"I came to complete not to refute. I came light to the World." Jesus Christ

No. _____

IN THE SUPREME COURT OF THE UNITED STATES

Mark Bochra, individually and on Behalf of all others similarly situated,

Applicant,

V.

U.S. DEPARTMENT OF EDUCATION; Betsy Devos, in her official and individual capacity as former Secretary for the Department of Education and Kenneth Marcus, in his official and individual capacity as the former Secretary for OCR; Miguel Cardona, in his official Capacity as the Current Secretary for the Department of Education, Suzanne Goldberg in her official and individual capacity as the Former secretary for OCR, and Secretary Catherine Lhamon in her official Capacity as the current Secretary for OCR.[1]

Respondents.

To the Honorable Amy Coney Barrett, Associate Justice of the
Supreme Court and Circuit Justice for the Seventh Circuit

APPENDICES

Mark Bochra
5757 North Sheridan Road, Apt 13B
Chicago, IL 60660
Plaintiff, Pro Se

August 23, 2023

[1] The parties mostly involved were former secretary Betsy Devos and former secretary Kenneth Marcus but because leadership changed from the Trump administration to the Biden administration, current secretary for the department of education and current secretary for office for civil rights had to be named in the ongoing litigation. The new administration took over leadership during Mark's appeal process of his OCR Complaint; they were partially involved.

Similar to the *Sweet v. Cardona* (3:19-cv-03674) case which was later settled, it went from Former Secretary Betsy Devos to Current Secretary Miguel Cardona because of the official capacity over the Department of Education. Moreover, OCR are currently handling employment discrimination for Mark Bochra against Chicago Public School and many change of events took place related to the IHRA definition as well as changes to the OCR manual without going through regulatory channels in direct violation of again the APA; major rule the "appeal" process was removed from the OCR manual.

"I came to complete not to refute. I came light to the World." Jesus Christ

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APPENDIX A Copy of Applicant's response to the Department of Justice Motion to Dismiss.

APPENDIX B Copy of District Court Order signed by Hon. Judge Sara Ellis.

APPENDIX C Copy of denied motion for injunction against the IHRA Definition pending appeal by 7th Circuit.[2]

APPENDIX D Copy of denied motion for injunction against the IHRA Definition pending appeal by 7th Circuit without clarification.

APPENDIX E Copy of Applicant's Brief with the 7th Circuit, pending respondents' response.

[2] **See Definition** https://www2.ed.gov/about/offices/list/ocr/docs/qa-titleix-anti-semitism-20210119.pdf

APPENDIX A

"I came to complete not to refute. I came light to the World." Jesus Christ

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHEN DISTRICT OF ILLINOIS
EASTERN DIVISION

Mark Bochra, individually and on
Behalf of all Others Similarly Situated,

Plaintiffs,

v.

U.S. DEPARTMENT OF EDUCATION
Lyndon Baines Johnson Dept. Of Education Bldg.
400 Maryland Avenue, SW
Washington, D.C. 20202,

And

Miguel Cardona
Secretary of Education,

And

Suzanne Goldberg, in her official capacity as
Acting Assistant Secretary
For the Office for Civil Rights,

Defendants.

Civil Action No. 1:21-cv-03887

Hon. Judge: Sara L. Ellis
Hon. Mag Judge: Jeffrey T. Gilbert

Date Filed: February 28, 2022

PLAINTIFF'S RESPONSE IN OPPOSITION TO DEFENDANTS' MOTION TO DISMISS PLAINTIFF'S AMENDED COMPLAINT

NOW COMES, Plaintiff, Mark Bochra, *pro-se*, on his own behalf and all other individuals similarly situated, hereby oppose the Motion to Dismiss filed by Defendants U.S. Department of Education, Miguel Cardona, and Suzanne Goldberg (collectively, "Defendants"), ECF No. 28 ("Mot. To Dismiss"). Both the changes to the OCR Manual and the adoption of the IHRA definition were promulgated violation of DOE's own regulations and were arbitrary and capricious, in direct violation of the Administrative Procedure Act, 5 U.S.C. Chapter 5, §§ 551, *et seq*. These changes were promulgated in violation of the APA's rule-making requirements. Contrary to Defendants' assertions, Plaintiffs have adequately pled that Defendants violated the APA. Therefore, Plaintiff prays that Defendants' motion should be denied in its entirety.

"I came to complete not to refute. I came light to the World." Jesus Christ

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"I came to complete not to refute. I came light to the World." Jesus Christ

PRE-STATEMENT: THE LAMP ON A STAND

No one lights a lamp and covers it with a bowl. Instead, they put it on a stand, so that those who come in can see the light. Whatever is hidden away will be brought out into the open, and whatever will be covered up will be found and brought out to light. Therefore take heed how you hear. For whoever has, to him more will be given; and whoever does not have, even what he seems to have will be taken from him [Luke 8:16-18].[1]

Defendants' counsel, Sarah Terman from the Justice Department in her motion to dismiss Plaintiff's complaint (Dkt 9) followed a specific strategy, that is to discredit Plaintiff's lawsuit by attacking his character with lies despite her knowing the truth while ignoring all the factual evidence within Plaintiff's complaint and their exhibits; like for instance failing to answer that Kenneth Marcus, a member of the Israeli lobby infiltrated the Federal Government to impose the IHRA definition on behalf of Israel to which has shocked Departments' Officials at that time.[2]

At that time, Secretary Betsy DeVos said, "the Department has **not** adopted a definition of anti-Semitism" *sic*, Hill said in an e-mail; *see* Dkt. 9 ¶ 6.[3] This was a clear statement from the former Secretary of the Department of Education to clarify that the Department of Education, Office for Civil Rights ("OCR") does not have jurisdiction to impose the IHRA definition; it also conflicts with OCR jurisdictions because they do not investigate religion discrimination.

Kenneth Marcus adoption of the IHRA definition when he personally granted Zionist Organization of America's appeal (a registered foreign agent acting on behalf of Israel)[4], not only ignored OCR Case Processing Manual because nowhere does it mention that a Secretary can review and grant or deny a Complainant's appeal; but also Kenneth Marcus adoption of the IHRA definition opened up Pandora's box for OCR to investigate religion discrimination which OCR refused to investigate for the Plaintiff. Hence, one of the many questions before this Honorable Court is: does the term "Jew" or "Jewish" refers to a race or a religion?[5]

---

[1] See https://youtu.be/0feZQkHbCkM?t=2712 see https://www.copticchurch.net/bible?r=Luke+8%3A16-18&version=NKJV&showVN=1

[2] See https://web.archive.org/web/20210812052718/https://www2.ed.gov/news/staff/bios/marcus.html (his profile was recently deleted but way back machine can restore it) see Kenneth Marcus leaked videos aiming to enforce IHRA without congress intent https://youtu.be/XytkI7afHcQ?t=1958 , https://youtu.be/XytkI7afHcQ?t=2504 , https://youtu.be/XytkI7afHcQ?t=2004 and see Kenneth Marcus personally granting Zoa's appeal after he gained access to Office for Civil Rights https://www.politico.com/f/?id=00000165-ce21-df3d-a177-cee9649e0000 (letter granting the appeal).

[3] See https://www.politico.com/story/2018/09/11/trump-anti-semitism-schools-781917

[4] See https://www.israellobby.org/zoa/DOJ-149-1603-ZOA/default.asp

[5] See Scholar Rabbi Yaakov Shapiro https://youtu.be/-I9O9RWqdgk?t=484

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INTRODUCTION

Plaintiff on his own behalf and on behalf of similarly situated people, filed a lawsuit (Dkt 9) in two parts, (1) seeking an injunctive and a declaratory relief against the Defendants under the Administrative Procedure Act, 5 U.S.C. Chapter 5, §§ 551, *et seq*., and (2) styled his complaint in a form of a class action lawsuit under Rule 23 of the Federal Rules of Civil Procedure when this honorable court permits it because the outstanding questions before this honorable court affects the entire education system (Dkt 25 Class Certification); either way, a nationwide injunctive and declaratory relief or certifying a class action lawsuit will remedy the complaint at hands and bring solace and rescue to America's entire Education system including the Plaintiff who suffered valid and clear injuries by Defendants' own misconducts.[6]

Defendants' counsel, Sarah Terman out of the abundance of her heart, in her motion to dismiss decided to double down on Plaintiff's pain by first defaming his character with lies[7] and later proceeded to make several arguments, that (1) the Plaintiff has no standing to attack the Department of Education's adoption of the IHRA definition with all its components and confused meanings[8]; (2) that the IHRA definition does not affect the Plaintiff in any way, nor caused any injuries to the Plaintiff, nor was it recited within his appeal with office for civil rights ("OCR"); (3) that the changes to the OCR Manual and the adoption of the IHRA definition were not arbitrary and capricious in violation of the Administrative Procedure Act, 5 U.S.C. Chapter 5, §§ 551, *et seq*; (4) that the Department of Education did not mishandle Plaintiff's complaint nor retaliated against him claiming that he can file a lawsuit in Florida against the Law School (which was shut down by DOE –– emphasis added)[9] in reality rendering OCR mission actually moot and doubling down on Plaintiff's injuries and financial well being; and (5) that former

[6] Motion for leave to amend the complaint was denied ***without*** prejudice pending ruling on DOJ motion to dismiss.
[7] Ms. Sarah Terman was the version of Ms. Trunchbull who bullies the weak with a pack of lies and relays on her mighty proud status as a DOJ lawyer to convince others that she is right and others are wrong; providing no mercy https://youtu.be/IeCZqVq7_pY?t=100 Ms. Terman given her family identity of being half Muslim and half Jewish shows a great conflict of interest as it pleases her to see the IHRA definition getting adopted because partially it serves her personal interest. See relatives of Ms Terman (Rochelle Terman) the daughter of a Muslim-Iranian mother and Jewish-American father https://www.berkeley.edu/news/students/2010/terman/index.shtml see her family paper on Iran https://digitalassets.lib.berkeley.edu/etd/ucb/text/Terman_berkeley_0028E_16254.pdf
[8] See Rabbi Yaakov Shapiro, opposition to IHRA https://youtu.be/NGdRzFmStdw see also the far left Jewish lobby J Street opposing IHRA https://www.jpost.com/judaism/progressive-jewish-groups-oppose-codification-of-ihra-antisemitism-definition-655293 see Kenneth Stern's article, the original drafter of IHRA "I drafted the definition of antisemitism. ***Rightwing Jews*** are weaponizing it" https://www.theguardian.com/commentisfree/2019/dec/13/antisemitism-executive-order-trump-chilling-effect
[9] DOE denied title iv funds to FCSL https://www.ed.gov/news/press-releases/department-educations-federal-student-aid-denies-reinstatement-application-profit-law-school

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President Trump's executive order adopting the IHRA definition trumps the Administrative Procedure Act (APA) process rendering it moot thus claiming that this Court has no jurisdiction to rule on the IHRA definition; and last (6) Plaintiff has no standing to bring a class action lawsuit because he is proceeding *pro-se* and cannot represent others; however, absent this court exercising its discretion in granting legal counsel representation because the Plaintiff was granted a *forma pauperis* status by this honorable court. All of Defendants' arguments could not stand because they fail to disclose or discuss the merits of Plaintiff's complaint; rather they navigate this honorable Court through a chain of narrative arguments which by Defendants' own words is actually why the IHRA definition has injured the Plaintiff in many ways, along with others.

In Defendants' motion to dismiss, Dkt 28 page 3, Defendants' counsel Sarah Terman first argument is her objection to the truth (a) the "Parable to the Justice System"[10]; (b) the validity of "Jesus Christ" and the Devil's existence[11], (c) and the existence of the "Jewish Oligarchy and the Jewish-Israeli Lobby"[12] as if they are an abnormal subjects that should not be discussed nor related to the Department of Education's personal interest at the hands of Kenneth Marcus.[13]

One blind man cannot lead another, if he does, they will both fall into a ditch [Luke 6:39].[14] Emphasis added "anyone who followed Kenneth Marcus's agenda has lead to more hate than love" — (will be discussed later in great details in this response).

Former Secretary Kenneth Marcus for Office of Civil Rights ("OCR"), by his own hands has destroyed the entire Department of Education, Office for Civil Rights mission, ethics, and their obligation to protect students from discrimination and retaliation when he rendered title vi moot through his adoption of the IHRA definition; *see* Dkt. 9 ¶¶ 11 -19 and ¶¶ 70 – 79; *see Exhibit* 1 Declaration of Mark M. Bochra (Bochra Decl).

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[10] It was taught by the Plaintiff to Attorney General William Barr https://www.justice.gov/opa/speech/remarks-attorney-general-william-p-barr-hillsdale-college-constitution-day-event (The Parable to the Justice System)

[11] Doctrines of Jesus Compared with Others, 21 April 1803 https://founders.archives.gov/documents/Jefferson/01-40-02-0178-0002 See President Biden https://youtu.be/lHIoZoIuDyE and https://youtu.be/4wcS-vFqhkM?t=1897

[12] Senator Bernie Sanders (Jewish) calling on the Jewish Oligarch: Bill Gates, Warren Buffet, and Jeff Bezos https://twitter.com/sensanders/status/1201234063106957312 See Forbes List Top Billionaire list https://www.forbes.com/billionaires/ and see article by Haaretz: Know Your Oligarch: A Guide to the Jewish Billionaires in the Trump-Russia Probe https://www.haaretz.com/us-news/know-your-oligarch-a-guide-to-the-jewish-machers-in-the-russia-probe-1.6113189 see also [T]he Secret IRS Files: Trove of Never-Before-Seen Records Reveal How the Wealthiest Avoid Income Tax (All Jews) https://www.propublica.org/article/the-secret-irs-files-trove-of-never-before-seen-records-reveal-how-the-wealthiest-avoid-income-tax see https://i.imgur.com/QiO8gdm.png and see https://i.imgur.com/bV67ZgO.png

[13] The day Kenneth Marcus resigned https://content.govdelivery.com/accounts/USED/bulletins/294dcb0

[14] See the scene https://youtu.be/0feZQkHbCkM?t=2210

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STATEMENT OF FACTS

I. STATUTORY AND REGULATORY BACKGROUND

Under Title IV of the HEA, 20 U.S.C. § 1070, *et seq.*, the Department is responsible for overseeing the federal student loan program, including the Federal Family Education Loan (FFEL), 20 U.S.C. § 1071, *et. seq.*, and William D. Ford Direct Loan Programs, 20 U.S.C. § 1087a, *et seq*. Under the Direct Loan Program, the Department directly lends money to eligible student borrowers so that they can attend "participating institutions of higher education," as approved and regulated by the Department. 20 U.S.C. § 1087a. Under the FFEL program (under which no new loans have been issued since July 1, 2010), private lenders issued student loans, which were then insured by guaranty agencies, and in turn reinsured by the Department. 20 U.S.C. § 1078.

Providing an education free from discrimination and retaliation is the central mission of Office for Civil Rights (OCR). When an institution of higher education fails to provide an education free from discrimination and/or retaliation, Office for Civil rights has the duty and the responsibility to provide an antidote to a virus called "evil"; failure to provide remedies, not only violates OCR special mission "to ensure *equal access* to education and to promote educational excellence through vigorous enforcement of civil rights in our nation's schools"[15] but also renders the civil right act moot on its face.

One of the many actions, OCR can take is enforcement action which denies Title IV funds to a specific institution which refuses to reach a settlement agreement with Office for Civil Rights and send the case to the Department of Justice for proper prosecution and remedies; Section 602 of OCR Manual states the following.[16]

> When post-Letter of Impending Enforcement Action negotiations do not result in a resolution agreement and OCR decides, within its discretion, to refer the matter to DOJ, it will issue a letter to the recipient stating that the case will be referred to DOJ within 10 calendar days of the date of the letter; Section 602 of OCR Manual.

See Exhibit 2, an e-mail from Office for Civil Rights on behalf of Secretary Betsy Devos to the Plaintiff in regards to remedies which cure a "hostile environment" such as educational

[15] See https://www2.ed.gov/about/offices/list/ocr/aboutocr.html
[16] See 2015 Manual https://web.archive.org/web/20150302165238/https:/www2.ed.gov/about/offices/list/ocr/docs/ocrcpm.pdf vs. 2020 Manual https://www2.ed.gov/about/offices/list/ocr/docs/ocrcpm.pdf

reimbursement and counseling; *see* *Exhibit* 3, an e-mail exchange between OCR Atlanta team and OCR HQ Mr. Randolph Wills notifying him that the recipient reached a resolution agreement with OCR.[17] At the time of the negotiated agreement, "educational reimbursement" was excluded but rather based upon Mr. Will's own words over the phone, to send the Plaintiff back to the law school; a law school that was destined for closure for committing deception and fraud against many students to which also the Plaintiff uncovered throughout his experienced chain of discrimination and retaliation; indeed the law school was later denied title iv funds by DOE; *see* Am. Comp ¶¶ 12-14, ECF No. 9; *see* Am. Comp *Exhibit G* pages 127-136, ECF No. 9.

The head of a federal Executive Department may adopt rules for the conduct and government of her agency. 5 U.S.C. §301. Adoption of such rules must comply with the requirements of the rule-making procedures of the federal Administrative Procedure Act ("APA"), 5 U.S.C. §551, et seq., if the proposed rules meet the definition of "rule" found in 5 U.S.C. §551(4): " … the whole or a part of an agency statement of general or particular applicability and future effect designed to implement, interpret, or prescribe law or policy or describing the organization, procedure, or practice requirements of an agency . . . ."

The APA requires that courts "shall … hold unlawful and set aside agency action, findings, and conclusions found to be … arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law." 5 U.S.C. § 706(2)(A), (B).

The APA also requires that rules proposed by a federal agency first be published in the Federal Register, with the terms or substance of the proposed rule, the legal authority for the proposed rule, and specific information regarding when a public hearing on the proposed rule will take place. 5 U.S.C. §§ 553(b), (d). Under the APA, the proposing agency must consider, prior to adoption of the rule, all written data, views, or arguments submitted by interested persons regarding the proposed rule. 5 U.S.C. §§ 553(c), (d). This set of APA provisions for publication and consideration of comments is referred to as the "notice-and-comment requirement."

The APA requires a federal agency to render responsive decisions on matters within its purview in a prompt and definite fashion. For example, the APA requires that, "[w]ith due regard

[17] Enforce Director Randolph Wills on or around **6/1/2018** over the phone told Mark Bochra that the recipient reached an agreement with OCR Atlanta but it doesn't include refund of his student loan back to DOE to which the Plaintiff relayed that this is not the right policy or remedy which OCR follows based on its resolution agreements with other complainants. However, in the end and after 2 years, no resolution was reached rather they, OCR aimed at destroying Plaintiff's complaint and they did so on 3/20/2020.

for the convenience and necessity of the parties or their representatives and within a reasonable time, each agency shall proceed to conclude a matter presented to it." 5 U.S.C. § 555(b).

The APA similarly requires that "prompt notice shall be given of the denial in whole or in part of a written application, petition, or other request of an interested person made in connection with any agency proceeding." 5 U.S.C. § 555(e). And, the APA requires that "[e]ach agency . . . [g]ive an interested person the right to petition for the issuance, amendment, or repeal of a rule." 5 U.S.C. §553(e). "A person suffering legal wrong because of agency action, or adversely affected or aggrieved by agency action within the meaning of a relevant statute, is entitled to judicial review thereof." 5 U.S.C. §702. "Agency action "includes the "failure to act." 5 U.S.C.§553(e).

A Court "shall – compel agency action unlawfully withheld or unreasonably delayed." 5 U.S.C. §706(1). A Court shall also "hold unlawful and set aside agency action, findings, and conclusions found to be . . . arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law." 5 U.S.C. §706(2)(A). 5 U.S.C. §702 creates a cause of action in federal court for any person who has suffered legal wrong because of, or been adversely affected or aggrieved by, an agency action or failure to act as required by the rule-making statutes. The statute waives the sovereign immunity of the federal government for such a lawsuit, so long as the lawsuit is against a federal agency or a federal employee who acted or failed to act in her official capacity or under color of legal authority, and the suit does not request monetary damages.

28 U.S.C. § 2201 permits this Court to issue a declaratory judgment that the Defendants have violated 5 U.S.C. Chapter 5 in adopting the IHRA definition as well as certain provisions in August 26, 2020 OCR Manual, as identified below.

II. DEPARTMENT OF EDUCATION OCR COMPLAINTS

The Department of Education, Office for Civil Rights is responsible for enforcing the civil rights statutes applicable to educational institutions. ("As the Assistant Secretary for Civil Rights, Kenneth Marcus at that time before his resignation was responsible for the administration of the DOE's Office for Civil Rights ('OCR') in accordance with law, including mandating procedures for the handling and processing of complaints of illegal discrimination made to OCR for investigation.").

"I came to complete not to refute. I came light to the World." Jesus Christ

The Office for Civil Rights ("OCR") within the U.S. Department of Education ("DOE") has a special mission: "to ensure *equal access* to education and to promote educational excellence through vigorous enforcement of civil rights in our nation's schools." https://www2.ed.gov/about/offices/list/ocr/aboutocr.html. This office serves "student populations facing discrimination and the advocates and institutions promoting systemic solutions to civil rights problems" *Id. See* Am. Comp ¶ 1, ECF No. 9. Contrary to its mission and without any public notice, DOE summarily eliminated substantive rights of the very people it purports to serve by changing its Case Processing Manual to abdicate its basic duty to investigate legitimate complaints of discrimination by students and their parents. Not only that, but DOE has set out a special class of race with a special set of treatments compare to another (*Jewish Students vs. the Gentiles*) by adopting an obscure definition named (IHRA)[18] without congress intent, public notice, and comments in the Federal Register.[19] *See* Am. Comp ¶ 4 and ¶¶ 8-11, ECF No. 9.

Anyone encountering discrimination can file an OCR complaint of discrimination, including any student or person who believes that an educational institution that receives federal financial assistance has discriminated against someone on the basis of race, color, national origin, sex, disability, or age; "religion discrimination" is excluded and not investigated by OCR but rather the Department of Justice, education section.[20]

III. THE OCR CASE PROCESSING MANUAL

The OCR Case Processing Manual ("CPM") sets out OCR's processes for investigating complaints pursuant to the regulations implementing Title VI of the Civil Rights Act of 1964, 42 U.S.C. § 2000d *et seq.*, and Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. § 794 *et seq.*, including the procedural regulations for Title VI, 34 C.F.R. § 100.7, and Section 504, 34 C.F.R. §104.61 ("The procedural provisions applicable to title VI of the Civil Rights Act of 1964 apply to this part. These procedures are found in §§ 100.6-100.10 and part 101 of this title.").

Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. § 794, *et seq.* ("Section 504"), prohibits discrimination by recipients of federal financial assistance, including assistance from the DOE, from discriminating against individuals with disabilities.

---

[18] See IHRA definition https://www.holocaustremembrance.com/working-definition-antisemitism
[19] See OCR notice on IHRA https://www2.ed.gov/about/offices/list/ocr/docs/qa-titleix-anti-semitism-20210119.pdf
[20] See DOJ jurisdiction https://www.justice.gov/crt/types-educational-opportunities-discrimination and see OCR jurisdiction https://www2.ed.gov/about/offices/list/ocr/docs/know-rights-201701-religious-disc.pdf

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Title VI of the Civil Rights Act of 1964, 42 U.S.C. § 2000d, *et seq.* ("Title VI"), prohibits discrimination by recipients of federal financial assistance, including assistance from the DOE, from discriminating on the basis of race, color, or national origin.

The DOE's Title VI regulations provide:

> The responsible Department official or his designee ***will*** make a prompt investigation ***whenever*** a compliance review, report, complaint, or any other information ***indicates a possible failure to comply*** with this part. The investigation should include, where appropriate, a review of the pertinent practices and policies of the recipient, the circumstances under which the possible noncompliance with this part occurred, and other factors relevant to a determination as to whether the recipient has failed to comply with this part.

34 C.F.R. § 100.7(c) (Title 34, Subchapter B, Chapter 1, Part 100: Non-Discrimination Under Programs Receiving Federal Assistance Through the Department of Education Effectuation of Title VI of the Civil Rights Act of 1964) (emphasis added).

Section 504 requires agencies that provide federal funding to apply the same remedies, procedures, and rights set forth in Title VI to the civil rights of persons with disabilities. 29 U.S.C. § 794a(a). DOE adopted the Title VI rights and procedures, including 34 C.F.R. § 100.7, for complaints of violations of Section 504. 34 C.F.R. § 104.61.

In recent years, schools and universities across the country have witnessed an expansion in the number, scope and length of investigations conducted by the U.S. Department of Education's Office for Civil Rights ("OCR"). In particular, OCR often expanded individual complaints to more broadly investigate evidence of systematic discrimination at schools and colleges. Also during the course of the investigation if any other violations occurs or reported by the Complainant, they are also investigated as part of the Complainant's Complaint. A June 8, 2017 memorandum issued by Candice Jackson, former OCR's Acting Assistant Secretary for Civil Rights, indicates that OCR will take a different approach going forward. *See* *Exhibit* 4; Former Secretary Candice Jackson's Memorandum.

> "OCR's stated goal is "to swiftly address compliance issues raised by individual complaint allegations, reach reasonable resolution agreements with defined, enforceable obligations placed upon recipients directly responsive to addressing the concerns raised in the individual complaint being resolved, and encourage voluntary settlements wherever possible."

These instructions were however violated greatly once Kenneth Marcus replaced Candice Jackson as the secretary for OCR; it was former Secretary Candice Jackson who appointed

Deputy Assistant Secretary for Enforcement Randolph Wills to handle the mishandling of Plaintiff's Complaint by OCR Atlanta by telling him "I need this case to be handled properly." To which in return, Mr. Randolph Wills reached out to the Plaintiff to address his concerns via e-mails and phone calls. *See* Am. Comp ¶¶ 83-88, ECF No. 9; and Am. Comp *Exhibit* "D" Pages 9-14; ECF No. 9.

A. The History of the 2015 OCR Manual

In order to understand the history behind the continuous "arbitrary and capricious" actions taken by Office for Civil Rights ("OCR") in violation to the APA; one must place a period at the end of the line and start from the beginning because the origin always reveals the truth no matter how obscure it might look later.

In 2015, the OCR issued a Case Processing Manual ("2015 OCR Manual"), which adopted "procedures to promptly and effectively investigate and resolve complaints, compliance reviews and directed investigations to ensure compliance with the civil rights laws enforced by OCR," including Title VI and Section 504. 2015 OCR Manual, Introduction. The 2015 OCR Manual set out the process by which OCR staff received and investigated complaints from individuals who allege that a person or entity that receives funding from the DOE has violated the civil rights laws by illegally discriminating on the basis of race, color, national origin, sex, disability, or age. *Id.*

The retelling history of the changes to the Case Processing Manual started with the coming of former Secretary for OCR Kenneth Marcus. Since the day Kenneth Marcus came to the Department of Education and chaos ensued, ethics were lost, lawyers committed moral turpitude, and they all saw Kenneth Marcus' leaked videos. No reform was applied, in fact under former President Donald Trump; they wanted to destroy the entire Department of Education by merging it with the Labor Department.[21] But with every evil move, they met public resistance.

The 2015 OCR Manual allowed timely complaints that were within OCR's jurisdiction to be dismissed prior to opening an investigation in three circumstances, namely, (1) if the complaint, on its face, failed to state a claim of violation of one of the laws that OCR enforces, (2) if it lacked sufficient detail for OCR to infer that discrimination has occurred, or (3) if it was

[21] See https://tcf.org/content/commentary/real-reason-behind-proposed-labor-education-departments-merger/?agreed=1

"I came to complete not to refute. I came light to the World." Jesus Christ

so speculative, conclusory or incoherent that OCR could not infer that discrimination had occurred. *Id.* § 108.

The 2015 Manual also provided that, if an investigation concluded that the preponderance of the evidence did not support a conclusion that the recipient had violated applicable law, OCR would issue a letter of findings explaining the reasons for its decision. 2015 Manual § 303. The 2015 Manual stated that "OCR affords an opportunity to the complainant to appeal" such a letter of findings to the *Deputy Assistant Secretary for Enforcement* who issues the letter. 2015 OCR Manual §§ 303(a) and 306, page 24.[22]

> **Case Processing Manual** **|Page 24**
>
> Notice of the appeal process is provided to complainants in the information sheet, "OCR Complaint Processing Procedures." OCR's appeal process is also available at http://www.ed.gov/about/offices/list/ocr/complaints-how.html.
>
> The complainant must send a written appeal to the Enforcement Office Director of the Enforcement Office that issued the determination. All documentation to support the appeal must be submitted with the complainant's appeal. In an appeal, the complainant must explain why he or she believes the factual information was incomplete, the analysis of the facts was incorrect, and/or the appropriate legal standard was not applied, and how this would change OCR's determination in the case. Failure to do so may result in the denial of the appeal.

The appeal process of the Manual was also left untouched with no limits to the number of pages an appeal needs to be, along with the only agency and/or person who rules on the appeal is OCR Headquarter; mainly the Deputy Assistant Secretary for Enforcement; in this case, currently Mr. Randolph Wills, (*See* Page 8 of the OIG Complaint against Kenneth Marcus filed by multiple civil right organizations).[23] *See Exhibit* 5, letter to the Inspector General from multiple civil right organizations against Kenneth Marcus.

Within the OIG Complaint against Kenneth Marcus, a FOIA request revealed a pending 183 appeals before the desk of Deputy Assistant Secretary for Enforcement, in this case, Randolph Wills; only two were re-opened for an investigation.[24] *See* page 8 of the complaint.

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[22] https://web.archive.org/web/20151103010525/https://www2.ed.gov/about/offices/list/ocr/docs/ocrcpm.pdf

[23] See Complaint with OIG revealing that it is the Deputy Assistant Secretary for Enforcement who rules on the appeals, in this case Mr. Randolph Wills https://www2.ed.gov/about/offices/list/ocr/contactus2.html See copy of the letter https://palestinelegal.org/news/2020/5/20/inspector-general-complaint-zionist-special-treatment-violates-law .

[24] See copy of the complaint, see page 8 https://static1.squarespace.com/static/548748b1e4b083fc03ebf70e/t/5ec593062f7cfc3aa7e3deac/1590006534631/Letter+from+Civil+Rights+Groups+to+Office+of+Inspector+General.pdf

> The unique handling of the ZOA appeal decision is also reflected in its outcome. Of those 183 appeals resolved between September 29, 2014, and August 27, 2018, by OCR's Deputy Assistant Secretary for Enforcement, only two were reopened (on April 12, 2013, and April 18, 2013).[20] Indeed, if one considers an even broader time period of almost six years (from December 11, 2012, to November 5, 2018) in which 743 appeals were resolved by OCR's Deputy Assistant

All these OCR appeals were affected by the arbitrary and capricious changes to the OCR manual; not counting Kenneth Marcus personally granting Zoa's appeal on August 27, 2018 and within it, implementing the IHRA definition, long before the Former President Donald Trump signed his (Executive Order) on December 11, 2019 to implement the IHRA definition without congress intent which would not trump the Administrative Procedure Act (APA) process.[25]

On Dec. 11, 2019 Former President Trump lobbied by right wing Jewish lobby and Sheldon Adelson (who gave Trump 424 million + 100 million)[26] issued an Executive Order (EO) stating that, "[I]t shall be the policy of the executive branch to enforce Title VI [of the Civil Rights Act of 1964] against prohibited forms of discrimination rooted in anti-Semitism as vigorously as against all other forms of discrimination prohibited by Title VI." What is new is that the EO directs executive branch agencies and departments charged with enforcing Title VI to consider the International Holocaust Remembrance Alliance's (IHRA) definition of anti-Semitism when investigating allegations of anti-Jewish discrimination (i.e., when they review an Office of Civil Rights (OCR) complaint). *See Exhibit* 6, Can a President Amend Regulations by Executive Order?

B. The Changes to the OCR Manual (2018 version) was Arbitrary and Capricious

In March 2018 under the leadership of Kenneth Marcus, OCR issued a new "U.S. Department of Education, Office for Civil Rights, Case Processing Manual." The Introduction to the 2018 OCR Manual states:

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; 2018 OCR Manual, Introduction. Upon information and belief, the 2018 Manual replaces the 2015 OCR

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[25] See https://trumpwhitehouse.archives.gov/presidential-actions/executive-order-combating-anti-semitism/
[26] See https://www.newsweek.com/sheldon-adelson-donald-trump-republicans-donations-1560883 and see https://www.theguardian.com/us-news/2020/feb/10/sheldon-adelson-trump-donation-republicans-congress

Manual. Unlike the 2015 OCR Manual, dismissal is mandatory §108(t), and there is no requirement that the previous complaints have been found to be without merit, or even that the undefined "pattern" involves the same or similar allegations.

The first change ("**Rule Change 1**") means that, as of March 5, 2018, OCR will no longer investigate a claim of illegal discrimination if the claim is part of "a pattern" of complaints by an individual complainant against multiple recipients. "Pattern" is undefined and may cover as few as two complaints, involving different allegations against different entities over an unspecified period of time. This provision, as written, is not limited to those complaints that would place an "unreasonable burden" on OCR. Nor is this provision limited to instances where the prior complaints were meritless.

This new restriction affects both individuals who have been subjected to more than one incident of illegal discrimination and organizations that represent individuals who cannot afford to bring claims on their own. The latter groups often submit claims over time for multiple individuals against multiple recipients. These groups include entities like Plaintiffs, civil rights advocates and attorneys, and the Protection and Advocacy systems, which are federally authorized and funded to pursue administrative, legal and other claims of discrimination on behalf of individuals with disabilities under 54 U.S.C. § 15043, 29 U.S.C. § 3004, and 42 U.S.C. § 10803-07.

According to the language of §108(t) of the 2018 OCR Manual, such entities will be blocked from bringing multiple claims on behalf of their multiple constituents. Because DOE provided no opportunity for notice and comment. In addition, the 2018 Manual precludes any civil right organization and/or individuals from bringing a single complaint against multiple recipients (even if those recipients acted together), if OCR, in its sole judgment, and on the basis of unknown factors, decides that investigating would place an undefined "unreasonable burden" on OCR's resources ("**Rule Change 2**").

These two distinct and substantive changes mean that, as of March 5, 2018, OCR has unilaterally eliminated a right of claimants that was created by the DOE's regulations and maintained in prior Case Processing Manuals: the right to have one's claim of discrimination investigated if it indicates a possible failure to comply with federal civil rights laws.

