No. 20-1408

IN THE SUPREME COURT OF THE UNITED STATES

KEITH FERNANDEZ,
Petitioner,

v.

THE WHARTON SCHOOL OF THE UNIVERSITY OF PENNSYLVANIA, et al., *Respondents*.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Third Circuit

PETITION FOR A WRIT OF CERTIORARI

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Friend of the Court

QUESTIONS PRESENTED FOR REVIEW

Petitioner is a graduate of Harvard College with an Honorary Degree in Economics and Wharton Business School with his M.B.A. in Finance. He filed Suit against Wharton Business School in 2019 in the Eastern District of Pennsylvania for Breach of Contract and Ethnicity Discrimination related to the awarding of the Academic Excellence Fellowship for 2018. This Fellowship is awarded to the student or students with the highest cumulative GPA during their second and third semesters of the MBA program.

During the awarding of the Fellowship, the Petitioner became suspicious of the behavior of Wharton Administrators. They told the Petitioner in an email that two students had a .01 higher GPA and that he would not be receiving the Fellowship. They intentionally stalned the Petitioner, were acting evasively and refused to provide the Petitioner with corroborating information or further detail on the awarding of the Fellowship.

The Petitioner later became aware, through informal discovery on the two winning recipients, that Wharton administrators were lying and covering up defrauding the Petitioner by awarding the Valedictorian Scholarship to a student or students with the same and/or lower GPAs than the Petitioner.

Due to the unethical and illegal behavior of the Wharton Administrators, the Petitioner filed Suit against Wharton Business School for Breach of Contract and Ethnicity Discrimination in violation of 42 U.S. Code § Section 1981.

Despite fulfilling all prosecutorial obligations, the Suit was suspiciously dismissed in the Eastern District of Pennsylvania by the Judge right before the Petitioner was scheduled to conduct discovery. The staff to the Judge wrote an email to the Petitioner telling him that he would be allowed to conduct discovery and that a case management date would be scheduled.

At the very last minute, the Judge dismissed the Petitioner's suit with prejudice right before discovery was scheduled to take place.

Numerous federal case precedent has been set establishing that a student enters into a contractual relationship with a College or University upon the implicit exchange of money for contractual educational services.[1] Despite this, the judge made an erroneous ruling on this matter in his Order dismissing the case with prejudice preventing the Plaintiff from even conducting discovery.

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(1) See Reynolds v. The University of Pennsylvania, 684 F. Supp. 2d 621 (E.D. Pa. 2010); Gally v. Columbia University, 22 F.Supp.2d 199, 206 (S.D.N.Y. 1998); Chira v. Columbia University, 289 F.Supp. 2d 477, 485-86 (S.D.N.Y. 2003); Peretti v. Montana, 464 F. Supp. 784 (D. Mont. 1979).

In *Reynolds v. The University of Pennsylvania,* a close precedent, the Plaintiff prevailed on a breach of contract claim for even less aggressive and more indirect misconduct by the University with egregious evidence of the Plaintiff even falsifying evidence and documents presented in discovery.

For some reason, in *Fernandez v. The Wharton School*, *Fernandez* wasn't even allowed to conduct discovery, even with this *Reynolds* precedent in place.

Under Fed. R. Civ. P. 12(b)(6), a Court may dismiss a complaint for failure to state a claim.

However, as established in *Jiri Pik v. University of Pennsylvania* [2] "dismissal is a harsh remedy and should only be resorted to in extreme cases." Even in this *Pik* precedent, the Plaintiff was able to conduct discovery and his Complaint was only dismissed for flagrant violations of the *Poulis* [3] precedent, including the Plaintiff not even showing up for scheduled discovery.

For some reason, despite all of this federal precedent, including favorable precedent established in the Eastern District of Pennsylvania against the same University system, *Fernandez* was still not even allowed to conduct discovery in his Case.

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(2) Jiri Pik v. The University of Pennsylvania, No. 08-5164 (E.D Pa. 2011).

(3) Poulis v. State Farm Fire and Cas. Co., 747 F.2d 863 (3d Cir. 1984).

The following question is presented:

1. Did the Eastern District of Pennsylvania err in its 12(b)(6) dismissal of the *Fernandez* case and did Wharton Business School breach its contract with the student with regards to the awarding of the Academic Excellence Fellowship for 2018?

PARTIES TO PROCEEDING AND RELATED CASES

Plaintiff

- Keith M. Fernandez

Defendants

- The Wharton School of the University of Pennsylvania
- The University of Pennsylvania
- Stephan Dieckmann
- Amy Miller
- Michelle Hopping

Related Cases

- *Fernandez v. The Wharton School of the University of Pennsylvania, et al.,* No. 2:19-cv-05574, U.S District Court for the Eastern District of Pennsylvania. Judgement entered May 11, 2020.

