanced safety and security measures. As a result, Harvard is in a very different place today from where it was a year ago. These efforts, and additional measures the university will be taking against antisemitism, not only are the right thing to do but also are critical to strengthening Harvard's community as a place in which everyone can thrive.

It is unfortunate, then, that your letter disregards Harvard's efforts and instead presents demands that, in contravention of the First Amendment, invade university freedoms long

Messrs. Gruenbaum, Keveney, and Wheeler

April 14, 2025

Page 2

recognized by the Supreme Court. The government's terms also circumvent Harvard's statutory rights by requiring unsupported and disruptive remedies for alleged harms that the government has not proven through mandatory processes established by Congress and required by law. No less objectionable is the condition, first made explicit in the letter of March 31, 2025, that Harvard accede to these terms or risk the loss of billions of dollars in federal funding critical to vital research and innovation that has saved and improved lives and allowed Harvard to play a central role in making our country's scientific, medical, and other research communities the standard-bearers for the world. These demands extend not only to Harvard but to separately incorporated and independently operated medical and research hospitals engaging in life-saving work on behalf of their patients. The university will not surrender its independence or relinquish its constitutional rights. Neither Harvard nor any other private university can allow itself to be taken over by the federal government. Accordingly, Harvard will not accept the government's terms as an agreement in principle.

Harvard remains open to dialogue about what the university has done, and is planning to do, to improve the experience of every member of its community. But Harvard is not prepared to agree to demands that go beyond the lawful authority of this or any administration.



William A. Burck

Quinn Emanuel Urquhart & Sullivan, LLP
1300 I Street NW
Suite 900
Washington, DC 20005



Robert K. Hur

King & Spalding LLP
1700 Pennsylvania Avenue NW
Suite 900
Washington, DC 20006

EXHIBIT 68

U.S. Department of Education

[HOME](#) / [ABOUT US](#) / [NEWSROOM](#) / [PRESS RELEASES](#)

PRESS RELEASE

Joint Task Force to Combat Anti-Semitism Statement Regarding Harvard University

APRIL 14, 2025

Today, the Joint Task Force to Combat Anti-Semitism released the following statement:

"Harvard's statement today reinforces the troubling entitlement mindset that is endemic in our nation's most prestigious universities and colleges – that federal investment does not come with the responsibility to uphold civil rights laws.

The disruption of learning that has plagued campuses in recent years is unacceptable. The harassment of Jewish students is intolerable. It is time for elite universities to take the problem seriously and commit to meaningful change if they wish to continue receiving taxpayer support.

The Joint Task Force to combat anti-Semitism is announcing a freeze on \$2.2 billion in multi-year grants and \$60M in multi-year contract value to Harvard University."

CONTACT

Press Office | press@ed.gov | (202) 401-1576 |

Office of Communications and Outreach (OCO)

EXHIBIT 69

This copy is for your personal, non-commercial use only. Distribution and use of this material are governed by our Subscriber Agreement and by copyright law. For non-personal use or to order multiple copies, please contact Dow Jones Reprints at 1-800-843-0008 or visit www.djreprints.com.

<https://www.wsj.com/us-news/education/anti-semitism-task-force-who-247c234e>

The Little-Known Bureaucrats Tearing Through American Universities

A new task force formed to combat antisemitism is using funding threats to force broader changes on campus

By *Liz Essley Whyte* [Follow](#), *Douglas Belkin* [Follow](#) and *Sara Randazzo* [Follow](#)

April 14, 2025 9:00 pm ET

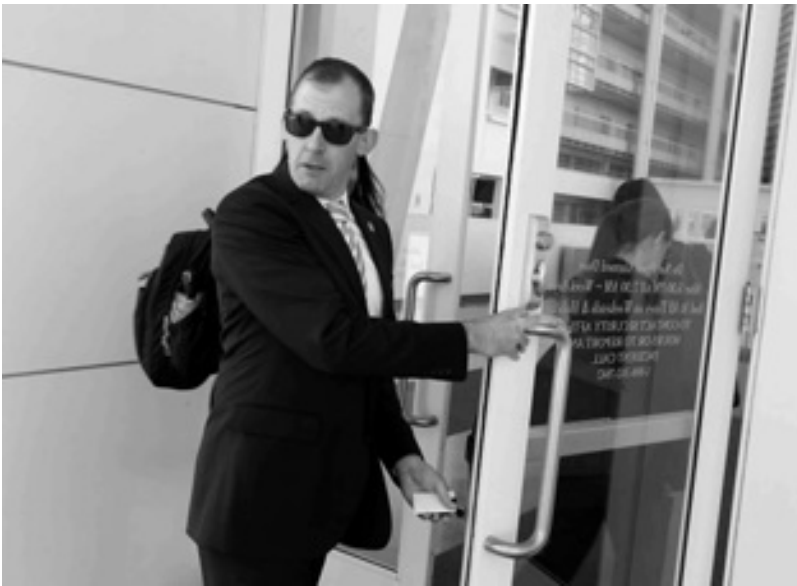
Columbia University's president had already been hounded out of office, but her ordeal wasn't over.

Four days after she stepped down under government pressure during fraught federal funding negotiations, Katrina Armstrong spent three hours being deposed by a government attorney in Washington, D.C. The lawyer grilled Armstrong over whether she had done enough to protect Jewish students against antisemitism.

As she dodged specifics under questioning, the lawyer said her answer "makes absolutely no sense" and that he was "baffled" by her leadership style.

"I'm just trying to understand how you have such a terrible memory of specific incidents of antisemitism when you're clearly an intelligent doctor," he said.

The attorney in the room during the April 1 deposition, a senior Health and Human Services official named Sean Keveney, is part of a little-known government task force that has shaken elite American universities to their core in recent weeks. It has targeted billions of dollars in federal funding at premiere institutions such as Columbia and Harvard, with cascading effects on campuses nationwide. Now it is pressing to put Columbia under a form of federal oversight known as a consent decree.



Sean Keveney, shown in 2016, is now a leader of the Trump administration's antisemitism task force.

PHOTO: RALPH FRESO/AP

Called the Task Force to Combat Anti-Semitism, the group's stated goal is to "root out antisemitic harassment in schools and on college campuses," a mission that emerged from pro-Palestinian protests that disrupted campuses last year. But along the way, the task force is taking on university culture more broadly in ways that echo the MAGA dreams for remaking higher education—including ending racial preferences in admissions and hiring.

The task-force leaders have unprecedented leverage, thanks to a financial assault on higher education by the Trump administration that has no equal since the federal government began pumping money into research at universities during World War II. The Trump administration has pulled or frozen more than \$11 billion in funding from at least seven universities. The tactics and agencies have varied but the top-line intent, Trump said on the campaign trail, is to wrest control of universities from the far left.

"We are going to choke off the money to schools that aid the Marxist assault on our American heritage and on Western civilization itself," Trump said at a 2023 event. "The days of subsidizing communist indoctrination in our colleges will soon be over."

The handful of government officials driving the group aren't household names. Aside from Keveney, the acting general counsel at HHS, they include a former Fox News commentator; a onetime leader of the Justice Department civil-rights division; and a government procurement official who spent much of his career in finance.

The antisemitism task force "is motivated by one thing and one thing only: tackling antisemitism," said White House Spokesman Kush Desai. "Antisemitic protesters inflicting violence and taking

JA724

over entire college campus buildings is not only a crude display of bigotry against Jewish Americans, but entirely disruptive to the intellectual inquiry and research that federal funding of colleges is meant to support.”

In the move-fast-and-break-things model of the Trump administration, the task force is deploying a range of legal tools and interpreting them expansively—moves hailed as brilliant and long overdue by conservative critics of universities.

In an interview, Education Secretary Linda McMahon said it was within the bounds of the federal government to ask universities to make changes to campus policies in the name of achieving administration priorities.



Secretary of Education Linda McMahon. PHOTO: NATHAN HOWARD/REUTERS

“These universities are taking federal funds,” McMahon said. “And so if you’re taking federal funds, then we want to make sure that you’re abiding by federal law.” The administration is not, she said, trying to take away academic freedom and the right to peacefully protest or disagree.

University leaders who are dealing with the task force use words like “scary” and “unsettling.” Academics say the group’s blunt negotiation approach is a sharp contrast to the more collaborative style of the Education Department officials they historically have met with to discuss campus problems.

The task force’s opening salvo was the cancellation of \$400 million in federal funds from Columbia. When the university quickly acquiesced to the task force’s demands, the group set an aggressive trajectory.

Even some members are surprised at how quickly the task force has put all higher education on alert, people familiar with the matter said. The task force's meetings buzz with excitement that what they are doing may actually change things on college campuses, one of the people said.

The task force asked Harvard to not only protect Jewish students and faculty from antisemitism but to reform the campus culture by making structural changes to governance, student admissions and faculty hiring. Those changes are aimed at improving viewpoint diversity, and ending "ideological capture," the task force wrote.

Advocates of the strategy contend there is a logical bridge between antisemitism, anti-Western ideologies and what they contend is an intolerant progressive orthodoxy on campus. Academic theories on "settler colonialism" hold that Israel is a white supremacist state created by the theft of land from Palestinians. Demonizing Zionism has fueled antisemitism on college campuses, according to the Anti-Defamation League, which has tracked reports of such behavior since 2014.

In negotiations with schools, the antisemitism task force carries a big stick. Federal funding constitutes a significant portion of the operating budget of some major research universities. Schools rely on federal contracts and grants to pay for laboratories and graduate assistants. Pell grants and federal loans help cover tuition costs for many undergraduates. Even schools with significant endowments cannot sustain prolonged periods of business as usual if the government cuts their funding.

In letters to universities, including Columbia and Harvard, the task force has cited civil-rights laws that encompass antisemitism, including Title VI and Title VII. But its tactic of targeting funding first and then beginning conversations is unprecedented, education lawyers say.

Typically, the Education Department's civil-rights arm handles such investigations—which can take months or even years—and hardly ever end with federal funds being cut. Instead, the investigations often result in voluntary settlements that some attorneys consider toothless.

"Cutting off the funding spigot is a nuclear-type weapon of enforcement," said Scott Schneider, an education lawyer in Austin. "It's outside the legal system and is a remarkable exercise of executive authority."



The campus of Harvard University, which is pushing back against demands from the administration.

PHOTO: MICHAEL CASEY/AP

The administration has also said at times that money is no longer being used for projects that align with White House “priorities,” a sweeping interpretation that has opened the door to potentially canceling billions of dollars of federal funds over ideology.

The schools, meanwhile, are scrambling to understand whether they could win in court, though none have yet sued. Harvard, where the task force has placed nearly \$9 billion in federal funds under review, has raised money in the bond market that it could use to free up cash flow in case it is unable to reconcile with the task force.

On Monday, Harvard pushed back on the task force, saying in a letter that the university is working to address antisemitism but won’t bow to the administration’s demands, which it calls unlawful.

“Neither Harvard nor any other private university can allow itself to be taken over by the federal government,” Harvard’s lawyers, William Burck and Robert Hur, wrote.

Hours later the task force said it was freezing \$2.26 billion in multiyear grants and contracts.

‘Bankrupt these universities’

The task force wielding this power pulls in representatives from across the federal government, including the General Services Administration and departments of Justice, Education and HHS.

Leo Terrell, a Justice Department political appointee and former Fox News commentator, was announced as the head of the task force when it was created in February. The longtime civil-rights

lawyer and friend of O.J. Simpson, who switched political affiliations from Democrat to Republican in 2020, said on Fox News last month that, “We’re going to bankrupt these universities” if they do not “play ball.”



Leo Terrell, center, a longtime civil-rights lawyer, was named to head the task force. PHOTO: SHAWN THEW/EPA/BLOOMBERG NEWS

Driving much of the day-to-day business of the task force are Keveney of HHS; Tom Wheeler, the Education Department’s acting general counsel; and Josh Gruenbaum, a commissioner in the General Services Administration.

The task force meets in person roughly every other week in HHS, Education Department or Justice Department buildings, said a person familiar with the task force’s work. The three day-to-day leaders always attend, plus at least one high-ranking official from Justice, and a rotating cast of civil-rights attorneys from the agencies. Between meetings, task-force members keep in touch via email.

Wheeler headed the Justice Department’s civil-rights division in 2017 during a time when Jewish community centers were receiving bomb threats. He later helped develop guidelines to reopen schools during the pandemic. He spent the bulk of his career in private practice in Indiana and also worked as counsel to former vice president Mike Pence during his time as Indiana’s governor.

Gruenbaum was working in private equity before he joined the Trump administration to run the Federal Acquisition Service, a part of GSA that handles procurement for the federal government. He told Jewish Insider in March that he reached out to offer his agency’s services to the task force once he heard it was being created. Being raised Orthodox Jewish as the grandson of a Holocaust survivor helped shape his worldview, he told the publication.

Keveney is a career government lawyer who has worked for HHS and the Justice Department since 2003. He was at Justice Department during the first Trump administration and worked on the Harvard affirmative action case decided by the Supreme Court in 2023.

The task force has no master list of schools to go after. Instead, the group tackles what seem to be the largest and most immediate problems, a person familiar with its work said. In its meetings, task force officials discuss strategies, legal tools, and news from student and alumni groups and university trustees that its members are connected to.

The task force has discussed broadly among its members, and with the State Department, potential student ties to terrorist organizations and how pro-Palestinian groups on campuses are funded, people familiar with the matter said. The task force isn't working with Immigration and Customs Enforcement, one of the people said.

Task-force members generally agree many universities have responded abysmally to the Oct. 7, 2023, Hamas attacks on Israel, and while their work is focused on antisemitism, they also agree that DEI and affirmative-action in admissions violate federal civil rights law.

The White House has, on its own without coordinating with the task force, been taking some actions against universities, including freezing funds to Cornell.

The task force appears, at least at times, to be making decisions independent of cabinet-level Trump appointees. McMahon, the education secretary, said she had a meeting in March set with Columbia's Armstrong to discuss antisemitism, not realizing that it was the same day that \$400 million in funding cancellations would be announced. "I found out just before I went in," she said. McMahon said she had known the action against Columbia was a possibility and that she delivered the news.

The task force named 10 schools in February that would be its initial focus for campus visits. The list includes universities that have had funding threatened so far, like Columbia, Harvard and Northwestern, as well as UCLA, the University of Minnesota and New York University. The group also said it would visit city officials in Los Angeles, Boston, New York and Chicago.

Separately, at least 60 colleges and universities are under investigation by the Education Department's Office for Civil Rights for their alleged inaction in protecting Jewish students and staff.

'Dismembering the prince'

The Trump administration's disdain for many elite institutions extends beyond the Israel-Hamas protests to the view that universities suppress conservative ideas and marginalize people who hold them. At a 2021 speech to the National Conservatism Conference, now-Vice President JD Vance, who at the time wasn't in public office, said: "I think if any of us want to do the things that we want to do for our country and for the people who live in it, we have to honestly and aggressively attack the universities in this country."

Meanwhile, the public mood toward elite universities with large endowments—Harvard's is north of \$50 billion—is sour. In a Wall Street Journal poll that surveyed 1,500 registered voters by phone from March 27 through April 1, 48% favored withholding funds from universities for failing to protect Jewish students from antisemitism.

Conservative activist Christopher Rufo, who helped craft the Trump administration blueprint to cut waste in government and attack DEI in universities, said the public's anger with higher education has made the sector a prime target to attack.



Christopher Rufo helped craft a Trump administration effort to combat campus DEI policies. PHOTO: TINA RUSSELL FOR WSJ

Rufo espouses making an example of a school and cutting its federal funding altogether—because it would prompt other schools to fall in line.

"Machiavelli has a great line, where he talks about the salutary effects of a kind of spectacular public punishment," Rufo said. "In his case, it was like dismembering the prince, but in this case, it's, metaphorically, putting the screws on one of these universities in a spectacular way, and then watching them implode."

Michael Poliakoff, president of the American Council of Trustees and Alumni, which works to ensure effective governance of colleges and universities, agrees with the need and direction of the task force but warned that whatever leverage it brings to bear could be used by future administrations.

“One has to anticipate what’s going to be coming down two or three moves into the future,” Poliakoff said. “And so I approach this with caution.”

Beyond civil-rights laws, the task force is also wielding the club of federal contracts. Kenneth L. Marcus, a former head of the Education Department’s Office for Civil Rights who now runs the Brandeis Center, which fights against antisemitism, called the involvement of the General Services Administration in the task force’s work a “brilliant stroke.”

Few people think about the agency as a lever of the federal government, Marcus said, but the power to pull back contracts “brings to bear immense new potentials for influencing compliance with federal civil rights laws.”

Write to Liz Essley Whyte at liz.whyte@wsj.com, Douglas Belkin at Doug.Belkin@wsj.com and Sara Randazzo at sara.randazzo@wsj.com

Appeared in the April 16, 2025, print edition as ‘Little-Known Group Tears Through Universities’.

EXHIBIT 70

Trump Has Targeted These Universities. Why?

President Trump has set his sights on defunding colleges, singling out some of the world's wealthiest schools in what critics say is an attack on academic freedom.



By Alan Blinder

April 15, 2025

The Trump administration is seeking to exert extraordinary influence over American universities by withholding the kind of federal financial support that has flowed to campuses for decades.

President Trump and his allies contend that some schools, especially a handful of elite universities, have become bastions of antisemitism and ideological indoctrination. Though the higher education industry has acknowledged shortcomings and failures, especially since the Hamas attack on Israel in October 2023, it has warned that reducing schools' federal funding could backfire on American society as a whole.

University leaders fear that by threatening to withhold funding, or suspending it with little or no warning, the government is trying to stamp out academic freedom, a cornerstone of the American education system.

The Trump administration has given broad reasons for the cuts, often involving claims that the schools tolerate antisemitism. But the choice of schools it has targeted and even some of its demands have sometimes confused educators and experts. Northwestern University, for example, recently released a lists of steps it

had taken to combat antisemitism that closely tracked with a list of demands the Trump administration had given to Columbia University. Northwestern was targeted several days later, nonetheless.

The issue is revealing the dollars-and-cents consequences of the tensions between campus leaders and the Trump administration. But the outcome of the underlying debate — over the very purpose of higher education — could shape the country for years to come.

Which schools have been targeted?

So far, seven universities have been singled out for punitive funding cuts or have been explicitly notified that their funding is in serious jeopardy. They are:

- Harvard University, which has approximately \$9 billion at stake. The government has already canceled more than \$2.2 billion in retaliation after Harvard publicly rebuffed the Trump administration's demands.
- Brown University, which the Trump administration said stood to lose \$510 million.
- Columbia, which is hoping to regain about \$400 million in canceled grants and contracts after it bowed to a list of demands from the federal government.
- Cornell University, the target of a cut of at least \$1 billion.
- Northwestern, which Trump administration officials said would be stripped of \$790 million.
- The University of Pennsylvania, which saw \$175 million in federal funding suspended in response to its approach to a transgender athlete's sports participation in 2022.
- Princeton University, which said "dozens" of grants had been suspended. The White House indicated that \$210 million was at risk.

Officials at some of the universities have been puzzled by the cuts, which they have sometimes learned about through social media, and insisted that they had taken action to combat antisemitism.

Dozens of other schools are under also scrutiny, largely by the Department of Education's Office for Civil Rights, and are aware that some of their federal funding is imperiled. But much of the focus is on 10 schools that have been identified for particular attention by a Trump administration task force that says it is devoted to rooting out antisemitism: Columbia; George Washington University; Harvard; Johns Hopkins University; New York University; Northwestern; the University of California, Berkeley; the University of California, Los Angeles; the University of Minnesota; and the University of Southern California.

Critics of the administration have not hesitated to point out that all of these schools are in states, or, in George Washington's case, a federal district, that voted for the Democratic ticket in 2024.

Why are the schools being criticized?

The administration has frequently claimed that the targeted schools harbor antisemitism. When a protest movement against Israel's war in Gaza swept college campuses around the country in 2024, for example, some of the most volatile scenes unfolded at Columbia.

But the administration's hostility toward major colleges and universities has deeper roots than the turmoil tied to that war alone. Conservatives have looked askance at the elite echelons of higher education for decades, disturbed by affirmative action admissions programs, high tuition costs, the views of liberal professors and the proliferation of diversity, equity and inclusion initiatives on campuses.

Many conservatives say their views have been marginalized in lecture halls, and regard top schools as incubators of so-called wokeness. They have said they want universities to emphasize academic programs that will lead students to the kind of

jobs that are essential to the economy.

A list of Trump administration demands made at Harvard appeared to touch on a variety of conservative complaints with academia, including a lack of diverse political viewpoints among faculty members and a disdain for diversity, equity and inclusion programs.

How much money is at stake?

So far, the government has pulled, or threatened to pull, more than \$12 billion. Most of that money is tied to Harvard and its affiliates, like its hospitals.

Universities have said little about which specific programs were in jeopardy. But Penn, for example, said that researchers in at least seven of its schools were affected.

“These contracts include research on preventing hospital-acquired infections, drug screening against deadly viruses, quantum computing, protections against chemical warfare, and student loan programs,” J. Larry Jameson, Penn’s president, said in an open letter.

How have schools responded?

Beyond statements of frustration and concern, they have generally not done much publicly.

But there are two enormous exceptions. In March, Columbia agreed to comply with demands from the administration so it could enter negotiations over the future of the \$400 million the government had struck. Some of the most important concessions included agreeing to place the university’s Middle Eastern, South Asian and African Studies Department under new oversight; strengthening its campus security force; and toughening its disciplinary and protest policies.

Columbia’s capitulation alarmed higher-education leaders across the country.

On April 14, Harvard tried a different strategy. It rejected proposals from the federal government, including one for the use of an outsider “to audit those programs and departments that most fuel antisemitic harassment or reflect ideological capture.” The government also wanted Harvard to curb the power of its faculty and report international students who committed conduct violations.

Harvard refused, and its president, Alan M. Garber, said that the university “will not surrender its independence or relinquish its constitutional rights.”

To many veterans of academia, Harvard’s choice marked a potential turning point.

Lee C. Bollinger, a former Columbia president, said Harvard’s resistance was “precisely what has been needed.” The university’s pushback, he said, amounted to “a major institution willing to defend the fundamental values at stake, not only with universities but also with other institutions and organizations vital to American democracy.”

These schools are rich. Why is the government funding them in the first place?

Since around the time of World War II, the U.S. government has leaned on academic institutions to conduct research projects whose findings will trickle into the public and private sectors. Federally funded research has almost always had bipartisan support, though there have been occasional complaints (and sometimes outright mockery) surrounding particular projects.

In their scramble to counter the Trump administration’s recent moves, universities have tried to tell elected officials and the public that they make important contributions to the country’s health and prosperity. They have also sought to frame university-based research as imperative to the nation’s future, especially amid China’s rise.

Can't schools just tap their endowments?

Many big schools do indeed have substantial endowments. Every endowment is different, though, and university leaders note that many donors put restrictions on how their money may be used. Republicans, including Vice President JD Vance, have openly discussed raising the excise tax on the largest endowments.

Harvard has an endowment worth about \$53 billion, far more than any other American university. Even so, a few days after the Trump administration announced a review of Harvard's federal funding, the university announced a plan to issue \$750 million in bonds. Proceeds would give the school, which has been engaged in contingency planning, some financial breathing room.

Alan Blinder is a national correspondent for The Times, covering education.

A version of this article appears in print on , Section A, Page 17 of the New York edition with the headline: Reasons for Singling Out Universities for Defunding Run Deep

EXHIBIT 71

OFFICE OF THE PROVOST

Home » [Directory](#) » Miguel S. Urquiola

Miguel S. Urquiola

Miguel Urquiola was appointed Senior Vice Provost for Academic Initiatives on April 15, 2025.

In this role, Professor Urquiola will focus on promoting cross-school academic excellence, starting with a comprehensive review of Regional Studies programs. This work will begin with a faculty committee review of Middle East programs. He continues in his roles as Professor of Economics and Dean of Social Science for the Faculty of Arts & Sciences.

Professor Urquiola has been a member of the Columbia community since 2003. He has chaired Columbia's Department of Economics and its Committee on the Economics of Education. He is also a member of the School of International and Public Affairs (SIPA), where he was Vice Dean of Faculty Affairs.

Outside Columbia, Professor Urquiola is a Research Associate at the National Bureau of Economic Research (NBER) and has held appointments at Cornell University, the World Bank, and the Bolivian Catholic University.

Professor Urquiola's research is on the Economics of Education. Its focus is on understanding how schools and universities compete, and how educational markets differ from other markets economists study. He has written numerous journal articles on these issues, and a book on why American universities excel at research: *Markets, Minds, and Money*.



Senior Vice Provost for Academic Initiatives; Dean of Social Sciences in the Faculty of Arts & Sciences; Professor of Economics and of International and Public Affairs

Contact Info

1018 International Affairs, MC 3308

📞 [+1 212 854 3769](tel:+12128543769)

✉️ miguel.urquiola@columbia.edu

EXHIBIT 72

INSIDE COLUMBIA'S BETRAYAL OF ITS MIDDLE EASTERN STUDIES DEPARTMENT

Columbia reassured its Middle Eastern studies scholars behind the scenes — then, to appease Trump, threw them to the wolves.

Meghnad Bose, Sacha Biazzo

April 16 2025, 12:30 p.m.



Students chain themselves to the fence of Columbia University in New York City on April 2, 2025. Photo: Mostafa Bassim/Anadolu via Getty

STUDENTS AT COLUMBIA University's Middle Eastern studies department were suffering from whiplash. Over two days in March, they

went from being reassured by Middle Eastern studies faculty that the university was supporting their embattled department to, just a day later, being hit with news that Columbia had cut a deal with the Trump administration.