Rule Changes 1 and 2 to the 2018 OCR Manual were arbitrary, capricious, and not in accordance with law.

In addition to adding § 108(t), DOE made a third change that eliminated complainants' right to appeal OCR findings of insufficient evidence ("**Rule Change 3**").

The 2015 OCR Manual included a right for complainants to appeal OCR decisions to close their complaints for lack of evidence. In the 2018 OCR Manual, DOE eliminated the entire "Appeals" section. There is no provision in the 2018 OCR Manual offering an appeal or reconsideration of an OCR determination not to pursue a claim of discrimination. The appeal right was eliminated without notice and comment and without any stated rationale to support it.

None of the three 2018 OCR Manual rule changes is merely an interpretative rule, a general statement of policy, or a rule of agency organization, procedure, or practice. All the changes shift and affect rights and interests of complainants, and make substantive changes to prior rules. Therefore, all three changes were required to be subject to notice and comment under the APA.

DOE did not comply with the federal APA rule-making procedures set out in 5 U.S.C. Chapter 5, §§ 551, *et seq*., before issuing the 2018 OCR Manual. The proposed 2018 OCR Manual was not published in the Federal Register, nor were public comments on the proposal sought, received, or considered, prior to the 2018 OCR Manual's adoption. The public did not have an opportunity for notice and comment before the Manual was adopted and put into effect.

C. Continued Arbitrary and Capricious action taken by OCR

After a public uproar and litigation, OCR backtracked by amending their manual and re-opened ***all*** dismissed complaints (reached settlement agreement on February 4, 2020).[27] However, again without any published notice in the Federal Register, comments, and discussion on the regulation, Office for Civil Rights has done two things to the manual under both the Trump's and the Biden's cabinet leaderships; OCR August 26, 2020 Manual (latest version) and January 19, 2021 the official adoption of the (IHRA definition). The changes were as follows:

(A) Weakening the appeal process by limiting the appeal to 10 page double space with no time frame provided to rule on the appeal, and without mentioning who rules on the appeal, yet the appeal is asked to be mailed to OCR headquarter address; never to any regional offices. The appeal procedure is written in a way that is vague, unclear, and provides no time frame for ruling on the appeal; rendering due process rights an illusion. The appeal procedure is written in a way

[27] See https://browngold.com/wp-content/uploads/2020/08/Countersigned-Settlement-Agreement-ACE-DOE.pdf

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which makes the appeal process a never independent process but rather it relays on pleasing the Masters who rule over a federal building i.e., Office For Civil Rights; here due process was denied again for many; equity and equality was denied for many as well ("**Rule Change 4**"); and

(B) Without any notice published in the Federal Register or public comments, or even congress adopting such definition, Office for Civil Rights adopted the IHRA definition, first by Kenneth Marcus himself when he granted Zoa's appeal under the definition without congress intent on August 27, 2018.[28] And later OCR continued and enforced the IHRA definition under the leadership of Suzanne Goldberg under the Biden's administration (both Kenneth Marcus and Suzanne Goldberg are Jews); a definition which makes the Jewish people superior in every way compare to the Gentiles ("**Rule Change 5**").[29]

None of the changes to the OCR Manual went through the normal channels of the regulatory process i.e., the APA. However, some rules were removed due to the past litigation and others were added after National Federation of the Blind, the Council of Parent Attorneys and Advocates, Inc., and the National Association for the Advancement of Colored People, Inc settled with the Department of Education.[30]

Even after an agreed settlement was signed and approved by the United States District Court for the District of Maryland, OCR added rules without again following the proper regulatory channels such as changing the appeal process entirely; not just restricting the appeal to a 10 page double space violating Complainants' due process by limiting their ability to file a proper appeal, but also failed to disclose who shall handle ruling on Complainants' appeals; last time it was Kenneth Marcus personally ruling on Zoa's appeal and inserting the IHRA definition without Departments' higher rank approval, congress intent, or even former President Donald Trump's executive order at that time; hence one time the Secretary for OCR will rule on an appeal and another time, someone else like in Plaintiff's case, OCR Dallas or OCR Denver, a regional office will rule on the appeal and another time it is the Deputy Assistant Secretary for Enforcement. The entire appeal process was destroyed by the Defendants' own actions and Defendants' changes to the Case Processing Manual were arbitrary and capricious to this very day.

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[28] See https://web.archive.org/web/20200307225539/https://www.politico.com/f/?id=00000165-ce21-df3d-a177-cee9649e0000

[29] See https://www2.ed.gov/about/offices/list/ocr/docs/qa-titleix-anti-semitism-20210119.pdf

[30] See https://nfb.org/about-us/press-room/national-federation-blind-and-others-settle-lawsuit-against-united-states

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HISTORICAL BACKGROUND ON IHRA AND THE SEMETIC TRIBES

I. THE IHRA DEFINITION & KENNETH MARCUS: OCR MISSION IN LIMBO

The Department of Education, Office for Civil rights is responsible for enforcing the civil rights statutes applicable to educational institutions. Anyone encountering discrimination can file an OCR complaint of discrimination, including any student or person who believes that an educational institution that receives federal financial assistance has discriminated against someone on the basis of race, color, national origin, sex, disability, or age; (*religion discrimination*) is excluded and not investigated by OCR but rather the Department of Justice ("DOJ"), education section.[31]

Providing an education free from discrimination and retaliation is the central mission of Office for Civil Rights (OCR). When an institution of higher education fails to provide an education free from discrimination and/or retaliation, Office for Civil rights has the duty and the responsibility to provide an antidote to a virus called "evil"; failure to provide remedies, not only violates OCR special mission "to ensure *equal access* to education and to promote educational excellence through vigorous enforcement of civil rights in our nation's schools." https://www2.ed.gov/about/offices/list/ocr/aboutocr.html but also render the civil right act moot on its face.

The adoption of the IHRA definition has opened Pandora's Box for OCR to investigate religion discrimination which was one of Plaintiff's requests to investigate Jews discriminating against a Coptic for hating Jesus Christ; even Plaintiff's initial complaint cited his religion "Christian Coptic." *See Exhibit* 1 Declaration of Mark M. Bochra (Bochra Decl), *see Exhibit* 23 and *Exhibit* 24 Plaintiff's discrimination and retaliation complaints with DOJ which was later handled by OCR.

A. The Afro-Asiatic Languages Are Semitic Speaking People

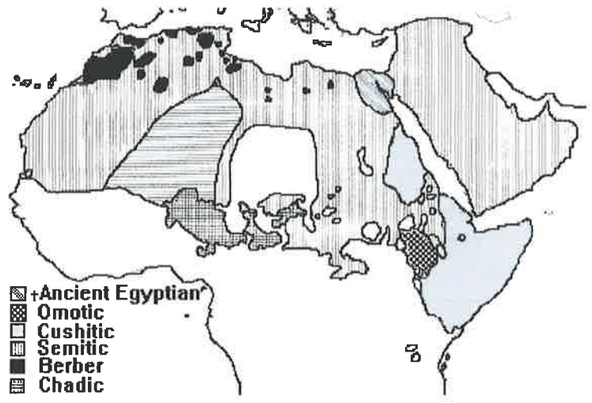
To say that the word anti-Semitism is pertaining only to the Jewish people, is the lie of the century. The term anti-Semitism was coined in 1879 by the German agitator (Wilhelm Marr)[32] to designate the anti-Jewish campaigns under way in central Europe at that time. Although the term now has wide currency, it is a misnomer, since it implies a discrimination

[31] See https://www.justice.gov/crt/types-educational-opportunities-discrimination
[32] See https://en.wikipedia.org/wiki/Wilhelm_Marr

against all Semites. Arabs and other peoples are also Semites, and yet they are not the targets of anti-Semitism as it is usually understood.

Plaintiff has advocated in letters to both the legislative and executive branches to go back to the origin (good vs. evil) for the eyes to see better rather than being distorted with labels. However, humans love labels, it empowers their identity. Hence, Plaintiff will disclose who are the Semitic speaking people because the Plaintiff himself speaks Arabic and that is a Semitic language; *see* the Afro-Asiatic Languages, formerly called Hamito-Semitic.[33]

The Semitic phylum contains some of the most well-known languages to those in western cultures: Hebrew, Arabic, Akkadian, Phoenician, Syriac, and Ugaritic. Others include Amharic, Eblaite, ESA, Ethiopic, Gurage, Harari, Harsusi, Lihyanite, Nehri, Moabite, Punic, Sheri, Soqotri, Tamudic, Tigre, and Tigriña. The Semitic languages are spoken in much of northern Africa and the Near East.[34]



Throughout antiquity, Egypt was known as the breadbasket of the world. The annual flooding of the Nile produced rich harvests, and when famine hit neighboring lands, starving peoples often made their way to the fruitful soils of Egypt. The archaeological record clearly shows that at least some of these peoples were of Semitic origin, coming from Canaan specifically and the Levant in general. In fact, the histories of both the Egyptian upper kingdom (ruled from Thebes in southern Egypt) and the lower kingdom (ruled from Avaris in the north),

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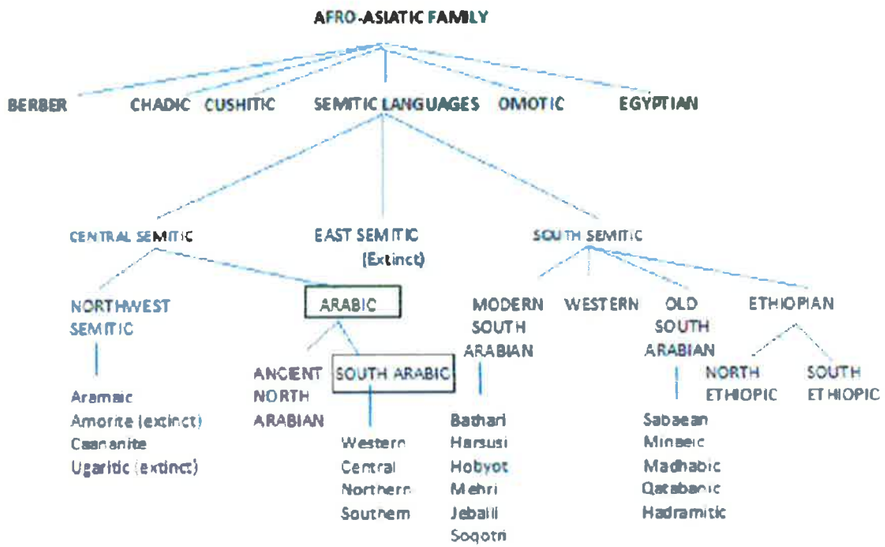
[33] see https://www.britannica.com/topic/Afro-Asiatic-languages/Proving-genetic-relationship-problems-of-internal-comparison

[34] See https://linguistics.byu.edu/classes/Ling450ch/reports/afro-asiatic.html

and Canaan were intimately tied together. Starting over 4,000 years ago, **Semites** began crossing the deserts from Israel into Egypt. The story of Joseph, the King of Dreams, the Hebrew who married an Egyptian Asenath, from a slave who was sold by his own brothers to a Pharaoh of Egypt is the biblical proof to the origin.[35] A Hebrew married an Egyptian giving birth to a new child for that same reason "Out of Egypt, I called my son" *see Exhibit G* pages 89-94, ECF No. 9

> And Pharaoh named Joseph Zaphenath Pa'neach, and he gave him Asenath the daughter of Poti phera, the governor of On, for a wife, and Joseph went forth over the land of Egypt [Genesis 41:45].[36]



The word anti-Semitism does not belong to the Jewish people only but the entire North African region. The Arabs or Arabians are Semitic people so are the Aramaic and many more.

B. The History of the IHRA Definition

The IHRA definition was a definition used by the U.S. Department of State and later in expanded form by the International Holocaust Remembrance Alliance, the definition itself was nothing more than a way of using (soft power) to influence other countries. The IHRA definition

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[35] See https://youtu.be/QWiJ8VQXJzY and see https://youtu.be/_oAmhSm84o4 (From a slave to a Pharaoh)
[36] See https://www.chabad.org/library/bible_cdo/aid/8236#v45 see https://jwa.org/encyclopedia/article/asenath-bible

never allowed the Jewish people to gain the hearts of multitudes, rather it wanted to control hearts of multitudes.[37]

The actual IHRA working definition is 38 words long and reads as follows: "Anti-Semitism is a certain perception of Jews, which may be expressed as hatred toward Jews. Rhetorical and physical manifestations of anti-Semitism are directed toward Jewish or non-Jewish individuals and/or their property, toward Jewish community institutions and religious facilities."

It is at best vague and at worst meaningless, failing to identify anti-Semitism as a form of racism or identifying the actual dangers to Jewish and other radicalized groups. It includes 11 examples which serve to limit discussion of Israel's violations of human rights, and regards naming Israel a "racist endeavor" and the Boycott, Divestment and Sanctions (BDS) campaign as anti-Semitic. Crucially, the working definition has been widely criticized by over 40 Jewish organizations globally, by Israeli academics and by the definition's author, Kenneth Stern; "I drafted the definition of anti-Semitism. Rightwing Jews are weaponizing it."[38]

Indeed, a group of Jewish and Israeli scholars developed the Jerusalem Declaration on Anti-Semitism to respond to the IHRA definition, which they deemed to have "caused confusion . . . generated controversy, hence weakening the fight against anti-Semitism." The Jerusalem Declaration links anti-Semitism and racism, and argues for freedom of expression. It has more than 200 signatories. The IHRA definition elevates anti-Semitism over other forms of racism, thus isolating victims of anti-Semitism and precluding solidarity between radicalized population groups.[39] The true definition is the simple meaning of (good vs. evil), the basic foundation but humans likes labels because it empowers their identities.

C. The IHRA Definition and the International Forum

Indeed, the IHRA definition cannot stop the International Criminal Court (ICC) investigation into Israel war crimes against the Palestinians.[40] The same is true, the IHRA definition cannot stop the current ongoing litigation against the Israeli lobby that was reversed in

[37] See https://www.holocaustremembrance.com/working-definition-antisemitism
[38] See https://www.theguardian.com/commentisfree/2019/dec/13/antisemitism-executive-order-trump-chilling-effect
[39] See https://rpl.hds.harvard.edu/news/2021/05/17/video-politics-defining-roundtable-discussion-about-jerusalem-declaration-antisemitism
[40] See ICC launches war crimes probe into Israeli practices https://apnews.com/article/israel-west-bank-palestinian-territories-courts-crime-19117d4265f5d564256ea7fe75854aa6

3-0 decision by the U.S. Court of Appeals for the D.C. Circuit; *Al-Tamimi v. Adelson, No. 17-5207 (D.C. Cir. 2019)*.[41] In a recent court ruling, the U.S. Court of Appeals for the D.C. Circuit revived a $1 billion lawsuit by Palestinians seeking to hold billionaire (Sheldon Adelson)[42] and more than 30 other pro-Israel defendants liable for alleged genocide, war crimes, and support of Israeli settlements in the West Bank, East Jerusalem, and the Gaza Strip.[43]

The IHRA definition was only a foreign policy used for the purpose of foreign affairs for the benefit of Israel but it was never a definition to be used domestically because the United States of America is guided by the U.S. Constitution and more importantly the founding fathers envisioned America to be build on the teachings of Jesus Christ (*see* Doctrines of Jesus Compared with Others, 21 April 1803).[44]

Directing federal agencies to rely on this framework in enforcing Title VI would effectively order nearly every campus in the country to censor its students and faculty on the basis of viewpoints — in this case, and when it came to Plaintiff's protected rights, it wasn't just protected speech that was violated but IHRA showed that Jewish Supremacy created an environment of injustice, Am. Compl. ¶¶ 10-12, ECF No. 9.[45] The parable to the world has shown that when the oppressed gain power, they often become oppressors themselves and all participate in injustice, actively or passively, even unintentionally.

D. The IHRA Definition Destroyed Title VI: Created Equal No Longer is True

The IHRA definition provides the Jewish people with a set of privileges above the Gentiles or students who fit different classes other than a Jewish identity. For example, the set of provided privileges can be viewed as *definitive* for the Jewish students compare to the Gentiles (referred to as Goys by the Jews)[46] even if a Jewish student commits evil and wickedness against a non-Jewish student as it happened to the Plaintiff, who is a Coptic.[47]

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[41] See https://law.justia.com/cases/federal/appellate-courts/cadc/17-5207/17-5207-2019-02-19.html
[42] See Israeli Lobby Documentary https://youtu.be/Mm-Dm4pO0xY?t=1531
[43] See ongoing litigation https://www.courtlistener.com/docket/4214523/al-tamimi-v-adelson/?page=2
[44] See https://founders.archives.gov/documents/Jefferson/01-40-02-0178-0002
[45] Haven't we learned anything from history? https://youtu.be/A14THPoc4-4?t=222
[46] See https://en.wikipedia.org/wiki/Goy see also https://www.timesofisrael.com/5-of-ovadia-yosefs-most-controversial-quotations/ "Goyim were born only to serve us. Without that, they have no place in the world – only to serve the People of Israel" . . . "Why are gentiles needed? They will work, they will plow, they will reap. We will sit like an effendi and eat... That is why gentiles were created." *sic* Rabbi Ovadia Yosef.
[47] See Who are the Coptic (Copts) http://www.coptic.net/EncyclopediaCoptica/ see Philos Project https://twitter.com/philosproject/status/1267508827030802432

"I came to complete not to refute. I came light to the World." Jesus Christ

For example:

a) Denying the Jewish people their right to self-determination.
b) Applying double standards by requiring of it a behavior not expected or demanded of any other democratic nation.
c) Accusing the Jews as a people.
d) Using the symbols and images associated with classic *anti-Semitism* (e.g., claims of Jews killing Jesus).

(a) The IHRA definition states in pertinent parts "denying the Jewish people their right to self-determination." In this instance, Plaintiff, a Coptic Christian student who attended Florida Coastal School of Law, suffered direct and intentional discrimination and retaliation at the hands of several Jews, was denied education, was denied the right to self-determination; *See Exhibit* 7 Plaintiff's memos 1-3 explaining this painful saga. The outcome was the perpetrator, Michael Roy Guttentag, a Jewish student was able to receive his education, transferred out of Florida Coastal School of Law, and attended a law school in New York, and was admitted to the New York Bar, not the Florida Bar because he was reported to the Florida Bar who opened a file under his name.[48] *See Exhibit* 8, letter from Executive Director Michele A. Gavagni to Mark Bochra, Florida Board of Bar Examiners. The Jewish person in this case despite being the evil one, received his education, and the victim, a Coptic person was denied the right to education and the right to self-determination. To substantiate this fact, OCR never in its findings mentioned that the involved student was Jewish nor his professor (Benjamin Priester)[49] was Jewish either, nor the dean of student's affair (Lauren Levine)[50] was Jewish. Furthermore, the Plaintiff is the only Coptic complainant in OCR database and OCR has with intent discriminated and retaliated against the Plaintiff across the span of 4 years by violating the OCR manual face on; ignoring Plaintiff's due process rights; destroying Plaintiff's witness list and even the key witnesses who were interviewed by OCR were never mentioned within OCR findings.

(b) The IHRA definition states "applying double standards by requiring of it a behavior not expected or demanded of any other democratic nation" *sic*. In this case, the double standards were already applied against the Coptic student, the Plaintiff Mark Bochra and in favor of the

[48] See Michael Roy Guttentag https://opengovny.com/attorney/5623384
[49] He is in litigation with the school https://www.jacksonville.com/story/news/education/2020/09/04/florida-coastal-professors-sue-school-saying-pay-illegally-cut/5709497002/
[50] She was replaced with another dean of student affairs and she left the school. Infilaw's board is notorious for dispersing anyone who brings them liability.

Jewish student. When the Federal Government covered up and protected the perpetrator who was Jewish, and denied the Plaintiff his right to education free from discrimination and retaliation.

(c) The IHRA definition states "accusing the Jews as a people" *sic*. Opening up the window to define a Jewish person as both a race and a religion. The asked question to this honorable court is what is the definition of a Jew? Is a Jew who follows Jesus Christ a Jew?[51] Is a Jew who is atheist a Jew?[52] Is a Jew who only follows the Old Testament a Jew? Rabbi Yaakov Shapiro answers the definition of a Jew by explaining the following.[53]

> Jewishness is one consistent definition. It is religious doctrine means as follows: there are no identifiable characteristics that all Jews share. That means there is no such thing as a definition of a Jew in terms of characteristics. It is not ethnicity, it is not a race, and it is not a religion but who is a Jew is a religious doctrine, *sic*; explained Rabbi Yaakov Shapiro.

(d) The IHRA definition states "Jews did not kill Jesus Christ" *sic*, hence it shows a profound hate, for Jews to hate one of their own; because Jesus Christ is the son of King David, the seed of Judah; for he is Jewish himself, the true messiah of the Jewish people.[54] A clear example of the Jewish hatred could be directly related to when Senator Graham asked Justice Elena Kagan "where were you at on Christmas day?" and Justice Kagan replied while grinding on her teeth "like all Jews, I was probably at a Chinese restaurant."[55] Does the symbol of the cross, the symbol for salvation to many; according to IHRA is a symbol of anti-Semitism?

Hence, when a Jewish person discriminates and retaliates against a Coptic person because of his faith in Jesus Christ, how can the IHRA definition stands? By Defendants' own hands, the Plaintiff did not only suffer continued discrimination and retaliation in law school, but at the hands of federal officials at the Department of Education, Office for Civil Rights ("OCR").

E. The IHRA Definition is the Use of Soft Power inside the United States of America

The IHRA definition seeks nothing more than power and control; when in doubt, look at how the Jewish people treat each others in Israel. For example, where would the IHRA definition stands when a Jewish person accuses another Jewish person of being a Goy i.e., a Gentile?

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[51] See Jews who follows Jesus Christ https://youtu.be/ynnjGKwVTjg?t=1688
[52] See Elon Musk, Jewish but atheist https://youtu.be/2e7rNbo5Dgg
[53] See https://youtu.be/-I9O9RWqdgk?t=484 See also Rabbi Yaakov Shapiro objection toward the adoption of the IHRA definition https://youtu.be/NGdRzFmStdw He explained "Zionism" is an ideology that people choose to adopt. Plaintiff with a Coptic root explained who is the real Zion "Jesus Christ." See Dkt 9 Exhibit G pages 104-117.
[54] See https://en.wikipedia.org/wiki/Genealogy_of_Jesus see diagram https://i.imgur.com/EqnghIJ.jpg
[55] See https://youtu.be/4ac0AcPQLt4?t=1072

"*I came to complete not to refute. I came light to the World.*" Jesus Christ

> Haredi MK Yaakov Litzman calls KarivGilad "this priest" for fighting for the rights of the Reform community. "You are not a rabbi, *you are a priest*," he tells Kariv, a Reform rabbi. "Remove your kippah. *Goy (gentile)*… Go to America" said in the Jewish congress Knesset.[56]

Far right member of the Jewish lobby, Ellie Cohanim, who is a friend with Kenneth Marcus, said the following behind her ambition for the adoption of the IHRA definition "[T]he anti-Semitism czar would be a "domestic diplomat" with the ability to persuade Hollywood, social media influencers, rap stars, athletes, elected officials, government bureaucrats, teachers, academics and thought leaders generally, to understand when they have crossed the line into anti-Semitism through their speech or actions"; *sic*.[57]

Many Jews and non-Jews rejected the IHRA definition and warned against using it as a law.

1) Canada: academics vote to reject IHRA definition of anti-Semitism.[58]
2) I drafted the definition of anti-Semitism. Rightwing Jews are weaponizing it.[59]
3) Anti-Semitism must not be elevated over other racism.[60]
4) Progressive Jewish groups oppose codification of IHRA anti-Semitism definition.[61]

Former President Donald Trump did not sign the executive order adopting the IHRA definition out of love for the Jewish people but to expose the Jewish lobby wickedness within their own hearts; given his recent interview with Israeli journalist Barak Ravid, during which Donald Trump lamented that Israel's "absolute power over Congress" had declined during the Obama administration.

> In a covert remark, former President Donald Trump asserted Israel power over Congress.[62]
>
> As quoted by the (Press TV)[63] — Trump inadvertently blurted out unmentionable truths about the outrageous *power of the Jewish lobby*, which has hijacked not just the *legislative branch*, but the *whole US government*, in part due to its stranglehold over the media […] The Jewish lobby has a disproportionate influence over the *US government* as well as the media.

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[56] See https://twitter.com/jacobkornbluh/status/1475574743092842502
[57] See https://www.newsweek.com/time-has-come-domestic-anti-semitism-czar-us-opinion-1604886
[58] See https://electronicintifada.net/blogs/nora-barrows-friedman/major-canadian-academic-group-rejects-israel-lobbys-anti-semitism
[59] See https://www.theguardian.com/commentisfree/2019/dec/13/antisemitism-executive-order-trump-chilling-effect
[60] See https://www.irishtimes.com/opinion/anti-semitism-must-not-be-elevated-over-other-racism-1.4756271
[61] See https://www.jpost.com/judaism/progressive-jewish-groups-oppose-codification-of-ihra-antisemitism-definition-655293 and see https://www.timesofisrael.com/us-reform-movement-ihra-definition-of-anti-semitism-should-not-be-law/
[62] See part of the interview https://twitter.com/LeviYonit/status/1471821911827091459
[63] See https://www.presstv.ir/Detail/2021/12/19/672982/Trump-trots-out-true-tropes-about-Jewish-juggernaut

"I came to complete not to refute. I came light to the World." Jesus Christ

> Sociologist James Petras's book *The Power of Israel in the United States* explores how dozens of Jewish billionaires, thousands of Jewish millionaires, and hundreds of thousands of rabid Jewish foot soldiers have terrorized the United States into submission to the will of Israel. […] No well-informed person would dispute Trump's claim that Israel has something close to absolute power over the US Congress, thanks to its vast outlays of bribes, euphemistically described as "campaign contributions."[64] Those interested in the history of Israel's takeover of the United States should begin by reading Laurent Guyenot's books *JFK-9/11*, *The Unspoken Kennedy Truth*, and *From Yahweh to Zion*. . . Following up on Michael Collins Piper's book Final Judgment, Guyenot shows how JFK was dedicated to forcing *the Jewish lobby to register as foreign agents*, taking currency creation out of the hands of private bankers, and shutting down Israel's *nuclear program*. . .According to Guyénot, Kennedy butted heads with David Ben-Gurion and the Kosher Nostra and suffered the consequences.

Indeed, Israel does have nuclear weapons which are illegal under a law passed in the 1970s that prohibits aid to nuclear powers who don't sign the Nuclear Non-Proliferation Treaty. In an interview in December, President-elect Joe Biden cautioned that if Iran went nuclear, Saudi Arabia, Turkey and Egypt might too, "and the last goddamn thing we need in that part of the world is a buildup of nuclear capability" wrote Peter Beinart on the New York Times.[65]

1) Joe Biden should end the US pretence over Israel's 'secret' nuclear weapons wrote Desmond Tutu is a Nobel peace laureate and a former archbishop of Cape Town.[66]
2) How the Israelis Hoodwinked JFK on Going Nuclear.[67]

All of these recited articles and major world topics were part of a foreign policy to use either *hard power* (wars) or *soft power* (political pressure) for the good of Israel, but with IHRA being adopted in the United States, it has merged foreign and domestic policies as one. As mentioned within Plaintiff's amended complaint Dkt 9 and recited by Defendants' own hands within their motion to dismiss, they recited the truth, *see* Dkt 28 page 6 of Defendants' motion to dismiss.

> *E.g.*, Am. Comp ¶¶ 71-72, ECF No. 9 ("The IHRA definition calls good-evil, and evil-good; it calls light-darkness and darkness-light; it calls hate-love and love-hate. […] The first major issue with the IHRA definition is to claim that Jews did not kill Jesus Christ and that claiming so is anti-Semitic"); wrote Sarah Terman, the Justice Department lawyer.

The IHRA definition has itself destroyed the Department of Education, Office for Civil Rights' mission, rending it moot and is bringing chaos to college campuses because the main

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[64] See Dark Money in congress https://www.opensecrets.org/dark-money/
[65] See https://www.nytimes.com/2021/08/11/opinion/biden-israel-nuclear-program.html
[66] See https://www.theguardian.com/commentisfree/2020/dec/31/joe-biden-us-pretence-israel-nuclear-weapons
[67] See https://foreignpolicy.com/2016/04/26/how-the-israelis-hoodwinked-jfk-on-going-nuclear-dimona-atoms-for-peace/

issue was Kenneth Marcus wanted to control hearts using his "law" rather than win "hearts" through hard work and persuasions; Kenneth Marcus wanted to be a master rather than a servant.[68] Not only has the IHRA definition personally injured the Plaintiff but it has destroyed OCR mission which needs this Honorable Court immediate attention through an injunction and a declaratory relief. The IHRA definition is not even adopted in Israel.

FACTUAL BACKGROUND

I. DISCRIMINATION BY JEWS AGAINST A COPTIC: MARK BOCHRA

When one looks at Plaintiff's story suffering discrimination and retaliation with intent and malice; one could say "this is not a story but a tale for God is with a child, named Mark." At every corner, the Plaintiff suffered discrimination and retaliation at the hands of evil Jews not only in law school i.e., Florida Coastal School of Law which was shut down by the Department of Education, but also when Jews held power and took control of Office for Civil Rights; when former secretary Candice Jackson left OCR and Kenneth Marcus became the new secretary for OCR; one was a Christian Secretary and the latter was a Jewish Secretary; a far right part of the Israeli lobby.

See Exhibit 9, a letter opposing the nomination of Kenneth Marcus by the Leadership Conference on Civil and Human Rights dated February 21, 2018. Vanita Gupta the current associate attorney general, the second highest DOJ official in the Biden's department of justice administration was the author of the letter, the president and the CEO of Leadership Conference on Civil and Human Rights wherein, she was opposing the confirmation of Kenneth Marcus as Assistant Secretary for Civil Rights.[69]

Plaintiff suffered injuries both in law school and by OCR officials and to retell his story, it needs some close up reading of the facts, the evidence, and the chain of events which OCR officials tried to destroy many times; it needs a Judge with a kind heart.[70]

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[68] See Jesus Christ answering the Jews "I am the light of the World" https://youtu.be/9R5VwxvUUvI?t=160 and see https://youtu.be/0feZQkHbCkM?t=5175 "The greatest one among you must be like the youngest, and the leader must be like the servant." Said Jesus Christ.

[69] See Letter http://civilrightsdocs.info/pdf/policy/letters/2018/Oppose-Ken-Marcus.pdf The letter was headed by the President and CEO of Leadership Conference who at the time was Vanita Gupta https://civilrights.org/2018/01/18/civil-human-rights-coalition-urges-senate-reject-ocr-nominee-kenneth-marcus/# who is currently the second highest rank of DOJ official, the associate attorney general https://www.justice.gov/asg/staff-profile/meet-associate-attorney-general

[70] See https://i.imgur.com/A6JfvoN.png and see https://i.imgur.com/xnzde1L.png

"I came to complete not to refute. I came light to the World." Jesus Christ

Within the Department of Education motion to dismiss, they briefly recited lies upon a lie because they could not disclose the merits of the case before this honorable court that they were actually negotiating a resolution agreement for nearly 2 years given the egregious set of discrimination and retaliation that took place. This case was destined to be passed to the justice department for prosecution pursuant to the OCR manual section 305 and 602 and Melanie Velez Atlanta OCR director own words over the phone to the Plaintiff, that if negotiation failed, Impending Enforcement Action will follow. *See* Dkt. 9 ¶¶ 86-88; *see* also *Exhibit* 10 (emails with Prof. Munsterman related to her interview), *see Exhibit* 11 (email from Atlanta Regional director Melanie Velez dated 7/12/2018 stating the case is going back into investigation), yet *see Exhibit* 12 (3 responsive letters to Senator Durbin's office showing that the case has been in negotiation mode from December 11, 2018 to October 31, 2019). *See Exhibit* 13, yet another e-mail dated June 28, 2019 by Melanie Velez stating that she hasn't gone into negotiation yet. What Melanie Velez says over the phone, she says the opposite of it via e-mails and letters to members of congress. For nearly 3 years, the OCR manual was selectively and unequally applied against the Plaintiff compare to other Complainants. Furthermore, it shows due process violations when the rights of the Complainant are violated through violation of the OCR manual.

However, within Defendants' motion to dismiss, Ms. Terman recited the following on page 2; *see* (Dkt 28) page 2.

> Bochra alleged that he was being subjected to discrimination on the basis of his national origin (he is a United States citizen who was born in Egypt), and also that the school retaliated against him for alleging national origin discrimination. *Id.* At the heart of Bochra's complaint was his dissatisfaction with a grade that he received in torts class (his appeal of that grade was denied, allegedly based on discrimination); and also his dissatisfaction with the way the school attempted to mediate a dispute between Bochra and a group of other students who felt that Bochra was aggressively harassing them.

Even with such lies, the Defendants failed to show that what they were saying was the truth, because Defendants own words within the findings showed that it was the Plaintiff who was exposed to a set of a hostile environment including battery, assault with a threat to kill by Michael Roy Guttentag; along with being also threaten by one of his professors if he reveals the truth about the professor tempering with students' grade for the benefit of the law school bar rank [a complaint was lodged for deception and fraud with the Office of Illinois Attorney General, and it is also currently being investigated by office of Federal Student Aid in cooperation with office of Illinois Attorney General] *See Exhibit* 14.

"I came to complete not to refute. I came light to the World." Jesus Christ

> OCR Complaint No. 04-16-2184
>
> On February 16, 2016, the Assistant Dean submitted a referral against Student A for the January 10, 2016 incident. Student A's referral stated that it was based on the Complainant's report to law enforcement that Student A punched the Complainant, threw his eyeglasses and made the threat, "I will kill you." The referral also noted that the Assistant Dean had given the Complainant and Student A directives to stay away from each other and on November 12, 2015 had emailed Student A, requesting that he not have contact with the Complainant. The referral stated that the Complainant's report provided a sufficient basis for referral of Student A for investigation under Conduct Code Section G.2.b.
>
> On February 18, 2016, the Panel sent a draft decision about the Complainant's referral to the Assistant Dean and the Dean, and also requested a review by the Law School's counsel. According to one of the Panel members, the professors on the Panel had not previously handled a case similar to the Complainant's and the Panel therefore asked the Assistant Dean to review a draft of their decision for consistency with applicable standards.[18]

Student A is Michael Roy Guttentag.[71]

Melanie Velez, and her haughty boss at ("OCR") Headquarter, Kenneth Marcus picked a fine chapter to omit from their memory bank.[72] *See Exhibit 15*; Plaintiff's appeal with OCR.