- *Fernandez v. The Wharton School of the University of Pennsylvania, et al.,* No. 20-2218, U. S. Court of Appeals for the Third Circuit. Judgement entered November 3, 2020.

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I. PETITION FOR WRIT OF CERTIORARI

Keith M. Fernandez petitions the Court for a writ of certiorari to review the judgment of the United States District Court for the Eastern District of Pennsylvania following the procedural dismissal of his Complaint by the United States Court of Appeals for the Third Circuit due to extenuating circumstances.

II. OPINIONS BELOW

The procedural dismissal of the Court of Appeals for the Third Circuit in *Fernandez v. The Wharton School of the University of Pennsylvania, et al., No. 20-2218 (3rd Cir. 2020)* is included in Petitioner's Appendix at B-1. The opinion of the District Court granting the motion to dismiss in *Fernandez v. The Wharton School of the University of Pennsylvania et al., No. 2:19-cv-05574 (E.D. Pa. 2020)* is included in Petitioner's Appendix at A-1.

III. JURISDICTION

The Eastern District of Pennsylvania entered judgment on May 11, 2020. See Appendix A-1. The Third Circuit entered an order for a procedural dismissal of the case on November 3, 2020. See Appendix B-1.

On March 19, 2020, "in light of ongoing public health concerns relating to COVID-19" it was ordered by the Court that "the deadline to file any petition for a writ of certiorari due on or after the date of this order is extended to 150 days from the date of the lower court judgment..." See Appendix C-1.

Given the Third Circuit entered judgement on November 3, 2020, this petition is timely filed within 150 days, pursuant to this order. This Court has jurisdiction under 28 U.S.C. § 1254(1).

IV. STATUTORY PROVISIONS INVOLVED

This case involves a Fed. R. Civ. P. 12(b)(6) dismissal for an educational breach of contract claim regarding the awarding of the Wharton Academic Excellence Fellowship for 2018 and ethnicity discrimination under 42 U.S. Code § Section 1981.

V. STATEMENT OF THE CASE

A. Introduction –

This petition arises from the efforts of a man who is being subject to Federal Witness Tampering, highly orchestrated and pre-meditated "Gaslighting"[1] of a Federal Whistleblower, sustained intimidation tactics utilized to discredit the testimony of a Federal Whistleblower and other violations of 18 U.S. Code § 1512. It can only be compared to what has occurred historically under the Stalin Regime in the Gulag Euthanasia Camps of the Soviet Union as a way to discredit and silence Government Dissidents and Whistleblowers. It is factually this extreme. It is exposed in this Writ before the Supreme Court as a way to preserve the integrity of our Country's highest educational institutions (who have been impacted by this), combat corruption, tampering and obstruction of justice in our Federal Court Systems and preserve the integrity of our Federal Intelligence Agencies.

Furthermore, it is exposed and documented to the Supreme Court as a way to prevent such highly

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(1) Gaslighting is a form of psychological manipulation in which a person or a group covertly sows seeds of doubt in a targeted individual, making them question their own memory, perception or judgment as a way to discredit them.

coordinated and orchestrated federal witness tampering from occurring again in the future against other Federal Whistleblowers.

The petitioner filed a Federal Qui-Tam Lawsuit on August 8th, 2018 in the Middle District of Florida exposing large-scale alleged Healthcare Fraud by Serial Offenders currently under investigation by the FBI and other federal agencies.[2]

As a result of this Whistleblower Lawsuit, it is the Petitioner's belief that he was put under warrantless Electronic Surveillance Monitoring by Federal Intelligence Agencies, including the Central Intelligence Agency ("CIA") for the purposes of influencing and coloring his Lawsuit.

It is also the Petitioner's belief that certain Federal Agents are attempting to obstruct justice on his Lawsuit and witness intimidate him to cover up the alleged fraudulent conduct. One of the **potential** reasons for this obstruction activity is to support the cultivation of "**Black Empowerment,**" and to combat the alleged "skin color discrimination" faced by the owners of the Defendant companies.

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(2) See United States of America ex rel. Keith Fernandez vs. Freedom Health, Inc., Optimum Healthcare, Inc. and Physician Partners, LLC, Case no. 8:2018-cv-1959.

This same pattern of documented harassment and intimidation behavior was inflicted on the first Whistleblower, Dr. Darren Sewell, to the Defendant's fraud in Fernandez's Qui-Tam Case, wealthy Indian-American businessmen, resulting in "black-balling," public defamation, stalking and extreme stress contributing to full loss of income and employment and an early death at the age of thirty-nine.[3]

Regardless of the validity of the Petitioner's beliefs, the facts are that such Federal surveillance activity is kept classified and not public information. As such, all the Petitioner can do is document the instances of overt felony witness intimidation and obstruction of justice.