At stake was some \$400 million in federal funding from the school that had been suspended by the White House. The Middle Eastern, South Asian, and African Studies Department – or MESAAS as it is formally known – was at the center of the storm.

Pushing back on the White House’s demands proved too tall an order at Columbia. The university administration made an announcement on March 21 that laid out a raft of policy changes. Among them was a plan to appoint a new senior vice provost whose work would include “a thorough review of the portfolio of programs in regional areas across the University, starting immediately with the Middle East,” the [announcement](#) said.

MESAAS scholars immediately saw the school had cut a deal that put them in the crosshairs.

Now, for the first time, several insiders at MESAAS are speaking up about the turmoil facing their department, the back-and-forth between the Trump administration and university leadership, and how they are the ones caught in the lurch.

“It’s saying one thing to the federal government and saying another thing to faculty and students.”

“The university is being quite opaque in its language and its messaging, and it’s saying one thing to the federal government and saying another thing to faculty and students,” said Craig Birckhead-Morton, a 22-year-

JA744

old graduate student at MESAAS. “Obviously, it’s been very frustrating for us, this duplicitous behavior of the university.”

“I’ve spoken with several of my classmates who are also afraid of either their ability to research the things that they’re researching being restricted, or them conducting that research and coming under attack for it,” he said. “This is very scary.”

Short-Lived Reassurance

The rollercoaster ride had begun only last month. On March 7, the White House put the university on notice: The Trump administration [announced](#) that it was canceling some \$400 million in federal funding to Columbia.

In negotiations over the funding, the White House made a series of demands on March 13, including that the Middle Eastern studies department be placed under academic receivership for a minimum of five years — taking control of the department out of its own faculty’s hands. A Wall Street Journal [article](#) published on March 19 said Columbia was about to cave to Donald Trump’s demands, with a deadline approaching the following day.



Related

Columbia Bent Over Backward to Appease Right-Wing, Pro-Israel Attacks — And Trump Still Cut Federal Funding

Then, on the day of the deadline, came an email from Gil Hochberg, the chair of MESAAS. Hochberg and three other senior faculty from the department had met with two high-level senior deans from the

university. They had come away from the hourlong Zoom discussion feeling relatively optimistic about maintaining “academic self-governing” at MESAAS.

“While many questions remain open, the four of us who attended today’s meeting, feel significantly more reassured that our department is being supported by the university as much as possible under the circumstances,” said the email, which was reviewed by The Intercept.

“We were told that it is very unlikely that we will hear anything determined this weekend,” Hochberg wrote. “The situation is complex and will take time – more time than we would like. March 20 was one deadline, but not a legally binding one.”

Defying Hochberg’s expectations, word from the Columbia administration came down quickly.

The very next day, on March 21, Columbia University made a sweeping list of announcements, chief among them that the university was going to appoint a new senior vice provost that same week, whose work would include reviewing programs that touch on the Middle East, ensuring “balanced” curricula, and processes by which curricular changes are made. (Neither Hochberg nor Columbia responded to requests for comment.)

Since Columbia’s announcement, uncertainty has reigned. The new vice provost was set to be appointed in the week of March 21. Only after three weeks, on April 15, did the university appoint Miguel Urquiola, a dean of social science at Columbia, as the new vice provost. Urquiola’s academic background is in economics, but his first major task as senior vice provost is to conduct a “thorough review” of Middle Eastern studies.

“Honestly, I don’t understand what this means,” said a MESAAS student, a Ph.D. candidate who asked that their name not be used due to concerns over their visa status. “It doesn’t make any sense. What does it mean for them to claim that they’ll be able to see how something is ‘balanced’? They’re not the people who are experts in these fields.”

MOST READ



Palestinian Student Leader Was Called In for Citizenship Interview — Then Arrested by ICE

Akela Lacy



Pete Hegseth Is Gutting Pentagon Programs to Reduce Civilian Casualties

Nick Turse

Newsletter

[The Intercept](#)

Inside MESAAS, scholars have viewed the developments of recent weeks as Columbia caving to the Trump administration’s demands. They fear control of the department is being wrested away from faculty – and, to make matters worse, little clarity has been available to students on how to navigate the changes since Columbia’s announcement in late March.

“There is no information that has been given since, so I’m just waiting,” said a Palestinian student at Columbia who asked for anonymity because of the crackdown on dissent at the school. “There’s just a general confusion.”

The Ph.D. candidate laid blame for the chaos on the university administration, not the department faculty.

“The faculty have also not been kept in the loop with a lot of these updates of what’s going on,” they said. “We do feel supported by our faculty, but we are isolated by the university administration.”



Photo: Meghnad Bose

Chaos on the Inside

For students at the Middle Eastern studies department, the university's apparent capitulation was particularly galling because it felt like an indictment of the department with no substantive critiques.

"The MESAAS department is not being attacked right now because of a lack of rigor in its coursework or a deficiency in the quality of the research that's being produced," said Birckhead-Morton, the graduate student. "The MESAAS department is one of the greatest Middle Eastern Studies departments in the country."

Other students, too, had come to Columbia looking to study at the highly regarded department.

“I came to Columbia specifically looking at MESAAS being home to some of the best scholars on Palestine,” said the Palestinian student. “Being able to work with them just really inspired me to apply to Columbia — it was my top choice.”

The internal MESAAS email and subsequent university announcement had come during spring break at Columbia. With classes set to resume on March 24, the Palestinian student felt dread over returning to campus.

“I was considering fully dropping out,” they said.

“In the past few weeks, I’ve just been very disillusioned by it all,” they said. “I would like my department to show a little ounce of courage.”

Wresting Control From MESAAS

For professors at Columbia, the move against faculty control at MESAAS reflects a larger attack by the Trump administration [on academic freedom](#) in the name of [ideological conformity](#).

“The federal government doesn’t get to tell ice cream shops what flavors to serve in what kind of cone, and they don’t get to tell universities what subjects to teach or how to teach them,” said Joseph Howley, an associate professor of classics at Columbia. “From the outside, the fact that MESAAS was targeted without justification or explanation suggests to me that this attack is being driven not by a concern for academic excellence or anyone’s safety, but by an extremist ideological agenda

that has employed the federal government to remake the university for its own ends.”



Related

Nobel Winner Joseph Stiglitz Denounces Columbia’s Apparent Capitulation to Trump

Among the university’s announcements on March 21 was a policy change stating that Columbia would be appointing “new faculty members with joint positions in both the Institute for Israel and Jewish Studies and the departments of Economics, Political Science, and School for International and Public Affairs.”

These appointments, according to Columbia, would be “reinforcing the University’s commitment to excellence and fairness in Middle East studies.”

Work on the Israeli–Palestinian conflict was the obvious target of the changes, Birckhead-Morton said, but other areas of study could come under the same scrutiny.

“Any coursework related to Palestine will certainly be the first to be removed or restricted or modified under this new regime that’s being imposed on us – that’s the biggest worry,” he said. “But there are other courses that are on settler colonialism, for example, that aren’t specific to Palestine, but could come under attack based on the statements of the university.”

For his part, [Mahmoud Khalil](#), a Palestinian graduate of Columbia, denounced the attacks on the department in an [op-ed](#) from immigration detention in Louisiana, where he is being held after having his green card revoked for his [activism at the university](#) against Israel’s war on

Gaza. In his op-ed, Khalil referred to the pressures on MESAAS as “McCarthyist and racist interventions at the Middle Eastern, South Asian, and African studies department.”



Read Our Complete Coverage

Israel's War on Gaza

While no active MESAAS professors responded to requests for comment, retired professors have been more forthcoming about recent developments at the department.

[Rashid Khalidi](#), a former [Arab studies professor](#) at MESAAS, recently [wrote](#), “It was never about eliminating antisemitism. It was always about silencing Palestine. That is what the gagging of protesting students, and now the gagging of faculty, was always meant to lead to.” And Sheldon Pollock, a former chair of the MESAAS department, likened the government’s demands of Columbia to “[a ransom note](#)”: “Like a mob boss, the government threatens to cut off two of the university’s fingers: academic freedom and faculty governance.”

Professors at other departments also spoke out against the announced changes.

“Many people in the educational establishment were telling Columbia that it should resist these demands by the Trump administration, and it should stand up and take a stand forcefully,” said Michael Thaddeus, a professor of mathematics at Columbia and vice president of the university’s chapter of the American Association of University

Professors, which sued the Trump administration over the revoked funding.

Thaddeus said the university's decision not to pursue its own legal action against the Trump administration was "extremely disappointing."

Conference Disrupted

Each year, students at MESAAS get a chance to present their research at the department's graduate conference. This year, the conference – on the theme of uprisings in the Middle East, South Asia, and Africa – was scheduled to take place at the university, in person, on April 10 and 11.

On April 1, though, an email went out to some participants announcing changes in the programming.

"In light of recent events at Columbia University, New York City, and the United States at large, we are writing to you about some last-minute measures we are taking in order to protect the safety of our conference participants," said the email, a copy of which was reviewed by The Intercept. "The conference, including the keynote address, will now happen only on Zoom."

The email went on to say that, despite the lack of an in-person forum, there would still be additional security measures. "We will be vetting all audience members, and request you to reply to this email with a list of people (friends, family, colleagues) with whom you want to share access to the conference," the email said.

"We haven't been directed to do this," said the MESAAS Ph.D. candidate. "It's really for our protection and for the protection of everyone speaking that these steps are being taken, to make sure that we can still

continue to have these conversations without becoming targets ourselves.”

“It is kind of an effort to keep the conference going despite all the odds that we are facing right now,” they said. “There is some concern that we will be constrained even further if we are in person.”

“It’s more like an underground secret meeting than a public rally.”

The Ph.D. candidate, however, added that the fact that the department had to change the program is a sign of the pressures on academic freedoms at Columbia and, in particular, MESAAS.

Another MESAAS student, who was slated to present at the conference and asked for anonymity because they are an international student, noted that the climate on campus meant that the events were not as widely promoted as usual.

“I am still happy that my work will be seen by people, but am sad and a little disappointed that it will be a smaller audience,” the student said. “It’s more like an underground secret meeting than a public rally.”

The Wider Struggle

When it comes to pressures on Middle Eastern studies departments, Columbia is far from alone. Despite recently rejecting the Trump administration’s demands, Harvard University in March **dismissed** the faculty leaders of their Center for Middle Eastern Studies, or CMES. Nonetheless, five days later, the Trump administration announced that

it would be reviewing close to \$9 billion in federal funding and multiyear grant commitments to the school.

“What happened at CMES at Harvard is shocking and egregious,” said Birckhead-Morton, the MESAAS graduate student. “So, they’ve come for Columbia, they’ve come for Harvard, we don’t want this to happen to other universities. We have to defend Middle Eastern studies across the board.”

Birckhead-Morton, who is Black and Muslim American, said the crackdown on Columbia’s academic functioning is part of a broader trend to attack scholarship seen as a threat to the powers that be.

“This is a continuation of the attack on critical race theory and ethnic studies,” he said. “It’s not just a Palestine issue or an Arab issue or a Middle East issue. These struggles and these histories are connected, and this crackdown is really going to affect us all.”

“This is an attack on scholarship, dissent, and critical thinking.”

RELATED



Palestinian Student Leader Was Called In for Citizenship Interview — Then Arrested by ICE



Mahmoud Khalil and the Necropolitics of Trump’s Deportation Regime



Trump Appears to Be Targeting Muslim and “Non-White” Students for Deportation

EXHIBIT 73

**TRUTH.****← Truth Details**

3183 replies

Trending ▾

...

**Donald J. Trump** ✓

@realDonaldTrump

Everyone knows that Harvard has “lost its way.” They hired, from New York (Bill D) and Chicago (Lori L), at ridiculously high salaries/fees, two of the WORST and MOST INCOMPETENT mayors in the history of our Country, to “teach” municipal management and government. These two Radical Left fools left behind two cities that will take years to recover from their incompetence and evil. Harvard has been hiring almost all woke, Radical Left, idiots and “birdbrains” who are only capable of teaching FAILURE to students and so-called “future leaders.” Look just to the recent past at their plagiarizing President, who so greatly embarrassed Harvard before the United States States Congress. When it got so bad that they just couldn’t take it anymore, they moved this grossly inept woman into another position, teaching, rather than firing her ON THE SPOT. Since then much else has been found out about her, but she remains in place. Many others, like these Leftist dopes, are teaching at Harvard, and because of that, Harvard can no longer be considered even a decent place of learning, and should not be considered on any list of the World’s Great Universities or Colleges. Harvard is a JOKE, teaches Hate and Stupidity, and should no longer receive Federal Funds. Thank you for your attention to this matter!

7.82k ReTruths **32.7k** Likes

Apr 16, 2025, 7:05 AM

**God & Country**

@GodandCountryy · 6h

Replying to @realDonaldTrump



JA756

EXHIBIT 74

BREAKING NEWS

NIH said to have halted awarding of new grants to more top universities

Internal email instructs agency staff not to communicate with institutions about the decision



Low Library at Columbia University, one of the schools that is not to be awarded any new NIH grants, according to an agency email. Adobe

By Anil Oza and Megan Molteni April 18, 2025

Embattled universities whose funding from the National Institutes of Health has been frozen may face further financial strain as the agency holds off awarding new grants to at least half a dozen of them, according to an email obtained by STAT.

The decision could mark the next stage of the Trump administration's attempts to apply pressure to a suite of elite colleges and universities by withholding research dollars. The email also instructs NIH staff to not communicate with the universities about whether or why funds are frozen.

Some grants that had previously been awarded to these universities had already been paused. But the new email suggests the NIH will hold off on awarding new grants as well.

The message — sent Thursday by Michelle Bulls, director of the Office of Policy for Extramural Research Administration — instructed staff not to make any awards to schools that have had funds frozen by the Trump administration. According to the email, the order originated in the office of the Secretary of Health and Human Services, Robert F. Kennedy Jr.

Asked about the directive, HHS Deputy Press Secretary Emily G. Hilliard told STAT in an email: "HHS does not comment on active investigations or the grant process to protect its integrity."

The schools named in the email were Columbia, Harvard, Brown, Northwestern, Cornell, and its affiliated medical school, Cornell-Weill Medicine. But others may be impacted by the move as well. In recent weeks, the Trump administration has been escalating its clash with colleges and universities, using the threat of withholding federal funds to try to enact sweeping changes to how institutions of higher education hire faculty, admit students, and what they teach in classrooms.

In early March, the NIH slashed about \$250 million in grants to Columbia after the Trump administration alleged the school had failed to crack down on antisemitism. The cuts shuttered large research programs into maternal mortality rates and chronic fatigue syndromes. Last week, the NIH, at the behest of HHS, froze all remaining grant money owed to the university, according to internal emails obtained by Science.

EXHIBIT 75



Post



Max Kozlov 
@maxdkozlov



I've received additional confirmation, as well as an email I can share publicly.

See the directive NIH grants management staff received from Michelle Bulls, director of extramural policy at NIH

From: Bulls, Michelle G. (NIH/OD) [E] <michelle.bulls@nih.gov>
Sent: Thursday, April 17, 2025 4:07 PM
To: Chief GMOs <ChiefGMOs@mail.nih.gov>; OTAC Principals <OTACPrincipals@mail.nih.gov>
Cc: Bulls, Michelle G. (NIH/OD) [E] <michelle.bulls@nih.gov>
Subject: Payment Restrictions at Entity Level - Guidance and Communications - Update
Importance: High

Hi,

We have received confirmation from HHS/IOS to hold off on making awards to schools where the funds have been frozen, i.e., Columbia, Brown, Northwestern, Cornell, Weill-Cornell, Harvard. Also, HHS/IOS has stated that we should not provide any communications to these schools about whether or why the funds are frozen. Hopefully, this helps given the discussion yesterday. We should try to respect their request and follow the guidance.

Michelle

Michelle G. Bulls
Director, Office of Policy for Extramural Research Administration, OER
National Institutes of Health
6705 Rockledge Drive, Room 803-C
Office: (301) 594-6739
Cell: (240) 550-1977

Email: michelle.bulls@nih.gov

3:24 PM · Apr 18, 2025 · 67.3K Views



9



102



332



26



Read 9 replies

Don't miss what's happening

People on X are the first to know.

Log in

Sign up

1A761

EXHIBIT 76



DAILY BEAST

SUBSCRIBE

TRUMPLAND 

Trump Takes Personal Revenge on Harvard's Lawyer for Standing Up to Him

| YOU'RE FIRED! |

Tension between the current administration and the university continues to escalate.



Nandika Chatterjee
Breaking News Intern

Updated Apr. 24 2025 7:30PM EDT
Published Apr. 24 2025 2:19PM EDT



 **HOMEPAGE**

JA763



Chip Somodevilla/Getty Images

Sign Up to Receive Breaking News Alerts

Stay up-to-date on all the biggest stories you need to know.

SIGN UP

By clicking "Sign Up" you agree to [Terms of Use](#) and [Privacy Policy](#).

President Donald Trump has ripped into Harvard University, accusing the Ivy League college of being a “threat to democracy” following the school president’s refusal to comply with his demands.

Harvard President Vows No 'Compromise' With Trump

| ALL OR NOTHING |

Nandika Chatterjee



“Harvard is an Anti-Semitic, Far Left Institution, as are numerous others, with students being accepted from all over the World that want to rip our Country apart,” the president posted.

Top Stories

READ MORE

00:00

00:00

The Truth Social post references Harvard’s ongoing legal dispute with the administration, which it is suing after it was stripped of \$2.2 billion in federal funding earlier this week.

Trump went on to say that Harvard had hired a lawyer who is also affiliated with the Trump Organization.

“Harvard is a threat to Democracy, with a lawyer, who represents me, who should therefore be forced to resign, immediately, or be fired. He’s not that good, anyway, and I hope that my very big and beautiful company, now run by my sons, gets rid of him ASAP!” Trump said.



Donald Trump's Truth Social Post
Truth Social

CNN's Kaitlin Collins confirmed that the Trump Organization has ended its relationship with prominent conservative attorney Bill Burck.

Eric Trump confirmed to *CNN* that Burck will no longer serve as an outside adviser, stating, "I view it as a conflict and I will be moving in a different direction."

Burck, who is a former Special Counsel and Deputy Counsel to former President George W. Bush in Washington, D.C., and a former federal prosecutor in New York City, is not a newcomer to Trump's orbit. He was also appointed to the Fox Corporation Board of Directors in June 2021.

A seasoned Washington attorney and former federal prosecutor, he previously represented several senior Trump administration officials during the special counsel investigation into Russian interference in the 2016 election.

His ties to Trump deepened in the lead-up to the president's second inauguration, when the Trump Organization brought Burck on board to help navigate potential business ventures and ethical concerns.

At the time, the company praised Burck as one of the "nation's finest and most respected lawyers," highlighting his role in advising the firm on avoiding conflicts of interest, particularly with foreign entities.

Trump's decision to cut ties with Burck—announced in a social media post—highlights his willingness to turn against longtime allies over what he perceives as disloyalty.

If anything, perhaps because Burck did not seek Trump's company's blessings before agreeing to represent Harvard.

Harvard Turns to Billionaire Donors in Its War Against Trump

| GRASPING AT STRAWS |

Nandika Chatterjee



Trump’s public denouncement of the school was perhaps sparked by Garber’s *NBC News* interview Wednesday evening, when Garber declared he “will not compromise on certain issues.”

“We are defending what I believe is one of the most important lynchpins of the American economy and way of life—our universities,” Garber said.

Harvard President Vows No ‘Compromise’ With ...

“There is so much at stake,” Alan Garber told *NBC News*’ Lester Holt.

The Trump administration demanded Harvard change its hiring and admissions practices and eliminate its diversity, equity, and inclusion programs. The university says it won’t comply.

The U.S. president also came after Harvard’s tax-exempt status, while his Department of Homeland Security (DHS) threatened to eliminate its control over enrolling international students.

“The place is a Liberal mess, allowing a certain group of crazed lunatics to enter and exit the classroom and spew fake ANGER AND HATE. It is truly horrific! Now, since our filings began, they act like they are all ‘American Apple Pie,’” Trump’s post continued.

Can’t get enough of the Beast?

Unlock unrestricted access to our reporting with a paid subscription.

[Subscribe Now](#)

CERTIFICATE OF SERVICE

I hereby certify that on September 22, 2025, I electronically filed the foregoing Joint Appendix with the Clerk of Court for the United States Court of Appeals for the Second Circuit using the ACMS system, which will send notice of such filing to all counsel of record in compliance with Local Rule 25.1(h)(2).

Dated: September 22, 2025

By: s/ Rachel Goodman

Rachel Goodman

Protect Democracy Project

82 Nassau Street, #601

New York, NY 10038

Tel: (202) 579-4582

Fax: (202) 769-3176

rachel.goodman@protectdemocracy.org

Counsel for Plaintiffs-Appellants

No. 25-1529

IN THE UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

AMERICAN ASSOCIATION OF UNIVERSITY PROFESSORS, AMERICAN
FEDERATION OF TEACHERS,

Plaintiffs - Appellants,

v.

UNITED STATES DEPARTMENT OF JUSTICE,
(For Continuation of Caption, See Inside Cover)

Defendants - Appellees.

On Appeal from the United States District Court for the
Southern District of New York
Case No. 1:25-cv-02429-MKV (Hon. Mary Kay Vyskocil)

JOINT APPENDIX (JA769 – JA878)
VOLUME 6 OF 8

Orion Danjuma
Rachel Goodman
Protect Democracy Project
82 Nassau Street, #601
New York, NY 10038
Tel: (202) 579-4582
Fax: (202) 769-3176
orion.danjuma@protectdemocracy.org
rachel.goodman@protectdemocracy.org

*(For Additional Counsel, See Inside
Cover)*

Eve H. Cervantez
Matthew J. Murray
Connie K. Chan
ALTSHULER BERZON LLP
177 Post St., Suite 300
San Francisco, CA 94108
Tel: (415) 421-7151
Fax (415) 362-8064
ecervantez@altber.com
mmurray@altber.com
cchan@altber.com

(Caption Continued) PAMELA BONDI, in her official capacity as the U.S. Attorney General, LEO TERRELL, in his official capacity as Senior Counsel to the Assistant Attorney General for Civil Rights and head of the DOJ Task Force to Combat Anti-Semitism, UNITED STATES DEPARTMENT OF EDUCATION, LINDA MCMAHON, in her official capacity as the U.S. Secretary of Education, THOMAS E. WHEELER, in his official capacity as Acting General Counsel of the U.S. Department of Education, UNITED STATES DEPARTMENT OF HEALTH AND HUMAN SERVICES, ROBERT F. KENNEDY, JR., in his official capacity as the U.S. Secretary of Health and Human Services, SEAN R. KEVENEY, in his official capacity as Acting General Counsel of the U.S. Department of Health and Human Services, NATIONAL INSTITUTES OF HEALTH, MATTHEW J. MEMOLI, in his official capacity as the Acting Director of the National Institutes of Health, UNITED STATES GENERAL SERVICES ADMINISTRATION, STEPHEN EHIKIAN, in his official capacity as Acting Administrator of the U.S. General Services Administration, JOSH GRUENBAUM, in his official capacity as Commissioner of the Federal Acquisition Service,

Defendants - Appellees.