A. Florida Coastal School of Law: Discrimination and Retaliation with Intent & Malice

Plaintiff can summarize a tale of discrimination and retaliation with intent and malice in these few asked questions that were presented as letters to both former President Donald Trump and current President Joseph Biden; *See* Am. Comp, ECF No. 9 *Exhibit D*; and ECF No 25 Motion for Class Certification *Exhibit* 13 titled (3-J). These questions were substantiated by 3 investigative memos; *Exhibit* 7 attached herein, which were backed up by a USB that held all the paper trail evidence; evidence which OCR Atlanta tried to destroy and never mention any of it within their trumped up findings that was issued by Melanie Velez, the director of OCR Atlanta.

> What happens when a student complain of a threat by a faculty just to find himself interim suspended without a valid and a clear reason immediately the next day? (**Exhibit 16**) What happens when a student files a grade appeal with evidence of his professor committing misconduct and after the professor's admission of such misconduct to the law school, the student finds his grade appeal denied *without due process* and interim

[71] See page 8 of Melanie Velez written findings (When she interviewed students).

[72] Melanie Velez learned from the Plaintiff directly how his settled housing discrimination wherein, a settlement agreement was signed by Judge Joan Lefkow and the district court retained jurisdiction over the agreement, *Amin et al v. 5757 North Sheridan Rd Condo Assn. et al* (1:12-CV-00446) (Dkt 66) . Melanie Velez learned how IDHR (Illinois Department of Human Rights) tempered with witnesses and evidence during their issued finding report; this case also involved Jews both at the condo association level and the director and investigator of IDHR because they were all Jews who did evil. Melanie Velez said in 2018 that OCR is not IDHR but yet again 3 years later, it became a fact.

> suspended immediately the next day? (**Exhibit 17**) What happens when a law school turns the ***complainant*** into the ***respondent*** after being assaulted and battered by another student i.e., Michael Roy Guttentag? What happens when a law school takes the student's money for living expenses provided by Federal Student Air, holding it in their bank, leaving the students in a foreign state without any means to pay his rent, food, afford legal counsel, and much more? What happens when a student reports ***discrimination just to be retaliated against*** in the most egregious manner? (**Exhibit 18**) What happens when a student mentions ***Jesus Christ*** quoting a verse from the bible because he is a Christian Coptic (**Exhibit 19**) just to be labeled later ***unfit to be a lawyer*** and an array of ***racial remarks*** in writing by a lead investigator Jewish "Benjamin Prister" who taught a class to the students involved including Michael Roy Guttentag (Conflict of interest)?[73] What happens when that same lead investigator befriend the involved students on facebook?[74] What happens when a law school tries to scare witnesses and faculties from speaking out for that same student in order to bury the truth? What happens when a law school seeks from a student to ***sign a release and waiver of all legal*** claims against the law school in order for that same student to continue his legal education? (**Exhibit 20**) And what happens when that same law school engages in conspiracy trying to setup the same student through the criminal justice system ***not once but twice*** in order to get rid of him for good?

All of these chains of events happened to me at Florida Coastal School of ~~Law~~ that was shut down by the Department of Education (the Defendants) by denying its access to title iv funds.[75]

When a student reports discrimination to a school, the school is on notice not to retaliate, but in reality, the school through their Jewish investigator, Benjamin Priester and after reading Plaintiff's e-mails reciting Jesus Christ, he planned to set the Plaintiff through the criminal justice system and when the truth came out and all his wickedness planning were put to a complete halt, the school said "Mark is turning into liability, let's get rid of him." This message was relayed to me directly by my counsel Eric Friday who had an insider working inside the school when he told me "Mark do not be surprised if the school suspends you, you've turned into a liability, I will try to find you a lawyer who can communicate with the school." At that time he recommended Archibald Thomas who took $1,000 charged on Plaintiff's mother credit card to negotiate with the school to which Mark Alexander the school's counsel told him the following "Mark needs to sign a waiver and a release of all his legal claims against the school if he wishes to continue his education and we will still sanction him or leave the school and we will clear his

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[73] The lead investigator name is ***Benjamin Priester***, who also taught criminal law, a legal course to all involved students including the evil Jewish student Michael Roy Guttentag.

[74] See https://i.imgur.com/VqLLoly.png and see https://i.imgur.com/JLHS7sr.png

[75] See https://www.ed.gov/news/press-releases/department-educations-federal-student-aid-denies-reinstatement-application-profit-law-school

record but we won't refund his education loan back to the department of education." Here was evidence of education denial, here was evidence of discrimination with intent even after the truth came out, and here the school rewarded the Jew Michael Roy Guttentag with education and denied Mark Bochra his right to education free from discrimination and retaliation. See Exhibit 20, Archibald's Thomas e-mails.

None of the recited produced evidence will this honorable court find disclosed within OCR issued findings, they purged it from history; redacted witnesses along with their testimonies; in addition to violating the OCR manual for nearly 3 years.

B. Office for Civil Rights: Due Process Violations and Equal Protection Clause

When one's read Defendants' motion to dismiss, it alleges a neutral process by arguing the following to the naked eyes (1) Plaintiff filed a complaint for discrimination and retaliation; (2) OCR investigated his complaints; (3) OCR dismissed the complaints for lack of substantial evidence; (4) Plaintiff appealed OCR findings; (5) OCR dismissed the appeal; case closed. Certainly this is the argument Defendants brought within their motion to dismiss to this honorable court; *see* Dkt 28 page 2.

> The following facts are drawn from the district court complaint (Dkt. 9), as well as three documents that Bochra incorporated into the complaint by reference:1 his administrative complaint to the Office for Civil Rights (Ex. A), OCR's administrative findings (Ex. B), and OCR's decision on appeal (Ex. C); *sic*.

However, as previously mentioned, this wasn't the case; rather Defendants applied the OCR manual, its procedure, and rules selectively and unequally on the Plaintiff compare to others. In addition, Defendants did with intent and malice temper with witnesses and the evidence to destroy Plaintiff's complaint. Here OCR mission became an illusion when it came to the Coptic.

Office for Civil Rights has further deprived the Plaintiff the right to equal protection clause when it enforced the IHRA definition which states in part "Jews have the right to self determination" by protecting the Jewish student Michael Roy Guttentag and retaliated against the Plaintiff Mark Bochra when they with intent and malice tempered with witnesses and evidence; equality and equity were both denied. *See Exhibit* 21, an e-mail dated October 4, 2019 complaining to OCR Headquarter, former secretary Kenneth Marcus and his confidential assistant Chelsea Henderson along with many OCR enforcement directors requesting for a new investigate team and a new director to handle my complaint but with no avail, Melanie Velez

kept handling Plaintiff's complaint until she with an agreement with OCR HQ destroyed the case and dismissed it a year later during covid19 lock down. The e-mail also recited section 305 Letter of Impending Enforcement Action. Then again in a follow up chain of e-mails few month later June 27, 2019 and still OCR refused to move toward section 305 of the OCR manual i.e., Impending Enforcement Action; *see Exhibit* 22.

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 the allegations opened for investigation;
- 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 investigated 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 regulations, 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; and
- 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.

When the Department of Education opens a complaint for investigation, OCR can investigate all of the Complainant's cited issues and during a phone interview with the Complainant, OCR can add additional information to what they will investigate; moreover, during the course of the investigation when it is revealed that other violations have occurred, OCR in a resolution agreement will remedy the violations. However, during Plaintiff's phone interview with OCR Atlanta senior attorney Ledondria Saintvil, Plaintiff shared that not only title vi was violated but also section 504 given his medical history of seizure epilepsy, and title ix in

term of gender equity was denied for the Plaintiff who was the actual victim compare to the remaining involved students including Michael Roy Guttentag, the Jewish student.

Plaintiff further added during the phone interview that all of the involved people who discriminated and retaliated against him were all Jews i.e., Lauren Levine, Michael Roy Guttenag, and Benjamin Priester. Plaintiff further mentioned that he was threatened by his tort professor. Plaintiff at that time was scared and crying in his office and only wanted to resolve the dispute and transfer out of this terrible law school. As substantiated by Plaintiff's OCR Complaint on page 6 line 16; *see Exhibit* 23 Plaintiff's DOJ complaint that was used by OCR for the investigation. *See* also *Exhibit* 24 Plaintiff's retaliation complaint that was used by OCR.

> On January 11, 2016, the Complainant met with Prof. Gregory Pingree wherein, during the conversation, Prof. Pingree assaulted Mark Bochra by placing him in imminent danger and fear when he pressed his hands on his desk and leaned his face toward Mark's face saying "I did not fucking make a mistake." Mark was calm the entire time during this meeting wherein, he advised Prof. Pingree that he will file a grade appeal. Prof. Pingree threatens and solicited Mark by saying "If you file a grade appeal, I will be your last ally and I won't write you a letter of recommendation." Prof. Pingree after calming down and seeing the Complainant crying, told him "I know it is against your moral and religion to curse but I curse at everyone, I curse at my kids, the faculty here, at Ragan, at Scott Devito." The Complainant relayed to Prof. Pingree that he would like to resolve this grade appeal mutually without being retaliated against and that he won't tell the class about it. The Complainant had evidence that Prof. Pingree plays with the students' grades and changes them to his like before applying the grade curve to the class — essentially changing the students' grades to his like after students earned their rightful grades, among other grading policy violations.

When Plaintiff received the open letter for investigate by OCR, he found that Ledondria Saintvil did not include the term "Jews" and also redacted the event that he was threaten by his tort professor, in addition to not including title ix (denial of gender equity), and section 504 (history of seizure epilepsy) violations; however the Plaintiff pursued these issues via e-mail with OCR Atlanta to which he was promised that they are being investigated during the course of the investigation. This is OCR policy to which was recited by former Secretary Candice Jackson. *See Exhibit* 4; Candice Jackson's Memorandum.

> "OCR's stated goal is "to swiftly address compliance issues raised by individual complaint allegations, reach reasonable resolution agreements with defined, enforceable obligations placed upon recipients directly responsive to addressing the concerns raised in the individual complaint being resolved, and encourage voluntary settlements wherever possible."

During the course of the investigation, Plaintiff due process rights were violated when he found out that Ledondria Saintvil lied to him when she told him that she interviewed his professor, Korin Munsterman who was to testify that "the school wanted to get rid of Mark and that Mark was a good student." This showed that the investigation was not independent and a special treatment was offered to the recipient and also posed the question, why would a federal investigator lie about interviewing a key witness.

During the course of the investigation and after the Plaintiff sent a letter to Secretary Candice Jackson for OCR, she assigned the enforcement director Mr. Randolph Wills to oversee this matter by telling him "I need this complaint handled properly." Everything from this point was suppose to run properly and the case processing manual was suppose to be enforced, however, quite the contrary it was never followed, and with the coming of Secretary Kenneth Marcus taking charge of OCR, the Plaintiff suffered continues due process violations, discrimination, and retaliation by office for civil rights. Plaintiff even complained directly to the chief of staff of Secretary Betsy Devos but nothing appeared to halt Office for Civil Rights plan for future retaliations; and they indeed did.

Many sections of the case processing manual of OCR were violated face on, like

(a) Section 302 time frame which provides only 30 days to negotiate a resolution rather than close to a 2 years negotiating with the recipient;

(b) Section 305 (LETTER OF IMPENDING ENFORCEMENT ACTION) for the recipient refusal to reach a resolution pursuant to Melanie Velez own words over the phone; and

(c) Section 602 (REFER TO DOJ, WHERE APPROPRIATE).

Moreover, OCR allowed the recipient to disperse all the witnesses who were suppose to be interviewed by OCR by halting the investigation for over 2 years claiming they were negotiating a resolution with the recipient. As substantiated by Melanie Velez letters to Senator Dick Durbin who is currently the Chairman of the Senate Judiciary Committee. *See Exhibit* 12 (3 responsive letters to Senator Durbin's office showing that the case has been in negotiation mode from December 11, 2018 to October 31, 2019). *See Exhibit* 13, yet another e-mail dated June 28, 2019 by Melanie Velez stating that she hasn't gone into negotiation yet.

OCR never interviewed Plaintiff's witness list and the people who OCR interviewed; they redacted their names and purged their testimonies from the findings like LT Larry Kitchen,

"I came to complete not to refute. I came light to the World." Jesus Christ

Professor Korin Munsterman. Each one of these witnesses were raised within Plaintiff's appeal with OCR. *See Exhibit* 15; Plaintiff's appeal and amended appeal with OCR to comply with their 10 page double space demand.

II. FINDING VIOLATIONS FOR TITLE VI, SECTION 504, AND TITLE IX

Plaintiff's disclosure of these resolved cases in favor of the Complainants were shared directly with Deputy Assistant Secretary for Enforcement Randolph Wills which he acknowledged and knew about them and again they were incorporated and made part of Plaintiff's appeal as well.

These cases were far less complicated yet OCR easily found evidence in favor of the Complainants and reached resolution agreements including educational reimbursement. However, none of the reasoning's and legal analysis that were used in these cases were used in Plaintiff's findings as well which was prepared and issued by Melanie Velez herself. In fact Melanie Velez never mentioned any legal analysis at all like the elements for discrimination or the elements for retaliation because the moment she approaches this line of thinking, she will have to write in favor of the Plaintiff by preponderance of the evidence. Yet from the beginning, the findings to which Melanie Velez already knew about it because she was suppose to proceed with a letter of impeding enforcement action. For that same reason she redacted two important key witnesses that put the entire case to the rest; these two key witnesses were LT Larry Kitchen and Professor Korin Munsterman.

And then again, when one compares the denial of appeal for the Plaintiff that was issued by Aaron Romine the director of OCR Denver not OCR Dallas with the granting of appeal written by former secretary for OCR Kenneth Marcus granting Zoa's appeal; one would find one lacked any analysis while the other contained in dept analysis along with implementing the IHRA definition to justify the approval of the appeal.

Here the rules and regulations of the OCR manual were applied selectively and unequally against the Plaintiff compare to many others based on his known and identified national origin and religion. Plaintiff was targeted because of his Coptic identity and OCR found that the Plaintiff has turned into a liability due to his objections to the IHRA definition when Kenneth Marcus was taking charge of OCR. Simply put like the law school, OCR had to get rid of Plaintiff.

"I came to complete not to refute. I came light to the World." Jesus Christ

A. Title VI & Retaliation: The Case of St. John's University:

This was a case of a black student who alleged that in retaliation for asserting that his […] professor (the Professor) refused to review a draft of an essay because of his race or color, the […] department chair (the chair): (a) overruled the Professor's decision to review the essay that was the subject of his grade dispute; (b) cancelled an independent research course led by the chair for which he had registered; (c) advised the complainant that he would prevent him from registering for the course with another professor; and (d) dissuaded two professors from representing the complainant in a grade appeal.

OCR easily found that retaliation occurred based on the following met elements:

> (1) whether the complainant engaged in a protected activity; (2) whether the recipient was aware of the complainant's protected activity; (3) whether the complainant was subjected to an adverse action contemporaneous with, or subsequent to, the recipient's learning of the complainant's involvement in the protected activity; and, (4) whether there is a causal connection between the protected activity and the adverse action from which a retaliatory motivation reasonably may be inferred. When there is evidence of all four elements, OCR then determines whether the recipient has a legitimate, non-retaliatory reason for the challenged action or whether the reason adduced by the recipient is a pretext to hide its retaliatory motivation.

OCR determined that the complainant engaged in protected activity by sending the email on December 19, 2014, asserting that the Professor had refused to review a draft of his essay because of his race or skin color Further, OCR determined that the chair was aware of the complainant's protected activity. The chair acknowledged that he instructed the Professor not to review the grade, cancelled the complainant's independent study course, and prohibited the complainant from taking the independent study course with another professor.

Based on the above, OCR determined that the chair's decision was motivated by a desire to retaliate against the complainant for his complaint of race discrimination regarding the Professor. Moreover, OCR determined that the chair's actions could effectively chill future protected activities.

OCR concluded with the following and issued a resolution agreement attached with its findings; *see Exhibit* 25.

> Accordingly, OCR determined that there was sufficient evidence to establish that the chair 's actions in (a) overruling the Professor's decision to review the essay that was the subject of his grade dispute; (b) cancelling an independent research course led by the chair for which the complainant had registered; and (c) advising the complainant that he

> would prevent him from registering for the independent research course with another professor, were in retaliation for the complainant's protected activity and violated the regulation implementing Title VI at 34 C.F.R. § 100.7(e).

This was a simple case unlike what the Plaintiff experienced i.e., being threaten by one of his professors and when he filed a grade appeal, it was denied immediately the next day without any due process, and when the Plaintiff complained of the threat directly to the Dean of the School, the Plaintiff was suspended the next day rather than being protected by also the same Dean.[76] And when the Plaintiff complained directly of discrimination, the law school sought to frame him through the criminal justice system using Michael Roy Guttentag even though the Plaintiff was the Complainant with the School never the Respondent; *see* *Exhibit* 18 complaint of discrimination filed with the school. And when the truth was revealed, the law school sought from the Plaintiff to sign on a release and waiver of all his legal claims against the school if he wishes to continue his education at the school; please refer back to *Exhibit* 20 e-mails from attorney Archibald Thomas. Here the school was put on notice not to retaliate when the Plaintiff filed a complaint for discrimination, yet the school with intent and malice did indeed retaliate turning it into discrimination with intent. And when the law school plan to frame the Plaintiff through the criminal justice system by supporting Michael Roy Guttentag failed, they sought from the Plaintiff to either accept their demand by signing a release and waiver of all his legal claims against the school or they will keep the expulsion or the long term 1 year suspension while providing an education to Michael Roy Guttentag.

See *Exhibit* 26, OCR warning schools against retaliation in a dear colleague letter.[77]

B. Section 504 & Retaliation: The Case of Miami Dade & Southern Technical Colleges

These case were not only similar when it comes to Plaintiff section 504 violations given his granted accommodation in law school and undergrad university and his history of seizure epilepsy but also one of the cases was investigated by the same investigate team which investigated Plaintiff's complaint until the director Melanie Velez took charge of the case herself. *See* *Exhibit* 27 an e-mail to Deputy Assistant Secretary for Enforcement Randolph Wills and OCR Atlanta Director Melanie Velez dated July 5, 2018; two cases recited within this e-mail

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[76] The dean was later fired by FCSL when they saw a copy of Plaintiff fraud complaint with the office of IL Attorney General. https://abovethelaw.com/2019/09/florida-coastal-dean-resign-missing-student-loans/

[77] See OCR Statement http://www2.ed.gov/about/offices/list/ocr/letters/colleague-201304.html

one is pertaining to section 504 violation and another was pertaining to title vi violation; both were resolved with a resolution agreement and included educational reimbursement. These two cases showed a resolution within 1 years or OCR Atlanta accommodating a complainant who filed multiple complaints and ended up with a resolution agreement with his last complaint. *See Exhibit* 28 copies of the findings and their resolution agreements.

The case of Miami Dade College was also investigated by OCR Atlanta; the case was about discriminated against the complainant based on his disability wherein he was expelled from the school. In this case, you will see a detailed analysis of what amounts to section 504 violations per OCR guideline. You will also see elements in how OCR evaluates "threat assessment" and when such evaluation is missing, section 504 is violated. *See Exhibit* 29, copy of the OCR findings in Miami Dade College along with its resolution agreement.

> OCR finds that this definition related to direct threat is not consistent with the Title II implementing regulation at 28 C.F.R.§ 35.139 definition of direct threat, which states that "In determining whether an individual poses a direct threat to the health or safety of others, a *public entity* must make an individualized assessment, based on reasonable judgment that relies on current medical knowledge or on the best available objective evidence, to ascertain: the nature, duration, and severity of the risk; the probability that the potential injury will actually occur; and whether reasonable modifications of policies, practices, or procedures or the provision of auxiliary aids or services will mitigate the risk." Procedure 4055 states that the direct threat assessment may be determined by the student, whereas Title II requires the public entity or College to make the determination. Furthermore, OCR notes that a direct threat assessment may be made prior to admission which would violate the Section 504 implementing regulation at 34 C.F.R. § 104.42(b)(4) which prohibits pre-admission inquiries as to whether an applicant for admission is a person with a disability. Based on the above, OCR finds that the College's Procedure 4055 is not in compliance with Title II and Section 504.

None of these analyses were used within Plaintiff's OCR Complaint; because Melanie Velez knew what she was doing was arbitrary and capricious. *See Exhibit* 30; e-mail to Ledondria Saintvil, the initial senior attorney who was handling the Plaintiff's OCR complaint, via e-mail she received a copy of Plaintiff's neurology report related to his seizure epilepsy.

Plaintiff has always been the victim who was denied equality and equity, who was transformed from being the Complainant to a Respondent; the wicked Jew was protected while the victim Coptic was neglected. This was the case of the Jew and the Coptic; yet I am the founder of the "Abraham Accord" because I knew how to change evil to good. *See* Am. Comp ¶ 93, ECF No. 9.

"I came to complete not to refute. I came light to the World." Jesus Christ

C. Title IX: Gender Equity [Mark Bochra the Coptic] vs. [Michael Guttentag the Jew]

Equity is a word that is often used by many government officials yet they never commit to it. Equity was used by Secretary Miguel Cardona, yet his education department neglected to provide me with equity up to this date.

> Tomorrow's Advancing Equity summit is an important component of the Education Department's ongoing efforts to implement Executive Order 13985, Advancing Racial Equity and Support for Underserved Communities through the Federal Government. The summit also advances the Secretary's goals for all youth and adults to be ready for, and have meaningful access to, quality college and career pathways; see the press release.[78]

Equity was also preached by Attorney General Merrick Garland, yet the Plaintiff did reach out to him many times through his Chief of Staff Matthew Klapper matthew.b.klapper@usdoj.gov to resolve and settle this litigation many times; however, he had ears but did not listen. Yet one attorney general will leave office and another will take his place; this is the parable to the world.

The fine line between Equity and Equality is that they are polar opposite; some argue that when one deny equality but provide equity you restore justice but in fact a real line of thinking would be if you deny equality, you have already admitted to targeted discrimination that you only find one solution; a softer solution to reach some sort of compensation through equity.

> At the hearing, Garland told Cotton, "I think discrimination is morally wrong. Absolutely." Taking Garland at his word, it is hard to understand how the Justice Department, under his stewardship, could in good conscience apply Biden's equity guidance. Equity, as explicated by the order's slippery prose, is targeted discrimination.[79]

Many people will speak of equity and often they will confuse equity with equality. When equality is denied, they preach equity to reach justice but in Plaintiff's case as a Coptic both equality and equity was denied for him first by Florida Coastal School of Law and later by Office for Civil Rights ("OCR"). Yet, it was provided to the Jewish perpetrator Michael Roy Guttentag and here one of IHRA's definitions is brought under the microscope and into question "the right for Jews to self-determination" only the Jews? In Plaintiff's case that was true.

Title IX in plain language is about treating both the male and female equally; the mother and the father loves both the son and the daughter equally. The core of Title IX is to prohibit sex discrimination. Hence, when the Plaintiff complained of being threaten by one of his professors

[78] See https://www.ed.gov/news/press-releases/secretary-cardona-open-wednesdays-2022-advancing-equity-career-connected-education-summit

[79] See https://www.nationalreview.com/2021/02/merrick-garland-misleads-on-equity-and-equality/

just but he gets suspended the next day immediately, was the Plaintiff protected under Title IX? The answer is no. Again, when the Plaintiff filed a Complaint with the law school against Michael Roy Guttentag for assault and battery with a serious complaint that Michael Guttentag charged at him with a threat to kill him and the school interviewed witnesses. How can the Plaintiff gets turned from a Complaint to a Respondent and gets suspended? The chain of events which took place at Florida Coastal School of Law showed an imminent hostile environment that has exposed the Plaintiff to extreme emotional damages yet the Plaintiff endured this trial to this very day and brought with him the change to the middle-east i.e., the Abraham Accord.

Despite Plaintiff's being the victim and this honorable court needs to ask this question again and again, why was the Plaintiff suspended from school? They will find discrimination and retaliation with intent and malice was the only answer. No reasonable mind can find that a student, male or female files a complaint of a threat by one of his or her professors only to find himself suspended the next day; a threat is a serious allegation. Also a complaint for battery and a charge to kill by Michael Guttentag against the Plaintiff makes 2 serious complaints on file with the school and what does the law school do, suspends the Plaintiff.

When the truth came out and the school failed in its plan to further discrimination or retaliate against the plaintiff, how did the school reward Michael Roy Guttentag? They gave him a warning and asked him to read the professionalism handbook for the Florida bar. See page 13 of Melanie Velez OCR findings; she could only destroy so much evidence but not all.

OCR Complaint No. 04-16-2184 **Mark Bochra**

and further infractions would result in permanent expulsion. The Panel recommended, but did not require, that the Complainant speak with an attorney with experience in bar admissions in the state in which he intended to apply for membership.[21] On February 28, 2016, Complainant filed an appeal of the one-year suspension. On March 11, 2016, the Dean denied Complainant's appeal and upheld the one-year suspension.

Michael Guttentag

According to the findings regarding the referral of Student A, on March 23, 2016 Student A met with the person assigned to investigate his referral (Investigator). The Investigator issued a violation finding against Student A on April 11, 2016, and assigned him the following sanctions: reading the 2014-2015 Professionalism Handbook of the Florida Bar and writing a reflection paper, participating in an educational conference with the Investigator, and having placed in his file a warning from the Law School. Student A appealed and the Law School upheld the decision.

And it didn't stop there, Michael Roy Guttentag threatened 3 more students, Ray Gossen, Omar El Jamal and Jordon Lulich wherein, they all reported him to title ix coordinator Tammy

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Hodo and yet Tammy Hodo covered up for Michael Guttentag. The school placed Michael Guttentag in night classes in order to finish his first year of law school and transfer out to another law school which was Hofstra Law School in New York wherein, he took the New York bar and became an attorney.[80] This happened while the Plaintiff was suffering outside the school, denied education, watching his educational dream of being a lawyer vanishing in the air at the hands of 3 wicked Jews: Michael Roy Guttentag, Lauren Levine, and Benjamin Priester.

The Jew according to IHRA had the "right for self determination" even when he was the wicked one, and the Coptic who was the victim was left without a law degree, with a student loan debt totally more than $42,000 and a tail of injustice at every corner.

Here is another truth, one night Plaintiff was cooking rice only to find Michael Roy Guttentag walking with Vince Cano yelling at him with a huge red face. Plaintiff asked what happened and Vince replied "Kendall punched Michael" Plaintiff asked why and later went to check on Kendall York and saw her knuckles were bleeding. Kendall York was the same person who warned the Plaintiff later on that Michael Guttentag hired a private investigator to stalk him and later the Plaintiff found out that it wasn't just him he was being stalked by a private investigator, but he was stalking 3 more students who reported Michael Guttentag i.e., Ray Gossen, Omar El Jamal, and Jordon Lulich. These incidents were both covered up by the law school and OCR to show a less degree of serious allegations against Michael Roy Guttentag.

[80] See https://freedmaninstitute.hofstra.edu/team/michael-guttentag/

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Title IX is sex discrimination; it protects both the male and the female. It also provides gender equity to the harmed victim. It means the following.

An autistic student asked for a 'fist bump' and a selfie. He got two Title IX investigations.[81] This case and many out there was the mess created by former secretary of OCR Catherine Lhmaon under the Obama administration, only to return again to OCR with the same legacy but this time, Plaintiff is in the scene to show the politics of both Catherine Lhamon and Kenneth Marcus.

Another case, Methodist University violated Title IX when it failed to provide a "prompt and equitable response" to the alleged sexual assault of a male student by another male student in 2012, the U.S. Department of Education announced Thursday. The university then failed to protect the victim from further harassment and embarrassment following the assault, the department said, leading him to drop out.[82]

> The student's claims are outlined in a resolution letter the Department of Education's Office for Civil Rights sent to SMU this week, concluding a three-year investigation that began with a separate complaint in 2011 and eventually grew to include a third complaint in 2013 and a review of the university's responses to sexual assaults dating back to 2009. The investigation concluded that the male student "was subjected to a sexually hostile environment as a result of the sexual assault and that he continued to be subjected to a sexually hostile environment as a result of the university's inadequate response to his reports of retaliatory harassment." Title IX violations and subsequent resolution agreements do not often stem from the complaints of male students, partly because of the scarcity of reported cases of sexual assault against men. With its decision against SMU, victim advocates said, the Education Department affirmed that Title IX protects students of all genders.[83]

And then again, another case, a female student Nikki Yovino falsely accused a black football player Malik St. Hilaire of rape, the end result was the ruining of the football player reputation and life but justice followed the female student and she was charged and convicted of false rape claims.[84]

Cases like the ones mentioned above, and God alone is what forced the 3 students, to fight with Michael Roy Guttentag; leaving him with his lies because they didn't want to become

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[81] See https://www.thecollegefix.com/this-autistic-student-asked-for-a-fist-bump-and-a-selfie-he-got-two-title-ix-investigations/

[82] Resolution Agreement http://www2.ed.gov/documents/press-releases/southern-methodist-university-letter.pdf

[83] See https://www.insidehighered.com/news/2014/12/12/smu-found-violation-title-ix-after-not-investigating-male-students-claim-sexual

[84] See https://youtu.be/1TzTCWfiRew and see https://www.ctpost.com/policereports/article/Woman-convicted-of-false-rape-claims-is-denied-15514302.php

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part of his chain of lies anymore but he did receive the school's support and cover up by many Jews inside the school i.e., Lauren Levine and Benjamin Priester; please refer to the investigate memo 1-3 *Exhibit* 7 for more details over the students (fear)[85] of being reported to cheat on part of a final exam, a set of multiple choice questions with unlimited repeated attempts which everyone in the school did it in groups in the library or study groups.

Did four students initially conspire against the Plaintiff; yes they did with the main head planner Michael Roy Guttentag because it was revealed later that Michael Roy Guttentag hated the Plaintiff since day one of law school and he is been planning since then to terminates Plaintiff's life from the entire school.

Reporting Threat - by Michael Roy Guttentag

On January 14, 2016 I sent an e-mail to Lauren Levine reporting that Michael "wish me gone". This was based on my roommate Vine Cano encounter with Michael Roy Guttentag on January 13, 2016. My roommate came that night and hugged me tight and told me buddy I am with you all the way. I asked him what did Michael told you, he was scared, he was also a bit drunk and told me he doesn't want you here.

The conversation is memorized in an e-mail sent to Lauren Levine.

Vince Cano: What do you want to do with Mark ?
Michael Roy Guttentag: I don't want him here at all.
Vince Cano: It isn't you who is going to remove mark, mark earned his grades.

I asked Vince that night what do you mean he doesn't want me here at all, did he mean in school, in spyglass, in Jacksonville, what is here ? His response was here at all. Vince refused to relay to me any further details and was breathing heavily that night.

Student Hanbook Violation: See Coastal Law Academic Honor Code[3], D.13. Failure to Report - Failing to file a complaint pursuant to the provisions of this Honor Code when a student has knowledge that another student has committed a violation of the Honor Code that raises a

Yet, the Plaintiff helped Michael Guttentag in many ways by taking him in his car to the emergency room at 2:00 am in the morning for his eye infection; cooked dinner and invited him; and even helped him with some of his law school assignments; only for that same Jew to ruin Plaintiff's legal career. This is the case of the Coptic and the Jew.

In the most notable federal appellate court decision to date, the U.S. Court of Appeals for the Sixth Circuit ruled in *Doe v. Baum et al* - 903 F.3d 575 (6th Cir. 2018) that "if a public

[85] Who placed that fear inside the students' heads? Michael Roy Guttentag. So they came up with the plan however Plaintiff's roommate Vince Cano left them to their evil plan.

university has to choose between competing narratives to resolve a case, the university must give the accused student or his agent an opportunity to cross-examine the accuser and adverse witnesses in the presence of a neutral fact-finder."[86]

And then again, in an opinion issued by the U.S. Court of Appeals for the Seventh Circuit *Doe v. Purdue University et al*, 928 F.3d 652 (7th Cir. 2019) ruled that an accused student has plausibly alleged that Purdue University held an unfair proceeding that violated the student's due process rights. The court also held that the university may have unlawfully discriminated against the plaintiff, suing anonymously as John Doe, on the basis of his sex.

Plaintiff's case is not even Title ix per se, but it does touch on many aspects of sex discrimination and male vs. male allegations; adding on top of this, a ~~law~~ school can't turn a Complainant into a Respondent. But the goal from the beginning was "get rid of Mark by any means possible, even if it is through malicious prosecution." *See* investigative memo 2 page 7.

LT. Larry Kitchen Conversation with Lauren Levine

LT Larry Kitchen exchanged several phone calls with Lauren Levine before and after the arrest warrant.

- He told me on January 19, 2016 "Mark the school will get rid of you. Yes I spoke to the dean, the white lady."
- He told me after the charges were dropped that she told him "**This is a concern, you do your job and we will do ours.**" Conspiracy Against Rights at that moment was established. I have established this communication by having a copy of a text message.
- He was never clear and I was completely lost. Later after the charges were dropped, he told me "I couldn't control Tomalis action. I was not his supervisor. Someone went behind my back and notified the school of the arrest warrant."

And the Lord, God raised the Plaintiff and exposed the law school and Infilaw's entire empire was shut down by the Department of Education within a matter of 3 - 4 years. Office for Civil Right first witness interview was LT Kitchen himself and he gave his cell phone to the Plaintiff for ("OCR") to reach out to him and was interviewed by OCR. OCR redacted his name and testimony from the findings just as they did with other witnesses to destroy Plaintiff's case.

Gender equity was denied for the Plaintiff by both the law school which was shut down by the Department of Education and by Office for Civil Rights when it treated the Jew differently than the Coptic.

[86] See http://www.opn.ca6.uscourts.gov/opinions.pdf/18a0200p-06.pdf

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III. OFFICE FOR CIVIL RIGHTS APPEAL PROCESS

There is no doubt that office for civil rights violated Plaintiff's due process rights, when it failed to enforce its own manual with Plaintiff's OCR Complaint; one cannot simply go from negotiating for nearly two years a resolution agreement and promising enforcement action right to dismissal. Since April 27, 2018 and even long before such date and OCR was negotiating a resolution agreement with the recipient i.e., Florida Coastal School of Law. Randolph Wills is the Deputy Assistant Secretary for Enforcement who oversees all enforcement directors along with the regional directors. This was a top official at Office for Civil Rights right underneath the duties of Secretary for office for civil rights; at that time was former secretary Candice Jackson.[87]

Your case

Wills, Randolph <Randolph.Wills@ed.gov>
Fri 4/27/2018 3:19 PM
To: mbochr2@hotmail.com <mbochr2@hotmail.com>

Hello, Mr. Bochra,

I will be leaving the office early today, so won't make our call at 4:45 EDT. However, I want you to know that the proposed resolution agreement was given to the law school two days ago, and that the OCR attorney handling the negotiations is scheduling a call to discuss the agreement with the law school's counsel early next week.