Such behavior, which has been thoroughly documented by the Petitioner, has resulted in alleged poisonings and usage of chemical weapons, ordered felony witness intimidation assaults, racist violent federal hate crimes, force suicide taunts, aggravated stalking of the Petitioner, false and framed arrests, framed involuntary commitments, documented tampering of his legal employment, and other instances of intimidation and criminal torture.

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(3) See "The Personal Tolls of Whistle-Blowing" article by Sheelah Kolhatkar. The New Yorker. January 28, 2019. Annals of Health Care. February 4, 2019 Issue.

Such documentation provides necessary evidence and corroboration to the allegations the Petitioner makes. Such documentation has resulted in the following criminal complaints and human rights complaints:

Complaints Filed

02/23/21: Exhibit D-2	Criminal Complaint made to the Attorney General's Office of the Southern District of Florida reporting Felony Witness Tampering, Felony Grand Larceny (FBI Complaint) & Obstruction of Justice
09/17/20: Exhibit D-3	Human Rights Complaint filed with the United Nations Convention Against Torture ("CAT") [4] and the Human Rights Council reporting Felony Torture, Use of Chemical Weapons & Poisonings, Sex Trafficking & Extortion by Federal Agents, Force Suicide Taunts, Surveillance Abuse & Severe Witness Intimidation
05/02/20: Exhibit D-4	Criminal Complaint made to the Attorney General's Office of the Eastern District of New York reporting an Ordered Felony Witness Intimidation Assault, Racial Federal Hate Crimes, Surveillance Abuse, Aggravated Stalking & Obstruction of Justice

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(4) According to the U.N. Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, the term "torture" means any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity.

One of the most damaging aspects of the sustained defamation and witness intimidation that the Petitioner has received is that his educational achievements have been rendered essentially worthless. In retaliation for his Qui-Tam Lawsuit and to discredit the validity of his testimony, the Petitioner has been subject to federal blanket surveillance resulting in extreme defamation, torture and inhumane treatment, gaslighting of mental illness, tampering with his employment opportunities, public ridicule and shaming and other acts of sustained and persistent witness intimidation.

All of this conduct is being done to discredit the testimony of the Petitioner and to cover up the allegations in his Qui-Tam Lawsuit for the purpose of cultivating and protecting "Black Empowerment," while permanently scarring the Petitioner for life.

It is the belief of the Petitioner that such surveillance activities and the resulting defamation he has received have also carried over to his educational achievements and impacted the way he has been treated and perceived while at Wharton. The coloring or influencing of Wharton administrators to discredit Fernandez and make him look bad may be a

reason why he was treated so poorly and unethically by Wharton administrators with regards to their defalcation of him for the Academic Excellence Fellowship for 2018. [5]

B. Background –

After graduating from Harvard College with Honors in 2010, Fernandez worked for four years on Wall Street at leading investment banks and private equity firms, including Bank of America Merrill Lynch and KKR.

After completing a two-year Associate program at KKR, Fernandez attended The Wharton Business School for one semester in 2014. During his first semester at Wharton, Fernandez started several businesses including National Diagnostic Solutions.

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(5) The student (or students, in the case of a tie) who achieve the highest academic performance during their second and third semester of the MBA program is awarded the Academic Excellence Fellowship, a grant of $10,000. Academic performance for the Academic Excellence Fellowship is measured by the cumulative GPA during those two terms, not counting summer courses. The GPA is determined by assigning the following numerical weights to the letter grades received in Wharton MBA courses: A=4 points, B=3 points, C=2 points, D=1 point, and F=0 points, with + (plus) increasing the full grade value by .33 and – (minus) decreasing the full grade value by .33. A+'s carry a 4.0 point value, a University of Pennsylvania policy. The Academic Excellence Fellowship requires that the student take at least 9 credit units during their second and third semester, not counting summer courses.

Given the time conflict and the extensive commitment of running his businesses while attending graduate school, Fernandez took an approved leave of absence from Wharton after one semester to focus on managing his companies.

After taking a leave from Wharton, Fernandez won several entrepreneurial awards over the next two years including the Brillante Award for Entrepreneurial Excellence from the National Society of Hispanic MBAs in 2015.[6]

In 2017, Fernandez decided to finish his graduate degree from Wharton and re-enrolled in the MBA program in Fall 2017. Given Fernandez had previously finished his first semester in 2014, he re-enrolled in Wharton "off-cycle," beginning his 2nd semester in Fall 2017.

After re-enrolling at Wharton, Fernandez was one of the best students in his class earning a GPA of 3.97 in both the 2nd and 3rd semesters and being awarded 6 A+s.

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(6) The National Society of Hispanic MBAs, now known as Prospanica, awards the Brillante Award for Entrepreneurial Excellence each year at their Annual Conference to an entrepreneur who exemplifies Hispanic leadership through their drive and success. Particular attention is given to the candidate's vision and passion, the candidate's leadership and the candidate's commitment to social responsibility and empowering the youth.