Additional counsel for Plaintiffs-Appellants:

Katie Schwartzmann
Protect Democracy Project
201 St. Charles Avenue, Ste. 114
New Orleans, LA 70170
Tel: (202) 579-4582
Fax: (202) 769-3176
katie.schwartzmann@protectdemocracy.org

Richard Primus
The University of Michigan Law School
(institutional affiliation provided for
identification
purposes only; not representing the
University)
625 S. State Street
Ann Arbor, MI 48109
Tel: (734) 647-5543
Fax: (734) 764-8309
PrimusLaw1859@gmail.com

Juhyung Harold Lee
Jonathan Rosenthal
ALTSHULER BERZON LLP
177 Post St., Suite 300
San Francisco, CA 94108
Tel: (415) 421-7151
Fax (415) 362-8064
hlee@altber.com
jrosenthal@altber.com

**JOINT APPENDIX
TABLE OF CONTENTS**

Tab. No.	Docket No.	Date Filed	Description	Page No.
Volume 1				
1			District Court Docket Sheet	JA1
Volume 2				
2	1	03/25/25	Complaint	JA26
3	27	04/03/25	Declaration of Todd Wolfson	JA113
4	28	04/03/25	Declaration of Julie Schmid & Exhibit A (<i>Condemning Hate and Affirming Freedom of Speech on Campus</i> , American Federation of Teachers (Nov. 9, 2023))	JA121
5	29	04/03/25	Declaration of Reinhold Martin	JA135
6	29-1	04/03/25	Exhibit A to the Declaration of Reinhold Martin (March 7, 2025 Email from Katrina Armstrong)	JA152
7	30	04/03/25	Declaration of Susan Witte	JA155
8	31	04/03/25	Declaration of Victoria Frye	JA164
9	32	04/03/25	Declaration of Jennifer S. Hirsch	JA169
10	45	04/03/25	Declaration of Veena Dubal	JA178
11	45-1	04/03/25	Exhibit A to the Declaration of Veena Dubal (March 24, 2025 Email from Danna Drori)	JA182
12	47	04/04/25	Declaration of Jonathan Rosenthal in Support of Plaintiffs' Motion for Preliminary Injunction	JA187
13	47-1	04/04/25	Exhibit 1 to the Declaration of Jonathan Rosenthal (Lydia Gall, <i>Hungary Continues Attacks on Academic Freedom</i> , Human Rights Watch (Sept. 3, 2020))	JA202

14	47-2	04/04/25	Exhibit 2 to the Declaration of Jonathan Rosenthal (Muzaffer Kaya, <i>Turkey's Purge of Critical Academia</i> , Middle East Report 288 (Fall 2018))	JA205
15	47-3	04/04/25	Exhibit 3 to the Declaration of Jonathan Rosenthal (Pedro Salgado, <i>The Crisis of Brazilian Universities: Higher Education Under Bolsonaro</i> , International Research Group on Authoritarianism and Counter-Strategies (July 22, 2021))	JA217
16	47-4	04/04/25	Exhibit 4 to the Declaration of Jonathan Rosenthal (<i>Agenda47: Protecting Students from the Radical Left and Marxist Maniacs Infecting Educational Institutions</i> , DJTFP 2024 (July 17, 2024))	JA225
17	47-5	04/04/25	Exhibit 5 to the Declaration of Jonathan Rosenthal (<i>Agenda47: The American Academy</i> , DJTFP 2024 (Nov. 1, 2023))	JA229
18	47-6	04/04/25	Exhibit 6 to the Declaration of Jonathan Rosenthal (Henry Reichman, <i>'The Professors Are the Enemy' Right-wing attacks on academic freedom have real repercussions.</i> , The Chronicle of Higher Education (Dec. 14, 2021))	JA233
19	47-7	04/04/25	Exhibit 7 to the Declaration of Jonathan Rosenthal (Rod Dreher, <i>"I would like to see European elites actually listen to their people for a change": An Interview with J.D. Vance</i> , The European Conservative (Feb. 22, 2024))	JA240
20	47-8	04/04/25	Exhibit 8 to the Declaration of Jonathan Rosenthal (Leo Terrell, <i>Senior Counsel to the Attorney General for Civil Rights, On Crushing Anti-Semitism On Campus</i> , HughHewitt & Duane Patterson (March 19, 2025))	JA252
21	47-9	04/04/25	Exhibit 9 to the Declaration of Jonathan Rosenthal (Feb. 17, 2025 Letter to Georgetown Law School from Edward R. Martin, Jr.)	JA259

22	47-10	04/04/25	Exhibit 10 to the Declaration of Jonathan Rosenthal (Jan Claassen, MD, et al., <i>Sleep Patterns May Reveal Comatose Patients with Hidden Consciousness</i> , Columbia University Irving Medical Center (March 3, 2025))	JA262
23	48-1	04/04/25	Exhibit 11 to the Declaration of Jonathan Rosenthal (Timothy Wang, MD, et al., <i>Nerves Electrify Stomach Cancer, Sparking Growth and Spread</i> , Columbia University Irving Medical Center (Feb. 19, 2025))	JA269
24	48-2	04/04/25	Exhibit 12 to the Declaration of Jonathan Rosenthal (Julia Wattacheril, MD, MPH, <i>Training Your Electronic Health Record to Think Like a Liver Doctor</i> , Columbia University Irving Medical Center (Feb. 20, 2025))	JA277
25	48-3	04/04/25	Exhibit 13 to the Declaration of Jonathan Rosenthal (Financial Overview of Columbia University)	JA283
Volume 3				
26	48-4	04/04/25	Exhibit 14 to the Declaration of Jonathan Rosenthal (Economic Impact of Columbia University)	JA290
27	48-5	04/04/25	Exhibit 15 to the Declaration of Jonathan Rosenthal (Ian Bogost, <i>A New Kind of Crisis for American Universities</i> , The Atlantic (Feb. 10, 2025))	JA299
28	48-6	04/04/25	Exhibit 16 to the Declaration of Jonathan Rosenthal (Willem Marx, <i>Campus protests over the war in Gaza have gone international</i> , NPR (May 3, 2024))	JA312
29	48-7	04/04/25	Exhibit 17 to the Declaration of Jonathan Rosenthal (Executive Order 14188 Additional Measures To Combat Anti-Semitism (January 29, 2025))	JA321
30	48-8	04/04/25	Exhibit 18 to the Declaration of Jonathan Rosenthal (Office of Public Affairs, <i>Justice Department Announces Formation of Task Force to Combat</i>	JA324

			<i>Anti-Semitism</i> , U.S. Department of Justice (Feb. 3, 2025))	
31	48-9	04/04/25	Exhibit 19 to the Declaration of Jonathan Rosenthal (Office of Communications and Outreach, <i>Justice Department Announces Formation of Task Force to Combat Anti-Semitism</i> , U.S. Department of Education (Feb. 3, 2025))	JA328
32	48-10	04/04/25	Exhibit 20 to the Declaration of Jonathan Rosenthal (<i>Statement on Notice From U.S. Department of Education Office of Civil Rights</i> , Columbia University Office of Public Affairs (Feb. 3, 2025))	JA331
33	49-1	04/04/25	Exhibit 21 to the Declaration of Jonathan Rosenthal (<i>HHS, ED, and GSA announce additional measures to end anti-Semitic harassment on college campuses</i> , U.S. General Services Administration (March 3, 2025))	JA334
34	49-2	04/04/25	Exhibit 22 to the Declaration of Jonathan Rosenthal (Truth Social Post from Donald J. Trump (March 4, 2025))	JA338
35	49-3	04/04/25	Exhibit 23 to the Declaration of Jonathan Rosenthal (<i>DOJ, HHS, ED, and GSA announce initial cancellation of grants and contracts to Columbia University worth \$400 million</i> , U.S. General Services Administration (March 7, 2025))	JA340
36	49-4	04/04/25	Exhibit 24 to the Declaration of Jonathan Rosenthal (Matthew Haag et al., <i>Decades Ago, Columbia Refused to Pay Trump \$400 Million</i> , The New York Times (March 21, 2025))	JA345
37	49-5	04/04/25	Exhibit 25 to the Declaration of Jonathan Rosenthal (<i>Responding to Federal Action</i> , Columbia Office of the President (March 7, 2025))	JA352
38	49-6	04/04/25	Exhibit 26 to the Declaration of Jonathan Rosenthal (March 13, 2025 Letter to Columbia University	JA356

39	49-7	04/04/25	Exhibit 27 to the Declaration of Jonathan Rosenthal (<i>Advancing Our Work to Combat Discrimination, Harassment, and Antisemitism at Columbia, Columbia University</i>)	JA359
40	49-8	04/04/25	Exhibit 28 to the Declaration of Jonathan Rosenthal (<i>HHS, ED, and GSA Respond to Columbia University's Actions to Comply with Joint Task Force Pre-Conditions</i> , U.S. Department of Health and Human Services (March 24, 2025))	JA364
41	49-9	04/04/25	Exhibit 29 to the Declaration of Jonathan Rosenthal (X Post from NIH (March 10, 2025))	JA369
42	49-10	04/04/25	Exhibit 30 to the Declaration of Jonathan Rosenthal (Caroline Lewis, <i>Hundred of research grants at Columbia canceled following Trump edict, administrator says</i> , Gothamist (March 11, 2025))	JA372
43	50-1	04/04/25	Exhibit 31 to the Declaration of Jonathan Rosenthal (Spreadsheet of Awards)	JA377
44	50-2	04/04/25	Exhibit 32 to the Declaration of Jonathan Rosenthal (Ryan Quinn, <i>Trump's Columbia Cuts Start Hitting Postdocs, Professors</i> , Inside Higher Ed (March 13, 2025))	JA420
45	50-3	04/04/25	Exhibit 33 to the Declaration of Jonathan Rosenthal (Humberto Basilio, <i>'My career is over': Columbia University scientists hit hard by Trump team's cuts</i> , Nature ((March 14, 2025))	JA428
46	50-4	04/04/25	Exhibit 34 to the Declaration of Jonathan Rosenthal (Joseph Goldstein, <i>Medical Research at Columbia Is Imperiled After Trump Terminates Funding</i> , The New York Times (March 18, 2025))	JA435
47	50-5	04/04/25	Exhibit 35 to the Declaration of Jonathan Rosenthal (Jason Mast, <i>Columbia scientists reel as Trump administration cancels grants, hitting broad suite of research</i> , Stat News (March 11, 2025))	JA442

48	50-6	04/04/25	Exhibit 36 to the Declaration of Jonathan Rosenthal (Isabella Cueto, <i>ME/CFS research program shuts down at Columbia after Trump cuts</i> , Stat News (March 19, 2025))	JA448
49	50-7	04/04/25	Exhibit 37 to the Declaration of Jonathan Rosenthal (March 30, 2025 Open letter in response to federal funding cuts at Columbia)	JA453
Volume 4				
50	50-8	04/04/25	Exhibit 38 to the Declaration of Jonathan Rosenthal (Mark Alfred, <i>The Trump Administration Cut Cancer and Alzheimer's Research Funding at Columbia University</i> , Notus (March 18, 2025))	JA477
51	50-9	04/04/25	Exhibit 39 to the Declaration of Jonathan Rosenthal (Thomas Bailey, <i>Update in Light of March 7 Federal Announcement</i> , Teachers College of Columbia University (March 7, 2025))	JA483
52	50-10	04/04/25	Exhibit 40 to the Declaration of Jonathan Rosenthal (Jocelyn Kaiser, <i>After Columbia's 'nightmare,' dozens more universities brace for Trump NIH cuts</i> , Science (March 18, 2025))	JA486
53	51-1	04/04/25	Exhibit 41 to the Declaration of Jonathan Rosenthal (Congressional Record, Senate (April 7, 1964))	JA490
54	51-2	04/04/25	Exhibit 42 to the Declaration of Jonathan Rosenthal (Congressional Record, House of Representatives (Feb. 7, 1964))	JA497
55	51-3	04/04/25	Exhibit 43 to the Declaration of Jonathan Rosenthal (Abigail A. Graber, <i>Religious Discrimination at School: Application of Title VI of the Civil Rights Act of 1964</i> , Congressional Research Service (Sept. 17, 2024))	JA504
56	51-4	04/04/25	Exhibit 44 to the Declaration of Jonathan Rosenthal (Jared P. Cole, <i>Civil Rights at School: Agency Enforcement of Title VI of the Civil Rights Act of</i>	JA511

			1964, Congressional Research Service (April 4, 2019))	
57	51-5	04/04/25	Exhibit 45 to the Declaration of Jonathan Rosenthal (<i>Case Processing Manual</i> , U.S. Department of Education Office for Civil Rights (Feb. 19, 2025))	JA539
58	51-6	04/04/25	Exhibit 46 to the Declaration of Jonathan Rosenthal (<i>Upholding Our Values</i> , Columbia Office of the President (Oct. 18, 2023))	JA572
59	51-7	04/04/25	Exhibit 47 to the Declaration of Jonathan Rosenthal (<i>Standing in Solidarity</i> , Columbia Office of the President (Oct. 27, 2023))	JA575
60	51-8	04/04/25	Exhibit 48 to the Declaration of Jonathan Rosenthal (<i>Task Force on Antisemitism</i> , Columbia University	JA578
Volume 5				
61	51-9	04/04/25	Exhibit 49 to the Declaration of Jonathan Rosenthal (<i>Announcing Task Force on Antisemitism</i> , Columbia Office of the President (Nov. 1, 2023))	JA587
62	51-10	04/04/25	Exhibit 50 to the Declaration of Jonathan Rosenthal (<i>About the Task Force on Antisemitism</i> , Columbia University)	JA590
63	52-1	04/04/25	Exhibit 51 to the Declaration of Jonathan Rosenthal (<i>Report #1: Task Force on Antisemitism Columbia University's Rules on Demonstrations</i> , Columbia University (March 2024))	JA593
64	52-2	04/04/25	Exhibit 52 to the Declaration of Jonathan Rosenthal (<i>President Shafik Welcomes the First Set of Recommendations From the Task Force on Antisemitism</i> , Columbia Office of the President (March 4, 2024))	JA612
65	52-3	04/04/25	Exhibit 53 to the Declaration of Jonathan Rosenthal (<i>Report #2: Task Force on Antisemitism</i> , Columbia University (Aug. 2024))	JA615

66	52-4	04/04/25	Exhibit 54 to the Declaration of Jonathan Rosenthal (<i>Combatting Antisemitism</i> , Columbia Office of the President)	JA620
67	52-5	04/04/25	Exhibit 55 to the Declaration of Jonathan Rosenthal (<i>University Statement Regarding UJB Determinations</i> , Columbia University Office of Public Affairs (March 13, 2025))	JA625
68	52-6	04/04/25	Exhibit 56 to the Declaration of Jonathan Rosenthal (Office of Public Affairs, <i>Federal Task Force to Combat Antisemitism Announces Visits to 10 College Campuses that Experienced Incidents of Antisemitism</i> , U.S. Department of Justice (Feb. 28, 2025))	JA628
69	52-7	04/04/25	Exhibit 57 to the Declaration of Jonathan Rosenthal (Office of Communications and Outreach, <i>U.S. Department of Education's Office for Civil Rights Sends Letters to 60 Universities Under Investigation for Antisemitic Discrimination and Harassment</i> , U.S. Department of Education (March 10, 2025))	JA632
70	52-8	04/04/25	Exhibit 58 to the Declaration of Jonathan Rosenthal (Maya Sulkin, <i>Columbia University Says One Thing to Trump Admin—and Another in Private</i> , The Free Press (March 25, 2025))	JA637
71	52-9	04/04/25	Exhibit 59 to the Declaration of Jonathan Rosenthal (<i>A Message from Dr. Katrina A. Armstrong</i> , Columbia University Office of Public Affairs (March 28, 2025))	JA642
72	52-10	04/04/25	Exhibit 60 to the Declaration of Jonathan Rosenthal (<i>Joint Task Force statement regarding Columbia University's steps to advance negotiations</i> , U.S. General Services Administration (March 28, 2025))	JA645
73	52-11	04/04/25	Exhibit 61 to the Declaration of Jonathan Rosenthal (Eugene Volokh et al., <i>A Statement from</i>	JA648

			<i>Constitutional Law Scholars on Columbia</i> , The New York Review (March 20, 2025))	
74	93	05/01/25	Declaration of Josh Gruenbaum in Opposition to Plaintiffs' Motion for a Preliminary Injunction	JA653
75	93-1	05/01/25	Exhibit A to the Declaration of Josh Gruenbaum (March 3, 2025 Memorandum to Columbia University from Josh Gruenbaum)	JA657
76	94	05/01/25	Declaration of Allison M. Rovner in Opposition to Plaintiffs' Motion for a Preliminary Injunction	JA661
77	94-1	05/01/25	Exhibit A to the Declaration of Allison Rovner (March 7, 2025 Letter to the Trustees of Columbia University from Mark Washington)	JA663
78	94-2	05/01/25	Exhibit B to the Declaration of Allison Rovner (March 7, 2025 Letter to the Teachers College Columbia University from Mark Washington)	JA666
79	94-3	05/01/25	Exhibit C to the Declaration of Allison Rovner (Oral Argument Transcript of Mahmoud Kahil et al., v. The Trustees of Columbia University in the City of New York, et al. (March 25, 2025))	JA669
80	99	05/08/25	Reply Declaration of Jonathan Rosenthal in Support of Plaintiffs' Motion for Preliminary Injunction	JA674
81	99-1	05/08/25	Exhibit 62 to the Reply Declaration of Jonathan Rosenthal (Sara Reardon, <i>Exclusive: NIH freezes all research grants to Columbia University</i> , Science (April 9, 2025))	JA680
82	99-2	05/08/25	Exhibit 63 to the Reply Declaration of Jonathan Rosenthal (Maddie Khaw, <i>All of Columbia's NIH Funding Is Apparently Frozen. Here's What That Looks Like for One Researcher</i> , Chronicle (April 11, 2025))	JA683

83	99-3	05/08/25	Exhibit 64 to the Reply Declaration of Jonathan Rosenthal (April 11, 2025 Letter to Harvard University)	JA690
84	99-4	05/08/25	Exhibit 65 to the Reply Declaration of Jonathan Rosenthal (Michael C. Bender et al., <i>Inside Trump's Pressure Campaign on Universities</i> , The New York Times (April 14, 2025))	JA696
85	99-5	05/08/25	Exhibit 66 to the Reply Declaration of Jonathan Rosenthal (<i>Sustaining Columbia's Vital Mission</i> , Columbia Office of the President (April 14, 2025))	JA714
86	99-6	05/08/25	Exhibit 67 to the Reply Declaration of Jonathan Rosenthal (April 14, 2025 Letter from Harvard University)	JA717
87	99-7	05/08/25	Exhibit 68 to the Reply Declaration of Jonathan Rosenthal (<i>Joint Task Force to Combat Anti-Semitism Statement Regarding Harvard University</i> , U.S. Department of Education (April 14, 2025))	JA720
88	99-8	05/08/25	Exhibit 69 to the Reply Declaration of Jonathan Rosenthal (Liz Essley Whyte et al., <i>The Little-Known Bureaucrats Tearing Through American Universities</i> , The Wall Street Journal (April 14, 2025))	JA722
89	99-9	05/08/25	Exhibit 70 to the Reply Declaration of Jonathan Rosenthal (Alan Blinder, <i>Trump Has Targeted These Universities. Why?</i> , The New York Times (April 15, 2025))	JA732
90	99-10	05/08/25	Exhibit 71 to the Reply Declaration of Jonathan Rosenthal (<i>Miguel S. Urquiola</i> , Columbia Office of the Provost)	JA739
91	99-11	05/08/25	Exhibit 72 to the Reply Declaration of Jonathan Rosenthal (Meghnad Bose et al., <i>Inside Columbia's Betrayal of its Middle Eastern Studies Department</i> , The Intercept (April 16, 2025))	JA742

92	99-12	05/08/25	Exhibit 73 to the Reply Declaration of Jonathan Rosenthal (Truth Social Post from Donald J. Trump (April 16, 2025))	JA755
93	99-13	05/08/25	Exhibit 74 to the Reply Declaration of Jonathan Rosenthal (Anil Oza et al., <i>NIH said to have halted awarding of new grants to more top universities</i> , Stat News (April 18, 2025))	JA757
94	99-14	05/08/25	Exhibit 75 to the Reply Declaration of Jonathan Rosenthal (X Post from Max Kozlov (April 18, 2025))	JA760
95	99-15	05/08/25	Exhibit 76 to the Reply Declaration of Jonathan Rosenthal (Nandika Chatterjee, <i>Trump Takes Personal Revenge on Harvard's Lawyer for Standing Up to Him</i> , Daily Beast (April 24, 2025))	JA762
Volume 6				
96	99-16	05/08/25	Exhibit 77 to the Reply Declaration of Jonathan Rosenthal (May 5, 2025 Letter to Hard University from Linda E. McMahon)	JA769
97	99-17	05/08/25	Exhibit 78 to the Reply Declaration of Jonathan Rosenthal (<i>Preserving Columbia's Critical Research Capabilities</i> , Columbia Office of the President (May 6, 2025))	JA773
98	99-18	05/08/25	Exhibit 79 to the Reply Declaration of Jonathan Rosenthal (Diabetes Prevention Program et al., <i>An open letter to the Columbia administration</i> , Columbia Spectator (May 4, 2025))	JA777
99	99-19	05/08/25	Exhibit 80 to the Reply Declaration of Jonathan Rosenthal (Liz Essley Whyte et al., <i>Trump Administration Proposes Terms for Federal Oversight of Columbia University</i> , The Wall Street Journal (May 5, 2025))	JA781
100	100	05/08/25	Supplemental Declaration of Todd Wolfson	JA785

101	101	05/08/25	Supplemental Declaration of Julie Schmid	JA796
102	102	05/08/25	Supplemental Declaration of Reinhold Martin	JA800
103	103	05/08/25	Declaration of Joshua Jacobs	JA804
104	104	05/08/25	Declaration of Jamie Daw	JA812
105	105	05/08/25	Declaration of Abigail Greenleaf	JA818
106	121	05/20/25	Order Denying Requests to Seal	JA823
107	124	05/23/25	Declaration of Matthew Murray in Support of Plaintiffs' Motion for Preliminary Injunction	JA829
108	124-1	05/23/25	Exhibit A to the Declaration of Matthew Murray (HHS' Civil Rights Office Finds Columbia University in Violation of Federal Civil Rights Law, U.S. Department of Health and Human Services (May 22, 2025))	JA831
109	128	05/23/25	Declaration of Ezra Susser (Witness B)	JA836
110	129	05/23/25	Declaration of Joseph Slaughter (Witness C)	JA844
111	130	05/23/25	Declaration of Joel Swanson (Witness D)	JA849
112	131	05/23/25	Declaration of Andrew Geneslaw (Witness K)	JA857
113	132	05/23/25	Declaration of Alex de Sherbinin (Witness L)	JA863
114	133	05/23/25	Declaration of Mary Beth Terry (Witness M)	JA868
115	134	05/23/25	Declaration of Steven Chillrud (Witness N)	JA873
Volume 7				
116	136	05/23/25	Declaration of Teresa Javenic (Witness O)	JA879
117	137	05/23/25	Supplemental Declaration of Joseph Slaughter (Witness C)	JA886

118	138	05/23/25	Supplemental Declaration of Andrew Geneslaw (Witness K)	JA889
119	139	05/23/25	Amended Declaration of Melanie Wall (Witness A)	JA892
120	140	05/23/25	Amended Declaration of Safia Southey (Witness E)	JA899
121	141	05/23/25	Amended Declaration of Anne Li (Witness I)	JA903
122	142-1	05/23/25	Amended Declaration of Jon Lorsch, Ph.D	JA907
123	142-2	05/23/25	Exhibit A to the Amended Declaration of Jon Lorsch (<i>NIH Grants Policy Statement</i> , National Institutes of Health (April 2024))	JA914
124	142-3	05/23/25	Exhibit B to the Amended Declaration of Jon Lorsch (Dorothy A. Fink, <i>Secretarial Directive on DEI-Related Funding</i> , Department of Health & Human Services (Feb. 10, 2025))	JA921
125	142-4	05/23/25	Exhibit C to the Amended Declaration of Jon Lorsch (Matthew J. Memoli, M.D., <i>Directive on NIH Priorities</i> , National Institutes of Health (Feb. 21, 2025))	JA924
126	142-5	05/23/25	Exhibit D to the Amended Declaration of Jon Lorsch (March 10, 2025 Letter to Angela V. Olinto, Ph.D., from Michelle G. Bulls)	JA927
127	142-6	05/23/25	Exhibit E to the Amended Declaration of Jon Lorsch (March 14, 2025 Letter to Angela V. Olinto, Ph.D., from Michelle G. Bulls)	JA930
128	142-7	05/23/25	Exhibit F to the Amended Declaration of Jon Lorsch (March 7, 2025 Notification of Termination of Multiple Task Orders to the Trustees of Columbia University from Alice Pagán Pereira)	JA933
129	149	06/16/25	Notice of Appeal	JA935
Volume 8				

130	145	05/29/25	Amended Declaration of Witness J (To be filed UNDER SEAL and included in Joint Appendix contingent upon this Court's grant of Plaintiffs' Unopposed Motion to File Under Seal)	JA937

EXHIBIT 77



THE SECRETARY OF EDUCATION
WASHINGTON, DC 20202

May 5, 2025

Dr. Alan Garber
Office of the President
Harvard University
Massachusetts Hall
Cambridge, MA 02138

Dr. Garber,

The Federal Government has a sacred responsibility to be a wise and important steward of American taxpayer dollars. Harvard University, despite amassing a largely tax-free \$53.2 billion dollar endowment (larger than the GDP of 100 countries), receives billions of dollars of taxpayer largess each year. Receiving such taxpayer funds is a privilege, not a right. Yet instead of using these funds to advance the education of its students, Harvard is engaging in a systemic pattern of violating federal law. Where do many of these “students” come from, who are they, how do they get into Harvard, or even into our country—and why is there so much HATE? These are questions that must be answered, among many more, but the biggest question of all is, why will Harvard not give straightforward answers to the American public?

Harvard University has made a mockery of this country’s higher education system. It has invited foreign students, who engage in violent behavior and show contempt for the United States of America, to its campus. In every way, Harvard has failed to abide by its legal obligations, its ethical and fiduciary duties, its transparency responsibilities, and any semblance of academic rigor. It had scrapped standardized testing requirements and a normalized grading system. This year Harvard was forced to adopt an embarrassing “remedial math” program for undergraduates. Why is it, we ask, that Harvard has to teach simple and basic mathematics, when it is supposedly so hard to get into this “acclaimed university”? Who is getting in under such a low standard when others, with fabulous grades and a great understanding of the highest levels of mathematics, are being rejected?

Harvard has even been embroiled in humiliating plagiarism scandals, exposed clearly and plainly in the media, with respect to your then University President, who was an embarrassment to our Nation. Much of Harvard’s hateful discrimination was revealed, last year, by the great work of Congresswoman Elise Stefanik, and her Committee. As if it were trying to embarrass itself even further, Harvard hired failed Mayors Bill De Blasio and Lori Lightfoot, perhaps the worst mayors ever to preside over major cities in our country’s history, to supposedly teach “leadership” at their School of Public Health. This is like hiring the captain of the Titanic to teach navigation to future captains of the sea.

This incomprehensible failure becomes more understandable after reviewing Harvard’s management. The Harvard Corporation, which is supposed to competently and professionally manage Harvard’s vast academic, financial, and physical resources, is run by strongly left-leaning Obama political appointee Penny Pritzker, a Democrat operative, who is catastrophic and

running the institution in a totally chaotic way. Harvard alumnus and highly successful hedge fund manager Bill Ackman noted that, under her leadership, Harvard has become “a political advocacy organization for one party.”