I am sorry that we won't speak today, but I would like to speak with you on Monday (4/30) at the same time, 4:45 p.m. EDT.

Thank you. I hope you have a good weekend.

Randolph Wills

There is also no doubt, that Plaintiff despite his numerous attempts to change the investigative team and complaint of discrimination to try to prevent future retaliation, that indeed retaliation did occur by Office for Civil Rights officials. The Plaintiff even complained to Secretary Betsy Devos Chief of Staff directly via e-mails nathan.bailey@ed.gov and phone calls, and despite many letters to the U.S. Senate Committee on the Judiciary and the House Oversight Committee which are considered whistleblower complaints and Kenneth Marcus continued in his

[87] See https://www2.ed.gov/about/offices/list/ocr/contactus2.html

path to retaliate against Plaintiff's civil right complaint, and indeed before Kenneth Marcus left office, Melanie Velez did destroy Plaintiff's complaint with intent and malice on March 20, 2020 when she issued her trumped up findings during covid19 lockdown; in the midst of chaos thinking no one will pay attention to Plaintiff's pleas.

Now we move into the appeal phase that was passed from OCR HQ to OCR Dallas for handling, and later from OCR Dallas to the Jewish director of OCR Denver. Here, Plaintiff was affected several times by Office for Civil Rights amendments to the appeal process without following the proper channels for a regulatory process. The same was true with the adoption of the IHRA definition in direct violation of the APA.

Without any published notice in the Federal Register, comments, and discussion on the regulation, Office for Civil Rights has done two things to the manual under both the Trump's and the Biden's cabinet leaderships; OCR August 26, 2020 Manual (latest version) and January 19, 2021 the official adoption of the (IHRA definition). The changes were as follows:

(A) Weakening the appeal process by limiting the appeal to 10 page double space with no time frame provided to rule on the appeal, and without mentioning who rules on the appeal, yet the appeal is asked to be mailed to OCR headquarter address; never to any regional offices. The appeal procedure is written in a way that is vague, unclear, and provides no time frame for ruling on the appeal; rendering due process rights an illusion. The appeal procedure is written in a way which makes the appeal process a never independent process but rather it relays on pleasing the Masters who rule over a federal building i.e., Office For Civil Rights; here due process was denied again for many; equity and equality was denied for many as well ("**Rule Change 4**"); and

(B) Without any notice published in the Federal Register or public comments, or even congress adopting such definition, Office for Civil Rights adopted the IHRA definition, first by Kenneth Marcus himself when he granted Zoa's appeal under the definition without congress intent on August 27, 2018.[88] And later OCR continued and enforced the IHRA definition under the leadership of Suzanne Goldberg under the Biden's administration (both Kenneth Marcus and Suzanne Goldberg are Jews); a definition which makes the Jewish people superior in every way compare to the Gentiles ("**Rule Change 5**").[89]

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[88] See https://web.archive.org/web/20200307225539/https://www.politico.com/f/?id=00000165-ce21-df3d-a177-cee9649e0000

[89] See https://www2.ed.gov/about/offices/list/ocr/docs/qa-titleix-anti-semitism-20210119.pdf

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When comparing Kenneth Marcus personally approving Zionist Organization of America's appeal with how Aaron Roman ruled on Plaintiff's appeal, when one puts the two appeals side by side, one will find the following:

1) The appeal process was not followed and the rules of the appeal process were applied selectively and differently on the Plaintiff who is a Coptic compare to the Jews; in that case the Zoa's appeal;
2) The implementation of the IHRA definition within Zoa's appeal provided the Jewish students with more rights above everyone else, including the Plaintiff; and
3) OCR while greatly provided a complete analysis to grant Zoa's appeal by Kenneth Marcus yet within Aaron Roman's denial of the appeal, he refused to provide any analysis to justify his denial.

By comparing both appeals one could see how one appeal was treated differently compare to another. The Departments actions were arbitrary and capricious to the very end in direct violation of the Administrative Procedure Act, 5 U.S.C. Chapter 5, §§ 551, *et seq*.

Moreover, by his own mouth, Kenneth Marcus in recent news interview admitted to [90]the following.

> Generally speaking, new administrations don't always want to build on the work of their predecessors and of course the Biden administration has expressed considerable disagreement with what was done by President Trump." Marcus added he was "really pleased" that the Biden administration *indicated it would codify the executive order*, but said that the "good news was somewhat tarnished when the current administration announced another delay in the much-needed regulation dealing with Jewish students."
>
> In order to codify a regulation, it must be formally proposed through the *federal register, provide time for public comment, and be approved by the Department of Justice, Office of Management and Budget and the Small Business Administration*, Marcus said.

There is no question that the Jewish/Israeli lobbies are trying to lobby some members of congress to codify former president Donald Trump's executive order given Plaintiff's chain of e-mails exposing them from within, and they are aware of this litigation; *see Exhibit* 31. However, the IHRA definition was never passed as a law by congress and here it showed that Office for Civil Rights' action were arbitrary and capricious from the very beginning in direct violation of the Administrative Procedure Act, 5 U.S.C. Chapter 5, §§ 551, *et seq*.

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[90] See https://jewishjournal.com/news/united-states/344959/ted-lieu-spearheads-bipartisan-letter-from-members-of-congress-calling-on-education-dept-to-end-delays-of-investigating-antisemitism-complaints/

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IV. SECRETARY CATHERINE LHAMON AND KENNETH MARCUS: BOTH HATED EACH OTHERS

To understand the internal fights between the Obama/Biden Administrations and the Trump's Administration over certain political agenda's one would need to understand the journey between Catherine Lhamon and Kenneth Marcus. When Secretary Lhamon left Office for Civil Rights, she became the Chair of the U.S. Commission on Civil Rights in order to attack Kenneth Marcus from within and she did indeed do so.[91] In a 621 pages report "Are rights a reality" on page 159 former secretary for OCR Catherine Lhamon exposed Kenneth Marcus in the report; see Exhibit 32 related to OCR pages 159-193.

> While [ED] OCR claimed in a July 2019 press release that "instead of seeing every case as an opportunity to advance a political agenda, [OCR is] focused on the needs of each individual student and on faithfully executing the laws […]," Assistant Secretary for Civil Rights Kenneth Marcus's claim is countered by the very data published in the release. Author analysis of the data show that the rate of civil rights complaints resolved with a change benefitting the student actually decreased from 13 percent between fiscal years 2009 and 2016 to 11 percent in fiscal years 2017 and 2018.
>
> ED OCR noted in its response to the Commission's Interrogatories that it had dismissed or administratively closed 6,492 complaints in FY 2016, and that number more than doubled in FY 2017, with 14,785 complaints dismissed or administratively closed. See Figure 3.4. These case closure rates have raised concern among analysts who have evaluated ED OCR case resolution data during the time period investigated. For example, the Center for American Progress reported that ED OCR during the Trump Administration closed 91.5 percent of complaints related to sexual orientation and gender identity through dismissal or administrative closure, whereas in the Obama Administration ED OCR closed 65.4 percent of such cases through these means. A Pro-Publica analysis of more than 40,000 ED OCR cases resolved during the time period the Commission studied for this report characterized ED OCR in the Trump Administration as having "scuttled" cases on the ground that "efficiency is the Trump Administration's priority."

Indeed, after litigation and reaching a settlement agreement in the first round, all of the dismissed cases were all brought back to OCR for reevaluation.[92] See *The National Federation of the Blind et al v.* U.S. *Department of Education et al* (1:2018-cv-01568).[93] In fact Catherine Lhamon

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[91] See Catherine Lhamon profile at USCCR https://www.usccr.gov/about/catherine-lhamon
[92] See settlement agreement https://browngold.com/wp-content/uploads/2020/08/Countersigned-Settlement-Agreement-ACE-DOE.pdf See the Washington Post https://wapo.st/3BY9bc3
[93] See Case history log https://www.courtlistener.com/docket/6996107/the-national-federation-of-the-blind-v-us-department-of-education/

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responded with the following to the Washington Post article "Education Department's civil rights office retreats, will consider claims filed en masse" describing OCR's reversal as a clear "cover-your-rear litigation response."

There is no doubt that from the very beginning and up to this date, OCR acted in a manner that is arbitrary and capricious in direct violation of the Administrative Procedure Act, 5 U.S.C. Chapter 5, §§ 551, *et seq*. What is even more hypocritical is that the former Secretary for OCR, Catherin Lhamon who criticized the work of Kenneth Marcus is now doing the very same thing she criticized by acting arbitrary and capricious toward Plaintiff's OCR complaint to which she knew Plaintiff's complaint during the Obama administration because Plaintiff's complaint was handled when he reached out directly to Secretary John King, the Secretary of DOE under the Obama administration; one complaint was forwarded to FSA and another to OCR.

RE: Honorable Dr. John B. King - Borrower Defense

You replied on Thu 6/16/2016 1:30 PM

KJ King, John <John.King@ed.gov>
Mon 5/23/2016 9:55 AM
To: You; ted.michel@ed.gov; Cole, James

Dear Mr. Bochra:
Thank you for your e-mail to Secretary of Education John B. King, Jr. We appreciate hearing from you.
Your communication has been forwarded to the Department's Federal Student Aid Office for review and further handling.
Thank you again for contacting us.
Sincerely,
Edgar Mayes

Director of Correspondence and
Communications Control Unit
Office of the Secretary
U.S. Department of Education
Washington, DC 20202

From: Mark Bochra [mailto:mbochr2@hotmail.com]
Sent: Monday, May 23, 2016 10:44 AM
To: King, John; ted.michel@ed.gov; Cole, James
Subject: Honorable Dr. John B. King - Borrower Defense
Importance: High

Dear Honorable Dr. John B. King,

I sincerely hope this matter reaches you.

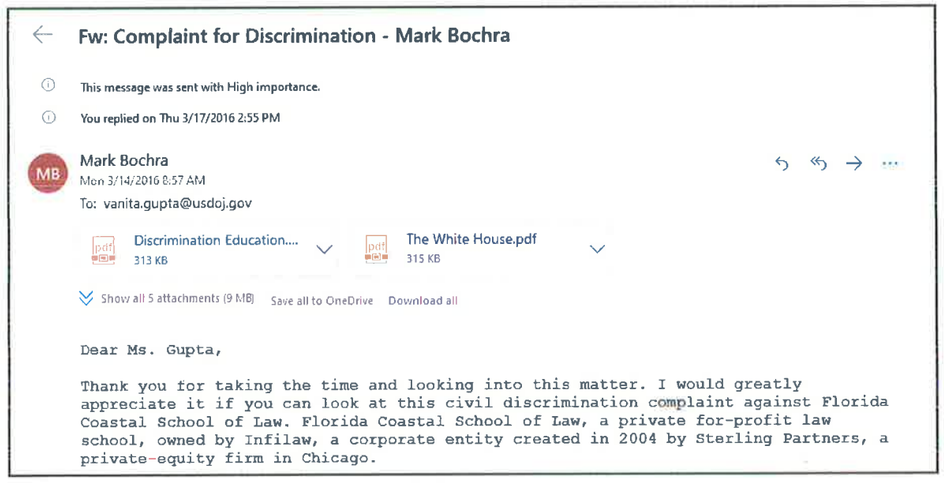
Discrimination persist in terms of power asymmetries, procedural defects and non-transparency, inequitable distributions of benefits and powers, and burdens to individuals and communities. However, the Department of Education can serve as an antidote to this problem.

Sincerely,
Mark Bochra

Reply Reply all Forward

"I came to complete not to refute. I came light to the World." Jesus Christ

The same was true with Obama administration top Civil Right official at the Justice Department, Vanita Gupta who objected to the nomination of Kenneth Marcus when she became the president and the CEO of Leadership Conference on Civil and Human Rights wherein, she opposed the confirmation of Kenneth Marcus as Assistant Secretary for Civil Rights.[94] Currently Vanita Gupta is an associate attorney general, the second highest DOJ official in the Biden's department of justice administration and she is very familiar with Plaintiff's case because she knew him since the Obama administration and Plaintiff did exchange-emails directly with Vanita Gupta at vanita.gupta@usdoj.gov .



Fw: Complaint for Discrimination - Mark Bochra

This message was sent with High importance.

You replied on Thu 3/17/2016 2:55 PM

Mark Bochra
Mon 3/14/2016 8:57 AM
To: vanita.gupta@usdoj.gov

Discrimination Education.... 313 KB
The White House.pdf 315 KB

Show all 5 attachments (9 MB) Save all to OneDrive Download all

Dear Ms. Gupta,

Thank you for taking the time and looking into this matter. I would greatly appreciate it if you can look at this civil discrimination complaint against Florida Coastal School of Law. Florida Coastal School of Law, a private for-profit law school, owned by Infilaw, a corporate entity created in 2004 by Sterling Partners, a private-equity firm in Chicago.

STANDARD OF REVIEW

I. Legal Standard for Rule 12(b)(1) Motions to Dismiss

A motion to dismiss under Rule 12(b)(1) challenges the Court's subject matter jurisdiction. Fed. R. Civ. P. 12(b)(1). The party asserting jurisdiction has the burden of proof. *United Phosphorus, Ltd. v. Angus Chem. Co.*, 322 F.3d 942, 946 (7th Cir. 2003), overruled on other grounds by *Minn-Chem, Inc. v. Agrium, Inc.*, 683 F.3d 845 (7th Cir. 2012). The standard of review for a Rule 12(b)(1) motion to dismiss depends on the purpose of the motion. *Apex*

[94] See Letter http://civilrightsdocs.info/pdf/policy/letters/2018/Oppose-Ken-Marcus.pdf The letter was headed by the President and CEO of Leadership Conference who at the time was Vanita Gupta https://civilrights.org/2018/01/18/civil-human-rights-coalition-urges-senate-reject-ocr-nominee-kenneth-marcus/# who is currently the second highest rank of DOJ official, the associate attorney general https://www.justice.gov/asg/staff-profile/meet-associate-attorney-general

Digital, Inc. v. Sears, Roebuck & Co., 572 F.3d 440, 443–44 (7th Cir. 2009). If a defendant challenges the sufficiency of the allegations regarding subject matter jurisdiction (a facial challenge), the Court must accept all well-pleaded factual allegations as true and draw all reasonable inferences in the plaintiff's favor. *See id.*; *United Phosphorus*, 322 F.3d at 946. If, however, the defendant denies or controverts the truth of the jurisdictional allegations (a factual challenge), the Court may look beyond the pleadings and view any competent proof submitted by the parties to determine if the plaintiff has established jurisdiction by a preponderance of the evidence. *See Apex Digital*, 572 F.3d at 443–44; *Meridian Sec. Ins. Co. v. Sadowski*, 441 F.3d 536, 543 (7th Cir. 2006).

II. Legal Standard for Rule 12(b)(6) Motions to Dismiss

A motion to dismiss pursuant to Federal Rule of Civil Procedure 12(b)(6) tests the sufficiency of the complaint, not the merits of the case. See *Gibson v. City of Chicago*, 910 F.2d 1510, 1520 (7th Cir. 1990). To survive a Rule 12(b)(6) motion to dismiss, the complaint first must comply with Rule 8(a) by providing "a short and plain statement of the claim showing that the pleader is entitled to relief" (Fed. R. Civ. P. 8(a)(2)), such that the defendant is given "fair notice of what the * * * claim is and the grounds upon which it rests." *Bell Atlantic Corp. v. Twombly*, 127 S.Ct. 1955, 1964 (2007) (quoting Conley v. Gibson, 355 U.S. 41, 47 (1957)). Second, the factual allegations in the complaint must be sufficient to raise the possibility of relief above the "speculative level," assuming that all of the allegations in the complaint are true. *E.E.O.C. v. Concentra Health Servs., Inc.*, 496 F.3d 773, 776 (7th Cir. 2007) (quoting Twombly, 127 S.Ct. at 1965, 1973 n.14). "[O]nce a claim has been stated adequately, it may be supported by showing any set of facts consistent with the allegations in the complaint." Twombly, 127 S.Ct. at 1969. The Court accepts as true all of the well-pleaded facts alleged by the plaintiff and all reasonable inferences that can be drawn therefrom. See Barnes v. Briley, 420 F.3d 673, 677 (7th Cir. 2005).

III. Legal Standard for Pro Se Litigants

District judges do not, and cannot, ordinarily dismiss a complaint with prejudice merely because the complaint is confusing. *Fidelity Nat'l Title Ins. Co. of New York v. Intercounty Nat'l Title Co.*, 412 F.3d 745, 749 (7th Cir. 2005).

Moreover, as the Supreme Court made clear in *Erickson v. Pardus*, 551 U.S. 89 (2007), the liberal pleading standards that apply to *pro se* litigants have survived the Supreme Court's recent "plausibility" cases that interpret Rule 8 of the Federal Rules of Civil Procedure. See also *Bridges v. Gilbert*, 557 F.3d 541, 546 (7th Cir. 2009) ("[W]e construe pro se complaints liberally and hold them to a less stringent standard than formal pleadings drafted by lawyers."). And in general, the Seventh Circuit's case law reveals that the Supreme Court's recent decisions in this realm represent a refinement rather than a revolution. See, e.g., *Brooks v. Ross*, 578 F.3d 574, 581 (7th Cir. 2009) ("a well-pleaded complaint may proceed even if it strikes a savvy judge that actual proof of those facts is improbable * * * [And the 'plausibility' requirement] simply calls for enough facts to raise a reasonable expectation that discovery will reveal evidence supporting the plaintiff's allegations") (quotation marks omitted).

ARGUMENT AND LEGAL ANALYSIS

Defendants' counsel, Sarah Terman in her motion to dismiss, walked this honorable court through a series of arguments without pointing out which count she is speaking of; which count she is seeking its dismissal under lack of subject matter jurisdiction and which count she is seeking its dismissal under failure to state a claim; Plaintiff's Amended Complaint contained 6 counts and they are as follow:

1) COUNT I: Violation of 5 USC Chapter 5, §§ 551, *et seq.*: Adoption of a Rule that is Not in Accordance with Law (for Injunctive and Declaratory Relief)
2) COUNT II: Violation of 5 USC Chapter 5, §§ 551, et seq. Adoption of the IHRA definition that is Arbitrary or Capricious (for Injunctive and Declaratory Relief)
3) COUNT III: Violation of 5 U.S.C. Chapter 5, §§ 551, et seq.: Failure to comply with notice and comment requirements (for Injunctive and Declaratory Relief)
4) COUNT IV: Unlawfully Withheld and Unreasonably Delayed Agency Action APA § 706(1)
5) COUNT V: Arbitrary and Capricious Final Agency Action APA § 706(2)
6) COUNT VI: PROCEDURAL DUE PROCESS – U.S. CONST. AMEND. 5

Defendants' counsel, Sarah Terman in her motion to dismiss made a total of 4 arguments; *see* page 4 (Dkt 28). Defendants arguments were as follow (1) Plaintiff can seek to file a lawsuit against the law school in Florida rather than file a lawsuit against the Department of education, and that he is precluded from bringing this action under Section 704 of the APA; (2) Plaintiff

"I came to complete not to refute. I came light to the World." Jesus Christ

can't challenge the agency's action of adopting the IHRA definition *even if he was correct* in understanding its meanings; (3) Plaintiff lack standing to challenge the changes within OCR Case Processing Manual (CPM) because 3 didn't affect him and the last one was procedural not substantive; (4) and last Plaintiff can't bring a class action lawsuit because he is proceeding *pro se* and *pro se* litigant may not serve as a class representative.

I. Enforcement of Federal Civil Rights Law – The Civil Rights Statutes

The mission of the DOE Office for Civil Rights ("OCR") is "to ensure equal access to education and to promote educational excellence through vigorous enforcement of civil rights in our nation's schools." https://www2.ed.gov/about/offices/list/ocr/aboutocr.html. *See* Am. Comp ¶ 1, ECF No. 9. This office serves "student populations facing discrimination and the advocates and institutions promoting systemic solutions to civil rights problems." *Id.* In fact, Secretary Miguel Cardona takes pride in promoting an agenda to be a pioneer for "Equity" rather than "Equality."[95]

OCR is responsible for enforcing certain civil rights statutes including Title VI of the Civil Rights Act of 1964, 42 U.S.C. SS 2000d-2000d-7 (2012), which prohibits discrimination on the basis of race, color, or national origin by recipients of federal financial assistance, and Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. S 794 (2012), which prohibits discrimination on the basis of disability by recipients of federal financial assistance. To fulfill its mission, OCR authorizes anyone who believes that an educational institution that receives federal financial assistance is discriminating on the basis of race, color, national origin, sex, disability, or age to file a complaint and have it reviewed by OCR. These regulations provide, *inter alia*, that the agency "*will* make a prompt investigation whenever a compliance review, report, complaint, or any other information indicates a possible failure to comply with this part." 34 C.F.R. § 100.7(c) (emphasis added).

Contrary to its mission and without any public notice, DOE summarily eliminated substantive rights of the very people it purports to serve by changing its Case Processing Manual to abdicate its basic duty to investigate legitimate complaints of discrimination by students and their parents; Am. Comp ¶ 4, ECF No. 9. Not only that, but DOE has set out a special class of

[95] See https://twitter.com/SecCardona/status/1407387055953526784 and see https://twitter.com/usedgov/status/1407095987760476162

race with a special set of treatments compare to another (*Jewish Students vs. the Gentiles*) by adopting an obscure definition named (IHRA)[96] without congress intent, public notice, and comments in the Federal Register.[97] Am. Comp ¶ 8-9 and 10-11, ECF No. 9. Plaintiff suffered injuries due to the fact that the people who discriminated against him in law school were (Jewish people or Jews), and Plaintiff suffered injuries when Kenneth Marcus targeted Plaintiff's complaint after former Secretary Candice Jackson left her position; Am. Comp ¶ 12-18, ECF No. 9.

Re: [EXTERNAL] Re: [EXTERNAL] Re: The Parable to this World and the Rebirth of the American Eagle

You replied on Sun 5/23/2021 5:58 PM

CJ Candice Jackson <CJackson@fmglaw.com>
Sun 5/23/2021 5:42 PM
To: You

I know it! I'm back in private practice (hence don't want to use my work email for political things). But yes indeed, I am sad to see what's happening to OCR. Keep up the pressure!!

Candice Jackson
Freeman Mathis & Gary, LLP
Cell: (818) 481-4565 Direct: (415) 352-6412

On May 23, 2021, at 3:31 PM, Mark Bochra <open_genesis@outlook.com> wrote:

By the way, I hope all is well on your side! you are great in my book!

If opportunity give you another chance, come back to OCR ! As you see all of Obama's people came back in Biden's administration.

Sincerely,
Mark

Plaintiff not only faced discrimination and retaliation by Jews in law school but also by Office for Civil Rights when it not only discriminated against his civil right complaint but with intent and malice applied the OCR manual selectively and unequally on the Plaintiff compare to others; in addition to enforcing the IHRA definition to protect the Jews by giving them a higher status above the Gentiles; rendering title vi meaningless.

Plaintiff was the only Christian Coptic student at Florida Coastal School of Law and the same was true, Plaintiff is the only Christian Coptic Complainant in Office For Civil Rights

[96] See IHRA definition https://www.holocaustremembrance.com/working-definition-antisemitism
[97] See OCR notice https://www2.ed.gov/about/offices/list/ocr/docs/qa-titleix-anti-semitism-20210119.pdf

("OCR") database; given the reality that the Plaintiff suffered discrimination and retaliation by Jews in both the law school and by OCR officials, it is undisputed that the IHRA definition by its own meaning has protected the Jewish people and neglected the Plaintiff when OCR failed to identity in its findings that the perpetrators against the Plaintiff were all Jewish by name only and that their actions constituted discrimination and retaliation with intent and malice under OCR standards; the truth was there but it was difficult for OCR officials to spell out that Jews discriminated against a Coptic, yet history of the Jews trying to exterminate the Coptic community is well established across the centuries; *see* Am. Comp ¶ 76.[98]

It is undisputed that an agency cannot act without Congressional authorization. Thus, the question here is whether Congress authorized OCR to impose its IHRA definition on the Plaintiff and the United States of America education systems. The same is true in that OCR cannot amend its Case Processing Manual ("CPM") without following the Administrative Procedure Act ("APA") which in return injured the Plaintiff; justice delayed was justice denied to this very day.

Office for Civil Rights failed to follow the APA when it amended its case processing manual and adopted the IHRA definition without public notice and comments in the federal register, and that these changes were arbitrary and capricious which resulted in injures toward the Plaintiff.

II. The Court Has Subject Matter Jurisdiction

Defendants argue that Plaintiffs' Amended Complaint should be dismissed pursuant to Rule 12(b)(1) for lack of subject matter jurisdiction. But Defendants failed to identity which count they seek dismissal under lack of subject matter jurisdiction. However, a closer look at the argument made by the Defendants reveals that the subject matter jurisdiction in question is (1) related to Defendants' argument that Plaintiff is barred from using the APA under Section 704 because he can bring a direct lawsuit against the law school in Florida; see page 4 (Dkt 28). And (2) Plaintiff did not satisfy the case or controversy requirement of Article III of the Constitution; see page 8 (Dkt 28). And (3) that former President Donald Trump's executive order adopting the IHRA definition trumps the APA entire process; reciting the following "which the agency is fully permitted to do without notice and comment under the APA" see page 10 (Dkt 28). All of Defendants' argument fails on its face. This Honorable Court retains subject matter jurisdiction.

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[98] See history https://www.samaanchurch.com/en/miracle

A. Legal Analysis for the Administrative Procedure Act

Whether judicial review of agency action is available in federal court turns on a number of factors. Courts must possess statutory jurisdiction to adjudicate a lawsuit, and plaintiffs must generally rely on a cause of action that allows a court to grant legal relief. Disputes must also present "cases" or "controversies" that satisfy the requirements of Article III of the Constitution. Finally, a suit must be presented to a court at the proper time for judicial review.

Congress has created numerous federal agencies charged with carrying out a broad array of delegated statutory responsibilities.[99] Agencies administer their delegated authority in a variety of ways, including by promulgating rules and regulations that bind the public,[100] advising regulated parties of an agency's enforcement prioritics via guidance documents,[101] bringing enforcement actions against private individuals or corporations for violation of a statute or regulation,[102] and determining whether to grant a benefit[103] or license.[104] These agency actions, in turn, often generate questions about the legitimacy of an agency's decision. Individuals affected by an agency decision can sometimes challenge that action in federal court as violating a legal requirement.

The U.S. Constitution vests the judicial power in the Supreme Court and any inferior courts established by Congress,[105] limiting the power of federal courts to the context of a "case" or "controversy."[106] Pursuant to this authority, Congress has established federal courts below the Supreme Court of the United States to hear a variety of cases, both criminal and civil.[107] Federal

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[99] The Constitution creates the offices of the President and Vice President, U.S. CONST. art. II, §1, the Congress, *id.* art. I, §1, and the Supreme Court, *id.* art. III, §1. Congress is authorized "[t]o make all Laws which shall be necessary and proper for carrying into Execution" the authority bestowed on these entities. *id.* art. I, §8, cl. 18. Pursuant to this power, Congress has established federal offices and agencies within the executive, legislative, and judicial branches. *See* CRS Report R43562, *Administrative Law Primer: Statutory Definitions of "Agency" and Characteristics of Agency Independence*, by Jared P. Cole and Daniel T. Shedd.

[100] *See* CRS Report RL32240, *The Federal Rulemaking Process: An Overview*, coordinated by Maeve P. Carey.

[101] *See* CRS Report R44468, *General Policy Statements: Legal Overview*, by Jared P. Cole and Todd Garvey.

[102] *See, e.g.*, Pierce v. SEC, 786 F.3d 1027, 1031 (D.C. Cir. 2015) (denying an individual's petition for review of enforcement actions brought by the Securities and Exchange Commission).

[103] *See, e.g.*, 42 U.S.C. §§301 *et seq*. (authorizing the Social Security Administration to pay benefits to certain disabled individuals).

[104] *See* 5 U.S.C. §558 (imposing certain requirements on agencies when reviewing applications for a license).

[105] *See* U.S. CONST. art. III, §1 ("The judicial Power of the United States, shall be vested in one supreme Court, and in such inferior Courts as the Congress may from time to time ordain and establish."); *id.* art. I, §8, cl. 9 (authorizing Congress "[t]o constitute Tribunals inferior to the [S]upreme Court").

[106] *Id.* art. III, §2, cl. 1.

[107] *See* Judiciary Act of 1789, ch. 20, 1 Stat. 73, 73; 28 U.S.C. §41 (establishing circuit courts); *id.* ch. 5 (establishing district courts); *id.* §1331 (providing district courts with "original jurisdiction of all civil actions arising under the

legislation authorizes courts to adjudicate challenges to actions taken by government officials and agencies in a variety of contexts.[108] Federal courts are, however, courts of limited jurisdiction—they must adhere to limits placed on their authority by Congress and the Constitution.[109] The circumstances under which a federal court will review the actions of a U.S. government agency or official thus involve complicated questions of statutory and constitutional law.

The Administrative Procedure Act (APA) is perhaps the most prominent modern vehicle for challenging the actions of a federal agency.[110] Enacted in 1946 following the New Deal era, during which the size of the administrative state was expanded, the statute represents the first government-wide attempt to "systematize" requirements on the actions of federal agencies.[111] The APA functions as the most prominent authorization of judicial review of agency action, including for agency compliance with substantive legal requirements—such as an agency's "organic," or authorizing, statute.[112] In addition, the APA imposes various procedural requirements on federal agencies and authorizes courts to review agency's compliance with these requirements.

Whether judicial review of agency action is available in federal court turns on a number of factors, including (constitutional),[113] (prudential),[114] and (statutory)[115] considerations. Courts

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Constitution, laws, or treaties of the United States."); *id.* §1332 (providing district courts with "original jurisdiction of all civil actions where the matter in controversy exceeds the sum or value of $75,000 ... and is between" diverse parties).

[108] *See infra* "Requirements for Judicial Review."

[109] *See* Owen Equip. & Erection Co. v. Kroger, 437 U.S. 365, 374 (1978) ("It is a fundamental precept that federal courts are courts of limited jurisdiction. The limits upon federal jurisdiction, whether imposed by the Constitution or by Congress, must be neither disregarded nor evaded.").

[110] 5 U.S.C. §§551 *et seq.*

[111] GARY LAWSON, FEDERAL ADMINISTRATIVE LAW 202 (2009).

[112] Drake v. FAA, 291 F.3d 59, 62 (D.C. Cir. 2002) (describing the scope of judicial review permitted by the agency's "organic statute"); *see generally* Kathryn E. Kovacs, *Superstatute Theory and Administrative Common Law*, 90 IND. L.J. 1207 (2015) ("The APA has taken on quasi-constitutional status.").

[113] U.S. CONST. art. III, §2, cl. 1; *see also* Lujan v. Defenders of Wildlife, 504 U.S. 555, 560 (1992) ("[T]he core component of standing is an essential and unchanging part of the case-or-controversy requirement of Article III."); United Pub. Workers of Am. (C.I.O.) v. Mitchell, 330 U.S. 75, 89 (1947) ("As is well known, the federal courts established pursuant to Article III of the Constitution do not render advisory opinions. For adjudication of constitutional issues, concrete legal issues, presented in actual cases, not abstractions are requisite.") (internal quotation marks and citations omitted).

[114] *See* Bennett v. Spear, 520 U.S. 154, 162 (1997) ("In addition to the immutable requirements of Article III, the federal judiciary has also adhered to a set of prudential principles that bear on the question of standing.") (internal citations and quotation marks omitted).

[115] *See, e.g.*, 5 U.S.C. §704 (allowing judicial review of administrative action under the APA only when such action is "final").

must possess statutory jurisdiction to adjudicate a lawsuit, and plaintiffs must generally rely on a cause of action that allows a court to grant legal relief. Disputes must also present "cases" or "controversies" that satisfy the requirements of Article III of the Constitution. Finally, a suit must be presented to a court at the proper time for judicial review.

As a threshold matter, courts must possess subject matter jurisdiction over a claim to hear a case.[116] Subject matter jurisdiction refers to a court's "power" to hear a case.[117] U.S.C. Section 1331 bestows upon federal district courts "original jurisdiction of all civil actions arising under the Constitution, laws, or treaties of the United States." This grant of subject matter jurisdiction authorizes federal courts to hear claims arising under the APA as well as "nonstatutory" and constitutional claims.

Nonstatutory review of federal agency action is available when an agency action is *ultra vires*, Larson v. Domestic & Foreign Commerce Corp., 337 U.S. 682, 689-90 (1949); Aid Ass'n for Lutherans v. U.S. Postal Serv., 321 F.3d 1166, 1173 (D.C. Cir. 2003), that is, when the agency has plainly violated an unambiguous and mandatory legal requirement. *Leedom v. Kyne*, 358 U.S. 184, 188-89 (1958); *Key Med. Supply, Inc. v. Burwell*, 764 F.3d 955, 962 (8th Cir. 2014). While nonstatutory claims are those suits brought without "a specific or a general statutory review provision," see, e.g., *Chamber of Commerce v. Reich*, 74 F.3d 1322, 1327 (D.C. Cir. 1996); *Puerto Rico v. United States*, 490 F.3d 50, 59 (1st Cir. 2007), a federal statute nonetheless authorizes subject matter jurisdiction in the federal courts. 28 U.S.C. §1331; *Trudeau v. Fed. Trade Comm'n*, 456 F.3d 178, 185 (D.C. Cir. 2006) (holding that "[s]ection 1331 is an appropriate source of jurisdiction for" APA, nonstatutory, and constitutional claims).[118] The district courts shall have original jurisdiction of all civil actions arising under the Constitution, laws, or treaties of the United States; 28 U.S. Code § 1331 - Federal question.