A+s at Wharton are discretionary and are only awarded to the very top academic performers in a class, sometimes only one or two in a given class of hundreds. According to the University of Pennsylvania policy, A+s carry the same weighting of 4.0 as regular As for the purpose of computing GPA.

A+s denote a "statistically-significantly" higher level of academic performance and aggregated exam and test scores in a given course relative to As.

Grading for most courses at the Wharton Business School are done on a curve and all grades A+ through D- are "relative" performance indicators (i.e., they depend on how other students in the class perform). While it varies by course, A grades are usually awarded to the top 10% of students in a given course. A+ grades, however, are awarded to only a couple to a few students in each class and are statistically differentiated relative to an A grade.

Wharton does not provide transparent data on the awarding of A+ grades and specifically how statistically significant the differential in academic performance may be for a student like Fernandez who achieves a remarkably high amount of A+ grades over

two semesters (i.e. 6 A+s in two semesters) vs. students who just receive an equivalent A.

C. The Awarding of the Academic Excellence Fellowship

Given his high marks, Fernandez sent an email to Amy Miller in the Academic Affairs department at Wharton on January 25, 2019 expressing his desire to be considered for the Academic Excellence Fellowship, awarded to the top student or student(s) at Wharton over the 2nd and 3rd semesters as determined by their cumulative and weighted GPAs.

On February 5, 2019, Plaintiff Fernandez received a rushed email from Defendant Miller, only moments before an official announcement was scheduled to be sent out, stating that Fernandez "was considered for the scholarship," however, two other students were the selected recipients of the Fellowship. Defendant Amy Miller also represented to Fernandez that the margin of differential was only .01 for both students.

Suspicious of the rushed and insensitive nature of the email, the statistically insignificant "alleged" margin of differential of .01, the prestige of the

fellowship and the monetary award of $10,000, Fernandez continued to press Defendant Miller to provide him with additional details regarding the calculation and determination of GPA for the award.

Specifically, Fernandez wanted to know (i) how the GPA was calculated (i.e. whether it was appropriately weighted and statistically adjusted for differentials in course credits and Pass-Fail courses), (ii) why it was determined that Fernandez should be benchmarked against the Class of 2019 vs. the Class of 2016 or 2018 and (iii) how many A+ and A- credits were earned by his competitors given the "alleged" insignificant margin of differential in GPA and the objective rarity of Fernandez's achievement of six A+ credits over two semesters.

Wharton's behavior became suspicious and suggestive of deceit. Despite Fernandez's logical and accurate requests for further information, Defendant Miller suspiciously refused to provide Fernandez with any further detail or information even if on an anonymous basis. Her behavior and conduct suggested that she was being untruthful with Fernandez.

Given the potentially illegal behavior by Wharton administrators and given the fact that discrimination against Hispanic-Americans (as demonstrated by empirical evidence and data) [7] is a serious problem in American higher-education, Fernandez warned Defendant Amy Miller about potential discriminatory liability for the University.

As such, Defendant Miller referred Fernandez's request to take the process more seriously to Defendant Stephan Dieckmann, Vice Dean of Academic Affairs.

On February 8, 2019, Defendant Dieckmann sent an email to Fernandez allegedly representing that the GPA for the Academic Excellence Award was calculated correctly, but refusing to provide further details, tangible evidence or a rational explanation for Fernandez's requests for further exposition and proof.

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(7) The New York Times, August 24, 2017, "Even with Affirmative Action, Hispanics Are More Underrepresented at Top Colleges than 35 Years Ago." According to data compiled by the U.S. Department of Education's Office for Civil Rights, despite decades of Affirmative Action policies at Ivy League Schools, the gap for minority enrollment at prestigious Ivy League Schools has actually worsened for Hispanics, with admissions of Hispanics not growing at a proportional rate to overall population growth relative to 1980.

However, in the same email that Defendant Dieckmann alleged that the Award GPA was calculated correctly, Defendant Dieckmann made a bad mistake.

Dieckmann intentionally misrepresented to Fernandez that he would be eligible for a different academic scholarship, the Palmer Scholarship, which in reality would be impossible for Fernandez to obtain if only Dieckmann had looked at his transcript.

This made it apparent to Fernandez that Dieckmann was lying and that he was intentionally taunting Fernandez. Such behavior by Dieckmann regarding something as important as the Academic Excellence Fellowship signified bias and deceit by Defendants Miller and Dieckmann.

After this erroneous email sent by Defendant Dieckmann on February 8, 2019, Fernandez ceased all contact with the University and signified that he would be filing a Complaint.

There were also rumors being spread that Fernandez was being "black-balled" by the University in retaliation for threatening a lawsuit and that he was being defamed amongst the faculty, staff and other students for asserting his legal rights. There

were also defamatory rumors being spread that Plaintiff Fernandez was "very sick."