Ackman has called for the resignation of Pritzker, concluding that the “[t]he mismanagement here is Penny Pritzker” and noting that any serious corporation would have removed her after a litany of recent failings and the fact that, incredibly, “Harvard is not in a good financial position.” According to Ackman, one of the world’s foremost finance experts, Harvard’s so-called \$53 billion endowment is “massively overstated as far as what it’s really worth,” and Harvard has irresponsibly taken out \$8 billion in debt.

If this is true, it is concerning evidence of Harvard’s disastrous mismanagement, indicating an urgent need for massive reform—not continued taxpayer investment. If Harvard prefers not to change, then Harvard should have no problem using its overflowing endowment to fund its bloated bureaucracy.

At its best, a university should fulfill the highest ideals of our Nation, and enlighten the thousands of hopeful students who walk through its magnificent gates. But Harvard has betrayed this ideal.

Perhaps most alarmingly, Harvard has failed to abide by the United States Supreme Court’s ruling demanding that it end its racial preferencing, and continues to engage in ugly racism in its undergraduate and graduate schools, and even within the Harvard Law Review itself. Our universities should be bastions of merit that reward and celebrate excellence and achievement. They should not be incubators of discrimination that encourage resentment and instill grievance and racism into our wonderful young Americans.

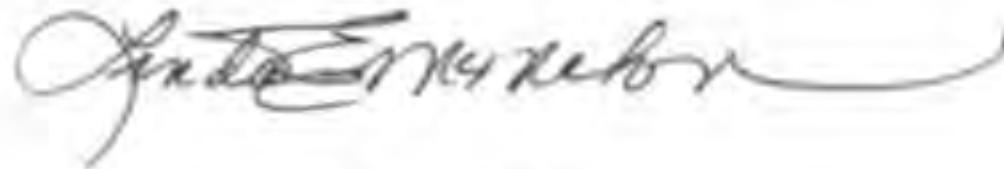
The above concerns are only a fraction of the long list of Harvard’s consistent violations of its own legal duties. Given these and other concerning allegations, this letter is to inform you that Harvard should no longer seek GRANTS from the federal government, since none will be provided. Harvard will cease to be a publicly funded institution, and can instead operate as a privately-funded institution, drawing on its colossal endowment, and raising money from its large base of wealthy alumni. You have an approximately \$53 Billion head start, much of which was made possible by the fact that you are living within the walls of, and benefiting from, the prosperity secured by the United States of America and its free-market system you teach your students to despise.

The Administration had previously been willing to maintain federal funding to Harvard, so long as Harvard committed to complying with long-settled Federal Law, including to protect and promote student welfare and the landmark decision of our Supreme Court against racial preferencing. The proposed common-sense reforms – which the Administration remains committed to – include a return to merit-based admissions and hiring, an end to unlawful programs that promote crude identity stereotypes, disciplinary reform and consistent accountability, including for student groups, cooperation with Law Enforcement, and reporting compliance with the Department of Education, Department of Homeland Security, and other

Federal Agencies. The Administration's priorities have not changed and today's letter marks the end of new grants for the University.

These requests will advance the best interests of Harvard University, so it can reclaim its status as a respected educational institution for the future leaders of America. Thank you for your attention to this matter!

Sincerely,

A handwritten signature in black ink, appearing to read "Linda E. McMahon", with a long, sweeping horizontal flourish extending to the right.

Linda E. McMahon
Secretary of Education

EXHIBIT 78

COLUMBIA | OFFICE OF THE PRESIDENT

[Home](#) » [Announcements](#) » Preserving Columbia's Critical Research Capabilities

[ANNOUNCEMENTS](#)

Preserving Columbia's Critical Research Capabilities

May 06, 2025



Dear members of the Columbia community:

In March, the University [shared its plan](#)  to assess and prioritize our research activity in light of substantial cuts to more than 300 multi-year awards for federally funded research. We write today to provide an update on the review process and share next steps as we continue to navigate how to best allocate resources amid significant fiscal pressures.

As many of you are aware, the University is engaged in a two-pronged effort related to grants terminated by the federal government. The first prong focuses on our continued efforts to restore our partnerships with government agencies that support critical research. Separately and in parallel, our Deans have carefully reviewed and prioritized our research activity to develop a plan for managing the affected research. We asked each principal investigator of a terminated award to develop a Research Action Plan (RAP) for review at the school level and to inform a school-based approach. During this review period, the University continued to fund those individuals whose salaries and stipends were previously funded with federal support on now-terminated awards.

JA774

Columbia's leadership continues discussions with the federal government in support of resuming activity on these research awards and additional other awards that have remained active, but unpaid. We are working on and planning for every eventuality, but the strain in the meantime, financially and on our research mission, is intense. Therefore, the second prong of our efforts is to take action to adjust—and in some cases reduce—expenditures based on current financial realities.

Moving forward, we will be running lighter footprints of research infrastructure in some areas and, in others, maintaining a level of research continuity as we pursue alternate funding sources. In some cases, schools and departments are winding down activity but remain prepared to reestablish capabilities if support is restored. Across the research portfolio we have had to make difficult choices and unfortunately, today, nearly 180 of our colleagues who have been working, in whole or in part, on impacted federal grants, will receive notices of non-renewal or termination. This represents about 20% of the individuals who are funded in some manner by the terminated grants.

We do not make these decisions lightly. We are deeply committed, at Columbia, to the critical work of invention, innovation and discovery. The excellence of our research portfolio is fundamental to our identity, and we are determined to support it. Part of that support means recognizing a changing landscape. Increasing budget constraints combined with uncertainty related to future levels of federal funding for research, including proposed reductions in facilities and administration (i.e., indirect costs) reimbursements, requires us to make difficult choices. We have had to make deliberate, considered decisions about the allocation of our financial resources. Those decisions also impact our greatest resource, our people. We understand this news will be hard.

As schools and departments moved through the process of reviewing priorities related to terminated awards, it became clear that we need to be prepared to make additional investments to secure the strength of our research enterprise as we navigate future periods of uncertainty and change. Additional complexities and risks include the process and funding for obtaining new awards and continuations of existing research projects. To that end, the University has established a Research Stabilization Fund to navigate these future funding risks and lend support to our scientific community in multiple forms. These resources will be made available through an application process for internal grants to scientists to support their work for a limited time as they seek alternate sources of funding or complete the components of their research to enable publication of results. In addition, the University will contribute funds to schools over the next year to support our commitments to graduate students and post-doctoral fellows on terminated training grants, an area that has been severely impacted by terminations of federal support. The [Stabilization Fund and Other Resources](#)  webpage developed by the Office of the Executive Vice President for Research provides more details about these funds and other resources on funding opportunities for the research community.

Federal actions over the last several months and our perspective on the scale and scope of future funding challenges requires that we look across the University, not just to areas directly impacted by federally funded research, and continue to support Columbia as a national leader in higher education, pioneering research, outstanding patient care, and global societal impact. We will continue to make prudent budget decisions that will ensure long-term financial stability across the University, including making significant budget reductions within the University's central administration. Across the University, we have set parameters to keep most salaries at their current level, without increases for the next fiscal year, with some schools and units providing a modest pool for employees at the lower end of their salary distribution. We have also developed programs to further streamline our workforce through attrition and are preparing to launch a voluntary retirement incentive program, the details of which will be shared next week.

In the coming weeks and months, we will need to continue to take actions that preserve our financial flexibility and allow us to invest in areas that drive us forward. This is a deeply challenging time across all higher education, and we are attempting to navigate through tremendous ambiguity with precision, which will be imperfect at times.

We are grateful for the exceptional leadership and professionalism of our deans, chairs, and senior management who have come together to navigate this critical moment with care and integrity, while upholding and advancing Columbia's mission, values, and the unique qualities that make this a vital, extraordinary place. At the heart of everything we do is our unwavering commitment to the important work that Columbia has led for more than 270 years. As we continue to move forward, the compassion and teamwork of our community exemplify the best of Columbia.

Sincerely,

Claire Shipman
Acting President, Columbia University in the City of New York

Angela V. Olinto
Provost, Professor of Astronomy and of Physics

Anne Sullivan
Executive Vice President for Finance

Jeannette Wing
Executive Vice President for Research, Professor of Computer Science

News

May 06, 2025

[Preserving Columbia's Critical Research Capabilities](#)

May 03, 2025

[A Message of Thanks and Pride](#)

April 28, 2025

[Supporting Our International Community](#)

April 18, 2025

[Building on Our Commitment to Listen and Learn](#)

April 14, 2025

[Sustaining Columbia's Vital Mission](#)

EXHIBIT 79

OPINION | OP-EDS

An open letter to the Columbia administration



By [Anna Fedorova](#) / Staff Photographer

BY [DPP/DPPOS RESEARCH GROUP](#) • MAY 4, 2025 AT 8:38 PM

[Share](#)

On March 10, the federal grant funding the Diabetes Prevention Program Outcomes Study [was terminated](#) by the National Institutes of Health as part of the federal government's response to alleged Title VI infractions at Columbia. Although Columbia is considered the primary recipient of this grant, 90 percent of the funds were being spent outside of Columbia through subcontracts to 30 Diabetes Prevention Program Outcomes Study centers located in 21 states. However, as the central [financial grantee](#), only Columbia can appeal the termination of the grant, and to date, it has been reluctant to do so. Without funding, the DPPOS, [which is almost 30 years old](#), will die.

JA778



subject through a lifestyle intervention program directed at weight loss and increased physical activity. Its major results were announced in 2001 and published in the New England Journal of Medicine in 2002. Today, the DPP publication remains the most frequently cited article in the diabetes prevention literature. The DPP lifestyle intervention was subsequently adopted by the Centers for Medicare and Medicaid Services as the Medicare DPP.

Since the completion of the DPP, which spanned from 1996 to 2001, its participants have been continuously monitored to determine the longer-term consequences of diabetes prevention, including potential benefits for heart disease, stroke, eye and kidney disease, cancer, and frailty. Of note, the prediabetes and diabetes populations in the United States total approximately 100 million and 40 million, respectively. The DPPOS study therefore seeks to study health concerns that affect a substantial fraction of the U.S. population—thus the long-term maintenance of the study is critical to addressing multiple major public health issues.

Beginning in 2022, DPPOS turned its attention to examining the development of Alzheimer's disease and other dementias among its diabetic and prediabetic members, who now have an average age in the 70s. With the shift in focus, the funding moved to Columbia, which in turn distributed it nationwide.

Since March 10, the DPPOS leadership has sought to have the funding restored by highlighting our innocent bystander status in the press and appealing to members of the Congressional Diabetes Caucus, the largest caucus in Congress. Thus far, Columbia has not submitted a formal appeal of the termination to the NIH on our behalf; instead, it has required us to wait while it negotiates a University wide appeal. Unfortunately, this places our study in grave peril. Staff at the 30 clinical sites are already being laid off, and clinics are preparing to close.

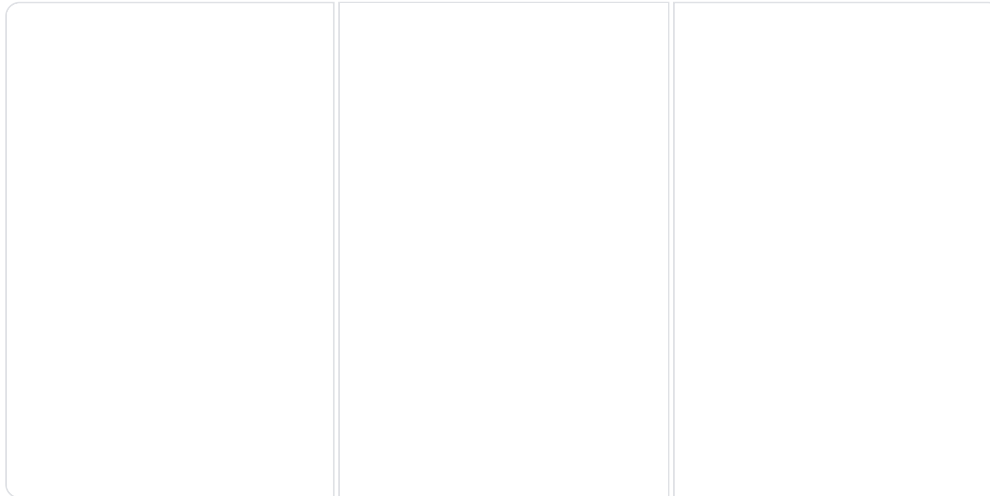
The failure of Columbia to file a timely appeal on behalf of the DPPOS is damaging the DPPOS infrastructure irreversibly. We cannot wait any longer to submit the appeal, which may be our only hope. Further, Columbia has prevented us from submitting an application to the NIH for a supplement that would allow us to conduct an orderly close-out, protect the data, and honorably conclude the relationship with study participants. The loss of the DPPOS would mean that important public health questions related to diabetes and dementia may never be answered: the almost 30 years of data it has collected from its 1,700 current participants is unique and cannot be replicated.

The DPPOS is addressing the prevention of chronic diseases that have been highlighted by the current federal administration. Every day that goes by threatens the survival of this valuable scientific resource. Without funding, staff at our 30 centers will need to find new employment; with their departure, long-term connections with loyal participants will inevitably disintegrate.



termination immediately. Alternatively, Columbia could request supplemental funding from the NIH in order to carry out an orderly study closeout. Unless Columbia acts now, the DPP/DPPOS will end, leaving unaddressed some of the most important questions in public health.

The Diabetes Prevention Program and DPP Outcomes Study Research Group is composed of the investigators and staff at the study centers including the participant study sites, coordinating center, central laboratory, and reading centers.



Editor's Top I
Baja Llama

To respond to this op-ed, or to submit your own, contact opinion@columbiaspectator.com.

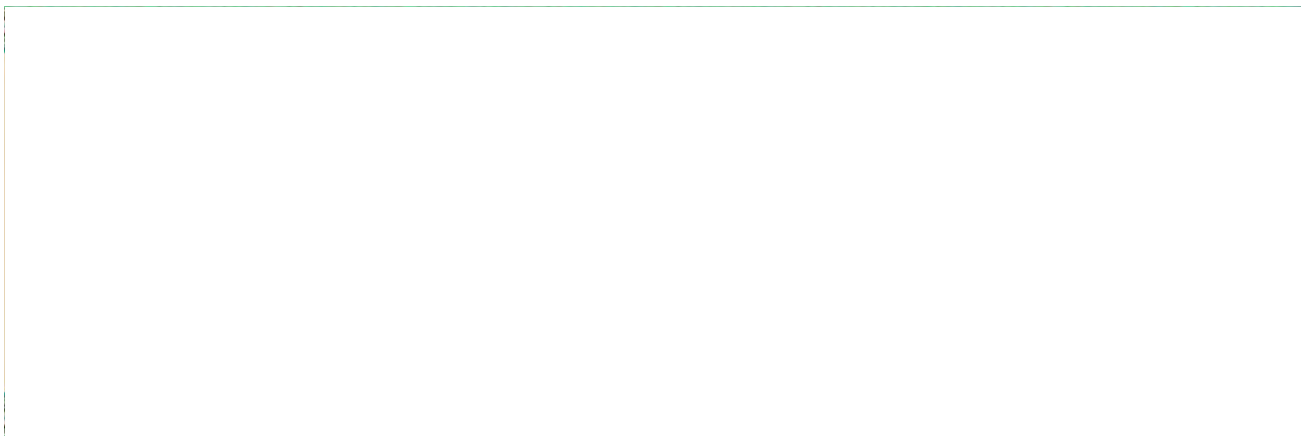


EXHIBIT 80

This copy is for your personal, non-commercial use only. Distribution and use of this material are governed by our Subscriber Agreement and by copyright law. For non-personal use or to order multiple copies, please contact Dow Jones Reprints at 1-800-843-0008 or visit www.djreprints.com.

<https://www.wsj.com/us-news/education/trump-columbia-university-consent-decree-proposal-d21830f2>

EXCLUSIVE**U.S. EDUCATION NEWS**[Follow](#)

Trump Administration Proposes Terms for Federal Oversight of Columbia University

The government has presented the Ivy League school with a proposal for a consent decree

By [Liz Essley Whyte](#) [Follow](#) and [Douglas Belkin](#) [Follow](#)

May 5, 2025 5:22 pm ET



Columbia University was thrust into a battle with the Trump administration in March. PHOTO: CHARLY TRIBALLEAU/AGENCE FRANCE-PRESSE/GETTY IMAGES

Key Points

What's This? [i](#)

- The Trump administration proposed a consent decree for Columbia, granting a judge oversight of compliance.
- The government is seeking viewpoint diversity among faculty and wants Columbia not to consider race in admissions.
- Columbia faces a choice: to negotiate decree, or fight in court, risking funding and public scrutiny.

The Trump administration has presented Columbia University with a proposal for a [consent decree](#), a form of federal oversight that would give a judge responsibility for ensuring Columbia complies with the agreement, according to people familiar with the matter.

Columbia leaders are negotiating with the government and weighing what to do, the people said. The university's board is undecided on whether to accept a consent decree, they said. For a consent decree to take effect, Columbia would have to agree to enter it.

The government has told the school that it can either negotiate and accept a consent decree, or face a court battle that could end up with the school facing more public scrutiny and in the end the same kind of legal agreement to make changes, perhaps with worse terms, they said.

With a consent decree, the government is seeking viewpoint diversity among Columbia's faculty and that the school not consider race in admissions, the people said.

Columbia was thrust into a battle with the Trump administration in March, when the government [canceled \\$400 million](#) in federal grants and contracts over concerns about campus antisemitism. The school agreed to an [initial list of demands](#), and is now in further talks about the future of its federal funding.

The negotiations at Columbia are part of a broader fight between the Trump administration and elite universities. The White House is also fighting [Harvard University](#) over federal funding, among other things.

A Columbia spokesperson said: "This story is based entirely on hearsay and does not hold merit." She pointed to a statement issued last month from acting university president Claire Shipman, who said that Columbia would reject any agreement that would require relinquishing its independence.

A consent decree would be a major escalation of how the federal government normally resolves education-related civil-rights issues. Typically after federal lawyers investigate and find evidence that civil rights were violated, schools enter voluntary agreements to change their practices. The federal government has little ability to enforce such agreements. The Biden administration entered into such voluntary agreements over antisemitism concerns with Brown University and Rutgers.

Columbia could fight the move in court; the Justice Department would need to prove that the arrangement is warranted. But a court case could take years, and Columbia would likely lose federal funding in the interim—and might ultimately lose. Opposing the move would also open the school up to required depositions and legal fact-finding, which could keep the school's campus politics in the spotlight.

Typically a consent decree involves a legally binding agreement, with compliance overseen by a judge. In the past, the government has implemented consent decrees in instances such as the Live Nation merger, where the newly formed company agreed to certain restrictions. Such decrees were used heavily during the Obama administration to negotiate with cities for changes to their police departments.

Write to Liz Essley Whyte at liz.whyte@wsj.com and Douglas Belkin at Doug.Belkin@wsj.com

Appeared in the May 6, 2025, print edition as 'Columbia Pressed To Accept Consent Decree'.

Further Reading

Trump Administration Cuts Off New Federal Grants to Harvard

Bill Ackman Backs Harvard Losing Tax-Exempt Status, Calls for Board Overhaul

Harvard's Brawl With Trump Casts Doubt on Its Pristine Credit

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

AMERICAN ASSOCIATION OF
UNIVERSITY PROFESSORS,

and

AMERICAN FEDERATION OF
TEACHERS,

Plaintiffs,

v.

UNITED STATES DEPARTMENT OF
JUSTICE, *et al.*,

Defendants.

Case No. 1:25-cv-02429-MKV

Supplemental Declaration of Todd Wolfson

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

AMERICAN ASSOCIATION OF UNIVERSITY
PROFESSORS,

Case No. 1:25-cv-02429-MKV

and

AMERICAN FEDERATION OF TEACHERS,

Plaintiffs,

v.

UNITED STATES DEPARTMENT OF JUSTICE. *et*
al.,

Defendants.

SUPPLEMENTAL DECLARATION OF TODD WOLFSON

I, Todd Wolfson, hereby declare as follows:

1. I currently serve as President of the American Association of University Professors (“AAUP”), a plaintiff in this action. I have served in that position since June 2024. I previously submitted a declaration in this action describing my background. *See* Declaration of Todd Wolfson (Mar. 31, 2025) (ECF 27).

2. I have personal knowledge of the facts set forth in this supplemental declaration in support of Plaintiff’s Motion for Preliminary Injunction, and if called as a witness in this action, I could and would testify competently to these facts.

3. In my previous declaration, I described harms that the AAUP’s members and the AAUP itself have suffered and will suffer from Defendants’ actions without a preliminary injunction. I have reviewed declarations submitted by other AAUP/AFT members describing harms they have suffered and will suffer without a preliminary injunction. I have also reviewed the April 1, 2025 Declaration of AFT Director of Higher Education Julie Schmid, describing harms

that the American Federation of Teachers (“AFT”), AAUP’s affiliate organization and co-plaintiff in this action, has suffered and will suffer without a preliminary injunction. This supplemental declaration summarizes the harms to the AAUP, the AFT, and their members described in those prior declarations.

Harms to AAUP and AFT Members

4. The following paragraphs of my pervious declaration and other AAUP/AFT members’ declarations describe the direct financial harms from loss of federal funding that AAUP/AFT members are suffering from Defendants’ cancelation of federal funding to Columbia and are at imminent risk of suffering as a result of Defendants’ threats to cancel more funding if Columbia does not accede to Defendants’ demands:

- a. **Declaration of Reinhold Martin (April 2, 2025) (ECF 29):** ¶¶13, 15 (AAUP/AFT member’s grant cut, grant covered 80% of salary), ¶¶22-23 (canceled grant covered “bulk” of salary), ¶¶32, 36 (grant funding two professors was canceled), ¶¶43, 49 (canceled grant covered 15% of salary, with other canceled grants covering “a large part” of their salary).
- b. **Declaration of Susan Witte (March 31, 2025) (ECF 30):** ¶15 (canceled grant would have provided salary support).
- c. **Declaration of Jennifer Hirsch (April 2, 2025) (ECF 32):** ¶12 (Columbia committed to provide temporary salary coverage for portion of canceled grant during “immediate period of uncertainty,” but not beyond).
- d. **Declaration of Witness-A (ECF 34, under seal):** ¶6 (salary nearly 100% covered by grant funding, with direct relationship between salary and grant funding), ¶¶8-10 (two grants canceled).
- e. **Declaration of Witness-B (ECF 35, under seal):** ¶¶7-8, 18 (position depends on grant funding, grants support up to 25% of salary, and several grants were terminated).
- f. **Declaration of Todd Wolfson (March 31, 2025) (ECF 27):** ¶9 (AAUP/AFT members rely on federal grants to support their research, scholarship, and teaching activities),

¶10 (AAUP/AFT members have lost funding as a result of \$400 million cancellation),
¶11 (AAUP/AFT members rely on federal funding Defendants have threatened to cancel), ¶12 (AAUP/AFT members concerned about losing their jobs or ability to continue to support their livelihoods).

5. The following paragraphs of other AAUP/AFT members' declarations describe examples of how Defendants' cancellation of federal funding to Columbia is harming ongoing and future work on previously approved multi-year grants:

- a. **Declaration of Reinhold Martin (April 2, 2025) (ECF 29):** ¶13 (termination of 5-year NIH U2R grant, with 1.5 years remaining), ¶17 (T32 training grants for PhD students in middle of 5-year grant), ¶22 (3-year NIH K01 grant terminated 2 months into project), ¶32 (5-year grant from National Cancer Institute canceled 1.5 years into grant), ¶35 (research halted after grant withdrawn, including clinical trial that had not yet begun), ¶¶43-44 (3-year grant, about 6 months into program).
- b. **Declaration of Susan Witte (March 31, 2025) (ECF 30):** ¶¶7, 10 (termination of 3-year NIH P20 grant just recently awarded).
- c. **Declaration of Jennifer Hirsch (April 2, 2025) (ECF 32):** ¶¶8-9 (termination of NIH 5-year grant for pre-doctoral research training program, currently in year 3).
- d. **Declaration of Witness-A (ECF 34, under seal):** ¶9 (termination of multi-year grants).

6. The following paragraphs of my previous declaration and other AAUP/AFT members' declarations describe harms beyond the loss of money that AAUP/AFT members and others are suffering and are at imminent risk of suffering as a result of Defendants' cancellation of federal funding to Columbia and threats to cancel more funding if Columbia does not accede to Defendants' demands:

- a. **Declaration of Reinhold Martin (April 2, 2025) (ECF 29):** ¶14 (cancellation caused interruption of collaborative research and training activities with scientists and trainees at other institutions), ¶17 (lost training and mentoring from NIH training grants), ¶18

(fewer training grants means smaller cohort of doctoral students, reduced research productivity for faculty, reduced teaching by teaching assistants), ¶24 (end of employment of research assistant), ¶25 (lost critical career development support for early career researchers, including training programs, data access, seminars, travel to collaborate; disruption of coordination with advisory teams and delayed access to knowledge and skills), ¶26 (will “jeopardize future recruitment opportunities” by causing inadequate training), ¶35 (research halted after grant withdrawn, including clinical trial that had not yet begun), ¶37 (termination of 10 people with unique experience and skills in South Africa supporting research will “set back this project and lifesaving research to combat cervical cancer substantially”), ¶38 (forced reneging on commitments to partners “erode[s] trust” with partnering organizations), ¶45 (cuts harm external partners at other universities), ¶46 (masters students working as research assistants laid off), ¶48 (causing delay in environmental health research).