The APA directs reviewing courts to "compel agency action unlawfully withheld or unreasonably delayed" and to "hold unlawful and set aside agency action, findings, and

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[116] Venue for a lawsuit is generally considered proper where the plaintiff or the defendant resides. 28 U.S.C. §1391(e). Some statutes, however, make the District of Columbia the exclusive venue for challenges to agency action. *See, e.g.*, 42 U.S.C. §7607(b)(1) (providing that petitions for review of certain agency actions may be filed only in the United States Court of Appeals for the District of Columbia).

[117] *See* Arbaugh v. Y&H Corp., 546 U.S. 500, 514 (2006); United States v. Cotton, 535 U.S. 625, 630 (2002); Ruhrgas AG v. Marathon Oil Co., 526 U.S. 574, 583 (1999) ("Moreover, courts, including this Court, have an independent obligation to determine whether subject-matter jurisdiction exists, even in the absence of a challenge from any party.").

[118] The district courts shall have original jurisdiction of all civil actions arising under the Constitution, laws, or treaties of the United States. 28 U.S. Code § 1331 - Federal question

conclusions" that violate the law or are otherwise "arbitrary and capricious." This review is limited, however, to "final agency action" that is not precluded from review by another statute or legally committed to the agency's discretion.

Pursuant to this mandate, courts are authorized to review agency action in a number of contexts. First, courts will examine the statutory authority for an agency's action and will invalidate agency choices that exceed these limits. In addition, a court may examine an agency's discretionary decisions, or discrete actions with legal consequences for the public. Finally, courts may also review an agency's compliance with statutory procedural requirements, such as the notice-and-comment rulemaking procedures imposed by the APA.

B. Plaintiffs Do Not Have an Adequate Alternate Remedy

Defendants' argument that Plaintiff is barred from using the APA under Section 704 because he can bring a direct lawsuit against the law school in Florida cannot survive; see page 4-5 (Dkt 28). Defendants cited the following,

> In this case, Bochra can bring suit directly against the recipient of federal financial assistance: Florida Coastal School of Law (in U.S. District Court in Florida). And therefore, the APA provides no remedy against the Department itself. *See Cannon v. Univ. of Chi.*, 441 U.S. 677 (1979); *Alexander v. Sandoval*, 532 U.S. 275, 279–80 (2001) (aggrieved individuals may bring civil suits directly against federal fund recipients for intentional discrimination under Title VI); *Women's Equity Action League v. Cavazos*, 906 F.2d 742, 751 (D.C. Cir. 1990) (dismissing claim against Department of Education for lack of subject matter jurisdiction, because student had an adequate alternative remedy under the APA, *i.e.*, bringing suit against the school); *Salvador v. Bennett*, 800 F.2d 97, 99-100 (7th Cir. 1986), [...] *see also Maloney v. Washington*, No. 84 C 689, 1987 WL 26146, at *1 (N.D. Ill. Dec. 1, 1987) ("The suit must be brought against the recipient of federal funding and not the federal agency doling out the money.").

Plaintiff does not have an adequate alternative remedy because the Defendants themselves have shut down the law school by its own hands i.e., Florida Coastal School of Law by rejecting its access to Title IV funds; *see* Am. Comp ¶¶ 12-19.[119]

> For the Department of Education senior leadership they aimed at getting rid of the issue all at once; hitting two birds with one stone by getting rid of Plaintiff's complaint by any means possible as they tried across the span of the past 4 years, and shutting down Florida Coastal School of law for good to render the Plaintiff's complaint moot, among DOE holding FCSL accountable for deception and fraud which was also the result of Plaintiff's initial complaint back in May 23, 2016 to Secretary John King.

[119] See DOE Press Release https://www.ed.gov/news/press-releases/department-educations-federal-student-aid-denies-reinstatement-application-profit-law-school

Moreover, complaint dismissals are more than just a procedural injury because Plaintiff cannot simply re-file his complaints in federal court; as Mark Riccobono, the President of National Federation of the Blind explained and the court accepted their argument in its issued memoriam (Dkt 58) page 13 – 14, *The National Federation of the Blind v. U.S. Department of Education* (1:18-cv-01568).

> Mark Riccobono, the President of NFB, explains that the OCR complaint process "presents a faster and lower-cost option to filing complaints in federal court," and most of NFB's members "cannot afford to hire an attorney and pay out-of-pocket for the fees and expenses of litigation" citing some of the injured Plaintiffs declarations. Even those members who can afford to litigate their complaints in federal court face higher costs of doing so, which is a cognizable injury. In two comparable cases in which NFB was involved, the one filed with OCR cost just over $70,000 and the one filed in federal court cost over $400,000.

Plaintiff himself has incurred over $42,000 with interest charges in student loan debts from a law school that not only discriminated and retaliated against him with intent and malice but also has shut down by the Defendants themselves. Plaintiff cannot financially travel to another State, Florida and re-litigate his complaint with a recipient that ceased to exist. *See* *Exhibit* 1 Declaration of Mark M. Bochra (Bochra Decl).

All of the adequate remedies to this very day is in Defendants' hands i.e., discharge the student loan pursuant to OCR "hostile environment" resolution agreements which was granted to many other complainants who filed a complaint with (OCR)[120] and write the truth in its findings because the truth is a character and fitness question which needs to be presented to any future law school and/or state bar; Defendants are very well aware of these remedies. As previously stated, the Jew received his education and became a lawyer i.e., Michael Roy Guttentag despite being the perpetrator and the Coptic, Mark Bochra who was the victim was denied education free from discrimination and retaliation and did not become a lawyer to this very day.

Using the APA as a vehicle to vindicate Title VI isn't novel. Prior to *Sandoval*, however, the approach was a non–starter. The APA makes reviewable "final agency action for which there is no other adequate remedy in a court." Before *Sandoval*, courts regularly entertained private disparate-impact claims under Title VI, so there was an "adequate remedy" that precluded APA review. As the D.C. Circuit reasoned in an opinion that ended the long-running educational

[120] Please refer to Exhibit 2 email from OCR HQ responding to the Plaintiff on behalf of secretary of education Betsy Devos. Educational reimbursement when a hostile environment is presented; remedies include educational reimbursement.

dispute of *Adams v. Richardson*, "Congress considered private suits to end discrimination not merely adequate but in fact the proper means for individuals to enforce Title VI and its sister antidiscrimination statutes."[121] Sandoval changed all that by eliminating a private right of action for disparate impact claims.[122] Absent that "*special, alternative remedy*," an APA claim to enforce an agency's compliance with its Title VI regulations should now be viable.

The post-Sandoval case law on the question is thin, but what little there is reinforces that conclusion. As the Sixth Circuit has observed (albeit outside the Title VI context):

> There is a major difference between a plaintiff attempting to obtain a remedy against a person subject to federal regulations, and a plaintiff attempting to hold an agency accountable for alleged violations of its own rules. *Sandoval* spoke to the former situation—alleged misconduct by a regulated person. But this case involves the latter situation—review of agency action.

In line with that reasoning, a California district court ruled in an environmental case that "neither a Title VI nor an equal protection claim constitutes an adequate remedy to an APA claim" when it comes to disparate impact.[123] Indeed, the U.S. Justice Department has itself raised that possibility of APA suits to vindicate Title VI; *see* ***Exhibit*** 33, "DOJ Title VI Legal Manuel" section IX "Private Rights of Action and Individuals Relief through Agency Action."

> The private right of action under Section 601 for intentional discrimination cannot be brought against individuals except in their official capacity. *Wood v. Yordy*, 753 F.3d 899, 903, 904 (9th Cir. 2014) (finding, consistent with the 3rd, 4th, 7th, and 10th Circuits, that Spending Clause statutes do "not authorize suits against a person in anything other than an official or governmental capacity"); *see also Price ex rel. Price v. La. Dep't of Educ.*, 329 F. App'x 559, 561 (5th Cir. 2009) ("[O]nly public and private entities can be held liable under Title VI."); *Shotz v.City of Plantation*, 344 F.3d 1161, 1171 (11th Cir. 2003) ("It is beyond question … that individuals are not liable under Title VI") (footnote omitted); *Mwabira-Simera v. Howard Univ.*, 692 F. Supp. 2d 65, 70 (D.D.C. 2010) ("[N]one of the individual defendants is subject to suit under [Title VI]").
>
> The most common form of relief sought and obtained through a Title VI private right of action is an injunction ordering a recipient to do or to stop doing something. *See, e.g., Sandoval*, 532 U.S. at 279 ("[P]rivate individuals may sue to enforce § 601 of Title VI

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[121] See ruling https://scholar.google.com/scholar_case?case=4586590175159195055&q=906+F.2d+742&hl=en&as_sdt=800000 06

[122] See https://supreme.justia.com/cases/federal/us/532/275/

[123] See Court ruling https://www.courthousenews.com/wp-content/uploads/2018/04/EPA-discrimination-ruling.pdf#page=21

> and obtain both injunctive relief and damages.")[124] To obtain a permanent injunction, the moving party must demonstrate: (1) that it has suffered an irreparable injury; (2) that remedies available at law, such as monetary damages, are inadequate to compensate for that injury; (3) that, considering the balance of hardships between the plaintiff and defendant, a remedy in equity is warranted; and (4) that the public interest would not be disserved by a permanent injunction. See *eBay Inc. v. MercExchange, L.L. C.,* 547 U.S. 388, 391 (2010); s*ee also Entergy Nuclear Vermont Yankee, LLC v. Shumlin*, 733 F.3d 393, 422-23 (2d Cir. 2013).

The factors for a preliminary injunction vary by circuit, but are similar to those considered for a permanent injunction. *See Winter v. Natural Res. Def. Council, Inc.*, 555 U.S. 7, 20 (2008) (moving party must show "he is likely to succeed on the merits, that he is likely to suffer irreparable harm in the absence of preliminary relief, that the balance of equities tips in its favor, and that an injunction is in the public interest"); *Centro Tepeyac v. Montgomery Cty.*, 722 F.3d 184, 188 (4th Cir. 2013); *Melendres v. Arpaio*, 695 F.3d 990, 1000 (9th Cir. 2012); *In re Navy Chaplaincy*, 697 F.3d 1171, 1178 (D.C. Cir. 2012); *EEOC v. KarenKim, Inc.*, 698 F.3d 92, 100 (2d Cir. 2012).

Justice Breyer made a related point in a concurrence in a case about the enforcement of the Medicaid statute.[125]

> Moreover, why could respondents not ask the federal agency to interpret its rules to respondents' satisfaction, to modify those rules, to promulgate new rules or to enforce old ones? See 5 U.S.C. 1390 *1390 § 553(e). Normally, when such requests are denied, an injured party can seek judicial review of the agency's refusal on the grounds that it is "arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law." §§ 702, 706(2)(A). And an injured party can ask the court to "compel agency action unlawfully withheld or unreasonably delayed." §§ 702, 706(1). See also Tr. of Oral Arg. 15-16 (arguing that providers can bring an action under the Administrative Procedure Act (APA) whenever a waiver program is renewed or can seek new agency rulemaking); Japan Whaling Assn. v. American Cetacean Soc., 478 U.S. 221, 230, n. 4, 231, 106 S.Ct. 2860, 92 L.Ed.2d 166 (1986) (APA challenge to the Secretary of Commerce's failure to act).

Moreover in *Alexander v. Sandoval*, 532 U.S. 275, 279–80 (2001) , it ruled that a recipient of federal financial assistance, the Alabama Department of Public Safety (Department), of which petitioner Alexander is the director, is subject to Title VI of the Civil Rights Act of 1964. Section

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[124] Not all monetary relief is automatically treated as compensatory or punitive in nature by the courts. In some instances monetary relief is equitable in nature and therefore may not require proof of intentional discrimination. *See Albemarle Paper Co. v. Moody*, 422 U.S. 405, 415-18 (1975)

[125] See https://scholar.google.com/scholar_case?case=16013694241089736850&hl=en&as_sdt=6&as_vis=1&oi=scholarr

601 of that title prohibits discrimination based on race, color, or national origin in covered programs and activities. Section 602 authorizes federal agencies to effectuate § 601 by issuing regulations, and the Department of Justice (DOJ) in an exercise of this authority promulgated a regulation forbidding funding recipients to utilize criteria or administrative methods having the effect of subjecting individuals to discrimination based on the prohibited grounds. Respondent Sandoval brought this class action to enjoin the Department's decision to administer state driver's license examinations only in English, arguing that it violated the DOJ regulation because it had the effect of subjecting non-English speakers to discrimination based on their national origin. Agreeing, the District Court enjoined the policy and ordered the Department to accommodate non-English speakers.

> (a) Three aspects of Title VI must be taken as given. First, private individuals may sue to enforce § 601. See, e. g., *Cannon v. University of Chicago*, 441 U. S. 677, 694, 696, 699, 703, 710-711. Second, §601 prohibits only intentional discrimination. See, e. g., *Alexander v. Choate*, 469 U. S. 287,293. Third, it must be assumed for purposes of deciding this case that regulations promulgated under § 602 may validly proscribe activities that have a disparate impact on racial groups, even though such activities are permissible under § 601

The Eleventh Circuit affirmed. Both courts rejected petitioners' argument that Title VI did not provide respondents a cause of action to enforce the regulation.

To maintain a claim under the APA, Plaintiffs must demonstrate that "there is no other adequate remedy [available] in a court." 5 U.S.C. § 704. Defendants failed argument as previously stated is that the Plaintiff can bring a lawsuit directly against the recipient, Mot. to Dismiss at 28. However, as noted previously, Defendants have shut down the recipient by denying it access to title iv funds, hence there is no adequate remedy for the Plaintiff.

A private right of action, however, is not equivalent to an OCR investigation and is not necessarily available to all organizations and individuals who have a right to file complaints with the DOE OCR. While a private right of action is available in some circumstances to victims of discrimination under Title VI and Section 504, this private right of action is not available to organizations and individuals who challenge disparate impact discrimination. Although the regulations implementing Title VI prohibit disparate impact discrimination, the prohibition of disparate impact discrimination may not be enforced privately. In *Alexander v. Sandoval*, 532 U.S. 275, 281 (2001), the Supreme Court was presented with "the question whether private individuals may sue to enforce disparate-impact discrimination] regulations promulgated under

Title VI of the Civil Rights Act of 1964." The Court answered in the negative, finding that only federal funding agencies could enforce such regulations and that there is no "freestanding private right of action" to sue for disparate impact discrimination. *Id.* at 293.

A private right of action is also not always available for non-victim individuals and organizations who file DOE OCR complaints. The purpose of Title VI and Section 504 is to prevent recipients of federal financial assistance from using federal money to support discrimination, not simply to remedy discrimination by recipients against particular individuals. As President Kennedy stated in 1963: "Simple justice requires that public funds, to which all taxpayers of all races [colors, and national origins] contribute, not be spent in any fashion which encourages, entrenches, subsidizes or results in racial [color or national origin] discrimination." H.R. Misc. Doc. No. 124, 88th Cong., 1st Sess. 3, 12 (1963).

As a result of this purpose, the OCR does not require that a complainant have been the direct or indirect victim of discrimination in order to complain about it—advocates and organizations may file complaints challenging federally-funded discrimination, even if they are not the victims of the discrimination. *See* 34 C.F.R. § 100.7(b) ("Any person who believes himself *or any specific class of individuals* to be subjected to discrimination prohibited by this part may by himself or by a representative file with the responsible Department official or his designee a written complaint.") (emphasis added).

For example, a non-victim who witnesses discrimination, whether a bystander, advocate, or organization, has the right to file an OCR complaint, even though he or she would not have the right to pursue a private action in court, because he or she would be unable to establish constitutional standing to sue. *See White Tail Park, Inc.*, 413 F.3d at 458 (explaining that standing requires the plaintiff to suffer "an injury in fact—an invasion of a legally protected interest which is (a) concrete and particularized, and (b) actual or imminent, not conjectural or hypothetical"). Thus, a private right of action in court is not extended to all persons who witness and abhor discrimination. However, they do have a right to file complaints with DOE OCR to prevent federal taxpayer dollars from contributing to discrimination. The existence of private rights of action for direct victims to seek compensation for the harms directly caused to them under the underlying civil rights statutes is not, therefore, the equivalent of the DOE OCR's regulatory complaint investigation and enforcement process. All persons, not only the direct victims of discrimination, have a right to ask federal agencies to exercise their enforcement

powers to ensure that federal money is not used to support discrimination, in order to stop the harm all suffer when the federal government funds discrimination. And the DOE regulations, issued after notice and comment rulemaking, require investigation of all complaints, whether by a direct victim or by a witness, that indicate a violation of the federal civil rights laws.

DOE OCR may not thwart the rights of witnesses to discrimination or advocates against such by arguing that those who directly suffer the effects of such discrimination may pursue their own claims in court. Nor does a private right of action sufficiently address the ultimate harm that results from DOE's failure to comply with its own regulations and the APA—the continued funding of educational institutions despite their discriminatory actions and practices. A private plaintiff cannot mandate the termination or withdrawal of federal funds for discriminatory actions, a remedy Title VI and Section 504 specifically authorize federal agencies to provide. *See, e.g.,* 42 U.S.C. § 2000d-1 (permitting federal agencies to "terminat[e]" or "refus[e] to grant or to continue assistance" for noncompliance). Private suits, without federal government enforcement, cannot provide this remedy.

Repeatedly, the 7th Court has tried to get this point across: it did so again just this term in *Weyerhaeuser v. U.S. Fish and Wildlife Service*, 139 S. Ct. 361 (2018). The Court explained—again unanimously—that the "Administrative Procedure Act creates a 'basic presumption of judicial review [for] one 'suffering legal wrong because of agency action.'" *Weyerhaeuser*, 139 S. Ct. at 370 (citing *Abbott Labs. v. Gardner*, 387 U.S. 136, 140 (1967) (quoting 5 U.S.C. § 702)). In *Weyerhaeuser*, the Court explained that federal agencies sometimes fail to properly apply the law and even violate the law, and will continue to do so if those decisions are shielded from judicial review. *Id.* at 370. "That is why this Court has so long applied a strong presumption favoring judicial review of administrative action." *Id.* (quoting *Mach Mining, LLC v. EEOC*, 135 S. Ct. 1645, 1652-1653 (2015)).

Indeed, the APA explicitly allows for the judicial review. *See* 5 U.S.C. § 704 ("Agency action made reviewable by statute and final agency action for which there is no other adequate remedy in a court are subject to judicial review") and indeed there is no alternative adequate remedy for the Plaintiff. Had the Defendants adjudicated Plaintiff's civil right complaint by issuing its finings within a year, a possible remedy would exist at that time because the law school would have been open up to this date. But the evidence presented to this court showed Defendants acted with intent and malice to discriminate and retaliate against the Plaintiff because

of his Coptic identity; Defendants actions from the very beginning were arbitrary and capricious to go from a negotiated resolution agreement with the recipient to a dismissal after the case was opened in 2016 and dismissed in 2020 (that is 4 years, the longest of any case opened for an investigation by OCR when most cases are rendered a decision within 1 year). *See* Catherine Lhamon report when she was Chair of the U.S. Commission on Civil Rights criticizing the work of Kenneth Marcus as a Secretary for OCR and his violations to OCR rules and regulations. See Exhibit 32 Page 476 of Catherine Lhamon's report "Are Rights a Reality" citing 326 maximum days for OCR to resolve complaints.

> In FY 2016, OCRD received 31 complaints of discrimination, all of which were based on alleged discrimination against persons with disabilities. Of the 31 complaints received, OCRD investigated five and did not investigate 26. OCRD found evidence of discrimination in two of the five cases it investigated and no evidence in two of the five cases. The remaining complaint was withdrawn. In FY 2016, OCRD took between *77 to 326 days* to resolve a case or complaint.

The APA creates a "basic presumption of judicial review [for] one 'suffering legal wrong because of agency action.'" *Weyerhaeuser*, 139 S. Ct. at 370 (citations omitted). This case fits the APA's judicial review mechanism hand in glove.

C. Congress did not authorize Defendants to adopt the IHRA definition

Defendants second argument is that Plaintiff lacks standing to challenge the IHRA definition because he did not satisfy the case or controversy requirement of Article III of the Constitution; see page 8 (Dkt 28). Defendant's second argument cannot survive on multiple fronts.

Administrative agencies are creatures of statute. They accordingly possess only the authority that Congress has provided. An agency may implement a rule only when Congress authorizes it to do so. "[A]n agency literally has no power to act … unless and until Congress confers power upon it." *La. Pub. Serv. Comm'n v. FCC*, 476 U.S. 355, 374 (1986). Agency actions that do not fall within the scope of a statutory delegation of authority are *ultra vires* and must be invalidated. "Normally, an agency rule would be arbitrary and capricious if the agency has relied on factors which Congress has not intended it to consider, entirely failed to consider an important aspect of the problem, offered an explanation for its decision that runs counter to the evidence before the agency, or is so implausible that it could not be ascribed to a difference in

view or the product of agency expertise." *Motor Vehicle Mfrs. Ass'n of U.S., Inc. v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 43 (1983).

Defendants did not engage in reasoned decision-making, but instead acted arbitrarily and capriciously, first by using the IHRA definition in granting Zoa's appeal by former Secretary Kenneth Marcus himself and later by adopting the IHRA definition without congress intent but relaying on former President Donald Trump executive order; Plaintiff will discussion this in greater detail in section "D". However, for now, Plaintiff wants to focus on Defendants' argument that the Plaintiff lacks standing to challenge the IHRA definition because he did not satisfy the case or controversy requirement of Article III of the Constitution. Indeed the Plaintiff did satisfy the case or controversy requirement of Article III of the Constitution.

In Defendants' motion to dismiss, on page 8, they recited *Spokeo, Inc. v. Robins*, 578 U.S. 330, 337 (2016) (cleaned up) stating that "[t]o satisfy the case-or-controversy requirement of Article III of the Constitution, plaintiffs bear the burden of establishing (1) that they have suffered an "injury-in-fact" that is "concrete and particularized" and "actual or imminent"; (2) that the injury is "fairly traceable to the actions of the defendant"; and (3) that the injury will likely be redressed by a favorable decision. *Bennett v. Spear*, 520 U.S. 154, 162 (1997). Defendants argue that Plaintiff's claim related to the IHRA definition failed on all three elements. Defendants further argued that the Plaintiff did not experience no injury because he did not discuss anti-Semitism or the IHRA within his OCR complaint or even within his appeal.

> Bochra's claim relating to the IHRA definition fails on all three elements. Dkt. 9 ¶¶ 70-79. Bochra did not bring a claim of anti-Semitism. He brought an administrative complaint (alleging discrimination on the basis of *his* national origin) to OCR. Ex. A. His complaint was opened, investigated, and dismissed for insufficient evidence, without any discussion of anti-Semitism or the IHRA definition. Ex. B. He was provided an opportunity to file an appeal of that insufficient evidence dismissal, which he did, and his *appeal* was considered and dismissed in accordance with Section 307 of the CPM, *without any discussion* of anti-Semitism or the *IHRA definition*. Ex. C.

The following was far from the truth. First, it is well established that the course of action taken by the Defendants against the Plaintiff showed intentional discrimination by the Defendants against the Plaintiff by selectively and unequally applying the OCR manual on the Plaintiff who is a Coptic differently compare to others in direct violation of Title VI. Second, it is well established that Plaintiff's OCR complaint was headed for either a resolution agreement or in a case of the recipient denial to reach an agreement, for OCR to proceed with enforcement action.

"I came to complete not to refute. I came light to the World." Jesus Christ

Third, it is well established that Defendants on its face tempered with Plaintiff's witnesses and evidence by redacting key witnesses and their testimonies when they issued the findings i.e., LT Kitchen and Prof Munsterman testimonies were completely redacted. Last, indeed the Plaintiff mentioned the IHRA definition for many years directly with the Defendants the moment Kenneth Marcus took charge of Office for Civil Rights and even within his appeal to OCR contrary to Defendants' claim that Mark Bochra did not discuss the IHRA definition within his appeal. See *Exhibit* 15, Plaintiff's appeal and amended appeal to comply with the 10 page double space appeal requirement even though the amendments to the appeal section did not go through the proper regulatory process.

V. EQUAL PROTECTION CLAUSE.

On August 27, 2018, Secretary Kenneth Marcus granted ZOA's appeal based on IHRA definition.[17] "Do for others just as others do for you" said Jesus Christ.[18] OCR denied the Complainant's rights under the equal protection clause when it failed to consider that the 3 main individuals involved in this case were all Jews.

1. Benjamin Priester is a Jew.
2. Lauren Levin is a Jew.
3. Michael Roy Guttentag is a Jew.

There was never a proper investigation conducted by OCR Atlanta rather they were destroyers for the truth.[19]

/s/ Mark Bochra

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[17] See letter written by Kenneth Marcus https://www.politico.com/f/?id=00000165-ce21-df3d-a177-cee9649e0000
[18] See https://youtu.be/0feZQkHbCkM?t=2109 See also a copy of a 2nd letter to Secretary Kenneth Marcus http://www.mediafire.com/file/ro5ylblv2iiflka/Letter_to_Secretary_Marcus-1.pdf/file
[19] See Melanie Velez past 3 response letters to Senator Dick Durbin http://www.mediafire.com/file/fru9x0iy8m0hy1t/Melanie_Velez_letters.pdf/file

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As substantiated by plaintiff's own appeal filed with OCR, plaintiff pleaded under the "equal protection clause" and cited the IHRA definition especially when it comes to "Jews having the right for self-determination" compare to the plaintiff who is a Coptic asking "wouldn't he have the right for self-determination as well." In that case by Defendants' own action, they said "no you don't, you're a Coptic and have no such right." Defendants' vicious

action across the span of 4 years against the Plaintiff proved that Plaintiff satisfied the case or controversy requirement of Article III of the Constitution.

In *Spokeo, Inc. v. Robins*, 578 U.S. 330, 337 (2016), a plaintiff invoking federal jurisdiction bears the burden of establishing the "irreducible constitutional minimum" of standing by demonstrating (1) an injury in fact, (2) fairly traceable to the challenged conduct of the defendant, and (3) likely to be redressed by a favorable judicial decision. *Lujan v. Defenders of Wildlife*, 504 U. S. 555, 560–561. The Supreme Court noted that as relevant here, the injury-in-fact requirement requires a plaintiff to show that he or she suffered "an invasion of a legally protected interest" that is "concrete and particularized" and "actual or imminent, not conjectural or hypothetical." *Lujan, supra,* at 560.

To determine whether an intangible harm constitutes injury in fact, both history and the judgment of Congress are instructive. Congress is well positioned to identify intangible harms that meet minimum Article III requirements, but a plaintiff does not automatically satisfy the injury-in-fact requirement whenever a statute grants a right and purports to authorize a suit to vindicate it. Article III standing requires a concrete injury even in the context of a statutory violation. This does not mean, however, that the risk of real harm cannot satisfy that requirement. See, e.g., *Clapper v. Amnesty Int'l USA*, 568 U. S. ____. The violation of a procedural right granted by statute can be sufficient in some circumstances to constitute injury in fact; in such a case, a plaintiff need not allege any additional harm beyond the one identified by Congress, see *Federal Election Comm'n v. Akins*, 524 U. S. 11, 20–25.

Plaintiff experienced multiple injuries; extreme emotional damage and being discriminated against by OCR own conduct. First Plaintiff religious complaint was not considered by Office for Civil Rights because it lacked jurisdiction to investigate religion discrimination yet it applied the IHRA definition for the Jewish people rendering religion investigated only for the Jewish people. Second, Plaintiff suffered injury when the OCR manual was violated on multiple fronts, with many of its sections, whether section 302 (used 2 years or more compare to what is provided 30 days to reach a resolution agreement), or section 305 (failed to enforce impeding enforcement action when promised to do so), or section 602 (failed to refer the case to DOJ for prosecution) or even the appeal process section 307. Third, Plaintiff suffered injuries through the implementation of the IHRA definition which provided the Jewish people with a set of privileges above the plaintiff and everyone else, but what makes this case

even more compelling is the fact that Plaintiff suffered discrimination and retaliation by Jews in law school while the Defendants completely redacted these facts. Defendants failed to this day to disclose why they have not included such facts in its issued findings among many more evidence that were tempered with or redacted. Fourth, it was Plaintiff's e-mail to his professor that the lord Jesus Christ will not leave him only to later find out that it was Benjamin Priester, a Jewish law professor who planned everything in term of setting up the Plaintiff through malicious prosecution while supporting his own student Michael Roy Guttentag. Yet the IHRA claims if one states that Jews killed Jesus Christ, than he or she is an anti-Semite.[126] The same language was used by OCR released guidance memo.[127]

From: Mark M. Bochra
Sent: Sunday, January 24, 2016 5:51 AM
To: Caroline R. Nichols; Korin Munsterman
Subject: Re: Case detail

Dear Prof. Nichols, you were about to help me by calling your husband. I was setup badly, very badly, this is unfair. Michael Guttentag was playing monopoly with my roommate and he showed him an email saying that i was suspended and he was happy. Lauren Levine knew the truth, met my mom and smiled at her.

God won't leave me, he won't leave his loved one be harmed:

To the lord, I lift up my soul.
In you I trust, let me not be put to shame.
let not my enemies exult over me.
Let none that wait for thee be put to shame.
let them be ashamed who are wantonly treacherous.
For you are the god of my salvation, Jesus Christ.

- Using the symbols and images associated with classic antisemitism (e.g., claims of Jews killing Jesus or blood libel) to characterize Israel or Israelis.

Plaintiff has well established that he suffered injuries fairly traceable to the challenged conduct of the defendant, and likely to be redressed by a favorable judicial decision. These conducts by the Defendants are as follow: amending the OCR manual and implementing the IHRA definition without following the proper regulatory process in direct violation of the APA; in addition to violating many sections of the OCR manual by applying the rules and regulations differently and

[126] See https://www.holocaustremembrance.com/resources/working-definitions-charters/working-definition-antisemitism
[127] See https://www2.ed.gov/about/offices/list/ocr/docs/qa-titleix-anti-semitism-20210119.pdf

unequally on the Plaintiff compare to others in direct violation of Title VI; failing to provide an education free from discrimination and retaliation which is what the agency mission stands for.

D. A President cannot amend a Regulation through an Executive Order

Defendants argues that former President Donald Trump's executive order adopting the IHRA definition trumps the APA entire process; reciting the following "which the agency is fully permitted to do without notice and comment under the APA" see page 10 (Dkt 28).

Generally, rules may only be amended through special procedures governed by the Administrative Procedure Act (APA). This process, known as notice-and-comment rulemaking, usually requires advance notice and a period for public comment on proposed rule amendments. Supreme Court precedent suggests that presidential actions, such as executive orders, are not reviewable under the APA. But the APA's procedural requirements still apply to agencies when they act to implement any presidential directives, raising the question of when presidential action ends and when agency implementation begins.

A president can through an executive order direct an agency to implement certain policies but that is all to the extent of the executive order; an executive order does not give an agency the right to implement what the President's executive order entails without the agency following the proper regulatory process.

When an agency engages in "rule making," defined as formulating, amending, or repealing a "rule," the APA generally requires the agency to follow certain procedures. Unless a rule falls within one of the statutory exceptions, the agency is required to undertake notice-and-comment rulemaking. (For an overview of notice-and-comment rulemaking procedures). An agency has to comply with the APA not only when it initially promulgates a rule, but also when its actions constitute a substantive amendment to a rule falling within the APA rulemaking requirements.

In 1992, the Supreme Court held in *Franklin v. Massachusetts*[128] that the President's "actions are not subject to [the APA's] requirements." In that case, the State of Massachusetts challenged the decision of the President and the Secretary of Commerce to use a certain method for counting federal employees serving overseas in the 1990 Census, arguing, in part, that this decision was arbitrary and capricious and therefore unlawful under the APA. The Court

[128] See ruling https://cdn.loc.gov/service/ll/usrep/usrep505/usrep505788/usrep505788.pdf#page-14

concluded that the relevant final action incorporating this method was that of the President, rather than the Secretary, and went on to consider whether the President was an "agency" subject to the APA. The Court acknowledged that the APA definition of "agency" does not expressly exclude the President, but noted that the President is not "explicitly included, either." Citing "respect for the separation of powers and the unique constitutional position of the President," the Court held that "textual silence" was "not enough to subject the President to the provisions of the APA." But the Court was careful to clarify that it was only holding that the President's actions may not be reviewed "for abuse of discretion under the APA," and those actions "may still be reviewed for constitutionality."

Additionally, the APA will likely still govern[129] the actions of executive branch agencies implementing a presidential directive. Lower courts[130] have suggested that this presidential exception will not "insulate . . . from judicial review"[131] any agency action implementing a presidential directive. In 1996, the D.C. Circuit, quoting Justice Scalia's concurring opinion in Franklin, announced that, "it is now well established that '[r]eview of the legality of Presidential action can ordinarily be obtained in a suit seeking to enjoin the officers who attempt to enforce the President's directive.'" The APA generally applies to any executive branch authority that is not the President. Even where a statute does vest the President with rulemaking authority, if the President delegates that regulatory power to an agency, the agency will likely have to follow APA rulemaking procedures when it exercises that power.[132]

In the context of (Executive Order 13985)[133] it appears that the (U.S. Office of Information and Regulatory Affairs, and Office of Management and Budget)[134] will primarily be implementing the directive—the executive order directs both offices to adopt regulations and provide guidance as necessary to implement the order,

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[129] See https://scholar.google.com/scholar_case?case=8546774205434112176&q=854+F.2d+490&hl=en&as_sdt=20003#p495

[130] https://scholar.google.com/scholar_case?case=12897516394337451221&q=974+F.+Supp.+1288&hl=en&as_sdt=20003#p1300

[131] https://scholar.google.com/scholar_case?case=4028150111619628079&q=74+F.3d+1322&hl=en&as_sdt=20003#p1327

[132] See https://scholar.google.com/scholar_case?case=9645059611742066258&q=773+F.3d+257&hl=en&as_sdt=20003#p260

[133] See https://www.federalregister.gov/documents/2019/12/16/2019-27217/combating-anti-semitism

[134] See https://www.reginfo.gov/public/do/eAgendaViewRule?pubId=202104&RIN=1870-AA15

"I came to complete not to refute. I came light to the World." Jesus Christ

> **Sec. 5.** *General Provisions.* (a) Nothing in this order shall be construed to impair or otherwise affect:
>
> (i) the authority granted by law to an executive department or agency, or the head thereof; or
>
> (ii) the functions of the Director of the Office of Management and Budget relating to budgetary, administrative, or legislative proposals.
>
> (b) This order shall be implemented consistent with applicable law and subject to the availability of appropriations.