As such, Fernandez never received proof or confirmation that he was being fairly evaluated for the Academic Excellence Fellowship and his complaint regarding insensitive, discriminatory, illegal and fraudulent treatment were never escalated or properly addressed according to University policies.

It was later determined through informal discovery on the two other award winners, that Wharton was in fact just lying and that at least one of the award winners did not indeed have a .01 higher aggregate GPA as he was told.

D. Procedural History

Given the unethical and defamatory behavior by Wharton administrators, Fernandez filed Suit in the Eastern District of Pennsylvania [8] on November 26, 2019 for breach of contract and ethnicity discrimination under 42 U.S. Code § Section 1981

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(8) Fernandez v. The Wharton School et. al., No. 2:19-cv-05574 (E.D. PA. 2020).

Despite fulfilling all prosecutorial obligations, the Suit was suspiciously dismissed in the Eastern District of Pennsylvania by the Judge right before the Petitioner was scheduled to conduct discovery. The staff to the Judge wrote an email to the Petitioner telling him that he would be allowed to conduct discovery and that a case management date would be scheduled.

At the very last minute, the Judge dismissed the Petitioner's suit with prejudice right before discovery was scheduled to take place on May 11, 2020 (see Appendix A-1). It is the Petitioner's belief that this unethical behavior may have been influenced by certain federal intelligence agents as a way to obstruct justice on his Lawsuit to prevent him from uncovering the truth through discovery and to discredit him and make him look bad to cover up his Qui-Tam Lawsuit.

In May 2019, after Fernandez's initial Suit was suspiciously dismissed in the Eastern District of Pennsylvania right before promised discovery and a Case Management Conference was scheduled to take place, Fernandez conducted informal discovery out of court on the two determined winners of the Academic

Excellence Fellowship to corroborate the information provided by Wharton administrators. He could tell by their behavior that Wharton administrators were acting unethically and lying.

Upon conducting this informal discovery, it was confirmed to Fernandez on the condition of anonymity that at least one of the recipients of the Academic Excellence Fellowship did not in fact have a .01 higher GPA. Rather, it was confirmed that their cumulative GPA over these two semesters was the same as Fernandez's 3.97 or perhaps even lower.

It was thus determined that Wharton was just lying and engaging in breach of contract regarding the awarding of this important Valedictorian Fellowship. They just robbed Fernandez of the Fellowship and lied about the GPA of the other winners.

There is also behavioral evidence suggesting that they influenced or attempted to influence the Judicial Officer to dismiss Fernandez's suit to impede his ability to conduct lawful discovery and expose the truth.

On June 17, 2020, Fernandez appealed the ruling of the Eastern District Court of Pennsylvania to the U.S Court of Appeals for the Third Circuit.

On ***9/11***, the Court of Appeals issued a briefing and scheduling order for a brief and appendix to be filed before October 21, 2020.

On September 17, 2020, Fernandez filed a Complaint of Felony Torture with the UN Convention against Torture related to persistent witness intimidation he was experiencing, including thoroughly documented force suicide taunts, ordered federal hate crime assaults (caught on surveillance video) and alleged use of chemical toxins as retaliation for his Federal Qui-Tam Suit. (Appendix **D-3**).

On September 18, 2020, the very next day, Fernandez was arrested on charges of Federal Fraud for ~$400k from 2018 with evidence of an illegal and targeted audit, framing and felony tampering with evidence and billings related to a healthcare practice used to frame him and his father (a physician) by a company in India. (See Motion to Dismiss Appendix D-1). Fernandez has pled not guilty to these charges.

He was held in federal detention for close to two months, had to be placed in Protective Custody after receiving "black power" taunts and "stabbing threats" by organized Blood Gang Members and there is evidence now that he was tortured in his cell and that his attorney was tampered with to prolong his incarceration to obstruct justice. (Appendix D-2).

Suspiciously, immediately after Fernandez was arrested on these charges (relatively small when compared to other federal healthcare fraud precedents), his Qui-Tam Lawsuit was immediately unsealed and a deadline for ascertaining new counsel was set to eliminate his ability to continue to litigate

Effectively, they misused his arrest and prolonged his incarceration as a way to obstruct justice on his Qui-Tam Lawsuit. (See Motion to Dismiss Appendix D-1). Fernandez is still continuing to litigate his Qui-Tam case, however. [9]

He was released from detention on November 5, 2020, to find his Wharton Lawsuit was also dismissed by the Court of Appeals on a procedural basis for failure to timely prosecute on November 3, 2020, only days before his release. (See Appendix B-1)

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(9) See United States of America ex rel. Keith Fernandez vs. Freedom Health, Inc., Optimum Healthcare, Inc. and Physician Partners, LLC, Case no. 8:18-cv-1959-MSS-JSS.