- b. **Declaration of Susan Witte (March 31, 2025) (ECF 30):** ¶10 (cancellation means faculty cannot hire to support research), ¶¶11-14 (laid off staff in Nairobi who had experience and standing in the community important for community health work), ¶16 (lost training opportunities for PhD students), ¶¶17-22 (stopping work “breaks the trust of the community” which is “vital” for research and will harm future efforts even if other funding were found), ¶19 (lost opportunities for conferences and knowledge-sharing), ¶¶24-25 (stopping work harms “trust and long-standing relationships with the local stakeholders” critical to research making it difficult to do future work because of this damaged trust).
- c. **Declaration of Victoria Frye (March 30, 2025) (ECF 31):** ¶¶6-8 (loss of T32 training grants for pre-doctoral students means less research work), ¶9 (“training program grants are critical to the development of future scientists in HIV-prevention and in research generally – the cutting of training program funding risks decimating a

- generation of scientists”); ¶10 (cuts harm ability to do long-term planning), ¶11 (harm to HIV research “threatens the health of all our communities”).
- d. **Declaration of Jennifer Hirsch (April 2, 2025) (ECF 32):** ¶¶8-10 (termination of training grant “puts the survival of the doctoral program as a whole in peril”), ¶13 (trainees denied access to regional meetings and conferences vital for professional development), ¶14 (unable to hire for future cycles).
 - e. **Declaration of Witness-A (ECF 34, under seal):** ¶9 (end of study breaks trust, makes it hard to recruit new study participants), ¶10 (stopping longitudinal study makes data collected earlier of little use), ¶12 (ending training grants hurts next generation of health sciences, makes it more difficult to recruit American students to health science).
 - f. **Declaration of Witness-B (ECF 35, under seal):** ¶¶12-13 (long-term project close to being finished has stopped, “years of hard work are basically lost”), ¶16 (cancellation breaks trust with collaborators outside Columbia, also detrimental to faculty’s reputation, even if funding is restored), ¶17 (harms workers at other universities who were funded as part of grant), ¶20 (likely causes layoffs of people with expertise), ¶29 (irrevocably complicates long term planning necessary to do collaborative work), ¶32 (harm to research risks harms to community health).
 - g. **Declaration of Todd Wolfson (March 31, 2025) (ECF 27):** ¶10 (funding cancellation causes AAUP members irreparable harm to their research, work, reputation, and ability to pursue their careers), ¶11 (uncertainty makes it difficult to plan, maintain professional relationships, and recruit staff).

7. The following paragraphs of my previous declaration and other AAUP/AFT members’ declarations describe harms that AAUP/AFT members and others are suffering to their First Amendment free speech, association, and academic freedom rights as result of Defendants’ actions:

- a. **Declaration of Reinhold Martin (April 2, 2025) (ECF 29):** ¶20 (cuts “have had a chilling effect on everyone at Columbia”), ¶54 (causing students and faculty to be “far

- more self-conscious in the classroom”), ¶¶57-59 (own teaching constrained; classroom environment “has become noticeably less open”), ¶¶62, 64 (faculty “unable to step forward and speak freely”).
- b. **Declaration of Susan Witte (March 31, 2025) (ECF 30):** ¶¶29-30 (“I’m uncertain about what I can and cannot say in the classroom or in public” and Defendants’ actions are “prevent[ing] me from expressing what should be a valid and legal viewpoint in the United States”), ¶32 (student refused to complete assignment for fear government could access it), ¶¶34-36 (funding cuts caused “second-guessing how my words may be taken out of context”; “my academic freedom is chilled”).
 - c. **Declaration of Victoria Frye (March 30, 2025) (ECF 31):** ¶¶15, 17 (“I now no longer talk freely in my work building” and “I am concerned that if I speak out, I will lose funding or others close to me will lose funding, and then our research study participants will be harmed”), ¶16 (faculty changed information session due to fear of government).
 - d. **Declaration of Jennifer Hirsch (April 2, 2025) (ECF 32):** ¶21 (fear about participating in this case), ¶24 (fear that speaking out “will lead to me being blacklisted at NIH”).
 - e. **Declaration of Witness-B (ECF 35, under seal):** ¶¶34-35 (feel chilled in my speech in teaching and around campus).
 - f. **Declaration of Witness-C (ECF 36, under seal):** ¶7 (funding cancelation and March 13 demands are chilling speech on campus, stifling classroom discussion and participation, event programming and external speaker visits, and research by students and faculty), ¶8 (students are scared to speak in class; one student compared the chill to their experience studying in Russia), ¶9 (faculty fear speaking openly in classrooms, events have been canceled, course material restricted or deleted from online).
 - g. **Declaration of Witness-D (April 1, 2025) (ECF 38, redacted):** ¶¶13-16 (students at other colleges fear speaking), ¶¶18-22 (faculty at other colleges are experiencing chill, changing teaching and choice of reading assignments).

- h. **Declaration of Todd Wolfson (March 31, 2025) (ECF 27): ¶28** (faculty have canceled conferences, pulled papers set for publication, decided not to teach certain classes, stopped attending talks, refrained from attending lawful protests, and stepped down from their AAUP chapter board).

Harms to the AAUP and the AFT

8. The following paragraphs of my previous declaration and the declaration of AFT Director of Higher Education Julie Schmid describe ways that Defendants’ actions have directly impaired the AAUP’s and the AFT’s missions to advance academic freedom and protect the economic security of academic workers:

- a. **Declaration of Todd Wolfson (March 31, 2025) (ECF 27): ¶16** (Defendants’ funding cancelation and threats to cancel more “are directly impairing the AAUP’s mission” including mission “to advance academic freedom and shared governance in higher education, define fundamental values and standards for higher education, promote the economic security of academic workers, and ensure higher education’s contribution to the common good”), ¶22 (Defendants’ actions “disrupt and frustrate the AAUP’s efforts to secure principles of academic freedom, shared governance, and due process at Columbia and elsewhere”), ¶24 (Defendants’ actions “make it harder for the AAUP to achieve its goals of promoting academic freedom, shared governance, and due process principles,” partly “because Columbia has taken steps in direct response to the Trump Administration’s actions to undermine those principles,” and Columbia is “less willing now to protect those principles in the face of threatened funding cuts”; Defendants have also “directly impaired the AAUP’s mission by pressuring Columbia to curtail speech and academic freedom on campus”).
- b. **Declaration of Julie Schmid (April 1, 2025) (ECF 28): ¶12** (cancelation of funding and demands that Columbia take additional steps as a “precondition” for any continued federal funding directly impairs AFT’s mission), ¶21 (Defendants’ actions “have undermined and eroded the longstanding principles of academic freedom, shared

governance, and due process that the AFT helps and seeks to protect at Columbia and other institutions” and “[a]s a direct result of Defendants’ actions, Columbia no longer adheres to these principles”), ¶23 (Defendants’ actions “make it harder for the AFT to achieve its goals of promoting academic freedom, shared governance, and due process principles in part because of the steps Columbia has taken in response to the Trump Administration’s actions to undermine those principles”).

9. The following paragraphs of my previous declaration and the declaration of AFT Director of Higher Education Julie Schmid describe ways that Defendants’ actions have forced the AAUP and the AFT to spend money and divert substantial resources from other efforts:

- a. **Declaration of Todd Wolfson (March 31, 2025) (ECF 27):** ¶20 (AAUP diverted staff time and expenses to assist Columbia members respond to Defendants’ demands), ¶23 (Defendants’ actions are costing AAUP more time and expenses to respond to government’s threats to academic freedom), ¶¶25-27 (AAUP forced to conduct nationwide calls and meetings to coordinate responses and represent faculty; redirected staff to be physically present on Columbia’s campus to support campus chapter’s response; spent “countless hours” advising Columbia members about government’s demands to place controls on MESAAS Department).
- b. **Declaration of Julie Schmid (April 1, 2025) (ECF 28):** ¶¶19-20 (AFT diverted staff time and resources that would be devoted to other work to host weekly calls, biweekly webinars, and produces weekly newsletter to advise affiliate leaders and members seeking guidance on how to respond to funding cuts and threats; and drafted contract and policy language to be used by affiliates), ¶22 (will cause significantly greater expenditures from AFT Defense Fund to support academic freedom and due process rights of faculty), ¶24 (forces to divert resources to respond to significant influx of inquiries from affiliates and members seeking guidance on how to protect academic freedom)

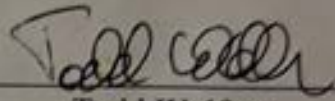
10. Since I signed my previous declaration on March 31, 2025, Defendants' funding cuts, threats to make additional cuts if Columbia does not accede to their demands, and freezing of additional federal funding to Columbia, including freezing all NIH grants, have directly frustrated the AAUP's core activities of providing counseling, advice, and support services to AAUP chapters and members to advance the AAUP's mission to protect academic freedom, due process, and economic security of higher education professionals. Defendants' actions have caused the AAUP to divert additional time, money, and staff resources from other efforts to respond to Defendants' actions. For example, since March 31, 2025, the AAUP has assigned a staff person to spend 90% of his time supporting the Columbia AAUP chapter, providing guidance, assistance, advice, and support services focused on helping the chapter protect the academic freedom and economic security of AAUP members at Columbia from the harms caused by Defendants' actions and threats. The AAUP's Executive Director has spent 10-12 hours in the past month alone focused exclusively on the AAUP's guidance and support services to the Columbia AAUP and its members. The AAUP's Secretary Treasurer has also spent substantial time creating organizing materials specifically for the Columbia AAUP chapter.

11. The AAUP diverted time, money, and staff resources to engage in these efforts and the efforts described in my previous declaration to respond to Defendants' actions that directly harmed the AAUP's ability to provide its core services to its chapters and members. Had Defendants not cut funding to Columbia and threatened to cut more funding unless Columbia complied with Defendants' demands, the AAUP would have used that staff time, money, and resources to engage in different tasks intended to promote other aspects of the AAUP's mission. For example, the AAUP would have assigned the staff person who has been almost exclusively dedicated to supporting the Columbia chapter to support other AAUP chapters. The AAUP's leadership has postponed addressing routine personnel matters that would have been addressed and resolved had leadership not been forced to dedicate its time to supporting the Columbia chapter and its members. The AAUP has also diverted staff time, resources, and money from other AAUP

chapters, and has not provided the support and services for organizing efforts at other universities that AAUP would have provided had it not been for Defendants' actions.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed on this 6th day of May 2025.



Todd Wolfson

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

AMERICAN ASSOCIATION OF
UNIVERSITY PROFESSORS,

and

AMERICAN FEDERATION OF
TEACHERS,

Plaintiffs,

v.

UNITED STATES DEPARTMENT OF
JUSTICE, *et al.*,

Defendants.

Case No. 1:25-cv-02429-MKV

Supplemental Declaration of Julie Schmid

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

AMERICAN ASSOCIATION OF UNIVERSITY
PROFESSORS,

and

AMERICAN FEDERATION OF TEACHERS,

Plaintiffs,

v.

UNITED STATES DEPARTMENT OF JUSTICE. *et*
al.,

Defendants.

Case No. 1:25-cv-02429-MKV

SUPPLEMENTAL DECLARATION OF JULIE SCHMID

I, Julie Schmid, hereby declare as follows:

1. I am over the age of 18 and have personal knowledge of the facts in this declaration. I serve as the Director of Higher Education at the American Federation of Teachers (“AFT”), one of the plaintiffs in this lawsuit. I previously submitted a declaration in this action describing my background. *See* Declaration of Julie Schmid (Apr. 1, 2025) (ECF 28).

1. I have personal knowledge of the facts set forth in this supplemental declaration in support of Plaintiff’s Motion for Preliminary Injunction, and if called as a witness in this action, I could and would testify competently to these facts.

2. In my previous declaration, I described harms that the AFT’s members and the AFT itself have suffered and will suffer from Defendants’ actions without a preliminary injunction. *See* Declaration of Julie Schmid (Apr. 1, 2025) (ECF 28) ¶¶12, 19-25. This supplemental declaration describes additional harms that Defendants’ actions have caused to the AFT since I signed my prior declaration.

3. Since I signed my previous declaration on April 1, 2025, Defendants' funding cuts to Columbia, threats to make additional cuts if Columbia does not accede to their demands, and freezing of additional federal funding to Columbia, including freezing all NIH grants, have directly frustrated the AFT's core activities of providing counseling, advice, and representation services to AFT chapters and members to advance the AFT's mission to protect academic freedom, due process, and economic security of higher education professionals. Defendants' actions have caused the AFT to divert additional time, money, and staff resources from other efforts to respond to Defendants' actions. For example, since April 1, 2025, the AFT has spent time and resources offering webinars and workshops addressing academic freedom and free speech concerns that chapters and members have raised as a direct result of the actions taken by the Defendants against Columbia. To support this effort, AFT's Higher Education Program and Policy Council established a subcommittee tasked with creating resources on academic freedom and free speech, with support from AFT staff. On April 3, 2025, as part of the AFT's counseling and representation services to its chapters and members, the Shanker Institute partnered with the AFT Higher Education Division to host an event titled, "Antisemitism, Democracy, and the Assault on Knowledge & Education," where panelists discussed how the Defendants exploited real concerns about antisemitism to attack higher education institutions like Columbia and offered advice to members on how to protect their rights. In her April 20, 2025 New York Times column, AFT president Randi Weingarten discussed how the Defendants' actions have undermined the pursuit of knowledge and the right to free speech, directly impairing the AFT's core activities. On April 23, 2025, the AFT released a podcast titled, Higher Education Under Attack, available at www.aft.org/uniontalk, focusing on the Defendants' attacks on higher education institutions and how members can defend their academic freedom and free speech rights.

4. The AFT diverted time, money, and staff resources to engage in these efforts and the efforts described in my previous declaration to respond to Defendants' actions that directly harmed the AFT's ability to provide its core services to its chapters and members. Had Defendants not cut funding to Columbia and threatened to cut more funding unless Columbia complied with

Defendants' demands, the AFT would have used that staff time, money, and resources to engage in different tasks intended to promote other aspects of the AFT's mission. For example, the AFT's previously ongoing and planned efforts aimed at increasing public funding for higher education and securing job security to contingent faculty have been redirected towards defending academic freedom through servicing and counseling to AFT chapters and members. Last summer, as part of its Real Solutions in Higher Education campaign, the AFT pledged \$1 million to support state and local affiliates in addressing job insecurity on campuses for contingent faculty, reducing public disinvestment in our colleges and universities, and fighting threats to academic freedom. Since its launch, the AFT has rejected more than \$900,000 in grant requests from affiliates related to job insecurity for contingent faculty and reducing public investment in colleges and universities, as a result of the AFT's need to focus its resources on the defense of academic freedom at Columbia and other campuses.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed on this 7th day of May 2025.



Julie Schmid

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

AMERICAN ASSOCIATION OF
UNIVERSITY PROFESSORS,

and

AMERICAN FEDERATION OF
TEACHERS,

Plaintiffs,

v.

UNITED STATES DEPARTMENT OF
JUSTICE, *et al.*,

Defendants.

Case No. 1:25-cv-02429-MKV

Supplemental Declaration of Reinhold Martin

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

AMERICAN ASSOCIATION OF UNIVERSITY
PROFESSORS,

and

AMERICAN FEDERATION OF TEACHERS,

Plaintiffs,

v.

UNITED STATES DEPARTMENT OF JUSTICE. *et*
al.,

Defendants.

Case No. 1:25-cv-02429-MKV

SUPPLEMENTAL DECLARATION OF REINHOLD MARTIN

I, Reinhold Martin, hereby declare as follows:

1. I am a Professor of Architecture at Columbia University and president of the Columbia chapter of the American Association of University Professors (AAUP). I previously submitted a declaration in this action describing my background. *See* Declaration of Reinhold Martin (Apr. 2, 2025) (ECF 29).

2. I have personal knowledge of the facts set forth in this supplemental declaration, and if called as a witness in this action, I could and would testify competently to these facts.

3. In my previous declaration, I described harms that I and other AAUP members have suffered and will suffer from Defendants' actions without a preliminary injunction. This supplemental declaration describes additional harms that Defendants' actions are causing on campus, including to AAUP members.

4. AAUP's membership includes faculty in the Middle Eastern, South Asian, and African Studies department (MESAAS). I understand that in response to Defendants' demands,

Columbia has appointed a Senior Vice Provost, Miguel Urquiola, to “review” the department and that his review is underway.

5. I have learned about many additional AAUP members who have been directly affected by Defendants’ termination of federal funding. For example, I am aware of an AAUP member at the Teachers College whose grant from the Department of Education was terminated and has not been reinstated.

6. As of the date of this declaration, it is my understanding that Defendants have not restored the vast majority of the federal funding to Columbia that they canceled in March. Columbia’s leadership has repeatedly indicated that the university remains in discussions with the federal government. The faculty has not received information about the details of those discussions, including about any specific additional demands the government has made. The government has not, to my knowledge, withdrawn any of the demands that it previously made.

7. AAUP members have expressed uncertainty and confusion about the extent to which Columbia intends to cover some portion of the terminated funding, including, in particular, the salaries for individuals funded by terminated grants. In a March 31, 2025 announcement, Provost Angela Olinto had indicated that Columbia would be conducting a review of the award terminations to inform next steps. She further stated that Columbia “committed to fund those individuals whose salaries and stipends were previously funded with federal support on now-terminated awards, using institutional funds, while we undertake the review.” However, the email provided no information about how long the review process would take or whether individuals could expect any additional salary coverage *after* the review was complete.

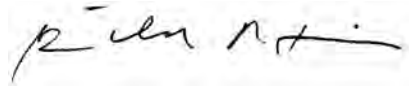
8. On May 6, 2025, the Office of the President sent a university-wide email providing at least some additional information on this question. The email stated that, as a result of the termination of federal funds, nearly 180 individuals “who have been working, in whole or in part, on impacted federal grants, will receive notices of non-renewal or termination” on that

day. The email further stated that this number “represents about 20% of the individuals who are funded in some manner by the terminated grants.”

9. The May 6 announcement makes clear that Columbia is not committing to fully covering the salaries and stipends of all individuals affected by the grant terminations. However, the announcement does not make clear whether Columbia intends to provide any coverage to the remaining 80% of individuals who remain in their positions for now (and if so, for how long).

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed on this __7th__ day of May 2025.



Reinhold Martin

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

AMERICAN ASSOCIATION OF
UNIVERSITY PROFESSORS,

and

AMERICAN FEDERATION OF
TEACHERS,

Plaintiffs,

v.

UNITED STATES DEPARTMENT OF
JUSTICE, *et al.*,

Defendants.

Case No. 1:25-cv-02429-MKV

Declaration of Joshua Jacobs

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

AMERICAN ASSOCIATION OF UNIVERSITY
PROFESSORS,

and

AMERICAN FEDERATION OF TEACHERS,

Plaintiffs,

v.

UNITED STATES DEPARTMENT OF JUSTICE. *et*
al.,

Defendants.

Case No. 1:25-cv-02429-MKV

DECLARATION OF JOSHUA JACOBS

I, Joshua Jacobs, hereby declare as follows:

1. I am an Associate Professor in the Department of Biomedical Engineering at Columbia University. I have been a member of the Columbia faculty since 2015.
2. I have B.S. and M.Eng. degrees in computer science from the Massachusetts Institute of Technology, as well as a Ph.D. in neuroscience from the University of Pennsylvania.
3. I am a member of the American Association of University Professors (AAUP).
4. I have personal knowledge of the facts set forth in this declaration and, if called as a witness in this action, I could and would testify competently to these facts.
5. My research focuses on understanding the neural basis of memory and spatial navigation. This work is important not only to explain how humans navigate, but also to elucidate how the brain supports various types of memory and to develop treatments for disorders such as Alzheimer's Disease.

6. Most of my research is based on direct human brain recordings, which allow us to identify neural patterns that reveal how the brain represents memories. Direct human brain recordings, however, are hard to obtain; they can only be captured after a neurosurgeon surgically implants electrodes in a subject's brain.

7. One of my major current projects seeks to develop and test new ways to measure the relationship between the human brain and behavior. This project is funded by an R61/R33 grant from the National Institute of Mental Health, a component of the National Institutes of Health (NIH). The initial Notice of Award was issued December 28, 2023, after a competitive application process. I am one of the principal investigators on the grant.

8. The project funded by this grant has two phases. In the R61 phase, it seeks to develop a state-of-the-art platform called CAMERA (Context-Aware Multimodal Ecological Research and Assessment). This platform will be capable of recording and combining signals from a range of data sources (such as human neural recordings, audiovisual recordings and wearable sensors) in order to predict a person's level of anxiety and memory state. This will provide novel biomarkers of anxiety and memory state, which can guide therapeutic brain stimulation. Our project will also provide a generalized platform for researchers studying the physiology of many types of complex human states and behaviors. The R61 phase of the project is intended to last three years.

9. If the R61 phase is successful—*i.e.*, if we can demonstrate that CAMERA can successfully combine these signals to predict a subject's emotional or memory state—then we will receive funding to proceed to the R33 phase of the project.

10. In the R33 phase, we will test whether we can use CAMERA to more accurately identify and modulate anxiety and memory performance in individual subjects. In other words, we will be able to use the platform we have developed to predict whether individuals are experiencing memory dysfunction or anxiety episodes, and if so, we will be able to apply brain stimulation to help treat those individuals. The R33 phase of the grant is intended to last two years.

11. If we do not succeed in the R61 phase, we will not receive funding to proceed to the R33 phase.

12. The grant awards Columbia approximately \$700,000 in direct costs per year (approximately \$1 million total per year).

13. This is an interdisciplinary research project involving a collaboration between biomedical engineers, a neurosurgeon, machine learning engineers, a neurologist, psychiatrists, and a neuroethicist. In total, the grant provides either full or partial salary support for approximately 15 individuals working on the project. Several of those individuals work at subaward institutions: the University of Minnesota, which is focused on the brain stimulation piece of the research project, and Rutgers University, which is focused on the machine learning aspect.

14. For multi-year grants like this one, NIH issues a separate Notice of Award for each year of the grant. Near the end of each grant year, researchers are typically required to submit a Research Performance Progress Report (RPPR) updating the agency on the project. NIH then issues a Notice of Award for the following year, accompanied by a new cycle of funding.

15. The Year 1 Notice of Award we received from NIH provided funding for the period from January 1, 2024 until December 31, 2024. We submitted our RPPR for this project in December 2024. Typically, based on my and my colleagues' experience with other NIH grants, I would have expected to receive the Year 2 Notice of Award in December 2024 or January 2025. However, I still have not received the Year 2 Notice of Award.

16. Until recently, based on communications from the NIH, it appeared that the delay in issuing the Notice of Award was caused by routine administrative issues. Between January 2025 and April 2025, NIH requested multiple updates to the RPPR and additional administrative documentation. I submitted several rounds of updated paperwork at NIH's request, most recently on April 15, 2025. On April 17, 2025, the NIH Grants Management Specialist sent an email acknowledging receipt of all requested documentation.

17. I have not heard any additional information from NIH since April 23, 2025. I have repeatedly reached out to my program officer at NIH to discuss the status of the grant and have requested multiple phone calls, but I have not gotten any response.

18. I have not received a termination notice or a stop-work order on this project from NIH.

19. I have never received any indication from NIH that the agency had concerns about our progress or the overall performance of the project. On the contrary, we received positive feedback on this project from a presentation at the 2024 annual BRAIN Initiative Meeting in June 2024. An NIH program official subsequently requested figures from our presentation to include in a progress update for NIH Institute/Center (IC) directors regarding the Brain Behavior Quantification and Synchronization (BBQS) program, which our project is part of. Program officials also conveyed enthusiasm among NIH officials for BBQS projects at a BBQS Consortium Principal Investigators Meetings on March 17, 2025. Further, I have been invited to an annual meeting with NIH staff on July 15, 2025 to discuss our research.

20. Our research project does not relate to diversity, equity, and inclusion (DEI) or other topics that NIH now appears to consider controversial.

21. Around April 18, 2025, I learned from social media posts by Max Kozlov, a science journalist at *Nature*, that NIH had been instructed to stop issuing awards to Columbia. Kozlov posted an April 17, 2025 email from Michelle G. Bulls, the Director of the NIH Office of Policy for Extramural Research Administration, who stated: “We have received confirmation from HHS/IOS to hold off on making awards to schools where the funds have been frozen, i.e., Columbia, Brown, Northwestern, Cornell, Weill-Cornell, Harvard. Also, HHS/IOS has stated that we should not provide any communications to these schools about whether or why the funds are frozen.”¹

¹ <https://bsky.app/profile/maxkozlov.bsky.social/post/3ln4h6i5tes2f>

22. These posts followed an April 9, 2025 article in *Science* that first reported on NIH's funding freeze. The article characterized an April 8, 2025 email from Bulls as stating that "no NIH awards can be made to Columbia until the restriction is lifted."²

23. I believe that NIH has not issued the Year 2 Notice of Award for my R61/R33 grant because of the funding freeze described in the April 8, 2025 email and confirmed in the April 17, 2025 email. I further believe that NIH has stopped communicating with me about the status of the award because of the directive relayed in the April 17, 2025 email.

24. In response to an email I sent on April 23, 2025 to the overseeing NIH Program Officer and Grants Management Specialist inquiring about the status of the grant, she did not identify any outstanding concerns and only stated that "We are awaiting guidance."

25. I am not aware of any NIH grants issued to Columbia after April 17, 2025.

26. The delay in receiving this year's Notice of Award could have catastrophic long-term consequences for this research project. As a clinical trial, a disruption in funding would lead to disruption in enrollment and follow up of human subjects. A disruption in the project would also risk nullifying the data from the first 19 subjects enrolled in the project, which would be a waste of the time and investment on the part of human subjects, researchers, and federal research funding. As explained, our ability to advance our project to the R33 phase—the phase that would allow us to apply the CAMERA system for the benefit of human patients—depends on our ability to successfully develop the system in the R61 phase. We only have three years to complete the R61 phase. A gap in funding would set back our progress significantly and could jeopardize our ability to move to the next phase because we would be likely to lose staff who are knowledgeable about the project.