However, the offices has not issued any guidance memos, but OCR on its own issued a guidance (memo)[135] and previously implemented the IHRA definition long before former president Donald Trump executive order was signed; that is when Kenneth Marcus infiltrated the Federal Government on behalf of Israel and granted Zoa's appeal by implementing the IHRA definition within the appeal. *See* Am. Comp ¶¶ 70 – 79, ECF No. 9.

> The goal is to have the *federal government* to establish a *definition of anti-Semitism* that is parallel to the *State Department Definition* [*sic*] said Kenneth Marcus in a leaked video under the title "the Lobby USA."[136] A year later Kenneth Marcus did what he just said by his own hands.

As substantiated here, from the beginning to this very day and OCR action has been arbitrary and capricious.

Defendants argue that the Department referring to the IHRA definition in its January 19, 2021 Q&A document, […] was hardly "rulemaking" for purposes of the APA. Ex. D. It did not create any new laws, rights, or duties. However, OCR has already created a law for IHRA because it already used it with Zoa's appeal, and further created a memo or guidance for it yet it did not go through the regulatory process in direct violation of the Administrative Procedure Act, 5 U.S.C. Chapter 5, §§ 551, *et seq*.

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[135] See https://www2.ed.gov/about/offices/list/ocr/docs/qa-titleix-anti-semitism-20210119.pdf
[136] See https://youtu.be/XytkI7afHcQ?t=2004

The Supreme Court's decision in *Perez v. Mortgage Bankers Association*[137], which the report suggests disposes of Melnick's concerns, does not address Melnick's second point – are these guidances legally binding, or are they not?[138] This was not the question at issue in *MBA*, which concerned D.C. Circuit precedent that held "that an agency must use the APA's notice-and-comment procedures when it wishes to issue a new interpretation of a regulation that deviates significantly from one the agency has previously adopted."[139] In dictum that ***does*** pertain to Melnick's point, Justice Sotomayor wrote in her majority opinion, "Interpretive rules 'do not have the force and effect of law and are not accorded that weight in the adjudicatory process."

As Justice Scalia said in his concurring opinion, however, this does not settle the question whether guidances are legally binding. The APA says that interpretive rules are *not* binding. But the Supreme Court, independent of any requirement in the APA, has over the years developed a habit of deferring to an agency's interpretation of its own regulations. If a court defers to an agency's interpretive rule, then the interpretive rule *is* binding. Justice Scalia wrote:

> Even when an agency's interpretation gets deference, the Court argues, "it is the court that ultimately decides whether [the text] means what the agency says." That is not quite so. So long as the agency does not stray beyond the ambiguity in the text being interpreted, deference *compels* the reviewing court to "decide" that the text means what the agency says. The Court continues that "deference is not an inexorable command in all cases," because (for example) it does not apply to plainly erroneous interpretations. True, but beside the point. Saying *all* interpretive rules lack force of law because plainly erroneous interpretations do not bind courts is like saying *all* substantive rules lack force of law because arbitrary and capricious rules do not bind courts. Of course an interpretative rule must meet certain conditions before it gets deference – the interpretation must, for instance, be reasonable – but once it does so it is every bit as binding as a substantive rule. So the point stands: By deferring to interpretive rules, we have allowed agencies to make binding rules unhampered by notice-and-comment procedures.[140]

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[137] 135 S.Ct. 1199 (2015).

[138] Melnick Statement at 2.

This truncated procedure raises an awkward question: are these various forms of guidance mere suggestions, or are they legally binding? When asked that question by Senator Alexander in 2014, two high ranking officials in the Obama Administration's Department of Education said they were *not* legally binding. A third – Assistant Secretary for Civil Rights Catherine Lhamon – said they *are* legally binding. So does "enforcing civil rights laws" mean requiring schools to follow each command in these often lengthy guidance documents, or does it mean something less demanding? Given the huge gap between what OCR says in its sparse regulations and what it says in its lengthy guidance documents, this is no minor matter.

[139] Perez v. Mortgage Bankers Ass'n, 135 S.Ct. 1199, 1204 (2015).

[140] Perez v. Mortgage Bankers Ass'n, 135 S.Ct. 1199, 1212 (2015)(Scalia, J., dissenting).

"I came to complete not to refute. I came light to the World." Jesus Christ

The intervening four years have not caused the Court to look more kindly upon judicial deference to agency interpretations of regulations. This last term, all nine justices agreed in *Kisor v. Wilkie* that judicial deference to agency interpretations of regulations (known as *Auer* deference or *Seminole Rock* deference) should be severely curtailed.[141]

Justice Kagan's statements that "*Auer* deference is sometimes appropriate and sometimes not"[142] and "this Court has cabined *Auer*'s scope in varied and critical ways – and in exactly that measure, has maintained a strong judicial role in interpreting rules", encourages judges to apply the requirements of *Auer* deference more energetically than they have been. In describing situations in which *Auer* deference would *not* apply, Justice Kagan gives the following examples: a situation in which a court applies the traditional terms of statutory construction to determine that a rule is *not* genuinely ambiguous (in other words, a court can't just take the agency's word for it that the regulation is ambiguous), the agency's interpretation of a regulation must be reasonable, "the agency's interpretation must in some way implicate its substantive expertise", a new interpretation must not cause "unfair surprise" to regulated parties, and "[t]hat disruption of expectations may occur when an agency substitutes one view of a rule for another."

Justices Gorsuch, Thomas, Kavanaugh, and Alito would have gone farther than Justice Kagan (and the Chief Justice, who provided the crucial vote for her opinion). These four would overrule *Auer*. Justice Gorsuch writes for these four justices:

> Still, today's decision is more a stay of execution than a pardon. The Court cannot muster even five votes to say that *Auer* is lawful or wise. Instead, a majority retains *Auer* only because of *stare decisis*. And yet, far from standing by that precedent, the majority proceeds to impose so many new and nebulous qualifications and limitation on *Auer* that the Chief Justice claims to see little practical difference between keeping it on life support in this way and overruling it entirely. So the doctrine emerges maimed and enfeebled – in truth, zombified.[143]

As substantiated by all these cases and facts, first a President cannot amend a regulration through an executive order, and second, the executive order became meangless because Kenneth Marcus already implemented the IHRA definition long before former President Donald Trump's signed Executive Order. In fact Kenneth Marcus by his own mouth said the following.

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[141] Kisor v. Wilkie, 139 S.Ct. 2400 (2019).
[142] Kisor v. Wilkie, 139 S.Ct. 2408 (2019).
[143] Kisor v. Wilkie, 139 S.Ct. 2425.

> In order to codify a regulation, it must be formally proposed through the *federal register, provide time for public comment*, and be approved by *the Department of Justice, Office of Management and Budget* and *the Small Business Administration*, Marcus said.[144]

If Kenneth Marcus knew what the law says, why did he grant Zoa's appeal and implemented the IHRA definition within the appeal? The answer is naked to the eyes of many; Kenneth Marcus acted with intent and malice. Three offices have to approve the IHRA definition, yet all of them are silent toward the crimes of Kenneth Marcus. Only the Plaintiff was the one who came and exposed it to all, but in return Kenneth Marcus retaliated against the Plaintiff's OCR complaint with intent and malice. The actions taken by OCR were arbitrary and capricious by preponderance of the evidence.

III. Plaintiff is likely to succeed on the merits of his claims.

It is undisputed that an agency cannot act without Congressional authorization. Thus, the question here is whether Congress authorized OCR to adopt the IHRA definition with all its incoherent and confused meanings, the answer would be no, congress did not authorize OCR to adopt the IHRA definition. A federal agency cannot act absent Congressional authorization. *La. Pub. Serv. Comm'n v. FCC*, 476 U.S. 355, 374 (1986). It cannot confer power upon itself. *Id.* "To permit an agency to expand its power in the face of a congressional limitation on its jurisdiction would be to grant to the agency power to override Congress." *Id. Id.* at 374–75. Therefore, under the Administrative Procedure Act (APA), courts must "hold unlawful and set aside agency action" that is "in excess of statutory jurisdiction, authority, or limitations, or short of statutory right." 5 U.S.C. § 706(2)(C).

When reviewing an agency's construction of a statute, courts must use the ordinary tools of statutory interpretation. First, under the *Chevron* two-step framework, a court must consider "whether Congress has directly spoken to the precise question as issue." *Chevron, U.S.A., Inc. v. Nat. Res. Def. Council, Inc.*, 467 U.S. 837, 842 (1984). If Congress has directly spoken on the precise issue, the court "must give effect to the unambiguously expressed intent of Congress." *Id.* at 842–43. But "if the statute is silent or ambiguous with respect to the specific issue, the question for the court is whether the agency's answer is based on a permissible construction of the statute." *Id.* at 843.

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[144] See https://jewishjournal.com/news/united-states/344959/ted-lieu-spearheads-bipartisan-letter-from-members-of-congress-calling-on-education-dept-to-end-delays-of-investigating-antisemitism-complaints/

"I came to complete not to refute. I came light to the World." Jesus Christ

Likewise with amending the OCR manual by first removing the entire appeal section completely and then restoring it after a settlement was reached but then again weaken it instead of strength it without again following the regulatory process of APA. It is undisputed that in the first round of litigation forced the Defendants to settle with the National Federation of the Blind, the Council of Parent Attorneys and Advocates, Inc., and the National Association for the Advancement of Colored People, Inc and bringing back all of the dismissed OCR complaints.[145]

Only for OCR in the second round to violate the APA again with the Plaintiff and many others when it restored the appeal process but not restored to its previous known version rather the Defendants amended the manual in such a way without following the proper channels of a notice and comments in the federal register. The difference between the older OCR manual (2015) and the new OCR manual (2020) is substantial when it comes to the OCR appeal section 307 in many ways, not just the 10 double space page requirement which by itself is substantial and has affected the Plaintiff because to an ordinary complainant filing an appeal and adhere to a 10 page double space is essentially asking for a direct dismissal because it can slash as many arguments and evidence that could be produced within an appeal. Noreover, the older manual directs complainant to file their appeal with OCR HQ and for Deputy Assistant Secretary for Enforcement to rule on these appeals.

However, as substantiated by this lawsuit. Some appeals are ruled directly by the secretary himself in this case it was Kenneth Marcus ruling in granting Zoa's appeal; in another instance, some appeals like in Plaintiff's case went to be ruled on by a regional office, first OCR Dallas and later the director of OCR Denver; and in another instances some appeals are ruled by the unknown individuals at OCR. This is not the right policy of the OCR manual. It created numerous conflicts of interest and as seen, some complainants will be treated differently than others. This court will be met with the question of which appeals are ruled by the Deputy Assistant Secretary for Enforcement; and which appeals are ruled by an OCR regional office other than the original office which investigated the complaint; and which appeals are ruled by individuals which are not mentioned in the OCR manual.

The answer before this court is that Defendants' actions from the very beginning were arbitrary and capricious. Both the changes to the OCR Manual and the adoption of the IHRA

[145] See https://nfb.org/about-us/press-room/national-federation-blind-and-others-settle-lawsuit-against-united-states

definition were promulgated violation of DOE's own regulations and were arbitrary and capricious, in violation of the Administrative Procedure Act, 5 U.S.C. Chapter 5, §§ 551, *et seq*. These changes were promulgated in violation of the APA's rule-making requirements.

A. OCR does not have jurisdiction to investigate religion discrimination

It is well established that Office for Civil Rights does not have jurisdiction to investigate religion discrimination, rather it is left to the Department of Justice; *see Exhibit* 34 "Know Your Rights: Title VI and Religion." Yet OCR first failed to investigate Plaintiff's religion discrimination "Christian Coptic" portion even though it was filed originally with the Justice Department and forwarded to OCR for proper handling but then the IHRA definition gave OCR to investigate religion discrimination, thus breaching OCR jurisdiction. Moreover, it discriminated against religion itself when it mentions that Jews did not kill Jesus Christ within one of its definition. There is no dispute in the examples used by OCR in its guidance memo.[146]

UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS

January 19, 2021

Questions and Answers on Executive Order 13899 (Combating Anti-Semitism) and OCR's Enforcement of Title VI of the Civil Rights Act of 1964

On December 11, 2019, President Donald J. Trump signed Executive Order 13899 on Combating Anti-Semitism.[1] The Executive Order reaffirms the long-standing principle that anti-Semitism and discrimination against Jews based on an individual's race, color, or national origin may violate Title VI of the Civil Rights Act of 1964 (Title VI), 42 U.S.C. § 2000d *et seq*.; directs the federal government to enforce Title VI against prohibited forms of discrimination rooted in anti-Semitism as vigorously as against all other forms of discrimination prohibited by Title VI; and requires federal agencies to consider the International Holocaust Remembrance Alliance's (IHRA) working definition of anti-Semitism and the IHRA's contemporary examples of anti-Semitism in enforcing Title VI.

- Applying double standards by requiring of it a behavior not expected or demanded of any other democratic nation.
- Using the symbols and images associated with classic antisemitism (e.g., claims of Jews killing Jesus or blood libel) to characterize Israel or Israelis.

[146] See https://www2.ed.gov/about/offices/list/ocr/docs/qa-titleix-anti-semitism-20210119.pdf

"I came to complete not to refute. I came light to the World." Jesus Christ

This honorable court will be met with many questions regarding what the HRA definition entails, like for instance is a cross considered a symbol for anti-Semitism and what is the true meaning of anti-semistm? And who are the Semitic communities? Office for Civil Rights has lost its path to enforce its mission in a vigorous and neutral manner; by adopting the IHRA definition it has rendered Title VI moot. Title VI states the following.

> Title VI of the Civil Rights Act of 1964, 42 U.S.C. 2000d, et seq. and its implementing regulations provide that no person shall be subjected to discrimination on the basis of race, color, or national origin under any program or activity that receives federal financial assistance.

It is the duty of the Justice Department only to investigate religion discrimination, yet OCR took it upon itself to investigate religion discrimination for the Jewish people in addition to providing them a whole set of privileges inside the IHRA definition compare to everyone else form every religion, race, or creed. Defendants in its motion to dismiss (Dkt 28) asked for this Honorable Court to disregard Kenneth Marcus granting Zoa's appeal by arguing on page 7 in the footnote that it is not relevant to Plaintiff's case when everything about Zoa's appeal is relevant to Plaintiff's case; the implementation of the IHRA definition.

[3] Bochra incorporates the Q&A document in his complaint at Dkt. 9, footnote 13.

[4] The International Holocaust Remembrance Alliance is an intergovernmental association that promotes holocaust remembrance and education.

[5] Paragraph 5 of the Complaint references an OCR letter issued in an administrative appeal in a different case involving Rutgers University that also references the IHRA definition. That OCR letter is not relevant to this case.

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Defendants to this date have failed to produce any evidence showing that congress authorized OCR to adopt the IHRA definition because the definition itself is discriminatory and it defeats Title VI rendering it moot. Congress did not authorize OCR to adopt the IHRA definition. A federal agency cannot act absent Congressional authorization. *La. Pub. Serv. Comm'n v. FCC*, 476 U.S. 355, 374 (1986). It cannot confer power upon itself. *Id.*

Office for Civil Rights cannot and do not have the jurisdiction to investigate religion discrimination or else they would need to reconsider Plaintiff's religion discrimination portion of his complaint against the Jews who discriminated and retaliated against him in law school.

"*I came to complete not to refute. I came light to the World.*" Jesus Christ

The IHRA definition not only interferes with free speech but also interferers with religion freedom. A person can falsely believe that the Jews did not kill Jesus Christ, yet it cannot be enforced as a law which brings sanctions against that same person with his false belief. Likewise, a person can believe that Muhammad is not the Prophet of Islam, yet it cannot be enforced as a law on the same individual who believes that Muhammad is not a prophet. What the IHRA definition is trying to do is to make the Jewish people supreme in every way by use of ambiguous and discriminatory law absent gaining hearts; it leads to destruction to which the Plaintiff is trying to prevent from happening.

B. The U.S. Solicitor General sided with Free Speech & against the IHRA Definition

In a recent case *Shurtleff v. Boston*, before the Supreme Court, a free speech case brought by a conservative Christian group to allow a flag with a cross to stand on City Hall building to show diversity; on many occasions, the city will replace its flag with another honoring an ethnic group, a cultural celebration, a historic event or individual, or some other flag requested by private citizens. At various points, Boston has displayed the flags of many nations, including Brazil, China, Ethiopia, Italy, Mexico, and Turkey. It's also displayed an LGBTQ Pride flag, a flag memorializing victims of murder, a flag commemorating the Battle of Bunker Hill, and a flag intended to honor Malcolm X. But Boston will not display a Christian flag — in particular, a mostly white flag featuring a red cross on a blue background in its corner.[147]

Unlike several other cases, where the Supreme Court has scrambled longstanding legal doctrines to hand victories to religious conservatives, the plaintiffs in Shurtleff raise genuinely strong arguments under existing legal precedents. Indeed, the best arguments for these plaintiffs' position are strong enough that President Joe Biden's administration filed a brief urging the Court to rule in their favor.[148]

The Solicitor General in its Amicus Curiae brief argued that the City's flag-raising program is not government speech clarifying that "the government speech doctrine allows the government to relay on contributions from private actors, but does not apply when the government creates a forum for a diversity of private views." It adds that "the City's flag-raising progress is a forum for private speech, not government speech" Yet here we find OCR is trying

[147] See https://www.scotusblog.com/case-files/cases/shurtleff-v-boston/
[148] See https://www.supremecourt.gov/DocketPDF/20/20-1800/201010/20211122165123662_20-1800tsacUnitedStates.pdf

to enforce a government speech, the IHRA definition with all its incoherence and discriminatory definitions in direct violation of Title VI and the government speech doctrine.

> This Court's precedents have consistently emphasized that the Free Speech Clause does not prevent the government from expressing its own views. The Court has likewise recognized that the government may rely on contributions from private parties without trans-forming government speech into private speech. But the Court has also made clear that the government does not engage in government speech when it simply pro-vides a forum for private speakers to express a diversity of private views.
>
> "The Free Speech Clause restricts government regulation of private speech; it does not restrict government speech." *Pleasant Grove City* v. *Summum*, 555 U.S. 460, 467 (2009). The government is thus "entitled to promote a program, to espouse a policy, or to take a position," even though it thereby endorses some view-points and rejects others. *Walker* v. *Sons of Confederate Veterans, Inc.*, 576 U.S. 200, 208 (2015). Indeed, "it is not easy to imagine how government could function if it lacked this freedom." *Summum*, 555 U.S. at 468. "[S]ome government programs involve, or entirely consist of, advocating a position." *Johanns* v. *Livestock Marketing Association*, 544 U.S. 550, 559 (2005). And in many contexts "it is the very business of government to favor and disfavor points of view." *National Endowment for the Arts* v. *Finley*, 524 U.S. 569, 598 (1998) (Scalia, J., concurring in the judgment).
>
> Accordingly, a "government entity has the right to 'speak for itself,' " "'to say what it wishes,' " and "to se-lect the views that it wants to express" without implicating the Free Speech Clause. *Summum*, 555 U.S. at 467-468 (citations omitted). In so doing, the government "represents its citizens and carries out its duties on their behalf." *Walker*, 576 U.S. at 208. And "when the government speaks," it is "accountable to the electorate and the political process for its advocacy." *Legal Services Corp.* v. *Velazquez*, 531 U.S. 533, 541 (2001) (citation omitted). The principal check on government speech is thus the electoral process, not the Free Speech Clause. *Walker*, 576 U.S. at 207.

In a variety of contexts, moreover, the principles reflected in the government-speech doctrine allow a government to invite some private speakers, but not others, to participate in a government-sponsored presentation. A state university hosting a lecture series may invite speakers to offer a diversity of opinions on a topic with-out thereby bestowing on other individuals with additional opinions a constitutional right of access to the podium. See *Widmar* v. *Vincent*, 454 U.S. 263, 276-277 (1981).

In structuring a ceremony to commemorate a historical event, the federal government may select private speakers to give a range of viewpoints without thereby incurring an obligation to ensure that other viewpoints are represented. And "[w]hen a public broadcaster exercises editorial discretion in the selection and presentation of programming, it engages in speech

activity" and thus may make content- and viewpoint-based editorial judgments. *Forbes*, 523 U.S. at 674. "Much like a university selecting a commencement speaker, a public institution selecting speakers for a lecture series, or a public school prescribing its curriculum, a broadcaster by its nature will facilitate the expression of some viewpoints rather than others." *Ibid.* The Solicitor General adds that the Supreme Court's recent decisions in *Summum*, *Walker*, and *Tam* illustrate the line between government speech and government-assisted private speech.

In other cases argued before the Supreme Court and ruled in favor of the Christian Plaintiffs were the case of the anti-Israel protesters and the Christian baker.

1) A group of Anti-Israel protesters protested in front of the Synagogue for many weeks carrying signs saying "Jewish Power Corrupts", "Resist Jewish Power", "No more wars for Israel", the case was dismissed for lack of standing and the 6th Circuit Court of appeal affirmed stating that the protesters were engaging in a constitutionally protected speech because they deal with matters of public concern; *Gerber v. Herskovitz* No. 20-1870 (6th Cir. Sep. 15, 2021).[149]
2) A Christian baker who refused to create a wedding cake for gay couples because it interferes with his religious believes (*Masterpiece Cakeshop Ltd. v. Colorado Civil Rights Commission*).[150]

As substantiated by all these cases, Defendants cannot survive its motion to dismiss. The adoption of the IHRA definition is in direct opposition with U.S. Solicitor General stand in *Shurtleff v. Boston*; one cannot argue for raising a Christian flag yet deny that the Jews killed Jesus Christ [Isaiah 53].[151]

> Who would have believed our report, and to whom was the arm of the Lord revealed? And he came up like a sapling before it, and like a root from dry ground, he had neither form nor comeliness; and we saw him that he had no appearance. Now shall we desire him? Despised and rejected by men, a man of pains and accustomed to illness, and as one who hides his face from us, despised and we held him of no account. Indeed, he bore our illnesses, and our pains-he carried them, yet we accounted him as plagued, smitten by God and oppressed.

Defendants own action is in direct violation of the Justice Department argued stance.

C. The IHRA Definition lacks statutory authority

"[O]ur system does not permit agencies to act unlawfully even in pursuit of desirable ends." Ala. Ass'n of Realtors v. Dep't of Health & Human Servs., 141 S. Ct. 2485, 2490 (2021).

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[149] See ruling https://www.courthousenews.com/wp-content/uploads/2021/09/synagogue-protest-ca6.pdf
[150] See Supreme Court Ruling https://www.supremecourt.gov/opinions/17pdf/16-111_j4el.pdf
[151] See https://www.chabad.org/library/bible_cdo/aid/15984/jewish/Chapter-53.htm

"I came to complete not to refute. I came light to the World." Jesus Christ

The IHRA Definition violates multiple provisions of the Administrative Procedure Act, and other federal statutes like Title VI itself "different rules for different people" also violates the equal protection clause and that unambiguously delineate Defendants' rulemaking authority and the procedural requirements that govern that rulemaking. Plaintiff is likely to succeed on the merits of its claims because the adoption of the IHRA (1) exceeds Defendants' statutory authority; (2) is arbitrary and capricious; (3) was adopted without compliance with procedures required by law; and (4) violates the Constitution.

Under the APA, courts must "hold unlawful and set aside agency action" that is "not in accordance with law" or "in excess of statutory . . . authority[] or limitations, or short of statutory right." 5 U.S.C. § 706(2)(A), (C). An agency may implement a rule only when Congress authorizes it to do so. "[A]n agency literally has no power to act … unless and until Congress confers power upon it." *La. Pub. Serv. Comm'n v. FCC*, 476 U.S. 355, 374 (1986). Agency actions that do not fall within the scope of a statutory delegation of authority are *ultra vires* and must be invalidated.

D. The IHRA definition is Arbitrary and Capricious

Normally, an agency rule would be arbitrary and capricious if the agency has relied on factors which Congress has not intended it to consider, entirely failed to consider an important aspect of the problem, offered an explanation for its decision that runs counter to the evidence before the agency, or is so implausible that it could not be ascribed to a difference in view or the product of agency expertise. *Motor Vehicle Mfrs. Ass'n of U.S., Inc. v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 43 (1983).

Defendants did not engage in reasoned decision-making, but instead acted arbitrarily and capriciously, in issuing the IHRA definition. Defendants acted arbitrarily and capriciously by enforcing the IHRA definition against the meaning of Title VI, while there is no such authority granted by congress to adopt and enforce the IHRA definition on the entire USA education system. The IHRA definition makes no sense. Defendants acted arbitrarily and capriciously by enforcing the IHRA definition against Title VI and other statues like the U.S. CONST. AMEND. 5, while the federal government like the justice department does not enforce the IHRA definition.

The Justice Department has stayed silent in the face of Office for Civil Rights arbitrary and capricious misconducts; it is the Justice Department that prosecutes civil right violations not

OCR. Also the IHRA definition runs against the attorney General memo pertaining to "religious freedom" signed on October 6, 2017.[152]

Office of the Attorney General
Washington, D.C. 20530
October 6, 2017

MEMORANDUM FOR ALL EXECUTIVE DEPARTMENTS AND AGENCIES

FROM: THE ATTORNEY GENERAL

SUBJECT: Federal Law Protections for Religious Liberty

The President has instructed me to issue guidance interpreting religious liberty protections in federal law, as appropriate. Exec. Order No. 13798 § 4, 82 Fed. Reg. 21675 (May 4, 2017). Consistent with that instruction, I am issuing this memorandum and appendix to guide all administrative agencies and executive departments in the execution of federal law.

The religious freedom memo was even used by the justice department when targeting Iran's malicious attacks against Christian and Christian converts.[153] This was the direct work of the Plaintiff with the Executive branch through many of his letters and direct e-mails that in order to defeat "evil" and change the world, not just the middle-east, one must promote religious freedom which was also adopted by the Trump's administration through an executive order "President Trump's Executive Order on Advancing International Religious Freedom."[154]

The adoption of the IHRA definition was arbitrary and capricious when it was first used by Kenneth Marcus within Zoa's appeal, long before the Trump administration executive order ("EO") and thc EO only direct an agency to start the process of rule-making, yet it defeated the entire process of APA because it was already used and applied in granting Zoa's appeal exclusively by the former secretary for OCR Kenneth Marcus. Defendants acted arbitrarily and capriciously by ignoring or arbitrarily rejecting the interests of all students who—for any number of varying personal reasons—do not approve the adoption of the IHRA definition.

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[152] See memo https://www.justice.gov/opa/press-release/file/1001891/download

[153] See memo https://www.justice.gov/eoir/page/file/1253351/download and see the news Iran is angry at Muslims who converted to Christianity in mass https://en.radiofarda.com/a/iran-intelligence-ministry-summons-iranian-who-showed-interest-in-christianity-/29921102.html

[154] See https://trumpwhitehouse.archives.gov/presidential-actions/executive-order-advancing-international-religious-freedom/

"I came to complete not to refute. I came light to the World." Jesus Christ

E. Defendants are confused between Jewish Hatred, Anti-Semitism and the IHRA Definition.

The World works in parables, and this has been proven across the centuries, usually the oppressed when gain power, becomes the oppressor himself.

> History has shown that when the oppressed gain power, they often become oppressors themselves. And we all participate in injustice, actively or passively, even unintentionally. We are all guilty and no one is righteous but the Lord, God.

The parable between Egypt and Israel; Moses and Jesus; Law vs. Love is well established. In the beginning, the Jewish/Israeli lobby came up with the word "Anti-Semitism" yet neglected the Semitic communities which included all of North Africa as previously mentioned in this response. Then the Jewish/Israeli said "anti-Semitism" is not the right word, lets remove the hyphen and call it "antisemetism" but then they found it to be too week. So they said let call it "Jewish hatred" but then here when the Plaintiff came and asked them "why denying Jesus Christ his Jewish identity of being the seed of Judah, the son of David, one of your own who you hated, isn't that "Jewish hatred"? This is the question of IHRA's many definition, to try and suppress the truth by claiming that Jews did not kill Jesus Christ.

Defendants did not explain what the IHRA definition entail or means in context, in fact on page 4 of Defendants' motion to dismiss, they agree that Plaintiff's explanation of IHRA could be correct yet they argue he has no right to challenge it "Bochra fundamentally misunderstands the Department's "adoption of the IHRA definition" of anti-Semitism; and even if his understanding were correct, he is clearly without standing to challenge the agency's actions." In fact, Plaintiff is challenging the IHRA definition because it injured him in many ways; from a religious perspective, to the injuries he sustained at the hands of the Jews who discriminated and retaliated against him. If a Jew has the right for self determination which is one of IHRA's definition, than in that case Michael Roy Guttentag Jewish himself had the right to be a lawyer yet Mark Bochra the Coptic was denied the right for self-determination to become a lawyer despite being the victim face on.

Defendants also cited one case *See, e.g., T.E. v. Pine Bush Cent. Sch. Dist.*, 58 F. Supp. 3d 332, 354 (S.D.N.Y. 2014) on page 7 within their motion to dismiss related to the word anti-Semitism. The case ended up with a settlement and the case has nothing to do with the IHRA definition, not was the IHRA definition used by the court in that case.

"I came to complete not to refute. I came light to the World." Jesus Christ

> Plaintiffs, five Jewish students who attended schools in the Pine Bush Central School District ("PBCSD" or "the District"), bring this Action against the District and several PBCSD Administrators under Title VI of the Civil Rights Act of 1964, 42 U.S.C §§ 2000d et seq. ("Title VI"), the Equal Protection Clause, U.S. Const. amend. XIV, § 1, under 42 U.S.C. § 1983 ("Section 1983"), and New York Civil Rights Law §§ 40-c and 40-d. Plaintiffs' claims arise from anti-Semitic harassment that Plaintiffs allegedly suffered while they were enrolled in the District. Defendants move for summary judgment with respect to the claims brought by T.E., D.C., and O.C., pursuant to Rule 56 of the Federal Rules of Civil Procedure. For the following reasons, Defendants' Motion is granted in part and denied in part.[155]
>
> In June 2015, we negotiated a far-reaching and substantial settlement in June 2015. Under the settlement, the school district paid $4.48 million and is overhauling its policies, procedures, training, education, and reporting relating to bullying, discrimination, and harassment. The district has instituted mandatory training and education for students and all district employees to improve tolerance and reduce anti-Semitic harassment and other bullying, led by the Anti-Defamation League. The district is also subject to monitoring for three years by both plaintiffs' counsel and the U.S. Department of Education's Office for Civil Rights. The far-reaching reforms required under the settlement is a model for all school districts interested in protecting students from bullying. The court approved the settlement after a hearing on July 9, 2015.[156]

No where within the Judge's ruling did the Court ever mentioned or adopted the IHRA definition because the IHRA definition was never adopted by Office for Civil Rights in 2014 but only when Kenneth Marcus took charge of OCR as its secretary and he did it knowing that congress did not authorize the agency to use the IHRA definition.

F. The IHRA Definition was adopted in violation of the notice-and-comment requirement.

Defendants must comply with the notice-and-comment requirements of 5 U.S.C. § 553 before promulgating a rule. Subject to certain statutory exceptions not implicated here, a "[g]eneral notice of proposed rulemaking shall be published in the Federal Register." 5 U.S.C. § 553(b). "After notice required by this section, the agency shall give interested persons an opportunity to participate in the rule making through submission of written data, views, or arguments." 5 U.S.C. § 553(c). "The required publication or service of a substantive rule shall be made not less than 30 days before its effective date [with inapplicable exceptions]." 5 U.S.C. § 553(d).

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[155] See court ruling https://www.publicjustice.net/wp-content/uploads/2012/12/Summary-Judgment-Opinion.pdf
[156] See settlement agreement http://www.publicjustice.net/wp-content/uploads/2016/07/Settlement-Agreement.pdf

"I came to complete not to refute. I came light to the World." Jesus Christ

Notice-and-comment procedures do not apply "when the agency for good cause finds (and incorporates the finding and a brief statement of reasons therefore in the rules issued) that notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest." 5 U.S.C. § 553(b)(3)(B).

The "good cause" exception should be read narrowly and "should not be used to circumvent the notice and comment requirements whenever an agency finds it inconvenient to comply." *U.S. Steel Corp. v. U.S. E.P.A.*, 595 F.2d 207, 214 (5th Cir. 1979). Likewise, the "public interest" prong only met in "rare circumstances." *Mack Trucks, Inc. v. E.P.A.*, 682 F.3d 87, 89 (D.C. Cir. 2012).

As substantiated in Plaintiff's response to Defendants' motion to dismiss, the adoption of the IHRA definition from the very beginning since using it within Zoa's appeal, directly violates the notice and comment requirement in direct violation of the Administrative Procedure Act, 5 U.S.C. Chapter 5, §§ 551, *et seq*. Defendants argue on page 9 within their motion to dismiss that referencing to the IHRA definition is not a "rulemaking" however, Defendants already ignored that it was already used when granting Zoa's appeal, yet the Defendants asked this honorable court to disregard this fact because they argue "it is not relevant" to the Plaintiff's case. *See* Am. Comp ¶ 79, ECF No. 9

> Kenneth Marcus in his first move after he gained the position for Secretary of OCR approved personally Zoa's appeal under OCR 2015 Manual; Zoa is a register foreign lobby for Israel.[157] Kenneth Marcus granted ZOA"s appeal under the IHRA definition without congress intent violating Title VI and the equal protection clause by enforcing a definition that is exclusive for the Jewish people. However, with the Plaintiff Mark Bochra"s complaint, equal protection was denied for him by OCR; raising up the Jews who did evil while stepping on the Coptic who tried to reform evil hearts.

What is relevant and/or irrelevant by Defendants' own definition? This honorable court will find that OCR has destroyed its own mission and corrupted many employees at OCR; *see* Am. Comp ¶ 8, ECF No. 9.

G. The IHRA Definition is a major rule that was adopted in violation of the Congressional Review Act.

Before a rule can take effect, the Federal agency promulgating such rule shall submit to each House of the Congress and to the Comptroller General a report containing (i) a copy of the

[157] See https://www.israellobby.org/ZOA/DOJ-149-1603-ZOA/default.asp

rule; (ii) a concise general statement relating to the rule, including whether it is a major rule; and (iii) the proposed effective date of the rule." 5 U.S.C. § 801(a)(1). A "major rule" cannot take effect until at least 60 days after Congress receives the report. 5 U.S.C. § 801(a)(3). A "major rule" is a "rule that the Office of Management and Budget and the Small Business Administration finds has resulted in or is likely to result in an annual effect on the economy of $100,000,000 or more." 5 U.S.C. § 804(2).