VI. REASON FOR GRANTING THE WRIT

A. This Court's intervention is needed to enforce and uphold the integrity of the Ivy League & monitor the practices, standards and ethics of the nation's Highest Educational Institutions

This Court's intervention is necessary to enforce and uphold the integrity of the Ivy League and to set much needed federal case precedent in collegiate and post-secondary educational breach of contract claims.

In general, in order to state a claim for breach of contract, a plaintiff must establish the existence of an agreement, performance of the contract by the plaintiff, breach of contract by the defendant and damages. *Eternity Glob. Master Fund Ltd. v. Morgan Guar. Tr. Co. of NY.* [10]

In *Gally v. Columbia University* [11], federal precedent was established to recognize the existence of an implied contract between a university and its students. The terms of this contract are outlined in the "bulletins, circulars and regulations made available to the student" and "a student may seek

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(10) Eternity Glob. Master Fund v. Morgan Guar. Tr. Co. of N.Y., 375 F.3d 168, 177 (2d Cir. 2004).

(11) Gally v. Columbia University, 22 F.Supp.2d 199, 206 (S.D.N.Y. 1998).

redress for alleged breaches by the university." *Id.*

In *Reynolds v. University of Pennsylvania* [12], the Court ruled in favor of the Plaintiff in a breach of contract claim. In *Peretti v. Montana* [13], the student prevailed in a suit for damages when the court recognized that an implied contract was entered into between a school and a student under which the school is required to honor its commitments.

In *Chira v. Columbia University* [14] it was further established that educational breach of contract claims must identify "specific" promises that were broken by the university (dismissing claims in which students "point[ed] to no document or conversation that gives rise to a promise which Columbia breached"). This precedent was further established in *Baldrige v. State.* [15]

Consistent with case precedent, Fernandez entered into a contract with Wharton Business School when he made his tuition payments to the University over the course of 2017 and 2018. Given this contract, Wharton was obligated to provide services and to

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(12) Reynolds v. The University of Pennsylvania, 684 F. Supp. 2d 621 (E.D. Pa. 2010).

(13) Peretti v. Montana, 464 F. Supp. 784 (D. Mont. 1979).

(14) Chira v. Columbia University, 289 F.Supp. 2d 477, 485-86 (S.D.N.Y. 2003).

(15) Baldrige v. State, 293 A.D.2d 941, 943 (3d Dep't 2002).

make determinations on scholarship and fellowship awards following the specific criteria set forth in its policies.

Additionally, in this case, Wharton broke specific "bulletins, circulars and regulations made available to the student" and just lied to Fernandez regarding the GPA of the other award winner(s) to rob him of the Academic Excellence Fellowship. This is a very specific breach according to the official published academic policies of the Wharton MBA Program:

> "The student (or students, in the case of a tie) who achieve the highest academic performance during their second and third semester of the MBA program is awarded the Academic Excellence Fellowship, a grant of $10,000. Academic performance for the Academic Excellence Fellowship is measured by the cumulative GPA during those two terms, not counting summer courses. The GPA is determined by assigning the following numerical weights to the letter grades received in Wharton MBA courses: A=4 points, B=3 points, C=2 points, D=1 point, and F=0 points, with + (plus) increasing the full grade value by .33 and – (minus) decreasing the full grade value by .33. A+'s carry a 4.0 point value, a University of Pennsylvania policy. The Academic Excellence Fellowship requires that the student take at least 9 credit units during their second and third semester, not counting summer courses."

In *Joyner v. Albert Merrill School* (16), a student alleged fraudulent misrepresentation and breach of contract against his school on the basis that they

(16) *Joyner v. Albert Merrill School, 97 Misc. 2d 568, 411 N.Y.S.2d 988 (1977).*

misrepresented or lied about statistics relating to the certainty of placement in a high paying job upon graduation. The Court ruled in favor of the Plaintiff on the basis of the school's deceptive behavior and fraudulent misrepresentations. Certainly, in Fernandez's situation where Wharton just lied about something as important as the Valedictorian scholarship, a breach of contract under their published anti-fraud policies occurred here given the defalcation and misappropriation of university funds.

As established in *Olsson v. Bd. of Higher Educ.*[17], the "essence" of an implied contract between a university and student is that the university "must act in good faith in its dealings with its students." In order to plead an actionable breach of contract, the student must show that the university "acted in bad faith or in an arbitrary or irrational manner." *See Pell v. Trustees of Columbia Univ.*[18] *and Babiker v. Ross Univ. Sch. of Med.*[19]

In this situation, clearly Wharton administrators acted in "bad faith" towards the

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(17) Olsson v. Bd. of Higher Educ., 97 Misc. 2d 568, 411 N.Y.S.2d 988 (1977).

(18) Pell v. Trustees of Columbia University, 1998 WL 19989 (S.D.N.Y. Jan. 21, 1998).