27. Before April, I received permission from Columbia to continue spending on the project even though this year's Notice of Award was delayed. That authorization was based on

² https://www.science.org/content/article/nih-freezes-all-research-grants-columbia-university?utm_campaign=Science&utm_source=Bluesky&utm_medium=ownedSocial

the assumption that the Notice of Award would be issued shortly and the new cycle of funding could be applied retroactively to cover any spending incurred in 2025.

28. Since reports of the NIH funding freeze emerged, however, I have been told by Columbia that “caution should be exercised in spending.” Our external partners at the subaward institutions have not received any payment for their work since January, and Rutgers has indicated their graduate students may not be able to continue working on the project. That would further compromise our ability to reach the R33 phase, given the expertise those individuals have developed this year.

29. I have repeatedly raised concerns to administrators at Columbia about the delay in issuing the Notice of Award. On April 23, 2025, an individual in Columbia’s Sponsored Projects Administration (SPA, the office that manages the university’s grants) confirmed in an email that they “have seen a definite sharp decline in receipt of new and non-competing continuation NIH [notices of award] in SPA.”

30. On April 25, 2025, I was forwarded an email sent by Columbia’s Dean of Science that described situations like mine and asked faculty for help compiling additional information. The message states: “I’m writing about an emerging issue with NIH grants that I’ll need timely help with from those of you with NIH grants in your departments. This regards non-cancelled, still-active NIH grants. PIs have been submitting their annual non-competing renewal progress reports, and NIH Program Officers have been reviewing and approving them. However, NIH has not been extending the end dates or issuing notices of awards (NOAs) for these grants, and there is no indication that end dates will be extended or NOAs issued on any reasonable timescale. Thus, these grants are effectively cancelled.”

31. I am greatly concerned that NIH has effectively terminated our research project without notice and does not plan to issue additional funding. The cancellation of this project would be a profoundly disappointing loss to the field, given the innovative technology we are working to develop, its potential to improve fundamental understanding of brain-behavior relationships, develop novel diagnostic and therapeutic interventions for anxiety and memory

disorders, and other potential applications as an accessible platform for studying complex human internal states, behavior, and cognition in real-world environments.

32. I understand the government claims to have terminated other research grants to Columbia because of antisemitism on campus. Terminating my project on that basis would make no sense. I am Jewish, as are two of my co-principal investigators. Ending this project will directly harm all of us, as well as the patients who could benefit from the research, and will do nothing to prevent antisemitism or protect Jewish students on campus.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed on this 8th day of May 2025.


Joshua Jacobs

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

AMERICAN ASSOCIATION OF
UNIVERSITY PROFESSORS,

and

AMERICAN FEDERATION OF
TEACHERS,

Plaintiffs,

v.

UNITED STATES DEPARTMENT OF
JUSTICE, *et al.*,

Defendants.

Case No. 1:25-cv-02429-MKV

Declaration of Jamie Daw

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

AMERICAN ASSOCIATION OF UNIVERSITY
PROFESSORS,

and

AMERICAN FEDERATION OF TEACHERS,

Plaintiffs,

v.

UNITED STATES DEPARTMENT OF JUSTICE. *et*
al.,

Defendants.

Case No. 1:25-cv-02429-MKV

DECLARATION OF JAMIE DAW

I, Jamie Daw, hereby declare as follows:

1. I am an Assistant Professor of Health Policy and Management at Columbia University's Mailman School of Public Health.
2. I have a B.H.Sc. from McMaster University, an M.Sc. from the University of British Columbia, and a Ph.D. from Harvard University.
3. I am a member of the American Association of University Professors (AAUP).
4. I have personal knowledge of the facts set forth in this declaration, and if called as a witness in this action, I could and would testify competently to these facts.
5. I am a quantitative health services and policy researcher. I study the intersection of health policy and maternal health, focusing specifically on how policies affect the barriers faced by reproductive-aged and pregnant women in accessing health services. One of the ultimate goals of my work is to inform policy changes that will reduce maternal and infant mortality in the United States.

6. A significant portion of my research portfolio is funded by the National Institutes of Health (NIH). In recent years, NIH's priorities have included funding projects that focus on improving maternal and infant health.

7. In 2023, NIH called for proposals to study integrated models of care that could improve pregnancy outcomes and reduce racial and ethnic disparities in maternal mortality and morbidity and other adverse outcomes. Along with my co-investigators, I submitted a proposal to study the recent implementation of Medicaid-supported doula programs in New York. After a competitive review process, we received a Notice of Award in June 2023. Columbia is the prime awardee, and I am one of the principal investigators on the project.

8. The project aims to study whether doula care during pregnancy, delivery, and postpartum improves recommended maternal health care use and health outcomes. We are conducting this research by evaluating the experience in New York, where the state's Medicaid program recently began reimbursing for doula care. We intended the project to have two main components: (1) an empirical evaluation of the policy's impact on health care use and health outcomes, and (2) a qualitative evaluation of the policy's implementation, including implementation challenges. This work would inform policymaking in New York and the many other states that are considering similar Medicaid policy changes.

9. The project involves a collaboration with several partner institutions and organizations, including Tulane University, New York University, the New York Department of Health and Mental Hygiene, and community-based doula organizations. These kinds of partnerships take considerable time and effort to develop, but they are critical to ensuring that our research evaluates these programs accurately and meets the highest standards of rigor. This project, for example, requires the ability to speak directly with doula providers to understand what is happening on the ground. It also requires the ability to empirically analyze Medicaid data that only the state can provide.

10. Across Columbia and our partner institutions, approximately 19 people were working on the project. Thirteen of those people received at least some salary support from the grant.

11. The project is intended to last five years, and we had just completed the second year working on the project. We just received approval to use the state Medicaid data in April 2025 and were about to begin field interviews with doulas, community-based doula organizations, and hospital staff.

12. On March 10, 2025, I received notice from Columbia that the grant funding this project had been terminated by NIH. I still have not received a revised Notice of Award that reflects the termination, but I understand that both Columbia and NIH consider the grant terminated. Columbia issued a stop-work order directing us to immediately cease work on the project and instructing us to notify all subwardees that the grant had been terminated by NIH.

13. Our partner organizations expressed significant disappointment when we notified them the grant had been terminated. These organizations had contributed considerable time and resources to develop the project, expected to receive financial support from the grant, and are now facing significant uncertainty about the future of the project. This has created particular challenges for the New York Department of Health and Mental Hygiene, which had recently hired a staff member on the expectation that they would be fully funded by the grant for years. That person is very likely to lose their position if the grant is not reinstated soon. Even if the grant were eventually restored, I worry it would be very difficult to reassemble this group of partner organizations and complete the project with the rigor that was originally planned. Further, even if reinstated, the pause of this research will also result in delays in producing timely scientific results that could inform active state policymaking around the decision to reimburse doula care in their Medicaid programs.

14. The consequences of abruptly terminating this grant extend far beyond the project. If Columbia is no longer seen as a trusted partner by community organizations, it will

severely jeopardize our ability as an institution to conduct the community-oriented, collaborative research that is critical in the public health field.

15. These consequences are exacerbated by the fact that some of the same community organizations were also involved in other projects that have been abruptly terminated by the government. For example, the Maternal Health Research Center of Excellence at Columbia had worked to develop relationships with some of the same doula organizations involved in my project, as well as other collaborator institutions. I am a co-investigator on the NIH grant that funded the Center. NIH also terminated that grant, and, to my knowledge, the grant has not been reinstated.

16. NIH funding is particularly important for this type of research and cannot be replaced by private funding. Private sources of funding, such as foundations, generally do not fund research at the scale that NIH does; that scale is particularly important for supporting complex, collaborative team-based research projects which bring together leading experts and key stakeholders to answer important questions relevant to public health. NIH also generally grants longer-term awards, allowing researchers to pursue more ambitious projects than those that can be achieved in a short period of time. NIH funding is also designed to support science at the highest levels of academic rigor; grant applications like mine are peer-reviewed in a rigorous process, ensuring that the agency funds only the best science as determined by the scientific community. Private foundations generally do not have the same peer-review process and typically award grants based on their specific priorities at the time. NIH funding is therefore critical to support research that is driven and evaluated by the scientific community, and thus, which has the highest potential to lead to improvements in the health of Americans.

17. I fear the government's mass termination of grants to Columbia will have significant and irreversible long-term consequences for Columbia and for academic research generally. These actions will damage our ability to recruit students and others who have historically come to Columbia to be part of an innovative research and training environment. I have heard that many of those prospective students and researchers are now worried not only

about the future of scientific, medical, and public health research generally, but also more specifically about the risk that Columbia's research funding will continue to be targeted.

18. More generally, I believe the government's actions pose a serious and unprecedented threat to the pursuit of science for science's sake – the pursuit of “fundamental knowledge” that defines the NIH mission. NIH has historically set broad priorities for scientific research and has not been perceived as political. I am aware of the demands the government made to Columbia in March as “preconditions” for Columbia receiving any future federal funding. The government now appears to be using its financial leverage over us as NIH-funded scientists to compel broader changes in the university that have nothing to do with our research. Many researchers are considering whether there are ways to reframe or reorient their work to avoid termination, even if those changes would not be helpful for scientific advancement. This is a profound and alarming shift in academic research.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed on this 8th day of May 2025.



Jamie Daw

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

AMERICAN ASSOCIATION OF
UNIVERSITY PROFESSORS,

and

AMERICAN FEDERATION OF
TEACHERS,

Plaintiffs,

v.

UNITED STATES DEPARTMENT OF
JUSTICE, *et al.*,

Defendants.

Case No. 1:25-cv-02429-MKV

Declaration of Abigail Greenleaf

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

AMERICAN ASSOCIATION OF UNIVERSITY
PROFESSORS,

and

AMERICAN FEDERATION OF TEACHERS,

Plaintiffs,

v.

UNITED STATES DEPARTMENT OF JUSTICE. *et*
al.,

Defendants.

Case No. 1:25-cv-02429-MKV

DECLARATION OF ABIGAIL GREENLEAF

I, Abigail Greenleaf, hereby declare as follows:

1. I am an Assistant Professor of Population and Family Health at Columbia University. My primary affiliation is with ICAP, a global health center at the School of Public Health composed of researchers and health professionals. I have been an Assistant Professor at Columbia since 2021.
2. I have a B.S. from George Washington University, a Master of Public Health (MPH) from Columbia University, and a Ph.D. from Johns Hopkins University.
3. I am a member of the American Association of University Professors (AAUP).
4. I have personal knowledge of the facts set forth in this declaration, and if called as a witness in this action, I could and would testify competently to these facts.
5. I am a public health demographer. My research focuses on collecting cell phone-based data in low- and middle-income countries where using cell phones to survey populations is an increasingly viable methodology.

6. In 2022, I applied for and in 2023 received a K01 grant from the Eunice Kennedy Shriver National Institute of Child Health and Human Development, a component of the National Institutes of Health (NIH). K01 grants are called “Mentored Research Scientist Career Development Awards.” As NIH explains, their purpose is “to provide support and protected time for an intensive, supervised career development experience in the biomedical, behavioral, or clinical sciences leading to research independence.”¹ The term of a K01 grant is five years.

7. The specific project funded by my K01 grant involves collecting data on contraceptive use and HIV-prevention behaviors among young women in Eswatini, the country with the highest HIV prevalence rate in the world. Since receiving the grant, I have recruited more than 300 participants to the study. I have been collecting biweekly data from these participants for more than a year, calling young women on cell phones and asking questions about their sexual activity and contraceptive use. By contacting participants on their cell phones rather than relying on face-to-face data collection (the predominant approach to data collection in sub-Saharan Africa), I am able to collect long-term, high-volume data that will lead to new insights about young women’s sexual and reproductive health. The ultimate goal of the research is to inform policymaking to address the high rates of undesired pregnancies and HIV incidence in this vulnerable age group.

8. I applied for this K01 grant to support both my short-term and long-term career development goals. In the short term, I am interested in understanding contraceptive dynamics in a country with high HIV prevalence, particularly among young women. That is a priority population for efforts to improve global sexual and reproductive health. In the long term, I aim to make significant scholarly contributions to the field of sexual and reproductive population studies. The project funded by the grant helps me achieve that goal in several ways, as it allows me to develop skills in advanced statistical methods, to gain expertise in HIV prevention and risk, and to be trained in relevant sociology theories.

¹ <https://researchtraining.nih.gov/programs/career-development/K01>

9. On March 10, 2025, I received notice from Columbia that my K01 grant had been terminated. I have not received a formal notice from NIH reflecting the termination, but I understand that it was on the list of NIH-terminated grants provided by the government to Columbia.

10. I am greatly concerned about the impact that terminating this project would have on the research participants and their willingness to enroll in future research studies. I have been speaking with these young women every two weeks for more than a year and asking them highly sensitive questions. Abruptly stopping a study like this erodes participants' trust and contributes to increased skepticism of medical research more broadly. The uncertainty about future grant funding exacerbates my concerns. In my opinion, it raises significant ethical problems to enroll patients in research studies that we cannot commit to completing.

11. The termination of my K01 grant has also caused me considerable personal stress due to concern about job loss. I believe this job stress contributed to a failed egg retrieval cycle shortly after I learned about the termination, and my doctor agreed that was likely the case.

12. As explained, a major purpose of this type of grant is to provide me with protected research time that will help support my long-term career goals. As stipulated in the Notice of Award, 75% of my time is dedicated to the project funded by the K01 grant. More than half of my salary is covered by the grant. Columbia is temporarily covering that portion of my salary during the immediate interim period while it considers next steps, but it is not clear how long that will extend. I still had three years remaining on the grant term. Columbia has not committed to cover my salary for that entire period.

13. It will be very hard to find alternative sources of funding to cover my salary. I am not aware of sources of private funding (as opposed to NIH) that allow for the same kind of dedicated research time for early-stage investigators for the subject matter I study. Although I hope to avoid this outcome, if federal funding is not restored, it is possible I will lose my job and have to leave the field entirely.

14. At minimum, the loss of the grant means I will no longer have the protected research time to develop my skills as a scientist. I also will not have dedicated funding to participate in professional development activities, such as academic conferences, that would help advance my career as an independent investigator. I now am no longer permitted to use my grant funds for conferences. I paid out of pocket to attend the Population Association of America's annual meeting in Washington, D.C. in April 2025. If federal funding is not restored, I will very likely be unable to attend the International Union for the Scientific Study of Population's (IUSSP) International Population Conference, which will be held in Australia in July 2025. That means I will be deprived of important opportunities to build connections and learn from researchers, policymakers and practitioners with expertise in my field.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed on this 8 day of May 2025.


Abigail Greenleaf

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

AMERICAN ASSOCIATION OF
UNIVERSITY PROFESSORS and
AMERICAN FEDERATION OF
TEACHERS,

Plaintiffs,

-against-

UNITED STATES DEPARTMENT OF
JUSTICE, PAMELA BONDI, LEO
TERRELL, UNITED STATES
DEPARTMENT OF EDUCATION, LINDA
MCMAHON,
THOMAS E. WHEELER, UNITED
STATES DEPARTMENT OF HEALTH
AND HUMAN SERVICES, ROBERT F.
KENNEDY, JR., SEAN R. KEVENEY,
NATIONAL INSTITUTES OF HEALTH,
MATTHEW J. MEMOLI, UNITED
STATES GENERAL SERVICES
ADMINISTRATION, STEPHEN
EHIKIAN, and JOSH GRUENBAUM,

Defendants.

USDC SDNY
DOCUMENT
ELECTRONICALLY FILED
DOC #:
DATE FILED: 5/20/2025

25-cv-2429 (MKV)

ORDER DENYING REQUESTS TO SEAL

MARY KAY VYSKOCIL, United States District Judge:

Plaintiffs the American Association of University Professors (“AAUP”) and the American Federation of Teachers (“AFT”) bring this action seeking an injunction requiring Defendants to pay out to non-party Columbia University approximately \$400 million in previously-allocated taxpayer funded grants [ECF Nos. 1, 25], among other relief. In connection with their motion for a preliminary injunction, Plaintiff have filed several sets of exhibits provisionally under seal [ECF Nos. 34–43; ECF Nos. 45, 45-1; ECF Nos. 107–112]. For the reasons set forth below, the requests to maintain those exhibits under seal [ECF Nos. 33, 44, 58, 61, 106] are DENIED.

1. Columbia's Request To Seal the Dubal Declaration and Exhibit A

Plaintiffs filed *ex parte* and provisionally under seal the Declaration of Veena Dubal, who serves as General Counsel for AAUP, and an exhibit entitled Exhibit A [ECF Nos. 45 (“Dubal Decl.”), 45-1 (“Exhibit A”)]. Exhibit A is an email and attached form which Columbia’s Office of the General Counsel sent, unsolicited, to members of the Columbia faculty and staff concerning the termination of federal grants. *See* Dubal Decl. ¶ 6; Exhibit A. Both the email and attached form state that the documents are confidential, subject to attorney-client privilege, and should not be shared with anyone outside of Columbia’s Office of the General Counsel. *See* Exhibit A at 1–3. However, according to Dubal, “multiple” recipients of the email and attachment were members of AAUP who forwarded the documents to Dubal. Dubal Decl. ¶ 4.

Although Plaintiffs filed the Dubal Declaration and Exhibit A *ex parte* and provisionally under seal, Plaintiffs simultaneously filed a letter requesting leave to unseal those documents and file them on the public docket [ECF No. 44]. Plaintiffs argue that Exhibit A is not a privileged attorney-client communication, since the recipients of the email and attachment who forwarded the documents to Dubal “had not sought legal counsel from the Columbia Office of the General Counsel” and “did not understand themselves to have any sort of attorney-client relationship with that office.” Dubal Decl. ¶ 6; *see id.* ¶ 4.

Counsel for The Trustees of Columbia University in the City of New York (“Columbia”) appeared in this action for the limited purpose of urging the Court to maintain Exhibit A, and all submissions concerning Exhibit A, under seal [ECF Nos. 58, 59]. Columbia argues that Exhibit A is protected by the attorney-client privilege and should be sealed or redacted even if the privilege does not apply. Plaintiffs thereafter filed letters in further support of their request to unseal the Dubal Declaration and Exhibit A [ECF Nos. 61, 62, 63].

As the Second Circuit has long affirmed, the strong presumption of public access to judicial documents is fundamental to our system of justice. *See Mirlis v. Greer*, 952 F.3d 51, 58 (2d Cir. 2020); *Lugosch v. Pyramid Co. of Onondaga*, 435 F.3d 110, 119 (2d Cir. 2006); *United States v. Amodeo*, 71 F.3d 1044, 1048 (2d Cir. 1995) (“*Amodeo II*”); *United States v. Amodeo*, 44 F.3d 141, 145 (2d Cir. 1995) (“*Amodeo I*”). Pertinent here, attorney-client privilege “suffices to defeat the presumption of access.” *Lugosch*, 435 F.3d at 125. “The party asserting the privilege . . . bears the burden of establishing its essential elements.” *United States v. Mejia*, 655 F.3d 126, 132 (2d Cir. 2011). Columbia cannot meet that burden with respect to the widely-shared email and attachment in Exhibit A.

“The attorney-client privilege protects communications (1) between a client and his or her attorney (2) that are intended to be, and in fact were, kept confidential (3) for the purpose of obtaining or providing legal advice.” *Mejia*, 655 F.3d at 132. As Columbia concedes, there is no attorney-client relationship between Columbia’s Office of the General Counsel and the faculty and staff to whom that office sent Exhibit A [ECF No. 59 at 1]. Moreover, Exhibit A clearly was not kept confidential, since multiple recipients sent it to Dubal. *See Dubal Decl.* ¶ 4.

Citing *Upjohn Co. v. United States*, 449 U.S. 383, 394–97 (1981), Columbia argues that it may nevertheless assert privilege on the ground that Columbia’s Office of the General Counsel was communicating with faculty in their capacity as “lower-level employees” of its client, Columbia, in order to collect information necessary to provide legal advice to Columbia [ECF No. 59 at 1]. However, *Upjohn* holds that an employee in such a circumstance must be “sufficiently” warned that the purpose of the communication is to provide legal advice to the corporate client, rather than to protect or advise the employee. *Upjohn*, 449 U.S. 394. Exhibit A does not contain such sufficient warning.

Rather, Exhibit A is largely framed as an offer to assist the faculty and staff to whom it was sent. The subject line of the email is “Time-Sensitive: Potential Appeal of Termination of *Your* Award(s).” Exhibit A at 1 (emphasis added). Similarly, the opening paragraph of the email states: “Many of you have asked how you can help with a potential appeal of the termination of your award(s).” *Id.* Exhibit A also suggests that Columbia’s Office of the General Counsel is deferring to the faculty on whether they “wish to pursue an appeal.” *Id.* As Columbia points out, the email does mention that Columbia is assessing “strategies . . . to restore the University’s federal research portfolio” and may need “help” from the faculty to prepare timely appeals. *Id.* However, there is no clear *Upjohn* warning that the purpose of the communication is advise Columbia, in contrast with the faculty. As such, Columbia has not carried its burden to establish the privilege it seeks to assert. *See Mejia*, 655 F.3d at 132.

Columbia argues that, even if the privilege does not apply, the Dubal Declaration and Exhibit A should be sealed on the ground that they are not judicial documents [ECF No. 58 at 2]. Columbia is incorrect. The Dubal Declaration and Exhibit A are “relevant to the performance of the judicial function” in this lawsuit, in which there is significant public interest. *Mirlis*, 952 F.3d at 59 (quoting *Amodeo I*, 44 F.3d at 145). As such, the documents are subject to “a potent and fundamental presumptive right of public access” that “is not easily overcome.” *Id.* at 58, 67. Columbia has not identified countervailing interests to overcome the right of public access.

2. Plaintiffs’ Request To Seal Various Declarations

While vigorously opposing the sealing of the Dubal Declaration and Exhibit A, Plaintiffs seek to leave file entirely under seal fourteen declarations and redact another declaration in support of their motion for a preliminary injunction [ECF Nos. 33, 106]. The declarants are “professors and students” who, Plaintiffs contend, “fear they will be subjected to retaliation and harassment if

their participation in this case is made public” [ECF No. 33 at 1; *accord* ECF No. 106 at 1]. Plaintiffs broadly assert that “[i]ndividuals perceived to be critical of the Trump administration” are “often” harassed, citing three news articles that have nothing to do with this case [ECF No. 33 at 3 & n.3–4; *accord* ECF No. 106 at 2 & n.3–4].

As explained above, and as Plaintiffs recognize when seeking to unseal documents, the public has a presumptive right to inspect documents that form the basis of judicial decisions. *See Mirlis*, 952 F.3d at 58; *Bernstein v. Bernstein Litowitz Berger & Grossmann LLP*, 814 F.3d 132, 142 (2d Cir. 2016). As such, the Second Circuit has instructed district courts to “skeptically review sealing requests” to determine whether “there really is an extraordinary circumstance or compelling need” for sealing. *In re Orion Pictures Corp.*, 21 F.3d 24, 27 (2d Cir. 1994). To be sure, countervailing interests such as the privacy of innocent third parties may overcome the presumption of public access. *See Mirlis*, 952 F.3d at 61; *Amodeo II*, 71 F.3d at 1050. However, mere speculation that members of the public may behave badly is not sufficient, irrespective of the imputed political leanings of the speculative antagonists. The declarants in question are under no obligation to “participat[e] in this case” if they do not wish to provide information on the public record. Indeed, much of the information Plaintiffs seek to submit under seal appears cumulative. *See United States v. Donato*, 714 F. App’x 75, 76 (2d Cir. 2018); Fed. R. Evid. 403.

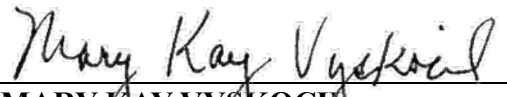
Accordingly, for the reasons set forth above, IT IS HEREBY ORDERED that the Dubal Declaration, Exhibit A, and the letters concerning the sealing of those documents shall be filed on the public docket by the close of business on May 23, 2025.

IT IS FURTHER ORDERED that, by the close of business on May 23, 2025, Plaintiffs shall either withdraw the declarations at ECF Nos. 34–43 and 107–112, or file those declarations on the public docket.

The Clerk of Court respectfully is requested to terminate the motions pending at docket entries 33, 44, 58, 61, and 106.

SO ORDERED.

Date: May 20, 2025
New York, NY


MARY KAY VYSKOCIL
United States District Judge

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

AMERICAN ASSOCIATION OF
UNIVERSITY PROFESSORS,

and

AMERICAN FEDERATION OF
TEACHERS

Plaintiffs,

v.

UNITED STATES DEPARTMENT OF
JUSTICE, *et al.*

Defendants.

Case No.: 1:25-cv-02429-MKV

**DECLARATION OF MATTHEW
MURRAY IN SUPPORT OF
PLAINTIFFS' MOTION FOR
PRELIMINARY INJUNCTION**

I, Matthew Murray, hereby declare as follows:

1. I am an attorney at the law firm Altshuler Berzon LLP in San Francisco, CA, and am a member of the State Bar of California. I am co-counsel for Plaintiffs in this matter, and have been admitted to practice *pro hac vice* in this case. I make this statement based on personal knowledge, and if called as a witness could and would testify competently thereto.