> In order to codify a regulation, it must be formally proposed through the *federal register, provide time for public comment*, and be approved by *the Department of Justice, Office of Management and Budget* and *the Small Business Administration*, Marcus said.[158]

The Court would still have to set it aside for failure to comply with the Congressional Review Act. "The reviewing court shall hold unlawful and set aside agency action, findings, and conclusions found to be without observance of procedure required by law." 5 U.S.C. § 706(2)(D).

The IHRA definition has already been used without complying with the congressional review act or the Administrative Procedure Act, 5 U.S.C. Chapter 5, §§ 551, *et seq.*

H. The Elimination of the Opportunity to Appeal but later amending it to weaken it not strengthen it is subject to the APA's Notice and Comment Procedures

As noted, Count I through Count VI challenges Defendants' enactment of Rule Changes 4 and 5 without providing notice of the changes and permitting comment from Plaintiffs and the public.[159] Section 553 of the APA requires federal agencies to provide the public with notice of a proposed rule and the opportunity to submit comments on it. *See* 5 U.S.C. § 553. Defendants acknowledge this general rule but argue that "the rule was 'procedural' rather than 'substantive' exempt from the APA's notice and comment requirements." *See* Defendants Mot. To Dismiss at 28 pages 10-13 (quoting 5 U.S.C. § 553).

Defendants acknowledge, *see* Mot. to Dismiss at 28, that this exception from notice and comment rulemaking cannot apply "where the agency action trenches on substantial private rights and interests," *Batterton v. Marshall*, 648 F.2d 694, 708 (D.C. Cir. 1980). The elimination of appeal rights was a substantive change to Defendants' existing regulations and policies because it changes legal rights or interests. *See Doe v. Trump*, 288 F. Supp. 3d 1045, 1074 (W.D.

[158] See https://jewishjournal.com/news/united-states/344959/ted-lieu-spearheads-bipartisan-letter-from-members-of-congress-calling-on-education-dept-to-end-delays-of-investigating-antisemitism-complaints/
[159] Rule 4 pertaining to OCR Manual, Rule 5 pertaining to the IHRA definition.

Wash. 2017) (citing *Neighborhood Television, Inc. v. FCC*, 742 F.2d 629, 637 (D.C. Cir. 1984)). Reviving the right to appeal but circumvent around its original form by weakening it rather than strengthen it, is substantive not procedural. Only a rule that simply prescribes "the manner in which the parties present themselves or their viewpoints to the agency" does not alter the underlying rights or interests of the parties and is, therefore, not subject to the APA's notice and comment requirements. *Batterton*, 648 F.2d at 707.

However, the revocation of the right to appeal is clearly substantive in nature and that is why there was a previous agreed signed settlement wherein, OCR brought back the appeal process. Only for later to modify it in a way that is weaker and confused compare to its original form i.e., the (2015 OCR)[160] manual vs. the (2020 OCR)[161] manual. Rule Change 4 was subject to the APA's notice and comment requirements. The Appeal process does not only limit Complainants to 10 page double space slashing as many evidence and arguments as possible from the appeal process rendering it moot but also it confuses many by removing the details of who will rule on the appeal. As shown previously, Zoa's appeal was ruled by former Secretary Kenneth Marcus himself, while Mark Bochra's appeal was first handled by OCR Dallas but was later ruled by the director of OCR Denver, Aaron Romine; *see* *Exhibit* G pages 130-133. Other appeals appear to be ruled by Deputy Assistant Secretary for Enforcement as originally intended; this clearly violates due process rights of the Complainants in many ways. The appeal process also does not indicate how many days it will take to rule on the appeal; in Plaintiff's case it took 1 year to rule on his appeal with one word "denial" without any legal analysis when putting the Zoa's appeal and Mark Bochra's appeal side by side; *see* *Exhibit* 35.[162]

There is a substantial likelihood that the Rule must be set aside for another reason: OCR did not have "good cause" to skip the notice-and-comment procedures required by the APA when it promulgated the Rule. Courts must set aside agency action undertaken "without observance of procedure required by law." 5 U.S.C. § 706(2)(D). Under the APA, an agency typically must first publish notice of a proposed rule and give the public opportunity to comment before adopting a final rule. 5 U.S.C. § 553(b), (c). The agency also must publish such rules at

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[160] See https://web.archive.org/web/20151103010525/https://www2.ed.gov/about/offices/list/ocr/docs/ocrcpm.pdf
[161] See https://www2.ed.gov/about/offices/list/ocr/docs/ocrcpm.pdf
[162] See Zoa's appeal https://www.politico.com/f/?id=00000165-ce21-df3d-a177-cee9649e0000

least thirty days before its effective date. § 553(d). These procedures are "designed to assure due deliberation." *Smiley v. Citibank (S.D.), N.A.*, 517

IV. Final Agency Action under the APA: Guidance letters vs. Rulemaking

Plaintiff reiterates that both (Rule 4) related to the OCR Manual appeal Section 307 and (Rule 5) related to the IHRA Definition were subject to APA.

In a popular case concerning Title IX, the Federal Court ruled in favor of the Plaintiff. The Department of Education has stated that its *guidance* does not have the *force of law*. Generally, only final agency action may be challenged. See 5 U.S.C. § 704. As such, agency action that does not impose rights, obligations, or legal consequences is, as a routine matter, not challengeable agency action. However, the Department's own assertions about whether its guidance imposes new rights or obligations, or carries the force of law, are not necessarily relied upon. In 2016, a federal district court in Texas ruled that the Department's guidance on transgender students—presented through a Dear Colleague letter—created legal consequences, and thus was final agency action, despite the Department's representations to the contrary. The court in *Texas v. U.S.* issued a nationwide preliminary injunction of the guidance, ruling that the Department's promulgation of the guidance was inconsistent with notice and comment rulemaking, and, as perhaps relevant here, the guidance itself was inconsistent with the text of the relevant statute, Title IX and its implementing regulations.[163]

A. The Administrative Procedure Act (the "APA")

"The APA authorizes suit by '[a] person suffering legal wrong because of agency action, or adversely affected or aggrieved by agency action within the meaning of a relevant statute.'" *Norton v. S. Utah Wilderness All.*, 542 U.S. 55, 61 (2004) (quoting 5 U.S.C. § 702). "Where no other statute provides a private right of action, the 'agency action' complained of must be *final* agency action.'" *Id.* at 61–62 (quoting 5 U.S.C. § 704).6 In the Fifth Circuit, "final agency action" is a jurisdictional threshold, not a merits inquiry. *Texas v. Equal Employment Opportunity Comm'n*, No. 14-10949, 2016 WL 3524242 at *5 (5th Cir. June 27, 2016) ("*EEOC*"); *see also Peoples Nat'l Bank v. Office of the Comptroller of the Currency of the United States*, 362 F.3d 333, 336 (5th Cir. 2004) ("If there is no 'final agency action,' a federal

[163] See Court ruling https://www.clearinghouse.net/chDocs/public/PA-TX-0001-0006.pdf

court lacks subject matter jurisdiction." (citing *Am. Airlines, Inc. v. Herman*, 176 F.3d 283, 287 (5th Cir. 1999))).

An administrative action is "final agency action" under the APA if: (1) the agency's action is the "consummation of the agency's decision making process;" and (2) "the action [is] one by which 'rights or obligations have been determined,' or from which 'legal consequences will flow.'" *Bennett v. Spear*, 520 U.S. 154, 177–78 (1997) (quoting *Chicago & Southern Air Lines, Inc. v. Waterman S.S. Corp.*, 333 U.S. 103, 113 (1948); and *Port of Boston Marine Terminal Assn. v. Rederiaktiebolaget Transatlantic*, 400 U.S. 62, 71 (1970)). "In evaluating whether a challenged agency action meets these two conditions, this court is guided by the Supreme Court's interpretation of the APA's finality requirement as 'flexible' and 'pragmatic.'" *EEOC*, 2016 WL 3524242, at *5; *Qureshi v. Holder*, 663 F.3d 778, 781 (5th Cir. 2011) (quoting *Abbott Labs. v. Gardner*, 387 U.S. 136, 149–50 (1967)). When final agency actions are presented for judicial review, the APA provides that reviewing courts should hold unlawful and set aside agency action that is arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with the law. *Martin v. Occupational Safety and Health Review Comm'n*, 499 U.S. 144, 150–151 (1991).

B. Final Agency Action Under the APA

Plaintiffs in the case *Texas v. United States* (7:16-cv-00054-O) sought a nationwide injunction relief argued that: (1) Defendants skirted the notice and comment process—a necessity for legislative rules; (2) the new mandates are incompatible with Title VII and Title IX and the agencies are not entitled to deference; (3) the mandates violate the clear notice and anti-coercion requirements which the federal government may attach to spending programs; and (4) nationwide relief is necessary to prevent the irreparable harm Defendants will cause Plaintiffs.

While the Defendants argued that Plaintiffs are not entitled to a preliminary injunction because: (1) Plaintiffs do not have standing to bring their claims; (2) this matter is not ripe for review; (3) Defendants' Guidelines do not violate the APA; (4) Plaintiffs cannot demonstrate irreparable harm and they have an alternative remedy; (5) Defendants did not violate the Spending Clause; (6) and an injunction would harm Defendants and third parties The Court ruled in Plaintiff's favor.[164]

[164] See Court ruling https://www.clearinghouse.net/chDocs/public/PA-TX-0001-0006.pdf

The same argument the current Defendants are bring in this case as well, however, this case deals with Title VI being completely destroyed by the implementation of the IHRA definition rather than Title IX and Title VII.

The Court found that Plaintiffs have standing. "The doctrine of standing asks 'whether the litigant is entitled to have the court decide the merits of the dispute or of particular issues.'" *Cibolo Waste, Inc. v. City of San Antonio*, 718 F.3d 469, 473 (5th Cir. 2013) (quoting *Elk Grove Unified Sch. Dist. v. Newdow*, 542 U.S. 1, 11 (2004)). Constitutional standing requires a plaintiff to establish that she has suffered an injury in fact traceable to the defendant's actions that will be redressed by a favorable ruling. *Lujan*, 504 U.S. at 560–61. The injury in fact must be "concrete and particularized" and "actual or imminent," as opposed to "conjectural" or "hypothetical." *Id.* at 560. When "a plaintiff can establish that it is an 'object' of the agency regulation at issue, 'there is ordinarily little question that the action or inaction has caused [the plaintiff] injury, and that a judgment preventing or requiring the action will redress it.'" *EEOC*, 2016 WL 3524242 at *2; *Lujan*, 504 U.S. at 561–62. The Fifth Circuit provided, "[w]hether someone is in fact an object of a regulation is a flexible inquiry rooted in common sense." *Id.* at *6 (quoting *Contender Farms LLP v. U.S. Dep't of Agric.*, 779 F.3d 258, 265 (5th Cir. 2015)).

In *EEOC*, Texas sued the EEOC over employment guidance the EEOC issued to employers concerning their Title VII obligations. In response, the EEOC argued Texas lacked standing because the guidance was advisory only and imposed no affirmative obligation. The Fifth Circuit held that Texas had standing to seek relief because it was an object of the EEOC's guidance as the guidance applied to Texas as an employer. *Id.* at *4.

This case is analogous. Defendants' Guidelines are clearly designed to target Plaintiffs' conduct. At the hearing, Defendants conceded that using the definition in the Guidelines means Plaintiffs are not in compliance with their Title VII and Title IX obligations. Defendants argue that that this does not confer standing because the Guidelines are advisory only. But this conflates standing with final agency action and the Fifth Circuit instructed district courts to address the two concepts separately. *See EEOC*, 2016 WL 3524242 at *3. Defendants' Guidelines direct Plaintiffs to alter their policies concerning students' access to single sex toilet, locker room, and shower facilities, forcing them to redefine who may enter apart from traditional biological considerations Plaintiffs' counsel argued the Guidelines will force Plaintiffs to consider ways to build or reconstruct restrooms, and how to accommodate students who may

seek to use private single person facilities, as other school districts and employers who have been subjected to Defendants' enforcement actions have had to do. That the Guidelines spur this added regulatory compliance analysis satisfies the injury in fact requirement. *EEOC*, 2016 WL 3524242 at *4 ("[T]he guidance does, at the very least, force Texas to undergo an analysis, agency by agency, regarding whether the certainty of EEOC investigations . . . overrides the State's interest . . . . [T]hese injuries are sufficient to confer constitutional standing, especially when considering Texas's unique position as a sovereign state . . . ."). That Plaintiffs have standing is strengthened by the fact that Texas and other Plaintiffs have a "stake in protecting [their] quasi-sovereign interests . . . [as] special solicitude[s]." *Mass. v. E.P.A.*, 549 U.S. 497, 520 (2007) ("Congress has moreover recognized a concomitant procedural right to challenge the rejection of its rulemaking petition as arbitrary and capricious. § 7607(b)(1). Given that procedural right and Massachusetts' stake in protecting its quasi-sovereign interests, the Commonwealth is entitled to special solicitude in our standing analysis.").

The same was true in this case my preponderance of the evidence, here the Defendants, the Department of Education has enforced the IHRA definition on the Plaintiff and everyone else in the United States of America which did injure the Plaintiff in many ways, neglecting his rights while protecting the rights of the Jewish people providing them with superior privileges compare to everyone else, (Jews *vs* Gentiles) in direct violation of Title VI. There is no question that this case at its core, the Coptic vs the Jew wherein, a Jewish student despite being the perpetrator had the right for self determination; the right to an education; provided equality and equity; while the Plaintiff, Mark Bochra was denied equality and equity for the past 6 years since he attended law school in 2016.

In the Texas case, the Court found that Defendants' actions amount to final agency action under the APA. *EEOC*, 2016 WL 3524242 at *11 n.9 ("Having determined that the Guidance is 'final agency action' under the APA, it follows naturally that Texas's APA claim is ripe for review. Texas's challenge to the EEOC Guidance is a purely legal one, and as such it is unnecessary to wait for further factual development before rendering a decision.") (Internal citations omitted). The Court found that the case was ripe for review.

The Court found that the Guidelines are final agency action under the APA. *Nat'l Pork Producers Council v. E.P.A.*, 635 F.3d 738, 755–56 (5th Cir. 2011) (citing *Her Majesty the Queen in Right of Ontario v. Envtl. Prot. Agency*, 912 F.2d 1525, 1532 (D.C. Cir. 1990)

(deciding that EPA guidance letters constitute final agency actions as they "serve[d] to confirm a definitive position that has a direct and immediate impact on the parties . . . ."). The second consideration is also satisfied in this case because legal consequences flow from the Defendants' actions. Defendants argue no legal consequences flow to Plaintiffs because there has been no enforcement action, or threat of enforcement action. The Fifth Circuit held in *EEOC* however that "an agency action can create legal consequences even when the action, in itself, is disassociated with the filing of an enforcement proceeding, and is not authority for the imposition of civil or criminal penalties." 2016 WL 3524242 at *8. According to the Fifth Circuit, "'legal consequences' are created whenever the challenged agency action has the effect of committing the agency itself to a view of the law that, in turn, forces the plaintiff either to alter its conduct, or expose itself to potential liability." *Id.* (citing *U.S. Army Corps of Eng'rs v. Hawkes Co.*, 136 S. Ct. 1807, 1814–15 (May 31, 2016) (holding that using the pragmatic approach, an agency action asserting that plaintiff's land was subject to the Clean Water Act's permitting process was a final agency action which carried legal consequences).

Here in this case however, there has been an enforcement action when the former Secretary for OCR, Kenneth Marcus granted Zoa's appeal by implementing the IHRA definition, opening the case for review on the merits and providing OCR with a jurication to investigate religion discrimination as well. The IHRA definition itself brings religion within it by claiming that if one said Jews killed Jesus Christ, than it is anti-Semitic subject to further sanctions by a federal agency. This is clearly stated in the definition and provided by OCR in a form of guidance letter.[165]

UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS

January 19, 2021

Questions and Answers on Executive Order 13899 (Combating Anti-Semitism) and OCR's Enforcement of Title VI of the Civil Rights Act of 1964

The Guidance Letter is an enforcement of the IHRA definition without congress authorizing it.

[165] See OCR letter https://www2.ed.gov/about/offices/list/ocr/docs/qa-titleix-anti-semitism-20210119.pdf

"I came to complete not to refute. I came light to the World." Jesus Christ

In the Texas case, *Texas v. United States* (7:16-cv-00054-O) the Court found that Plaintiffs have shown a likelihood of success on the merits because: (1) Defendants bypassed the notice and comment process required by the APA; (2) Title IX and § 106.33's text is not ambiguous; and (3) Defendants are not entitled to agency deference under *Auer v. Robbins*, 519 U.S. 452 (1997).

C. Ongoing Coercion Doctrine

In a recent case *Sambrano v. United Airlines* (21-11159) at the 5th circuit court of appeal, the Court applied "ongoing coercion" for a private right to preliminary injunctive relief.[166] The case stems from Plaintiffs who are United Airlines employees. United has given them a choice: receive the COVID-19 vaccine or be placed on unpaid leave indefinitely. The question we address here is narrow. If United's policy is not preliminarily enjoined, are plaintiffs likely to suffer irreparable harm? For the two plaintiffs who received religious exemptions and remain on unpaid leave, the court held that they are.

> If plaintiffs here merely alleged that a past action by the employer caused and will continue to cause economic harms, our precedent likely would not allow us to conclude that they have demonstrated irreparable harm. But plaintiffs allege a harm of a different nature, and one that is ongoing. Thus, this is one of the "extraordinary cases" in which "the circumstances surrounding [the employer's actions], together with the resultant effect on the employee, may so far depart from the normal situation that irreparable injury might be found." *Sampson*, 415 U.S. at 92 n.68.
>
> Plaintiffs are not merely seeking to prevent or undo the placement on unpaid leave itself, but are also challenging the *ongoing coercion* of being forced to choose either to contravene their religious convictions or to lose pay indefinitely. In such cases, when an employee is subjected to *ongoing coercion* because of a protected characteristic, the irreparable harm factor of the preliminary injunction analysis is satisfied.

The same is likewise true with the adoption of the IHRA definition for many students and their families including the Plaintiff himself who suffered irreparable injuries through *ongoing coercion* to choose between accepting the IHRA definition or lose his conviction in the Lord Jesus Christ and what the bible teaches that it was the Jews who killed Jesus Christ when they asked for the release of a thief named Barabbas and for Jesus Christ to take his place.[167] The bible teaches that Christ was crucified to bring salvation to the world and for humanity to gain

[166] See ruling https://www.govinfo.gov/content/pkg/USCOURTS-ca5-21-11159/pdf/USCOURTS-ca5-21-11159-0.pdf
[167] See the scene https://youtu.be/0feZQkHbCkM?t=6096

power over "sin", as prophesied by prophet Isaiah chapter 53 and many of the Old Testament prophets. *See* Amd Comp *Exhibit G* pages 96, ECF No. 9.[168]

V. Procedural Due Process Violation – U.S. CONST. AMEND. 5

If someone is prejudging the outcome of an investigation before it ends, and someone is prejudging the outcome of an investigation before it even begins, what is more textbook evidence of bias. We can't survive with a justice system we don't trust. I don't mind if people are wrong, I really mind if they are unfair.

> "The relationship between law and equity is of interest to us all, even to non-lawyers," Justice Amy Barrett said. "At root, it's about the tension between the demands of the law, which constrains, and the demands of fairness, which is flexible. That tension permeates almost every area of our law."[169]

It is well established by preponderance of the evidence that Plaintiff's due process rights were violated left and right when the OCR manual and many of its sections were not enforced, rather applied unequal against the Plaintiff compare to many others. One simply cannot go from a negotiated resolution agreement which dictates violations of OCR laws to a complete dismals after 5 years; the evidence will not add up, not the action taken by the Defendants will also add up. Plaintiff's due process rights were violated in direct violation of the United States Constitution Amendment 5. Defendants argument falls short and cannot survive; on page 13 in the footnote of Defendants Mot to Dismiss, they argue that.

> Bochra's complaint also appears to challenge two additional OCR actions tied to the handling of his OCR appeal that were both procedural in nature and not referenced in the CPM. The first was to assign the appeal to a Regional Office for resolution rather than to Headquarters. Dkt. 9 ¶¶ 65, 103. The second was to issue an untimely decision on appeal. Dkt. 9 ¶¶ 103, 126. Clearly, both of these actions were subject to agency discretion and are not subject to judicial review under Section 701 of the APA. *Heckler v. Chaney*, 470 U.S. 821, 828 (1985). Additionally, Bochra purports to bring a count for "procedural due process." Dkt. 9 ¶ 34. But he has failed to identify any constitutionally protected property or liberty interest at stake that might trigger due process protection. *Bd. of Regents v. Roth*, 408 U.S. 564, 577 (1972); *Paul v. Davis*, 424 U.S. 693 (1976).

Due process rights is violated when the OCR manual was not enforced equally and in a neutral manner, when the Complainant was treated differently compare to the Recipient; when the Complainant's rights were violated by denying him equality and equity yet it was provided to

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[168] See a true and correct copy of the page https://i.imgur.com/7bf3lu2.png
[169] See Justice Barrett recent address on Federal Equity Powers https://youtu.be/n0LA-z-SW5w?t=269

the Jew Michael Roy Guttentag. Due process rights were continuously violated with the amendments of the OCR manual without complying with the APA; enforcing it forcefully on the Plaintiff. Due process rights were continuously violated with the adoption of the IHRA definition which targeted and injured the Plaintiff in many ways. Due process rights are part of Title IX, due process rights are part of Title VI, and due process rights are part of Section 504 of the rehabilitation act.

Plaintiff has suffered in all 3 titles; Title IX when he was turned from a complainant into a respondent and denied gender equity; Title VI when he was discriminated and retaliated against with intent and malice and was denied education free form discrimination and retaliation; and Section 504 of the rehabilitation act when he was granted testing with accodomation due to his history of seizure epilepsy yet both the law school and OCR have exposed the Plaintiff to an extreme level of intentional emotional damage having him fight for his rights instead of gaining them back.

VI. Class Action Certification

Based on the history of this litigation, this honorable court, last ruling was to reconsider hiring legal representation to meet certain elements of the class certification after it rules on Defendants' motion to dismiss.

There is a cure for the class action certification that is when this honorable court grants Plaintiffs motion for legal counsel, even if it is temporary in order to reach a resolution with the Defendants.

> The Court denies Plaintiff's motion for reconsideration [40]. The Court has reviewed Plaintiff's request for recruitment of counsel [40], Ex. 2]. The Court notes that Plaintiff is a college graduate, previously attended law school for a period of time, and currently works as a substitute teacher. At this point, the Court believes that Plaintiff has the capability to represent himself during the briefing of Defendants' motion to dismiss. Should this case proceed to a point where the Court is considering Plaintiff's motion for class certification, Plaintiff may file a renewed motion for recruited counsel. (Dkt 45)

The one element that is lacking is adequate legal representation which was stated within plaintiff's motion for class certification; see Dkt 25 page 10 section "D".

"I came to complete not to refute. I came light to the World." Jesus Christ

CONCLUSION

For the foregoing reasons, Plaintiff prays to the Lord, God to give Honorable Judge Sara Ellis the wisdom and the heart to see the merits of this litigation and for this Court to deny Defendants' Motion to Dismiss Plaintiff's Amended Complaint.

Dated: February 28, 2022

Respectfully submitted,

/s/ Mark Bochra
Plaintiff, Pro Se

5757 North Sheridan Road, Apt 13B
Chicago, IL 60660

"I came to complete not to refute. I came light to the World." Jesus Christ

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on February 28, 2022, the aforesaid document was filed electronically with the Clerk of Court for the U. S. District Court, Northern District of Illinois, using the electronic case filing system of the Court. A copy of the filed motion was sent electronically to Defendants' counsels via e-mail because they have subscribed to using the CM/ECF system which will send a notice of electronic filing to them.

Respectfully submitted,

/s/ Mark Bochra
Plaintiff, Pro Se

5757 North Sheridan Road, Apt 13B
Chicago, IL 60660

Plaintiff is inviting the Solicitor General, should they like to file an *Amicus Brief* in this case.[170]

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[170] Their recent amicus brief filed with the Supreme Court supporting a Christian flag, is in objection of the implementation of the IHRA definition. See Brief https://www.supremecourt.gov/DocketPDF/20/20-1800/201010/20211122165123662_20-1800tsacUnitedStates.pdf

APPENDIX B

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

MARK BOCHRA, Plaintiff, v. UNITED STATES DEPARTMENT OF EDUCATION, Defendant.	)	No. 21 C 3887 Judge Sara L. Ellis

OPINION AND ORDER

Plaintiff Mark Bochra brings this lawsuit against the United States Department of Education ("the Department"),[1] alleging that its Office for Civil Rights ("OCR") mishandled his discrimination and retaliation complaint against Florida Coastal School of Law. Bochra alleges that OCR violated the Administrative Procedures Act ("APA"), 5 U.S.C. § 701, *et seq.*, by: (1) failing to properly consider his OCR complaint; (2) adopting the International Holocaust Remembrance Alliance ("IHRA") definition of anti-Semitism; and (3) revising its Case Processing Manual ("Manual") without public notice and comment (Counts I–V). Bochra also brings a claim for a procedural due process violation (Count VI). The Department moves to dismiss.

Because Bochra could sue the law school under Title VI, he cannot proceed under the

[1] Bochra also names as defendants Miguel Cardona, Secretary of Education, in his official capacity, and Suzanne Goldberg, Acting Assistant Secretary for the Department's Office for Civil Rights, in her official capacity. "[A]n official-capacity suit is, in all respects other than name, to be treated as a suit against the entity." *Kentucky v. Graham*, 473 U.S. 159, 166 (1985); *see also Brandon v. Holt*, 469 U.S. 464, 471–72 (1985). "An action against federal officers or employees in their official capacities is really an action against the United States that requires its consent." *June v. United States*, No. 3:04-CV-250-TS, 2005 WL 8170622, at *4 (N.D. Ind. Sept. 30, 2005) (dismissing *pro se* complaint against federal employees in their official capacities). Because Bochra has sued the Department, the Court dismisses with prejudice all claims against Cardona and Goldberg in their official capacities and terminates those Defendants.

APA, and this Court lacks subject matter jurisdiction over his claims of a mishandled OCR complaint. Bochra lacks standing to bring claims based on the IHRA definition or changes to the Manual that did not affect him; thus, the Court dismisses those claims. Additionally, because the Manual change creating a page limit for written appeals is procedural rather than substantive, Bochra fails to state a claim under the APA. Finally, Bochra does not plead a constitutionally protected property or liberty interest, and further cannot allege a lack of due process, therefore his procedural due process claim fails. Because amendment would be futile, the Court dismisses Bochra's first amended complaint with prejudice. Civil case terminated.

BACKGROUND[2]

In 2015, Bochra enrolled in Florida Coastal School of Law. In 2016, Bochra filed an administrative complaint with OCR against the school, alleging national origin discrimination and retaliation based on the school's treatment of him during a grade dispute and discipline related to his conflicts with other law students. OCR investigated Bochra's complaint and attempted to mediate a resolution, which failed. After interviewing witnesses, and reviewing documents and correspondence, OCR concluded that there was insufficient evidence to support the allegations of discrimination and retaliation. OCR denied Bochra's appeal of that decision. Bochra then filed this lawsuit.

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[2] The Court takes the facts from Bochra's first amended complaint (Doc. 9) and exhibits attached thereto, and presumes them to be true for the purpose of resolving the Department's motion to dismiss. *See Virnich v. Vorwald*, 664 F.3d 206, 212 (7th Cir. 2011) (Rule 12(b)(6)); *Ezekiel v. Michel*, 66 F.3d 894, 897 (7th Cir. 1995) (Rule 12(b)(1)). The Court also reviewed Bochra's administrative complaint and the OCR's administrative findings and decision on appeal, which the Department attached to its motion to dismiss. Although the Court normally cannot consider extrinsic evidence without converting a motion to dismiss into one for summary judgment, *Jackson v. Curry*, 888 F.3d 259, 263 (7th Cir. 2018), the Court may consider "documents that are central to the complaint and are referred to in it" in ruling on a motion to dismiss, *Williamson v. Curran*, 714 F.3d 432, 436 (7th Cir. 2013). The Court "may also take judicial notice of matters of public record." *Orgone Cap. III, LLC v. Daubenspeck*, 912 F.3d 1039, 1043–44 (7th Cir. 2019).

LEGAL STANDARD

A motion to dismiss under Rule 12(b)(1) challenges the Court's subject matter jurisdiction. Fed. R. Civ. P. 12(b)(1). The standard of review for a Rule 12(b)(1) motion to dismiss depends on whether the defendant raises a facial or factual challenge. *Silha v. ACT, Inc.*, 807 F.3d 169, 173 (7th Cir. 2015). If, as here, a defendant challenges the sufficiency of the allegations regarding subject matter jurisdiction—a facial challenge—the Court "must accept all well-pleaded factual allegations as true and draw all reasonable inferences" in the plaintiff's favor. *Id.* "[W]hen evaluating a facial challenge to subject matter jurisdiction," the Court employs the *Twombly–Iqbal* "plausibility" standard, "which is the same standard used to evaluate facial challenges to claims under Rule 12(b)(6)." *Id.* at 174.

A motion to dismiss under Rule 12(b)(6) challenges the sufficiency of the complaint, not its merits. Fed. R. Civ. P. 12(b)(6); *Gibson v. City of Chicago*, 910 F.2d 1510, 1520 (7th Cir. 1990). In considering a Rule 12(b)(6) motion, the Court accepts as true all well-pleaded facts in the plaintiff's complaint and draws all reasonable inferences from those facts in the plaintiff's favor. *Kubiak v. City of Chicago*, 810 F.3d 476, 480–81 (7th Cir. 2016). To survive a Rule 12(b)(6) motion, the complaint must assert a facially plausible claim and provide fair notice to the defendant of the claim's basis. *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009); *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555 (2007); *Adams v. City of Indianapolis*, 742 F.3d 720, 728–29 (7th Cir. 2014). A claim is facially plausible "when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." *Iqbal*, 556 U.S. at 678.

The Court construes Bochra's complaint liberally because he is proceeding *pro se*. *See Erickson v. Pardus*, 551 U.S. 89, 94 (2007) ("A document filed *pro se* is 'to be liberally

construed,' and 'a *pro se* complaint, however inartfully pleaded, must be held to less stringent standards than formal pleadings drafted by lawyers.'" (quoting *Estelle v. Gamble*, 429 U.S. 97, 106 (1976))).

ANALYSIS

I. APA Claims (Counts I–V)

A. OCR's Handling of Bochra's Complaint

The Department argues that Bochra cannot bring APA claims against the Department based on its alleged mishandling of his complaint because he has an adequate, alternate remedy under Title VI: a lawsuit against Florida Coastal School of Law for allegedly discriminating and retaliating against him. The APA allows "a limited cause of action for parties adversely affected by agency action." *Oryszak v. Sullivan*, 576 F.3d 522, 525 (D.C. Cir. 2009) (citation omitted). When a plaintiff can bring suit directly against the regulated entity, he cannot seek relief from the federal agency under the APA. *See, e.g.*, *Coker v. Sullivan*, 902 F.2d 84, 89 (D.C. Cir. 1990) ("[T]he APA specifically provides that, if other remedies are adequate, federal courts will not oversee the overseer."); *Walsh v. United States Dep't of Veterans Affairs*, 400 F.3d 535, 537–38 (7th Cir. 2005) ("[U]nder the APA, judicial review is appropriate for an agency action only when 'there is no other adequate remedy in a court.'" (quoting *Bennett v. Spear,* 520 U.S. 154, 162, 175 (1997))). Bochra can sue Florida Coastal School of Law as the alleged discriminator and a recipient of federal funds under Title VI, therefore the APA bars him from bringing this suit against the Department. *See Alexander v. Sandoval*, 532 U.S. 275, 279 (2001) ("[P]rivate individuals may sue to enforce § 601 of Title VI and obtain both injunctive relief and damages."); *Women's Equity Action League v. Cavazos*, 906 F.2d 742, 751 (D.C. Cir. 1990) ("[I]mplied private rights of action against discriminating institutions were intended by Congress

to provide individual citizens effective protection against discriminatory practices." (citation omitted) (internal quotation marks omitted) (alterations omitted)); *Kirk v. United States Dep't of Just.*, 842 F.3d 1063, 1066 (7th Cir. 2016) (Because plaintiff could file a motion for the remedy sought, "5 U.S.C. § 704 forecloses resort to the APA."); *Salvador v. Bennett*, 800 F.2d 97, 99 (7th Cir. 1986) ("Title VI follows this model: . . . a complainant told that the agency will do nothing, however, may get 'review' not by suing the adjudicator but by pursuing the supposed offender.").

Bochra argues that his suit against the Department should not be barred because Florida Coastal School of Law was "shut down" by the Department of Education, and therefore this alternate remedy is illusory. Doc. 54 at 63. The Court notes that in 2021 the law school unsuccessfully sought reinstatement of its Title VI eligibility, *Fla. Coastal Sch. of Law, Inc. v. Cardona*, No. 3:21-CV-721-MMH-JBT, 2021 WL 3493311, at *27 (M.D. Fla. Aug. 9, 2021) (denying motion for temporary restraining order and/or preliminary injunction), and that its public website states it is in a "teach out" and not currently enrolling new students, https://fcsl.edu/ (last visited September 8, 2022). However, the school's status and even Bochra's practical ability to recover against it are irrelevant to the Section 704 analysis. *Garcia v. Vilsack*, 563 F.3d 519, 525 (D.C. Cir. 2009) ("The relevant question under the APA, then, is not whether private lawsuits against the third-party wrongdoer are as effective as an APA lawsuit against the regulating agency, but whether the private suit remedy provided by Congress is adequate."); *Women's Equity Action League*, 906 F.2d at 751 ("But under our precedent, situation-specific litigation affords an adequate, even if imperfect, remedy.").