(19) Babiker v. Ross Univ. Sch. of Med, 2000 WL 666342 (S.D.N.Y. May 19, 2000).

student, breaking their own official university policies in a very "specific manner" and engaging in lies to the student to defraud him of an important Fellowship.

In *Gociman v. Loyola University of Chicago*[20], the District Court dismissed the Complaint finding the plaintiff failed to allege the University made a specific promise. In *Hassan v. Fordham University*[21], the District Court dismissed the Complaint finding the plaintiff failed to identify a specific promise.

Moreover, as established in *Rodriguez v. N.Y. Univ.*[22], "[t]he mere allegation of mistreatment without identification of a specific breached promise or obligation does not state a claim upon witch a relief can be granted."

In *Fernandez v. The Wharton School*, the opposite occurred. The University broke a very specific promise and the terms of the Fellowship and just lied to the student. There is also evidence suggestive of tampering or influencing of the judicial officer to prevent the Defendant from conducting discovery to uncover the truth. This breach of contract

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(20) Gociman v. Loyola University Chicago, No. 1:20-cv-03116 (N.D. Ill. 2020).

(21) Hassan v. Fordham University, No. 20-CV-3265 (S.D. New York. 2021).

(22) Rodriguez v. N.Y. Univ., No. 05-CV-7374, 2007 WL 117775 (S.D.N.Y. 2007)

is egregious and not subjective, with very specific documented false statements and lies in the correspondence with the student. This resulted in a loss of $10,000 for the student, loss of the prestige of the fellowship, loss of future career opportunities and other serious damages.

This is something very serious that impacts the integrity of the entire Ivy League and our nation's highest important academic institutions.

As established in *Mindek v. Rigatti* [23], "dismissal is a harsh remedy and should only be resorted to in extreme cases." As established in *Gross v. German Found Indus. Initiative* [24], the Court must accept the truth of all factual allegations in a complaint and must draw all reasonable inferences in favor of the Plaintiff

Furthermore, as established in *Conley v. Gibson* [25], a 12(b)(6) motion must be denied "unless it appears beyond doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief."

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(23) Mindek v. Rigatti, 964 F.2d 1369, 1373 (3d Cir. 1992).

(24) Gross v. German Found Indus. Initiative, 549 F.3d 605, 610 (3d Cir. 2008).

(25) Conley v. Gibson, 355 U.S. 41 (1957).

In this case, it was not beyond doubt that there were no set of facts that could be procured to support the claims of the Plaintiff. Certainly, discovery should have been allowed to occur to determine the truth as there were false statements in the correspondence between the student and Wharton administrators.

Under Pennsylvania law, to decide if a contract is enforceable, it must be determined "(1) whether both parties manifested an intention to be bound by the agreement; (2) whether the terms of the agreement are sufficiently definite to be enforced; and (3) whether there was consideration." *See ATACS Corp. v. Trans World Commc'ns, Inc.* [26]

In this case, the Judge broke ground with federal case precedent and ruled that a contract was not set in place relating to "specific and identifiable promises that the school failed to honor." Certainly, the published Official MBA Academic Policies of the University are very "specific and identifiable promises" and meet the requirements of the "bulletins, circulars and regulations made available to the student" definition as outlined in the *Gally v. Columbia University* [27] precedent.

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(26) ATACS Corp. v. Trans World Commc'ns, Inc., 155 F.3d 659, 666 (3d Cir. 1998).

(27) Gally v. Columbia University, 22 F.Supp.2d 199, 206 (S.D.N.Y. 1998).

Additionally, the breach of contract behavior in *Fernandez v. The Wharton School* was an even more flagrant violation of "specific and identifiable promises" than the *Reynolds v. The University of Pennsylvania* [28] precedent, where the alleged misrepresentation related to "subjective matters" such as "not benefiting from the Wharton brand."

Furthermore, *Reynolds* was caught by the University falsifying actual physical evidence because his case was so weak, but he was still allowed to progress with discovery and ultimately prevailed in his breach of contract claim with the University receiving substantial compensation.

In *Fernandez v. The Wharton School*, there are documented false statements by the Dean of the school relating to something as important and prestigious as a Valedictorian Scholarship. Despite this, *Fernandez* was not even afforded the opportunity to conduct discovery, even with this *Reynolds* precedent in place.

Furthermore, the Plaintiff was in compliance with all the terms of the Court. The Plaintiff even received emailed physical correspondence from the Judge's staff stating that a Case Management

(28) Reynolds v. The University of Pennsylvania, 684 F. Supp. 2d 621 (E.D. Pa. 2010).

Conference date would be scheduled and discovery would be allowed to take place. The Plaintiff was showing a pro-active willingness to conduct discovery and attend the Case Management Conference.

Suspiciously and at the very last minute, without anything changing and without the Plaintiff violating any order of the Court, the Suit was dismissed with prejudice by the Judge, suggestive of some type of outside collusion or influence.