2. This declaration is submitted in support of Plaintiffs' Motion for a Preliminary Injunction.

3. Attached hereto as **Exhibit A** is a true and correct copy of the following U.S. Department of Health and Human Services press release posted yesterday, May 22, 2025: *HHS' Civil Rights Office Finds Columbia University in Violation of Federal Civil Rights Law* (May 22, 2025), downloaded from <https://www.hhs.gov/press-room/ocr-columbia-violates-federal-civil-rights-law.html>.

I declare under penalty of perjury that the foregoing is true and correct.

Dated: May 23, 2025

Signed: /s/Matthew Murray

Matthew Murray

Counsel for Plaintiffs

Exhibit A

 An official website of the United States government



[Home](#) </>

[Press Room](/press-room/index.html) </press-room/index.html>

HHS' Civil Rights Office Finds Col...

Navigate to:

T+



FOR IMMEDIATE RELEASE

May 22, 2025

Contact: HHS Press Office

202-690-6343

[Submit a Request for
Comment](#)

HHS' Civil Rights Office Finds Columbia University in Violation of Federal Civil Rights Law

*Extensive Investigative Findings Conclude that Columbia University Violated Title VI by
Showing Deliberate Indifference to the Hostile Environment Faced by its Jewish
Students*

Today, the U.S. Department of Health and Human Services (HHS) Office for Civil Rights (OCR) announced that Columbia University violated Title VI of the Civil Rights Act of 1964 (Title VI) by acting with deliberate indifference towards student-on-student harassment of Jewish students from October 7, 2023, through the present.

OCR enforces Title VI, which prohibits a recipient of Federal financial assistance from discriminating in its programs and activities on the basis of race, color, or national origin, which includes discrimination against individuals that is based on their actual or perceived Israeli or Jewish identity or ancestry. OCR's Notice of Violation articulates extensive factual findings that span a period of over 19 months in which the University continually failed to protect Jewish students. The findings are based on information and documents obtained during the investigation, including witness interviews; examination of written policies and procedures; reliable media reports that contemporaneously capture antisemitic incidents and events at Columbia University; and reports from Columbia University's own Task Force on Antisemitism.

"The findings carefully document the hostile environment Jewish students at Columbia University have had to endure for over 19 months, disrupting their education, safety, and well-being," said Anthony Archeval, Acting Director of the Office for Civil Rights at HHS. "We encourage Columbia University to work with us to come to an agreement that reflects meaningful changes that will truly protect Jewish students."

The Notice of Violation comprehensively explains the ways in which Columbia University acted with deliberate indifference with regard to the hostile environment created by some of its students. For example, the University failed:

- To establish effective reporting and remediation mechanisms for antisemitism until the summer of 2024,
- To properly abide by its own policies and procedures when responding to Jewish students' complaints,
- To abide by its only policies and procedures governing student misconduct against Jewish students,
- To investigate or punish vandalism in its classrooms, which include the repeated drawing of swastikas and other universally recognized hate images, and

- To enforce its time, place, and manner restrictions for protests held on campus, such as inside and around its academic buildings, residence halls, and libraries since October 7, 2023.

OCR's Notice of Violation to Columbia is jointly issued and signed by the U.S. Department of Education's Office for Civil Rights. This action demonstrates the Administration's commitment to address "anti-Semitism vigorously, using all available and appropriate legal tools[] . . . [to address] unlawful anti-Semitic harassment and violence," as expressed in President Trump's Executive Orders, *Combating Anti-Semitism* <<https://www.federalregister.gov/documents/2019/12/16/2019-27217/combating-anti-semitism>> (Dec. 11, 2019) and *Additional Measures to Combat Anti-Semitism* <<https://www.whitehouse.gov/presidential-actions/2025/01/additional-measures-to-combat-anti-semitism/>> (Jan. 29, 2025).

Today's announcement is part of a broader effort by the Administration's multi-agency Joint Task Force to Combat Anti-Semitism <<https://www.justice.gov/opa/pr/justice-department-announces-formation-task-force-combat-anti-semitism>>.

If you believe that you or someone else has been discriminated against because of race, color, national origin, disability, age, sex, or religion in programs or activities that HHS directly operates or to which HHS provides Federal financial assistance, you may file a complaint with the HHS Office for Civil Rights at: <https://www.hhs.gov/civil-rights/filing-a-complaint/index.html> </civil-rights/filing-a-complaint/index.html>

Follow HHS OCR on X (formerly Twitter) at @HHSOCR <<https://x.com/hhsocr>>.

###

Note: All HHS press releases, fact sheets and other news materials are available in our Press Room </press-room/index.html>.

Like HHS on Facebook, follow HHS on X @HHSgov <<https://x.com/hhsgov>>, @SecKennedy <<https://x.com/seckennedy>>, and sign up for HHS Email Updates <<https://cloud.connect.hhs.gov/subscriptionscenter>>.

Last revised: May 22, 2025



Submit a request for comment

For media inquiries, please submit a request for comment.

Sign up to receive our press releases

Sign Up

Related Press Releases

HHS' Civil Rights Office Clarifies Race-Based Prohibitions for Medical Schools to Advance Values of Initiative, Hard Work, and Excellence </press-room/guidance-med-

schools-dear-colleague-letter.html>

MAY 6, 2025 | PRESS RELEASE

Task Force to Combat Anti-Semitism Statement Regarding Yale's Actions </press-

room/anti-semitism-task-force-statement-on-yale.html>

APRIL 24, 2025 | PRESS RELEASE

HHS Office for Civil Rights Works with Alabama to Help Young Adult with Autism Move from a State Institution to a Home in the Community </press-room/ocr-olmstead-

resolution-alabama-department-mental-health.html>

APRIL 4, 2025 | PRESS RELEASE

Content created by Office for Civil Rights (OCR)

Content last reviewed May 22, 2025

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

AMERICAN ASSOCIATION OF
UNIVERSITY PROFESSORS,

and

AMERICAN FEDERATION OF
TEACHERS,

Plaintiffs,

v.

UNITED STATES DEPARTMENT OF
JUSTICE, *et al.*,

Defendants.

Case No. 1:25-cv-02429-MKV

**Declaration of Ezra Susser
(Witness B)**

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

AMERICAN ASSOCIATION OF UNIVERSITY
PROFESSORS,

and

AMERICAN FEDERATION OF TEACHERS,

Plaintiffs,

v.

UNITED STATES DEPARTMENT OF JUSTICE. *et*
al.,

Defendants.

Case No. 1:25-cv-02429-MKV

DECLARATION OF EZRA SUSSER

I, Ezra Susser, declare as follows:

1. I am a Professor of Epidemiology and Psychiatry at the Mailman School of Public Health.
2. I have been at Columbia for about 35 years, and I used to be the chair of the epidemiology department.
3. I received my Bachelor of Arts (BA) from Columbia University in 1974, my Master of Public Health (MPH) from Columbia University in 1982, and my Doctor of Public Health (DrPH) from Columbia University in 1992.

4. My research focuses on mental health disorders, like schizophrenia. My research has examined the role of early life experience in health and disease throughout the life course and has sought to uncover the developmental origins of psychiatric and neurodevelopmental disorders such as schizophrenia, autism and ADHD, as well as other complex diseases.

5. I am over the age of 18 and competent to testify as to the matters set forth in this affidavit based on my own personal knowledge.

6. I am a member of AAUP and AFT.

7. My position depends significantly on grant funding, and the vast majority of grants that I receive are federal grants.

8. I have had several grants terminated. I am the lead or co-lead on two of the terminated grants. There is at least one more terminated grant on which I was a researcher but was not the lead or co-lead.

9. The grant on which I am listed as the principal investigator (PI) at Columbia is an NIH grant that funded a large project to study the genomics of schizophrenia.

10. The National Institutes of Health (NIH) sent to Columbia, who then forwarded to me, a notification from NIH that the grant was terminated. The notice stated, "This project has been terminated due to unsafe antisemitic actions that suggest the institution lacks concern for the safety and well-being of Jewish students."

11. This project, which was done in partnership with the University of Washington and the University of Cape Town, focused on the Xhosa population of South Africa. We worked with that community because there is more genetic variety in Africa than on any other continent, and thus the results of this genomic study would have critical implications for an understanding of schizophrenia around the world, including in the US.

12. This project has been funded by NIH for more than 10 years, and the team would have finished the genomic sequencing required for the analysis of the data in just about one more year. We could have finished at least a basic genomic analysis in just about one year; and could have completed it all within two years under a no cost extension which we expected to be granted by the agency, because that would not have required new funds from the agency but rather saving funds to spend in the following year.

13. The project is now stopped. This cuts off federal funding to complete the analysis of the data, including the completion of the genomic sequencing. Without this funding, we won't be able to draw any more conclusions about schizophrenia. We won't be able to share our findings with the scientific community and with the world. Years and years of hard work are basically lost.

14. The cessation of this research represents a huge loss to my research and to the understanding of schizophrenia. No other research group is poised to step into this critical research. Whether or not it will ever be completed is now uncertain because of this funding termination. It won't be completed unless we find alternative funding from somewhere, and at this juncture, it doesn't seem likely that we will find that funding.

15. I coordinated the project and my team played the central data management role. Funds are not available at other sites for others to assume this role.

16. The termination in grant funding and resulting halt of the work also breaks the relationship of trust between me and my collaborators outside of Columbia University, and that harm would persist even if this project were to restart. It is also detrimental to this my reputation and overall work.

17. The grant supported a subcontract to a researcher at the University of Pennsylvania and their team. Because of this grant termination, their funding has also stopped.

18. The grant also partially supported my salary and the salaries of five other team members at Columbia University. Over time, the grant has supported about 20-25% of my salary.

19. The total funding amount for the project for 2025 was \$447,238.

20. Without funding, I will likely need to lay off at least one but probably several people from this team. That will be a loss of expertise and knowledge for the project, even if this project could be re-continued in the future.

21. I was also the co-lead on a grant that funded a training program that has been in existence continuously since 1972 and that trained many of the leaders in psychiatric epidemiology in the country.

22. Another AAUP/AFT member is a faculty member in the Mailman School of Public Health and is also a co-lead of this training program.

23. The leads of the program received notice from Columbia University that the federal funding for this training grant has stopped.

24. The loss of such a training grant is a loss of the ability to train the next generation of psychiatric epidemiologists. Training the next generation has been an important part of my career.

25. There were three post-docs in the program, and they now have no guarantee of funding from the federal government.

26. None of the work funded by these two grants was related to the Israel/Palestine conflict. Neither program has faced any investigation or complaint related to antisemitism. If the government had started an investigation into my programs, I am sure they would have found that

there is no antisemitism in my programs. Moreover, a large proportion of the investigators are Jewish. If any investigation had been started on a legal basis, I would have participated, I would have participated in any official investigation for my programs as appropriate under the law.

27. The training program has trained many students from Israel, including some of the leaders in the field in Israel. The training program has had relationships with Israeli institutions. We also have relationships with researchers from other countries, and do not have a specific policy favoring collaboration with any one country over others. The Israeli collaborations evolved naturally from our faculty connections, as did other collaborations.

28. I am Jewish. Many of the students in the training program have been Jewish.

29. Overall, the funding withdrawals by the federal government create enormous uncertainty about the future of my research. Since scientific research typically involves long-term multi-year commitments, the funding withdrawal irrevocably complicates the planning necessary to undertake this work.

30. I find it very distressing. It has been such a shock. It hurts to lose the work I've done. It hurts to watch my colleagues, who have also lost grants, in such distress and uncertainty.

31. Being forced to stop this work also hurts the legacy of my parents, who were among the legendary founders of the field of epidemiology after World War II. They devoted much of the first half of their lives opposing apartheid in South Africa and much of the second half of their lives building up the field of epidemiology in South Africa. I too devoted much of my career to epidemiology, mainly but not only psychiatric epidemiology, in the United States, in South Africa and in other regions of the world. Now the grant terminations are jeopardizing the future of psychiatric epidemiology.

32. The harm to the field of epidemiology will also harm our community health in general. It creates a risk of infectious diseases returning and spreading.

33. I understand that Title VI and its implementing regulations require the government to provide notice and opportunity for a hearing, followed by a finding on the record, before terminating federal funding to any program or part thereof based on a violation of Title VI. I was not provided any such notice, and I am not aware of any such notice having been provided or any such hearing occurring prior to the termination of \$400 million in federal funding to Columbia.

34. I also feel chilled in my speech. Personally, even though I want to try not to restrict what I say, I still feel like I need to be more careful in what I say in teaching and around the university. I wouldn't just go out and say things without worry like in the past.

35. For example, I teach a class that is about the history of epidemiology. It includes a lot of social history and topics like race, sex, and social injustices. It is designed to help students think about the present and identify their own biases through the lens of a history that they were previously not aware of. I feel like I need to be more careful as I teach about these subjects now.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Dated: 3 | 30 | 25

Signed: 

Ezra Susser

Professor of Epidemiology and Psychiatry

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

AMERICAN ASSOCIATION OF
UNIVERSITY PROFESSORS,

and

AMERICAN FEDERATION OF
TEACHERS,

Plaintiffs,

v.

UNITED STATES DEPARTMENT OF
JUSTICE, *et al.*,

Defendants.

Case No. 1:25-cv-02429-MKV

Declaration of Joseph Slaughter (Witness C)

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

AMERICAN ASSOCIATION OF UNIVERSITY
PROFESSORS,

and

AMERICAN FEDERATION OF TEACHERS,

Plaintiffs,

Case No.1:25-cv-02429-MKV

v.

UNITED STATES DEPARTMENT OF JUSTICE. et al.,

Defendants.

Declaration of Joseph R. Slaughter

I, Joseph R. Slaughter, declare as follows:

1. I am an Associate Professor of English and Comparative Literature at Columbia. I am also the Director of the Institute for the Study of Human Rights ("ISHR") at Columbia. I have been a member of the Columbia faculty since 2000.

2. I have a PhD in English, specializing in Ethnic and Third World Literatures, from the University of Texas at Austin. My research and teaching explore ways in which literature intersects with social justice, human rights, and international law.

3. The ISHR offers students an interdisciplinary human rights education, fosters innovative academic research, and offers its expertise in capacity building to human rights leaders, organizations, and universities around the world. Students and faculty at ISHR regularly engage in difficult research and discussion involving fraught political topics including using history in

genocide prevention, indigenous peoples' rights, and a broad range of international human rights abuses.

4. Faculty regularly teach courses related to armed conflict, minority rights, and international law, including in areas such as Israel and Palestine. For example, recent course offerings include "War, Gender and Migration," "Refugees, Forced Migration, and Displacement," "The Law of Genocide," "Humanitarian Law and Human Rights in Global Challenges," "Gender-Based Violence and Human Rights," and "Religion and Human Rights."

5. I am a member of the American Association of University Professors ("AAUP") and the American Federation of Teachers ("AFT").

6. I am over the age of 18 and competent to testify as to the matters set forth in this affidavit based on my own personal knowledge. I am aware that the current administration has taken a series of actions targeting Columbia. In particular, I am aware that on February 3rd, 2025, the U.S. Department of Education announced an investigation into Columbia. I am aware that on February 28, the federal Task Force to Combat Anti-Semitism announced that it would visit the Columbia campus. I am aware that on March 3, 2025, several federal agencies announced that they would review funding to Columbia. I am aware that on March 7, 2025, several federal agencies announced \$400 million in grant cancellations to Columbia, and stated that that "[t]hese cancellations represent the first round of action and additional cancellations are expected to follow." Most recently, I am aware that on March 13, 2025, officials from the General Services Administration (GSA), the Department of Health and Human Services (HHS), and the Department of Education (ED) sent a letter to Columbia that was made public, and demanded that Columbia immediately take a long list of actions as a precondition of further negotiations regarding federal

funding. I am aware that Columbia announced the adoption of numerous of these policy demands on March 21, 2025.

7. It is my perception and belief that the March 7 funding cancellation and March 13 policy demands have already had a substantial impact in terms of chilling speech on campus and that the challenged actions are already stifling classroom discussion and participation, event programming and external speaker visits, as well as research work by students and faculty.

8. Students have grown scared to speak in class, even on topics that are only tangentially related to current controversial issues. Open discussion in seminars has already been chilled, and students have said they are concerned about being surreptitiously recorded by others or even speaking first when a question is posed to the class. One student from Eastern Europe compared the current chill in Columbia classrooms to their experience studying in Russia. Students have told me that other professors do not talk about contemporary events occurring on campus or in the U.S. and have asked students not to talk about them in class. Attendance is down in many classes, and some students have confided that they are scared to come to campus and to class for fear of surveillance or worse. Many students have told me that they are self-censoring in their courses, concerned that they might unwittingly say something that could run afoul of the administration. Multiple students have said that they have changed a research topic for a seminar paper or a thesis out of fear.

9. Numerous faculty colleagues have also expressed fears of speaking openly in their classrooms, for fear of running afoul of the administration or of the University trying to placate the administration. Faculty now routinely express fear of being surreptitiously recorded and/or reported by students for saying something that might be misrepresented as offensive in the current climate. A number of faculty, students, and scholars on campus have already been recorded

secretly by students or university staff. Those recordings have been shared with members of Congress and the administration, recirculated in doxing posts on social media, fed to unscrupulous news outlets, and used to file spurious claims of harassment to university administrators. Emails and course postings from classes have similarly been used, and faculty have made decisions to restrict communications with students or to protect student privacy and welfare by disabling online group conversations through course websites. For example, I have restricted access to course materials that in the past I always opened to the entire university community, and I have deleted old course materials in an effort to protect students from unwarranted interference or scrutiny in their education. Departments and Institutes have cancelled events that might be perceived in the current climate as controversial, and faculty and outside scholars have cancelled or substantially altered topics for scholarly talks out of fear. Events that once would have been open to the public are now often limited to invitation-only or strict preregistration.

10. I am deeply concerned that in the future my colleagues, students, or I will be targeted for research work disfavored by the administration or for statements made in the course of regular teaching or routine academic discussions.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Date: 31 March 2025

Signed: 
Joseph R. Slaughter
Associate Professor of English
& Comparative Literature

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

AMERICAN ASSOCIATION OF
UNIVERSITY PROFESSORS,

and

AMERICAN FEDERATION OF
TEACHERS,

Plaintiffs,

v.

UNITED STATES DEPARTMENT OF
JUSTICE, *et al.*,

Defendants.

Case No. 1:25-cv-02429-MKV

Declaration of Joel Swanson (Witness D)

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

AMERICAN ASSOCIATION OF UNIVERSITY
PROFESSORS,

and

AMERICAN FEDERATION OF TEACHERS

Plaintiffs,

v.

UNITED STATES DEPARTMENT OF JUSTICE et al.,

Defendants.

Case No. 1:25-cv-02429

**DECLARATION OF
JOEL SWANSON IN
SUPPORT OF
PLAINTIFFS' MOTION
FOR A PRELIMINARY
INJUNCTION**

I, Joel Swanson, declare as follows:

1. I am Assistant Professor of Jewish Studies in the Religion Department of Sarah Lawrence College, a private liberal arts college in Yonkers, New York. I joined the faculty of Sarah Lawrence in September 2024. Previously I was a lecturer at The University of Illinois, Chicago, where I taught Jewish history and continental philosophy or religions.

2. I earned both a doctoral and masters degree from The University of Chicago, and a bachelors degree from Swarthmore College.

3. I am a member of American Association of University Professors and American Federation of Teachers.

4. My scholarship focuses on modern Jewish intellectual history, drawing on both philosophical and literary sources. I am particularly interested in questions of trauma and Jewish collective memory; racialization, gender identity, and the Jewish body; tensions between religious, ethnic, and national understandings of Jewish identity; and how the history of the

Jewish people complicates and challenges the structures of philosophical universalism and the modern nation-state.

5. As an active member of the Association for Jewish Studies, I have published articles on topics as diverse as Jewish contributions to French deconstruction and psychoanalytic debates; competing Zionist and diasporist politics of memory; German Jewish philosophy; and Yiddish poetry. In addition to my scholarship, I am a widely-published commentator on Jewish political issues in publications such as *Haaretz*, *The Times of Israel*, *The Jerusalem Post*, the *Jewish Telegraphic Agency*, and *The Forward*. I also have served as a researcher for the Leo Baeck Institute in Jerusalem and helped develop resources for a national curriculum on antisemitism education for the Anti-Defamation League.

6. I am over the age of 18 and competent to testify as to the matters set forth in this affidavit based on my own personal knowledge.

My Scholarship and Teaching at Sarah Lawrence & Current Events

7. I am the sole Jewish Studies faculty at Sarah Lawrence. This academic year, I am teaching a lecture on Jewish history from ancient to medieval to modern times, as well as a seminar entitled, *The Holocaust in Cultural Memory*. These courses cover topics such as what it means to be a modern Jew and how debates about Holocaust remembrance play a role politically in the United States and Europe.

8. My courses attract students who are interested in studying the Jewish people, the modern state of Israel, and the shaping of contemporary Jewish identity. This field of study is necessarily connected to contemporary understandings of antisemitism as well as to contemporary debates about Israel and Palestine.

9. As a scholar, I have engaged with a broad range of political perspectives on Israel and Palestine and with people who disagree widely on the subject. I believe that, as a scholar, it is important to uphold academic freedom apart from one's substantive views on the Israel/Palestine debate. The point of academic freedom is to support open debate and discourse. As a teacher, I strive to create a classroom environment where all perspectives on the subject of Israel and Palestine are welcome and contribute to academic discourse. I am proud that my student evaluations so far reflect my success in this effort, showing that students with views sympathetic to Israel and students with views critical of Israel both feel valued and heard. While I have my own views on the matter, I do not bring them into the classroom, and my students generally do not identify me as associated with one side of the debate or the other.

10. I am aware that the federal government has taken a series of actions targeting Columbia over the last month. In particular, I am aware that in early March, several federal agencies announced that they would review federal funding to Columbia and then cancelled \$400 million in grants to Columbia on March 7, 2025. It's my understanding that the federal government presented the \$400 million in funding cuts as an initial round of action, with the prospect of additional cancellations at Columbia and at other schools. I am also aware that on March 13, 2025, officials from several federal agencies sent a letter to Columbia that was made public, and demanded that Columbia immediately take a long list of actions as a precondition of further negotiations regarding federal funding. I am aware that Columbia adopted numerous of these policy demands on March 21, 2025.

11. I am also aware that on March 10, 2025, the U.S. Department of Education sent letters to 60 universities and colleges, including Columbia University and Sarah Lawrence

College, warning the schools of potential enforcement actions if they did not fulfill their obligations under Title VI.

12. Given the proximity of Sarah Lawrence College to Columbia University, many of my students spend time on Columbia's campus to connect with students or participate in activities there. Some of my students have joined campus protests at Columbia relating to the war in Gaza. All of my students are generally aware of the actions that the federal government has taken against Columbia over the last month or so.

Chilling Effects on Students

13. Over the last few weeks since the federal government began taking actions against Columbia, I have noticed a dramatic increase in fear and a chilling effect among my students, who have a range of political, ideological, and religious perspectives. Students have told me that they are afraid to express any opinion one way or another on the subject of Israel and Palestine or on the existence of antisemitism on campus because doing so could draw negative press attention and put Sarah Lawrence in the crosshairs like Columbia. There is a sense that our institution could be next, and it is better not to say anything that could be taken the wrong way.

14. Highly concerning to me is that some students are feeling chilled from talking about antisemitism at all, even to express concerns about it. A student said to me recently that they wanted to be able to talk about antisemitism, but they feared that if they did, those statements could put Sarah Lawrence under the eye of the federal government, and that could result in adverse action against the institution and its students. This student told me they thought it was better to just shut up. My pro-Israel students are some of the ones telling me they are most upset about what is happening at Columbia, because it keeps them from talking about real issues of antisemitism for fear that their concerns will be used to hurt the college and their classmates.

In reality, the federal government's crackdown on Columbia is actually silencing speech about antisemitism.

15. In addition, many students are chilled from voicing their opinions on the subject of Israel and Palestine in the classroom. Some students have expressly told me, one on one, that they are holding back from speaking in class. They say it is "too stressful" to have to watch their words so closely – regardless of their viewpoint. They would rather speak up in class when the discussion has moved on to other topics. In the last couple of weeks, my course on modern Jewish history covered the topic of Zionism. Two students told me they skipped those classes and would resume attendance when we moved on to Russian Jewish history because it was less of a minefield.

16. Some students have told me that, based on what their friends at Columbia have experienced, they fear that someone will attend the class who is not enrolled, record the discussion, and make it public in a way that draws negative press and gets everyone in trouble. They are worried that such intrusions could happen in our classroom. In particular over the past week, there has been a real panic among students that the federal government might require the school to disclose information about students, including what they wrote in papers for classes. Some of my students are particularly concerned about putting their foreign classmates at risk.

17. No matter where my students' sympathies lie most heavily in the debate about Israel and Palestine, they say that the people in the federal government who claim to be defending Jewish students against antisemitism are not making their lives better; they are making them harder.

Chilling Effects on My Scholarship and Teaching

18. I myself am experiencing a chilling effect as well. While my own scholarship does not deal directly with Israel and Palestine, it does engage with the topic of Zionism. As a scholar, I feel that I need to watch how I engage with this topic extremely carefully. I always want to present my students with reading materials that demonstrate multiple perspectives. My students have a range of different opinions on that issue. But now, I feel that I could get in trouble and get my institution in trouble if I don't present the material in a way that gets the balance just right from the federal government's perspective. It troubles me to recognize that is affecting how I now present the material and the environment I create for open discourse.

19. For example, when teaching about the topic of Zionism, I have had to change my approach. My approach to teaching is to create an outline of discussion points and then guide an open discussion to evolve in a natural way. On the topic of Zionism, I now feel like I have to write down everything I am going to say and not say anything extemporaneously. I don't feel like I can create an open, flowing discourse on Zionism anymore, like I can with other subjects.

20. In addition, the chilling effect of the Trump administration's crackdown on Columbia University is affecting my choices of what texts I assign my students on my syllabi. When I prepared the syllabus for my course on The Holocaust in Cultural Memory at the beginning of this semester, I considered including post-colonial perspectives on Israel. I held off on including them at the time but remained open to adding them to the syllabus. I often revise my syllabi over the course of the semester as I learn what students are interested in and where the discussions are going. I now fear that I cannot add the post-colonial critique of Israel, even if students are interested in debating it, without getting in trouble and getting my institution in trouble.

21. The chilling effect that I am experiencing in light of what's happening to Columbia over the last few weeks is preventing me from being the independent scholar that I want to be. I now feel that any time I say something on the topic of Israel or Zionism, I do not represent the views of Joel Swanson, the Jewish history scholar. Instead, I represent Sarah Lawrence under the scrutiny of the federal government, and I am responsible for the fate of this institution, my colleagues, and my students. That violates the principle of academic freedom and the commitment to independent thought that I am supposed to bring as a scholar.

22. As a scholar who is committed to academic freedom and who has endeavored to create an inclusive and open environment for my students to learn about Jewish history, including the ways it connects to contemporary debates, I fear that the federal government's actions only serve to destroy academic freedom and independent inquiry, rather than improve conditions for Jewish students on college campuses.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Dated: 4/1/2025

Signed: Joel N. Swanson

Joel Swanson

Assistant Professor of Jewish Studies
Sarah Lawrence College

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

AMERICAN ASSOCIATION OF
UNIVERSITY PROFESSORS,

and

AMERICAN FEDERATION OF
TEACHERS,

Plaintiffs,

v.

UNITED STATES DEPARTMENT OF
JUSTICE, *et al.*,

Defendants.

Case No. 1:25-cv-02429-MKV

**Declaration of Andrew
Geneslaw
(Witness K)**

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

AMERICAN ASSOCIATION OF UNIVERSITY
PROFESSORS,

and

AMERICAN FEDERATION OF TEACHERS,

Plaintiffs,

v.

UNITED STATES DEPARTMENT OF JUSTICE. *et*
al.,

Defendants.

Case No. 1:25-cv-02429-MKV

DECLARATION OF ANDREW GENESLAW

I, Andrew Geneslaw, hereby declare as follows:

1. I am an Assistant Professor of Pediatrics at the Columbia University Irving Medical Center (CUIMC), where I also serve as the Program Director for the Pediatric Critical Care Medicine Fellowship. I have been a member of the Columbia faculty since 2019.

2. I have an Sc.B. in neuroscience from Brown University, an M.D. from Tufts University School of Medicine, and an M.S. in patient-oriented research from Columbia's Mailman School of Public Health.

3. I am a member of the American Association of University Professors (AAUP).

4. I have personal knowledge of the facts set forth in this declaration, and if called as a witness in this action, I could and would testify competently to these facts.

5. As a specialist in pediatric critical care medicine, I care for children of all ages who need advanced levels of care and monitoring in the intensive care unit. My patients can include children with lung disease bad enough to need a ventilator, heart failure, severe

infections that cause dangerously low blood pressure, or organs that no longer work and need to be supported until a transplant can be found. My job is to treat these diseases directly, and to support and coordinate among families, nurses, nutritionists, physical therapists, and other specialist doctors, so that the entire team can maintain the body's delicate balance and allow it to function during a critical illness.

6. In addition to my clinical work, I am the director of the Pediatric Critical Care Medicine fellowship training program at CUIMC. This is a three-year program for doctors who have completed their medical residency in pediatrics and seek additional training in the subspecialty of pediatric critical care. The program accepts 3-4 trainees per year and maintains 11 trainees at any given time.

7. Although it is a clinical training program, all of our trainees are expected to engage in academic research as well. We routinely accept trainees who are interested in becoming physician-scientists—in other words, devoting a significant amount of their career to scientific research in addition to clinical practice. Trainees interested in this career path can apply for grant funding to support their research during and after fellowship training.

8. Trainees in my program have been directly affected by the termination of grants to Columbia. One trainee was supposed to have been funded by a two-year T32 training grant. This grant would have allowed the trainee to study vascular biology and the origins of congenital heart disease in children, working with talented researchers in the fields of cardiology, embryology, and obstetrics and gynecology. That grant has now been terminated.

9. Another trainee will be funded by a T32 training grant from the Agency for Healthcare Research and Quality. That training grant has not been terminated. However, the NIH R01 grant funding the research project that the trainee expected to work on has been canceled. The project involved integrating an artificial intelligence system into the electronic health record throughout the adult hospital to prevent adverse patient outcomes; a recent clinical trial on adult patients showed a 36% decrease in the risk of death across hospital units that used this system. The terminated grant would have extended this research to the pediatric hospital

context. Although my trainee's grant has not been terminated, the trainee will no longer be able to conduct this important and promising research under the mentorship of the person whose R01 grant was canceled.

10. These grant terminations directly harm the Pediatric Critical Care fellowship program. The grant funding generally is used to support the salary of the trainee during their time dedicated to research activity. By terminating this funding source, the Department of Pediatrics has less funding than it otherwise would have, which leaves fewer resources for other activities.

11. The grant terminations will also jeopardize our program's ability to recruit excellent trainees in the field of pediatric critical care, particularly those interested in pursuing academic careers. One of the main reasons that fellows choose our program is that Columbia is a major academic center engaged in important scientific research. Trainees are altruistically motivated to do this important work because it will help children survive and live longer, healthier lives. For physician-scientists, the ability to earn grants to fund that research is a major determinant of career trajectory. It will be much more difficult to recruit talented physician-scientists to Columbia if federal grants to our institution are at risk of being canceled with virtually no notice, to the detriment of our trainees' careers.

12. I am aware from public reporting of several other grant terminations that are affecting research in pediatric medicine at CUIMC. For example, NIH terminated the Clinical and Translational Science Award (CTSA), which has funded the Irving Institute for Clinical and Translational Research at the medical center since 2006. The purpose of the CTSA is to support the translation of research discovery into improved patient care. It provides an enormous amount of direct support for researchers, including statistical analysis, administrative support, assistance with clinical trials, and advice on all aspects of the research process. These services enable researchers to develop new treatments faster and to deliver those treatments to patients more efficiently, effectively, and safely.

13. The CTSA provided funding and support for my previous research grant, which examined severe respiratory failure in infants and children and subsequent problems with their neurodevelopment and mental health. I continue to use CTSA resources to support research in this area. I have previously relied on CTSA expertise to aid research on multisystem inflammatory syndrome in children (a life-threatening post-infectious complication of COVID-19). That support helped to advance our understanding of the most effective treatments for this illness. I have also used CTSA services to provide advice on projects centered on neurodevelopment after premature birth and care in a neonatal ICU. In general, the CTSA has been the backbone for my own research support, and the loss of its services would be devastating for funded and unfunded research projects across the institution.

14. NIH has terminated several other grants related to pediatric research. For example, one terminated project sought to develop antiviral medications to inhibit SARS-CoV-2 (the virus responsible for COVID-19) from entering and infecting cells. This would have been a non-vaccine method for preventing spread of the disease, particularly useful in vulnerable or immunocompromised populations. Another terminated project was the COVID-19 Mother Baby Outcomes (COMBO) initiative, which has been studying the impact of COVID-19 infections during pregnancy on the developing fetus and the future health of both the mother and child. The cancellation of these projects will deprive the field of pediatric medicine of critical insights that could be applied to save lives, improve patient care, and help children throughout the United States.

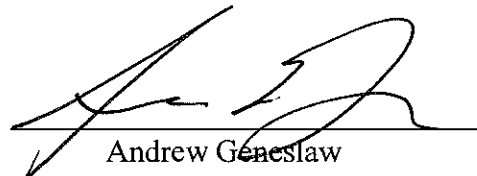
15. I understand the government claims to have terminated these grants because of Columbia's "continued inaction in the face of persistent harassment of Jewish students." It is abhorrent to me as a physician, scientist, teacher—and as a Jew—that the administration would claim that halting scientific research funding is somehow an appropriate response to antisemitism. The administration's actions do not make Jews on Columbia's campus safer. Instead, their actions compromise our ability to do vital work caring for patients (in my case, very sick children), training the next generation of physicians and scientists, and conducting the

research that will enable us to better understand, prevent, and treat the causes of our patients' suffering.

16. I am greatly concerned that the government's actual motivation is to suppress free speech on campus and punish ideas and viewpoints that it does not like—including, for example, support for diversity, equity, and inclusion. I strongly believe in the importance of diversity in the medical profession, given the evidence that a more representative workforce leads to improved health outcomes for patients, particularly those in marginalized communities. But the government's actions have had a significant chilling effect on the way that my colleagues and I discuss the issue of diversity in medicine, as well as other topics the government would consider controversial.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed on this 8 day of May 2025.



Andrew Geneslaw

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

AMERICAN ASSOCIATION OF
UNIVERSITY PROFESSORS,

and

AMERICAN FEDERATION OF
TEACHERS,

Plaintiffs,

v.

UNITED STATES DEPARTMENT OF
JUSTICE, *et al.*,

Defendants.

Case No. 1:25-cv-02429-MKV

Declaration of Alex de
Sherbinin
(Witness L)

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

AMERICAN ASSOCIATION OF UNIVERSITY
PROFESSORS,

and

AMERICAN FEDERATION OF TEACHERS,

Plaintiffs,

v.

UNITED STATES DEPARTMENT OF JUSTICE. *et*
al.,

Defendants.

Case No. 1:25-cv-02429-MKV

DECLARATION OF ALEX DE SHERBININ

I, Alex de Sherbinin, hereby declare as follows:

1. I am the Director of the Center for Integrated Earth System Information (CIESIN), a research unit of the Columbia Climate School at Columbia University. I have worked at CIESIN since 1999. I also regularly teach students at the Climate School.
2. I have personal knowledge of the facts set forth in this declaration, and if called as a witness in this action, I could and would testify competently to these facts.
3. Since 1998, CIESIN has had a contract with the National Aeronautics and Space Administration (NASA) to run one of twelve data centers known as Distributed Active Archive Centers (DAACs). The general purpose of these data centers is to process, archive, and distribute different types of earth science data, as well as to create data sets for and provide support to researchers at NASA and elsewhere.

4. NASA selected CIESIN to run the Socioeconomic Data and Applications Center (SEDAC), the data center that focuses specifically on data relating to human interactions in the environment.

5. SEDAC provides unique global and regional data products and services in five major areas: population and settlements; climate mitigation and adaptation; environmental sustainability; natural hazards; and poverty and food security. SEDAC's flagship data product is the Gridded Population of the World, which is a global map that models the distribution of the human population across the world. This map can be integrated with other data sets (*e.g.*, data on air pollution), allowing for a greater understanding of the impact of issues like air pollution on public health. SEDAC also created a gridded version of the U.S. Social Vulnerability Index, a data set that helps assess the ability of counties in the United States to prepare for, respond to, and recover from environmental hazards.

6. SEDAC's data products have been used widely, both in academic research and in real-world decision-making and applications. Roughly 700 academic journal articles per year cite SEDAC data, with many using our data to understand the ways that humans are affected by, or contributing to, environmental change. As far as real-world applications, disaster managers have used SEDAC data to help estimate the population in communities affected by natural disasters, such as hurricanes, major flooding, and wildfires. Understanding the precise population distribution can help emergency managers identify the appropriate size of the emergency response, as well as the appropriate locations to send utility trucks and other forms of emergency assistance.

7. CIESIN's most recent contract with NASA was a five-year contract for more than \$5 million a year (for a total contract value of nearly \$30 million). There were 3.5 years left on this contract.

8. CIESIN's contract with NASA has paid for the salaries of the 25 people who worked on SEDAC on either a full- or part-time basis. These individuals have unique skills and

specialized knowledge in the technical areas relevant to running a data repository, including the development and processing of data.

9. On March 7, 2025, CIESIN received a stop-work order from NASA instructing us to cease work on SEDAC. Although we did not receive a formal termination letter from NASA until April 30, 2025, it is my understanding that the original stop-work order was issued as part of the government's termination of \$400 million in grants and contracts to Columbia. Neither the stop-work order nor the termination letter we received gave a specific reason for the termination.

10. I have learned that CIESIN's contract with NASA appeared on a March 3, 2025 list of contracts identified for potential stop-work orders by Josh Gruenbaum, the Commissioner of the Federal Acquisition Service in the General Services Administration. *See* ECF No. 93-1. The contract number is 80GSFC23CA001, and the amount of the contract is \$29,953,052.00.

11. The loss of the SEDAC contract will be devastating for the tremendously dedicated staff at CIESIN. Because the contract has been terminated, CIESIN has had to notify 17 of the 25 people who have worked on SEDAC that they will be losing their positions.

12. The loss of the contract also means SEDAC will no longer be able to perform the important services it has performed for more than 25 years—including updating the data, developing new data sets and products, curating data from third-party developers, and ensuring the data are archived and distributed in accordance with best practices. This will have real-world consequences, given the range of practical applications for which SEDAC data have been used.

13. Because the contract has been terminated, NASA removed all SEDAC data from its Earthdata catalog in early April 2025. Since public access was interrupted, CIESIN invested substantial effort in identifying an appropriate open repository and has begun the process of moving the data to that repository. Until that happens, CIESIN has made the data catalog available on a webpage to provide minimal access for its user community and attempted to publicize it, but it is likely that many researchers and others who rely on the data do not know where to find them. The current catalog is a Google sheet with very limited functionality for

data search and discovery. In the month or so since the data were removed from the NASA catalog, I have heard from many SEDAC data users who relied on the data and were concerned it would no longer be available.

14. I have no reason to believe the termination of the SEDAC contract had anything to do with CIESIN's performance. SEDAC is rated each year by NASA's Earth Observing System Data and Information System (EOSDIS), and it has generally received exceptional ratings. SEDAC also has a strong reputation among the communities we serve.

15. In my experience, the government's actions terminating millions of dollars in federal funds have affected the campus environment. I have found people are more cautious and guarded about expressing their views, due to concerns that particular words may be taken out of context and used against them.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed on this 8th day of May 2025.



Alex de Sherbinin

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

AMERICAN ASSOCIATION OF
UNIVERSITY PROFESSORS,

and

AMERICAN FEDERATION OF
TEACHERS,

Plaintiffs,

v.

UNITED STATES DEPARTMENT OF
JUSTICE, *et al.*,

Defendants.

Case No. 1:25-cv-02429-MKV

Declaration of Mary Beth Terry (Witness M)

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

AMERICAN ASSOCIATION OF UNIVERSITY
PROFESSORS,

and

AMERICAN FEDERATION OF TEACHERS,

Plaintiffs,

v.

UNITED STATES DEPARTMENT OF JUSTICE. *et*
al.,

Defendants.

Case No. 1:25-cv-02429-MKV

DECLARATION OF MARY BETH TERRY

I, Mary Beth Terry, declare as follows:

1. I am a Professor of Epidemiology and Environmental Sciences at the Mailman School of Public Health.
2. I have been at Columbia University for over 25 years. I received my PhD in Epidemiology at Columbia University.
3. My research focuses on chronic disease risk, including cancer.
4. I am over the age of 18 and competent to testify as to the matters set forth in this affidavit based on my own personal knowledge.
5. I am a member of AAUP and AFT.
6. I have had an NIH center grant, called a P50 award, terminated. I was the overall contact Principal Investigator (PI) for the grant. The notice from NIH about the termination stated, "This

project has been terminated due to unsafe antisemitic actions that suggest the institution lacks concern for the safety and well-being of Jewish students.”

7. The grant was in the middle of its fourth year, and we had about a year and a half left. The grant was for a total of about \$20 million over those four years.

8. This grant funded research on chronic disease prevention. The grant supported many components, including three main clinical trials.

9. One trial involved breast cancer patients who were at risk of heart disease. The goal was to figure out ways to manage multiple chronic diseases.

10. A second trial focused on preventing chronic diseases, like cancer and cardiometabolic health.

11. A third trial focused on colorectal cancer screenings and reducing colorectal cancer risk.

12. These trials all included patient participants. Now, the trials are not continuing. As a result of the funding withdrawal, the already-enrolled participants will not be able to get the benefit of their participation: they will not receive the results related to managing or preventing chronic diseases. For those who enrolled in the colorectal cancer screening trial, those participants will no longer be able to access the cancer screenings through the trial, leaving them at risk of developing undetected cancer. We also have stopped all recruitment for future participants in each trial.

13. The NIH center grant also supported two additional trials that were funded as offspring of these main trials, and they have stopped.

14. There were also over 30 pilot studies, run by junior investigators, that were part of this center grant, and they are now cancelled. This is extremely detrimental to the junior researchers

and their career. The grant provided them an opportunity to work, train, and develop their careers, and it brought in new researchers to the field of chronic disease.

15. As a direct result of the funding termination, we have had to lay off staff. We laid off one person around May 7, 2025, and there may be more. This layoff was part of the layoffs that Columbia University publicly announced around the same time. I took time and resources to train these individuals. Their layoff is a huge loss to the project, even if it were ever to be restarted.

16. Although Columbia University was the lead on this grant, there were a number of other institutions that were also part of the NIH center grant, including Hunter College, Cornell, Northwell Health Systems, and the research arm of the Physician Affiliate Group of New York (PAGNY). The funding termination removes their funding, too. I understand that they also have had to lay off staff as a result.

17. We had obtained this grant as part of a specific call for proposals. The call funded eleven centers around the country, and we were one of them. This was a request for proposals to get people who had not been working together to do so, in order to better understand potential solutions to prevent different types of chronic diseases. It was a unique effort.

18. The sudden termination of funding for this research, without any notice, has been harmful for multiple reasons. First, our community partners were critical to this research. The abrupt funding termination after these community partners had been working in good faith harms the trust that we have worked so hard to build.

19. It is also extremely detrimental to the patient participants. Abruptly canceling ongoing clinical trials severely damages trust – why would a patient ever participate in a trial if they don't get to finish and don't get the results and answers they were looking for? They wouldn't.

20. This is a huge loss not only for me and my team, but also for our collective understanding of chronic diseases, like cancer and heart disease.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Dated: 5/7/25

Signed: Mary Beth Terry

Mary Beth Terry
Professor of Epidemiology and Environmental Sciences

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

AMERICAN ASSOCIATION OF
UNIVERSITY PROFESSORS,

and

AMERICAN FEDERATION OF
TEACHERS,

Plaintiffs,

v.

UNITED STATES DEPARTMENT OF
JUSTICE, *et al.*,

Defendants.

Case No. 1:25-cv-02429-MKV

Declaration of Steven Chillrud (Witness N)

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

AMERICAN ASSOCIATION OF UNIVERSITY
PROFESSORS,

and

AMERICAN FEDERATION OF TEACHERS,

Plaintiffs,

v.

UNITED STATES DEPARTMENT OF JUSTICE. *et*
al.,

Defendants.

Case No. 1:25-cv-02429-MKV

DECLARATION OF STEVEN CHILLRUD

I, Steven N. Chillrud, hereby declare as follows:

1. I am a Lamont Research Professor at the Lamont-Doherty Earth Observatory of Columbia University. I have also served in leadership roles on large center grants such as being the Director of the Exposure Assessment Core at the Center for Environmental Health in Northern Manhattan for over 10 years. I have been a fulltime member of the Columbia University research staff since 1996, starting as a postdoc and working my way up to being a tenured Lamont Research Professor.

2. I have a bachelor's degree in chemistry and environmental studies from the University of California, Santa Cruz, and a Ph.D. from Columbia University specializing in geochemistry.

3. I am a member of the American Association of University Professors (AAUP).

4. I have personal knowledge of the facts set forth in this declaration, and if called as a witness in this action, I could and would testify competently to these facts.

5. The Center for Environmental Health and Justice in Northern Manhattan (“the Center”) is funded by a large P30 grant from the National Institute of Environmental Health Sciences, a component of the National Institutes of Health (NIH).

6. A P30 grant is a type of NIH grant known as a Center Core Grant, which is designed to support shared resources and facilities for research by many different investigators. The goal is to provide a comprehensive suite of facilities that can support researchers throughout all stages of their investigations, thus improving research quality and overall research productivity.

7. The mission of our Center is to identify and understand health concerns caused by environmental exposures and to address those exposures through science and partnerships. Researchers at the Center tend to focus in particular on cancer, respiratory illnesses, and neurological and neurodegenerative diseases. We study the effects of environmental exposures both locally in New York and in other places around the United States and the world.

8. The Center is divided into several “facility cores”—i.e., groups that provide different kinds of services to support research projects. For example, the Study Design and Data Science Facility Core provides resources to plan, conduct, and analyze studies, including guidance on data management, interpretation, and reproducibility. The Community Engagement Core conducts and disseminates community-engaged environmental health research, developing strong collaborations with community and government partners and making research accessible to community members, policymakers, public health practitioners, and healthcare providers.

9. I am currently the co-director of the Translational Research Support Core, the overall purpose of which is to provide specific types of laboratory services that can complement investigators’ expertise. I lead a sub-core called the Exposure Assessment Core, which has expertise on providing state-of-the-art analysis of environmental samples (e.g., air, dust, water, soil) and can create customized air monitors and other tailored solutions for researchers. Another sub-core focuses on the collection and analysis of biological samples (animal samples or human blood, urine, tissue, etc.).

10. Any member of the Center can access the services provided by the facility cores. The membership of the Center currently includes 67 Columbia faculty members from a range of academic departments and disciplines.

11. The Center also has two programs to help encourage new scientific studies and develop the careers of faculty members. First, the Pilot Projects Program helps launch new studies, providing pilot funding (up to \$25,000) to conduct preliminary research and analysis; the data generated can then be used to support applications for additional grant funds from NIH and other sources. Second, the Career Development Program awards funding every two years to selected junior faculty members. This funding can be used to help support their research careers by, for example, setting up a laboratory or hiring research assistants or lab techs.

12. Columbia has received P30 grants to support the Center for approximately 26 years.

13. During that time, the Center has supported an enormous amount of important research on environmental science issues. Examples of recent work that Columbia researchers have done through Center collaborations include: showing that metals from e-cigarette aerosols accumulate in the brain in mice and might do the same in humans; reporting on increased hospitalizations following extreme weather events; investigating access to clean drinking water and the impact on infant health; and showing the impacts of mold interventions in homes to reduce asthma exacerbations.

14. The Center has also supported research that has informed significant policy interventions with a meaningful impact on human health. For example, the Center's research on chemicals in children's products helped support the passage of safety legislation in New York State. The Center also worked to help pass an order requiring the phase-out of residual fuel oil in New York City, which has resulted in 40% lower air pollution emissions from large buildings. And the Center has conducted mechanistic studies on the impact of the pesticide chlorpyrifos on the developing brain, which helped inform an EPA regulation on this pesticide.

15. On March 10, we received notice from Columbia that the P30 grant supporting the Center appeared on a list of grants to Columbia that had been terminated by NIH. By March 14, we had been notified directly by NIH that the grant was terminated.

16. I am not aware of any concerns by NIH about the Center's performance. On the contrary, the Center went through a competitive renewal approximately two years ago and received one of the best scores indicating that it is one of the top centers in the country.

17. The termination of the grant will make it substantially more difficult for researchers at Columbia to conduct the type of environmental health research that the Center has historically supported. This will have a major impact on Columbia's ability to recruit the best graduate students and young scientists interested in environmental health and science research.

18. The Center will likely lose multiple staff members as a result of the grant's termination. These are individuals who have spent years (in some cases, decades) building up highly specialized skills and expertise in particular aspects of environmental science research. Even if funding were eventually restored and we were able to hire new staff to fill these roles, it would be an enormous undertaking to train these individuals to perform the work our current staff performs. I believe it would take decades to rebuild the expertise we will have lost.

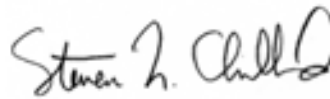
19. The loss of the Center's Pilot Projects and Career Development Programs will also cause both immediate and long-term harm, particularly to junior researchers. We will no longer be able to provide dedicated funding for junior faculty career development. Much of the Center's pilot funding has been awarded to early-career faculty and, as noted, has been used to support applications for additional funding. The loss of these opportunities will jeopardize the ability of junior researchers to develop the skills and access the resources they need to be successful independent investigators.

20. I am aware of other grants to Columbia that were terminated on the same date as our P30 grant. These include grants that funded important training opportunities for graduate students, as well as research projects aimed at understanding the health effects of certain chemical exposures.

21. I am greatly concerned about the consequences of these mass grant terminations not only for Columbia and for individual researchers whose careers are now at stake, but also for the United States' competitiveness in environmental health science and many other fields. I believe these actions will make it considerably harder for the United States to attract the best graduate students and young scientists from around the world.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed on this 7th day of May 2025.



Steven N. Chillrud

CERTIFICATE OF SERVICE

I hereby certify that on September 22, 2025, I electronically filed the foregoing Joint Appendix with the Clerk of Court for the United States Court of Appeals for the Second Circuit using the ACMS system, which will send notice of such filing to all counsel of record in compliance with Local Rule 25.1(h)(2).

Dated: September 22, 2025

By: s/ Rachel Goodman

Rachel Goodman

Protect Democracy Project

82 Nassau Street, #601

New York, NY 10038

Tel: (202) 579-4582

Fax: (202) 769-3176

rachel.goodman@protectdemocracy.org

Counsel for Plaintiffs-Appellants