Unlike in *Ware v. Rodale Press, Inc.* [29] or *Jiri Pik v. University of Pennsylvania* [30] where the Plaintiffs were allowed to conduct discovery, but failed to show up or continue to prosecute and conduct such discovery, the opposite occurred in *Fernandez v. The Wharton School.* The Court inappropriately dismissed his Suit despite him showing pro-activeness in discovery and despite him being in compliance with all the conditions of the Court. This is very suspicious.

Additionally, "when ruling on a defendant's motion to dismiss, a judge must accept as true all of the factual allegations contained in the complaint"

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(29) Ware v. Rodale Press, Inc., 322 F.3d 218, 222-23 (3d Cir. 2003).

(30) Jiri Pik v. The University of Pennsylvania, No. 08-5164 (E.D. Pa. 2011).

and allow lawful discovery to occur to corroborate information and expose new facts. *See Erickson v. Pardus* [31] *and Dixon v. United States.* [32]

Additionally, "[f]or the purpose of resolving [a] motion to dismiss, the Court...draw[s] all reasonable inferences in favor of the plaintiff." *See Daniel v. T&M Prot. Res., Inc.* [33] *and Koch v. Christie's Int'l PLC.* [34] Furthermore, given the Plaintiff proceeded pro se, the Court must "construe [a Complaint] liberally and interpret [it] to raise the strongest argument that [it] suggests." *See Sykes v. Bank of America* [35] *and Farzan v. Wells Fargo Bank, N.A.* [36]

Even if applying the strict interpretation of precedent case law established in *Bell v. Jendell* [37] that "the liberal treatment afforded to pro se litigants does not exempt a pro se party from compliance with relevant rules of procedural and substantive law" or

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(31) Erickson v. Pardus, 551 U.S. 89, 94 (2007).

(32) Dixon v. United States, No. 13-CV-2193, 2014 WL 23427, (S.D.N.Y. Jan. 2, 2014).

(33) Daniel v. T&M Prot. Res., Inc., 992 F. Supp. 2d 302, 304 n.1 (S.D.N.Y. 2014).

(34) Koch v. Christie's Int'l PLC, 699 F.3d 141, 145 (2d Cir. 2012).

(35) Sykes v. Bank of America, 723 F.3d 399, 403 (2d Cir. 2013).

(36) Farzan v. Wells Fargo Bank, N.A., No. 12-CV-1217, 2013 WL 6231615, (S.D.N.Y. Dec. 2, 2013).

in *Caidor v. Onondaga Cty.* [38] that "[p]ro se litigants generally are required to inform themselves regarding procedural rules and to comply with them," the dismissal of the complaint at such an early stage in *Fernandez v. The Wharton School* was not warranted.

Fernandez was in compliance with the Court at the time and was showing proactive and diligent willingness to conduct discovery and abide by court protocol. Additionally, despite promises made to Fernandez that he would be able to conduct formal discovery, his Complaint was suspiciously dismissed at such an early stage, further impeding his ability to uncover facts and subpoena testimony from witnesses to support his case and discover "outside material and facts."

As established in *Walker v. Schult* [39], when deciding a motion to dismiss a pro se complaint, it is appropriate to allow discovery to occur to allow a plaintiff a chance to proceed to trial and additionally to allow him to introduce "materials outside the complaint" to further solidify his position and uncover

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(37) Bell v. Jendell, 980 F. Supp. 2d 555, 559 (S.D.N.Y. 2013).
(38) Caidor v. Onondaga Cty, 517 F.3d 601, 605 (2d Cir. 2008).
(39) Walker v. Schult, No. 12-1806 (2d Cir. 2003).

the truth in opposition motions (noting that a court may consider "factual allegations made by a pro se party in [his] papers opposing the motion").

For all the above-mentioned reasons, the Court erred in its 12(b)(6) dismissal of *Fernandez v. The Wharton School of the University of Pennsylvania* at such an early stage in the litigation process and impeded the ability of the student to conduct discovery and uncover meaningful facts important to upholding and preserving the integrity of the Ivy League.

This Court's intervention is necessary to enforce and uphold the integrity of the Ivy League and to set much needed federal case precedent in the burden of standard for 12(b)(6) dismissals and in collegiate and post-secondary educational breach of contract claims.

VII. CONCLUSION AND PRAYER FOR RELIEF

There is nothing more important than preserving the integrity of the Ivy League and rooting out unethical and corrupt behavior in post-secondary education in the United States of America.

When it comes to something as important as a Valedictorian Fellowship or Scholarship at one of the nation's leading institutions of higher education, it is absolutely critical that the rules are followed, that tampering is condemned and punished and that the integrity of the fellowship process is maintained.

This petition for a writ of certiorari should be granted.

DATED this 25th day of March 2021.

Respectfully Submitted,

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