With the APA, Congress carved out a narrow judicial review of agency decisions, relying on the general availability of private causes of action against federal-fund recipients. *Id.*

("Congress considered private suits to end discrimination not merely adequate but in fact the proper means for individuals to enforce Title VI and its sister antidiscrimination statutes."). This design maintains the separation of powers and retains executive and Congressional (rather than piece-meal judicial) oversight of federal agencies. *Council of & for the Blind of Del. Cnty. Valley, Inc. v. Regan*, 709 F.2d 1521, 1532 (D.C. Cir. 1983) (explaining that the APA does not "empower one district judge to act as supreme supervisor of the ORS's enforcement activities—a role more appropriately reserved for the Executive under the oversight of Congress"). The question is whether a plaintiff like Bochra has a private right of action against a federally funded school under Title VI—he does, *Women's Equity Action League*, 906 F.2d at 750 ("Plaintiffs have implied rights of action against federally-funded institutions to redress discrimination proscribed by Titles VI and IX.")—not the likelihood of success of any particular plaintiff's case, *Garcia*, 563 F.3d at 523 (A plaintiff may not seek review under the APA "where there is a private cause of action against a third party otherwise subject to agency regulation." (citation omitted)). Bochra chose to sue the Department rather than the law school; however, because he *could* have sued the school, the APA bars his claim. *Salvador*, 800 F.2d at 100 ("[Plaintiff] must be content with his own remedies against the accused discriminator.").

Bochra next argues that he lacks an adequate, alternate remedy because he cannot bring a disparate impact suit against the law school. However, Bochra's OCR complaint alleged intentional discrimination and retaliation, not disparate impact. Doc. 28-1 ("This is a federal civil rights complaint . . . reporting Florida Coastal School of Law for discrimination and retaliation . . . ."); *see Nat'l Wrestling Coaches Ass'n v. Dep't of Educ.*, 366 F.3d 930, 946 (D.C. Cir. 2004) (rejecting a similar argument because plaintiffs had a private right of action under Title VI). Bochra makes an additional argument about "bystander" rights, Doc. 54 at 64, but

Bochra filed his complaint as a victim of, not a witness to, discrimination and retaliation, *see* Docs. 9 & 28-1, so this argument is inapplicable.

Because Bochra has an adequate, alternative remedy, he cannot proceed against the Department under the APA, and therefore the Court lacks subject matter jurisdiction over his claims that the Department mishandled his OCR complaint.[3] Because amendment of this claim would be futile, the Court dismisses it with prejudice. *See Stanard v. Nygren*, 658 F.3d 792, 800 (7th Cir. 2011) (finding refusal to allow amendment "eminently reasonable" when plaintiff failed to cure deficiencies in incomprehensible complaint); *Anderson v. Deutsche Bank Nat'l Tr. Co.*, No. 14 C 5474, 2014 WL 6806891, at *2 (collecting cases).

B. IHRA Definition of Anti-Semitism

The Department seeks dismissal of the IHRA definition of anti-Semitism claims on the basis that Bochra lacks standing. Standing "is a threshold question in every federal case because if the litigants do not have standing to raise their claims the court is without authority to consider the merits of the action." *Meyers v. Nicolet Rest. of De Pere, LLC*, 843 F.3d 724, 726 (7th Cir. 2016) (citation omitted). Standing consists of three elements: "[t]he plaintiff must have (1) suffered an injury in fact, (2) that is fairly traceable to the challenged conduct of the defendant, and (3) that is likely to be redressed by a favorable judicial decision." *Spokeo, Inc. v. Robins*, 578 U.S. 330, 338 (2016).

[3] To the extent Bochra also seeks to challenge OCR's assignment of his claim to a Regional Office for review, failure to issue a timely decision, and/or failure to refer his case to the Department of Justice for investigation and prosecution, those actions (*if* they could be considered final agency actions) are within the Department's discretion and therefore not subject to judicial review under the APA. *See* 5 U.S.C. § 701 (excluding "agency action . . . committed to agency discretion by law"); *Heckler v. Chaney*, 470 U.S. 821, 831 (1985) ("This Court has recognized on several occasions over many years that an agency's decision not to prosecute or enforce, whether through civil or criminal process, is a decision generally committed to an agency's absolute discretion."); *Webster v. Doe*, 486 U.S. 592, 601 (1988) (staff termination decision within agency director's discretion).

In *Spokeo*, the Supreme Court held that "Article III standing requires a concrete injury even in the context of a statutory violation." *Id.* at 341; *see also Simon v. E. Ky. Welfare Rights Org.*, 426 U.S. 26, 39 (1976) (Article III standing requirements apply to APA claims); *Groshek v. Time Warner Cable, Inc.*, 865 F.3d 884, 887 (7th Cir. 2017) (no standing for "a statutory violation completely removed from any concrete harm or appreciable risk of harm"). Bochra alleges that the Department adopted an invalid definition of anti-Semitism in violation of the APA. The Department disputes Bochra's characterization that it "adopted" this definition as a rule[4] and denies that it differentiates between enforcement of anti-Semitic complaints versus other race or national origin complaints intermingled with religious discrimination allegations.

Putting this aside, even if the Court were to accept Bochra's allegation that the Department uses a faulty definition of anti-Jewish bias, Bochra does not (and cannot) allege any concrete injury because he based his discrimination complaint on his own national origin (a United States citizen born in Egypt who is a Coptic Christian). Doc. 28-1 at 8; Doc. 54-1 ¶¶ 1, 6. The OCR investigated that complaint over a period of years and found no evidence of discrimination or retaliation. Doc. 28-2. Bochra appealed, and OCR denied the appeal. Doc. 28-3. OCR did not use or discuss the IHRA definition in its deliberations. Docs. 28-2, 28-3. The Department did not use the contested definition in Bochra's situation, and a change in the Department's use of this definition would not provide him redress. *See Sierra Club v. Morton*, 405 U.S. 727, 739–740 (1972) (The APA requires "that the party seeking review must himself have suffered an injury" and does not "authorize judicial review at the behest of organizations or

[4] The Court agrees that this "non-binding definition," presented by Executive Order and referred to in a January 19, 2021, Department Question and Answer document is not a legislative rule subject to the APA's notice-and-comment requirement. *See* 5 U.S.C. § 553(b) (APA notice-and-comment requirement does not apply to "interpretive rules, general statements of policy, or rules of agency organization, procedure, or practice"); *Bd. of Trustees of Knox Cnty. Hosp. v. Shalala*, 135 F.3d 493, 500–501 (7th Cir. 1998) ("interpretive rule" stating how Secretary interpreted regulation and intended to apply it not subject to notice and comment because it did not "create law").

individuals who seek to do no more than vindicate their own value preferences through the judicial process"); *Hartigan v. Fed. Home Loan Bank Bd.*, 746 F.2d 1300, 1308 (7th Cir. 1984) (plaintiff trade association did not have standing to bring APA claim on behalf of members who were not harmed by the transaction). Because Bochra lacks standing and any amendment would be futile, the Court dismisses with prejudice his claims related to the IHRA definition. *See Tribble v. Evangelides*, 670 F.3d 753, 761 (7th Cir. 2012), *as amended* (Feb. 2, 2012) (district court did not abuse its discretion in denying futile amendment); *Estrada v. Reed*, 346 F. App'x 87, 89 (7th Cir. 2009) (same).

C. Case Processing Manual

The Department seeks dismissal of all claims related to changes to the Department's Manual on the basis that Bochra lacks standing to challenge three of the four changes because they did not affect him and because the APA notice and comment requirements do not apply to the remaining, merely procedural change. Bochra brings claims related to four Manual changes: (1) automatic dismissal of a discrimination complaint if it is part of a "pattern" of complaints by an individual against multiple recipients; (2) automatic dismissal of a discrimination complaint against multiple recipients if OCR determines that investigation would create an "unreasonable burden"; (3) elimination of appeal rights when the OCR finds insufficient evidence; and (4) a page limit for written appeals.

The Department argues that the first amended complaint does not allege that the Department applied any of the first three changes (automatic dismissal because of a pattern of complaints or unreasonable burden, and the elimination of appeal rights) to Bochra's complaint, and therefore he has suffered no injury and has no standing to challenge these changes. The Court agrees. The Department did not automatically dismiss Bochra's complaint; rather, it found

insufficient evidence of intentional discrimination or retaliation, and Bochra then submitted his appeal. Bochra cannot show an injury-in-fact sufficient to confer standing. *See Sierra Club*, 405 U.S. at 740 ("[A] party seeking review must allege facts showing that he is himself adversely affected."); *Hartigan*, 746 F.2d at 1308 (no standing when no injury to members). And because any amendment would be futile, the Court dismisses Bochra's claims related to the first three Manual changes with prejudice. *Estrada*, 346 F. App'x at 89 (District court "does not abuse [its] discretion by denying a futile amendment.").

As for the fourth Manual change, Bochra pleads that he complied with the 10-page appeal page limit and that this undercut his ability to make arguments and present evidence. The Department argues that this change was a procedural, rather than substantive, rule and therefore not subject to the APA's notice and comment requirements. The APA exempts from its general notice and comment requirement "rules of agency organization, procedure, or practice." 5 U.S.C. § 553(b). A rule change is procedural "if it does not alter the rights or interests of parties." *Inova Alexandria Hosp. v. Shalala*, 244 F.3d 342, 349 (4th Cir. 2001) ("a procedural rule for handling appeals" did not require notice and comment) (citation omitted) (internal quotation marks omitted). Rules like a page limitation, which proscribe "the manner in which the parties present themselves or their viewpoints to the agency" are procedural, not substantive. *Nat'l Sec. Counsel v. C.I.A.*, 931 F. Supp. 2d 77, 106–07 (D.D.C. 2013); *Saint Joseph Hosp. v. Shalala*, No. 99 C 7775, 2000 WL 1847976, at *5 n.6 (N.D. Ill. Dec. 15, 2000) (deadline to file an appeal not a substantive rule subject to notice-and-comment). The page-limit did not "change the substantive standards by which the [OCR] evaluates applications which seek a benefit that the agency has the power to provide." *Nat'l Sec. Counsel*, 931 F Supp 2d at 107 (citation omitted) (internal quotation marks omitted). Bochra disagrees with the page limit and argues

that it harmed his ability to win his appeal; however, this does not convert this procedural rule into a substantive one requiring public notice and the opportunity for comment under the APA. *See id.* ("[A]n otherwise-procedural rule does not become a substantive one, for notice-and-comment purposes, simply because it imposes a burden on regulated parties." (citation omitted) (internal quotation marks omitted)); *James V. Hurson Assocs., Inc. v. Glickman*, 229 F.3d 277, 282 (D.C. Cir. 2000) ("[A]gency housekeeping rules often embody a judgment about what mechanics and processes are most efficient. This does not convert a procedural rule into a substantive one." (citation omitted) (internal quotation marks omitted)); *Nat'l Sec. Counsel*, 931 F. Supp. 2d at 106 ("This statutory exception for procedural rules was provided to ensure that agencies retain latitude in organizing their internal operations." (citation omitted) (internal quotation marks omitted)).

Bochra lacks standing to challenge the first three Manual changes, and he cannot bring an APA notice-and-comment challenge against a procedural rule. Because amendment would be futile, the Court dismisses with prejudice all Bochra's claims involving changes to the Manual. *See James Cape & Sons Co. v. PCC Const. Co.*, 453 F.3d 396, 401 (7th Cir. 2006) ("The district court could have quite reasonably believed that an amended complaint would suffer the same fatal flaws as the one before it, and that the "interests of justice" did not require permission to amend.").

II. Procedural Due Process (Count VI)

Finally, the Department seeks dismissal of Bochra's Fifth Amendment procedural due process claim on the basis that he fails to identify any constitutionally protected property or liberty interest that might trigger due process protection. To establish a procedural due process violation, Bochra must plead: "(1) a cognizable property interest; (2) a deprivation of that

property interest; and (3) a denial of due process." *Hudson v. City of Chicago*, 374 F.3d 554, 559 (7th Cir. 2004) (quoting *Buttitta v. City of Chicago*, 9 F.3d 1198, 1201 (7th Cir. 1993)).

To state a claim under the Due Process Clause, Bochra must first establish a constitutionally protected interest. *See Citizens Health Corp. v. Sebelius*, 725 F.3d 687, 694 (7th Cir. 2013) ("The threshold question in any due process challenge is whether a protected property or liberty interest actually exists."); *see also Khan v. Bland*, 630 F.3d 519, 527 (7th Cir. 2010) ("An essential component of a procedural due process claim is a protected property or liberty interest." (citation omitted)). Bochra pleads that he has been deprived of his civil rights because the Department did not provide a neutral decision-maker for his complaint, adopted the IHRA definition of anti-Semitism, and amended the Manual without public notice and comment. Doc. 9 ¶¶ 133–35. A constitutionally protected liberty or property interest is not "created by the Constitution." *Bd. of Regents v. Roth*, 408 U.S. 564, 577 (1972). Rather, it is created by "existing rules or understandings that stem from an independent source such as state law." *Kim Constr. Co. v. Bd. of Trs. of the Vill. of Mundelein*, 14 F.3d 1243, 1245–46 (7th Cir. 1994) (property interest); *Paul v. Davis*, 424 U.S. 693, 711 (1976) (explaining courts find liberty or property interests when, "as a result of the state action complained of, a right or status previously recognized by state law was distinctly altered or extinguished. It was this alteration, officially removing the interest from the recognition and protection previously afforded by the State, which we found sufficient to invoke the procedural guarantees" of the Constitution.).

OCR's internal procedures do not create a liberty or property interest for Bochra. *See Olim v. Wakinekona*, 461 U.S. 238, 250 (1983) ("Process is not an end in itself. Its constitutional purpose is to protect a substantive interest to which the individual has a legitimate claim of entitlement."); *Olaifa v. McAleenan*, No. 18 CV 6801, 2019 WL 5183887, at *5 (N.D. Ill. Oct.

15, 2019) (dismissing due process claim alleging federal agency failed to follow certain guidelines). Nor do they establish an entitlement in the outcome of the Department's review of his complaint. *See Cevilla v. Gonzales*, 446 F.3d 658, 662 (7th Cir. 2006) (Even if the agency action was "so wacky as to constitute a denial of due process of law . . . a procedural entitlement is not a liberty interest.").

But even if the Court assumes a constitutionally protected interest, Bochra does not plead a lack of process. Bochra contends that the Department either did not apply its Manual to him or applied its Manual differently to him (versus another student), adopted the IHRA definition, and amended the Manual, all of which injured him. Doc. 54 at 96–97. However, nothing in the first amended complaint suggests an actual lack of process. Instead, OCR investigated Bochra's complaint by reviewing documents, interviewing witnesses, and engaging in extensive communications with him. Bochra then exercised his appeal rights when OCR found insufficient evidence. Bochra cannot state a procedural due process claim. *See Anderson v. Cardona*, No. 5:20 CV 01824 VAPSP, 2021 WL 6423804, at *6–7 (C.D. Cal. Nov. 4, 2021) (dismissing *pro se* procedural due process claim when plaintiff disagreed with the outcome of his license revocation but did not plead any "facts to suggest a lack of process").

Because Bochra does not plead a constitutionally protected liberty or property interest, and because he cannot plead a lack of process, amendment would be futile, and the Court dismisses Bochra's procedural due process claim with prejudice. *See Anderson*, 2021 WL 6423804, at *9 (recommending dismissal with prejudice because the pleading "could not possibly be cured by the allegation of other facts").

III. Class Claims

Bochra styles his first amended complaint as one for class relief. As a *pro se* litigant who is not a member of the bar admitted to practice before this Court, Bochra cannot seek to represent individuals beyond himself. *Lawrence v. Sec'y of State*, 467 F. App'x 523, 525 (7th Cir. 2012) ("[*P*]*ro se* plaintiffs cannot represent others."); *Jagla v. LaSalle Bank*, No. 05 C 6460, 2006 WL 1005728, at *4 (N.D. Ill. Apr. 12, 2006) ("[C]ourts have uniformly refused to certify class actions brought by *pro se* plaintiffs."). The Court already denied Bochra's motion to certify a class, finding that the action must proceed as an individual case. Doc. 34. Therefore, to the extent the first amended complaint pleads class claims, the Court dismisses those claims.

CONCLUSION

For the foregoing reasons, the Court grants the Department's motion to dismiss [27]. The Court dismisses with prejudice Bochra's APA claims (Counts I–V) and procedural due process claim (Count VI). Civil case terminated.

Dated: September 12, 2022

SARA L. ELLIS
United States District Judge

APPENDIX C

22-2903 Mark Bochra v. Department of Education, et al "Order filed"

CA07_CMECFMail@ca7.uscourts.gov
Thu 1/5/2023 11:08 AM
To:mbochr2@hotmail.com <mbochr2@hotmail.com>

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Seventh Circuit Court of Appeals

Notice of Docket Activity

The following transaction was entered on 01/05/2023 at 11:02:58 AM Central Standard Time and filed on 01/05/2023

Case Name:	Mark Bochra v. Department of Education, et al
Case Number:	22-2903
Document(s):	Document(s)

Docket Text:
ORDER re: Motion for an injunction pending appeal. [14] The motion for an injunction is DENIED. JPK [15] [7282845] [22-2903] (CG)

Notice will be electronically mailed to:

Mark Bochra
Ms. Sarah Terman, Attorney

The following document(s) are associated with this transaction:
Document Description: Order
Original Filename: /opt/ACECF/live/forms/222903_c7_Order_BTC_7282845_CaitlinGodoy.pdf
Electronic Document Stamp:
[STAMP acecfStamp_ID=1105395651 [Date=01/05/2023] [FileNumber=7282845-0]
[8503e643f6085c54879492896ee6695c6bbb27763afa5c14f3ea6881e1750baf73bda09f2bf305be2bb
93cf07eda36d3cb9191c88fa583e208d82237511aaa6c]]
Recipients:

- Mark Bochra
- Ms. Sarah Terman, Attorney

APPENDIX D

UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

Everett McKinley Dirksen
United States Courthouse
Room 2722 - 219 S. Dearborn Street
Chicago, Illinois 60604

Office of the Clerk
Phone: (312) 435-5850
www.ca7.uscourts.gov

ORDER

January 23, 2023

By the Court:

No. 22-2903	MARK BOCHRA, Plaintiff - Appellant v. DEPARTMENT OF EDUCATION, et al., Defendants - Appellees
Originating Case Information:	
District Court No: 1:21-cv-03887 Northern District of Illinois, Eastern Division District Judge Sara L. Ellis	

Upon consideration of the **PLAINTIFF-APPELLANT'S MOTION FOR A MORE CLARIFIED RULING ON DOCKET [15] DENYING INJUNCTION AGAINST THE IHRA DEFINITION PENDING THIS APPEAL,** filed on January 20, 2023, by the pro se appellant,

IT IS ORDERED that the motion is **DENIED**.

APPENDIX E

UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

Everett McKinley Dirksen
United States Courthouse
Room 2722 - 219 S. Dearborn Street
Chicago, Illinois 60604

Office of the Clerk
Phone: (312) 435-5850
www.ca7.uscourts.gov

ORDER

May 23, 2023

Before

THOMAS L. KIRSCH II, *Circuit Judge*

Nos. 22-2903 & 23-1388	MARK BOCHRA, Plaintiff - Appellant v. DEPARTMENT OF EDUCATION, et al., Defendants - Appellees
Originating Case Information:	
District Court No: 1:21-cv-03887 Northern District of Illinois, Eastern Division District Judge Sara L. Ellis	

Upon consideration of the **MOTION FOR AN EXTENSION OF TIME TO FILE HIS BRIEF DUE TO SEVERAL LIFE AND MEDICAL CONDITIONS AND PERMISSION SEEKING TO FILE AN OVERSIZED BRIEF**, filed on May 19, 2023, by the pro se appellant,

IT IS ORDERED that the motion for leave to file an oversized brief is **DENIED**.

IT IS FURTHER ORDERED that the request for an extension is **GRANTED**. Appellant Mark Bochra's opening brief is due on or before August 15, 2023. Bochra is warned, however, that in light of the length of the extension and number of extensions prior to consolidation, no further extensions will be allowed. The briefing is as follows:

1. The appellant shall file his consolidated brief and required short appendix by August 15, 2023.

2. The appellees shall file their consolidated brief by September 14, 2023.

3. The appellant shall file his consolidated reply brief, if any, by October 5, 2023.

-over-

Important Scheduling Notice!
Hearing notices are mailed shortly before the date of oral argument. Please note that counsel's unavailability for oral argument must be submitted by letter, filed electronically with the Clerk's Office, no later than the filing of the appellant's brief in a criminal case and the filing of an appellee's brief in a civil case. *See* Cir. R. 34(b)(3). The court's calendar is located at http://www.ca7.uscourts.gov/cal/argcalendar.pdf. Once scheduled, oral argument is rescheduled only in extraordinary circumstances. *See* Cir. R. 34(b)(4), (e).

"I came to complete not to refute. I came light to the World." Jesus Christ

No. 22-2903 and 23-1388

IN THE UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT

Mark Bochra, individually and on Behalf of all others similarly situated,

Plaintiffs -Appellants,

V.

U.S. DEPARTMENT OF EDUCATION; Betsy Devos, in her official and individual capacity as former Secretary for the Department of Education and Kenneth Marcus, in his official and individual capacity as the former Secretary for OCR; Miguel Cardona, in his official Capacity as the Current Secretary for the Department of Education, Suzanne Goldberg in her official and individual capacity as the Former secretary for OCR, and Secretary Catherine Lhamon in her official Capacity as the current Secretary for OCR.[1]

Defendants -Appellees.

On Appeal from the United States District Court
For the Northern District of Illinois
No. 1:21-cv-03887 (Judge Sara L. Ellis)

OPENING BRIEF OF APPELANT

Mark Bochra
5757 North Sheridan Road, Apt 13B
Chicago, IL 60660
Plaintiff, Pro Se

[1] The parties mostly involved were former secretary Betsy Devos and former secretary Kenneth Marcus but because leadership changed from the Trump administration to the Biden administration, current secretary for the department of education and current secretary for office for civil rights had to be named in the ongoing litigation. The new administration took over leadership during Mark's appeal process of his OCR Complaint; they were partially involved.

Similar to the *Sweet v. Cardona* (3:19-cv-03674) case which was later settled, it went from Former Secretary Betsy Devos to Current Secretary Miguel Cardona because of the official capacity over the Department of Education. Moreover, OCR are currently handling employment discrimination for Mark Bochra against Chicago Public School and many change of events took place related to the IHRA definition as well as changes to the OCR manual without going through regulatory channels in direct violation of again the APA; major rule the "appeal" process was removed from the OCR manual.

"I came to complete not to refute. I came light to the World." Jesus Christ

STATEMENT REGARDING ORAL ARGUMENT

Plaintiff Mark Bochra, *pro se*, tried his best to describe this complex case of discrimination and retaliation not just by Florida Coastal School of Law (FCSL) but by Office for Civil Rights (OCR) under Kenneth Marcus leadership who was working as an agent on behalf of Israel without registering under the Foreign Agents Registration Act (FARA), used the IHRA definition without the department's senior leadership awareness to personally grants Zoa's appeal; ECF No. 54 page 4.

The district court dismissed Mark's lawsuit with prejudice while failing to factor in Mark's 6 raised Counts with in-depth analysis including a request for injunction and the removal of the IHRA from the Department of Education website and declaring it unconstitutional by adequately challenging it under the Administrative Procedure Act ("the APA") on four bases: (1) arbitrary & capricious, 5 U.S.C. § 706(2)(A); (2) "contrary to a constitutional right, power, [or] privilege," id. § 706(2)(B); (3) exceeding statutory authority, id. § 706(2)(C); and (4) promulgated "without observance of procedure required by law," id. § 706(2)(D).

While this case was pending appeal, several Circuit Court cases such as *CFPB v. All Am. Check Cashing, Inc.*, 33 F.4th 218, 241 (5th Cir. 2022) (Jones, J., concurring) supported Mark's standing to lawsuit the Department of Education when an agency acts "arbitrary & capricious", 5 U.S.C. § 706(2)(A) and "contrary to a constitutional right, power, [or] privilege," id. § 706(2)(B). In addition to a recent unanimous 9-0 Supreme Court ruling in *Axon Enterprise v. Federal Trade Commission* No. 21-86.

Appellant Mark Bochra respectfully request an oral argument because this is a fact intensive case with a 5 years history and ongoing violations under the APA to this very day; oral argument will provide the parties with an opportunity to assist the Court in the Constitutional, statutory, and factual analysis required to resolve this appeal.

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STATEMENT OF JURISDICTION

The district court had subject-matter jurisdiction because the case presents federal questions under the Administrative Procedure Act, 5 U.S.C. Chapter 5, §§ 551; et seq[1] and procedural due process – U.S. Const. Amend 5. The district court also had subject matter jurisdiction over this matter pursuant to U.S.C. §701 – 706; 28 U.S.C. §§ 1331 and 2201; HEA, 20 U.S.C. § 1082; and Federal Rule of Civil Procedure 23 and authority to issue declaratory and injunctive relief pursuant to 28 U.S.C. § 2201-2202.

Plaintiff, Mark Bochra also wanted to amend his complaint once as a matter of right with additional counts. However, the district court denied it claiming it wants to rule on Defendants' motion to dismiss first (see ECF No. 34, see also the court striking a its own the sureply in ECF No. 64 which provides a cure to the court's own ruling in ECF No. 84 related to property and liberty rights deprivation) additional counts i.e., violations of the 1st amendment rights in terms of endorsed view point discrimination, violation of equal protection clause under the 5th amendment, as well as claims pursuant to 42 U.S.C. §§ 1985(3) - Conspiracy to interfere with civil rights and 1986 - Action for neglect to prevent; and Title VI of the Civil Right Act of 1964, 42 U.S.C. § 2000d et seq; free from retaliation under the Whistleblower Protection Act.

The district court issued its final judgment with prejudice on September 12, 2022 in (ECF Nos. 84-85) by cancelling the scheduled hearing between the parties which was set on September 27, 2022. This happened after Mark sought the recusal of Hon. Judge Sara Ellis, see ECF Nos. 78 (the judicial misconduct complaint was sealed on its own without the court's knowledge, see ECF No. 102 but more can be read in ECF Nos. 120 and 121 Brief and Appendix related to the Executive Committee)[2], see also ECF Nos. 80 and 81-82 (recusal requested).

Mark's initial complaint was based on 6 counts; these counts were related to both the 2020 OCR Manual and the IHRA definition under the APA for injunctive and declaratory relief.

1) Count I: Violation of 5 USC Chapter 5, §§ 551, *et seq.*: Adoption of a Rule that is Not in Accordance with Law (for Injunctive and Declaratory Relief)
2) Count II: Violation of 5 USC Chapter 5, §§ 551, et seq. Adoption of the IHRA definition that is Arbitrary or Capricious (for Injunctive and Declaratory Relief)
3) Count III: Violation of 5 U.S.C. Chapter 5, §§ 551, et seq.: Failure to comply with notice and comment requirements (for Injunctive and Declaratory Relief)

[1] On review, the APA empowers courts to set aside agency action that is, among other things, "arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law."
[2] Mark didn't want to proceed further pursing this matter and wants to see the good hearts of the Executive committee. He has several motions pending before them because the mandate was sent back to them.

4) Count IV: Unlawfully Withheld and Unreasonably Delayed Agency Action APA § 706(1)
5) Count V: Arbitrary and Capricious Final Agency Action APA § 706(2)
6) Count VI: Procedural due Process – U.S. Const. Amend. 5

Mark timely appealed, see Fed. R. App. P. 4(a)(1)(B), 4(a)(4)(A)(iv). See also FED. R. CIV. P. 60(b) and 62.1 and Federal Rule of Appellate Procedure 12.1. The 7th Circuit Court of Appeals on its own has consolidated both appeals 22-2903 and 23-1388. This Honorable Court has subject matter jurisdiction under 28 U.S.C. § 1291.

STATEMENT OF THE ISSUES

1. Whether plaintiff has a standing to lawsuit the Department of Education and challenge the IHRA definition seeking an injunction against it, removal of the IHRA definition from the Department of Education website, and declaring it unconstitutional by adequately challenging it under the Administrative Procedure Act ("the APA") on four bases: (1) arbitrary & capricious, 5 U.S.C. § 706(2)(A); (2) "contrary to a constitutional right, power, [or] privilege," id. § 706(2)(B); (3) exceeding statutory authority, id. § 706(2)(C); and (4) promulgated "without observance of procedure required by law," id. § 706(2)(D).

2. Whether the district court improperly held that it lacks subject matter jurisdiction over the department of education when it acted arbitrarily and capriciously toward the plaintiff and others wherein: (a) the Department of Education under Kenneth Marcus leadership adjudicated religion discrimination under the IHRA definition for ZOA but refused to provide the same equal protection and equal treatment toward the plaintiff; (b) whether the plaintiff was protected from any retaliation by OCR under the leadership of Kenneth Marcus for reporting Kenneth Marcus infiltrating the department of education on behalf of Israel and implementing the IHRA definition without going through the regulatory channels; and (c) whether tempering with witnesses, redacting witnesses' names and testimonies and producing a false OCR report to alter the truth after promising enforcement action was the next step, constitutes arbitrary and capricious behavior by the department of education under Kenneth Marcus leadership; see also *Delgado v. United States Department of Justice*, No. 19-2239 (7th Cir. 2020).[3]

3. Whether the equal protection clause mandates that all complainants are treated fairly and equally regardless of their race, religion, or color by OCR; the IHRA definition

[3] See https://law.justia.com/cases/federal/appellate-courts/ca7/19-2239/19-2239-2020-07-16.html

violates the equal protection clause under the 5th Amendment. See Mark's appeal with OCR reciting "equal protection clause" ECF No. 54 page 68 as well as Exhibit 15 in ECF No. 54.

4. Whether the APA and the doctrine of "non-statutory review" of an unfair OCR proceeding with direct violation to its own case processing manual and the use of the IHRA definition with one appeal compare to another, waives sovereign immunity of federal officials in both their individual and official capacities when constitutional rights are violated.

5. Whether a federal official's sovereign immunity is waived when there is a clear violation of individual's civil rights under 42 U.S.C. § 1983 because of federal officials' actions led to complaints with OIG DOE, OIG DOJ, and other federal agencies related to Kenneth Marcus and his use of the IHRA definition acting as an agent on behalf of Israel.

6. Whether Mark Bochra stated a claim that federal officials committed an endorsed government view point discrimination (the IHRA definition says "Jews didn't kill Jesus Christ")[4] and violated equal protection clause under the 1st and 5th amendments through the department's use of the IHRA definition by subjecting Mark to ongoing discrimination and retaliation based on his Coptic identity and his faith in Jesus Christ; seeking injunctive and prospective relief.

7. Whether defendants waived their rights on appeal to challenge plaintiff's claims under the (law of the case, waiver, and judicial estoppels) when they abandoned challenging plaintiff's many arguments in his ECF No. 54 while focusing on challenging small arguments on page 89 (pages which were attacked by the defendants 89, 24, 21, 64, 61) knowing that they have potentially waived their rights to challenge any and all of plaintiff's raised arguments including who is Kenneth Marcus and what he did at OCR pertaining to his use of the IHRA definition and plaintiff's OCR Complaint (retaliated against). See ECF Nos. 61-62 and 64 (court order), ECF No. 65 and 67 (court order).

8. Whether the recent unanimous 9-0 Supreme Court ruling in *Axon Enterprise v. Federal Trade Commission* No. 21-86 provides the plaintiff with a standing to lawsuit the Department of Education seeking an injunction against the IHRA definition declaring it unconstitutional in violation of the APA; see ECF No. 122 Exhibits A & B. See also recent ongoing Supreme Court case in *Loper Bright Enterprises v. Raimondo* No. 22-451, the Supreme

[4] Can the Department of Education have a definition which says "Muhammad is not the prophet of Islam" on its Department's website? Or Moses did not receive the 10 Commandments from God.

Court potentially in the near future could vacate the "Chevron Doctrine" sending power back to the Judicial Branch for reviewing federal agencies actions.[5]

9. Whether both the defendants and the court improperly held that plaintiff has an alternative adequate remedy barred by Section 704 under the APA. If the recipient is no longer eligible for federal funds under Title IV when the Department of Education denied Florida Coastal School of Law access to Title IV funds, then the recipient is not federally funded and Mark can't lawsuit a dead law school under § 601 of Title VI. The district court claims FCSL is still federal funded under Title VI, see page 4 ECF No. 84. See also Mark's arguments in ECF No. 54 pages 59-66 further stating there are no alternative adequate remedy.

10. Whether the district court abused its discretion many times and showed bias under 28 U.S.C. § 455 towards Mark's Coptic identity when (a) it denied class certification without rigorous analysis of its elements in ECF Nos. 34, 39, 45, 49 see *Eddlemon v. Bradley Univ.*, No. 22-2560; (b) when it denied amending the complaint once as a matter of right knowing Mark's lawsuit is not futile see *Runnion ex rel. Runnion v. Girl Scouts of Greater Chi. & Nw. Ind.*, 786 F.3d 510, 519 (7th Cir. 2015); (c) when it denied Mark's filed sureply which provided a cure to property and liberty due process deprivation ECF Nos. 61, 64-65, and 67; (d) when a judicial misconduct complaint was pending review before the 7th Circuit Judicial Council and Hon. Judge Sara Ellis refused to postpone the hearing or recuse from the case but retaliation occurred when the scheduled hearing among parties was canceled and a 14 page ruling was issued without any oral arguments or in-depth analysis of Plaintiff's pleadings, see ECF Nos. 78 (sealed not by the Court), 80, 81-82, and 84. For more details on judge shopping and what transpired many of Mark's painful journey, see ECF Nos. 120 and 121.

11. Whether the Department of Education violated the district court own ruling in ECF No. 84 (a) when it later removed the entire appeal process, a major rule, without going through the regulatory channels under the APA; and (b) when it failed to evaluate the IHRA definition in Mark's employment discrimination complaint 05-23-1149 which was the court's own ruling in ECF No. 84 stating that IHRA has to be part of the complaint in order to be evaluated subject to judicial review; see ECF No. 123 Exhibit A.

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[5] No wonder that many judges in the lower courts seem prepared to write the doctrine's eulogy. They are eager to stop aiding and abetting an "erode[d]" "role of the judiciary" and "diminishe[d]" "role of Congress." Egan v. Del. River Port Auth., 851 F.3d 263, 279 (3d Cir. 2017) (Jordan, J., concurring in the judgment). They are ready for the "Article III renaissance [that] is emerging against the judicial abdication performed in Chevron's name." Waterkeeper All. v. EPA, 853 F.3d 527, 539 (D.C. Cir. 2017) (Brown, J., concurring).

STATEMENT OF THE CASE

Plaintiff, Mark Bochra suffered various forms of discrimination with retaliation after reporting discrimination to the dean of the law school (ECF No. 54 page 29-30 & Exhibit 18); direct violations to Title IX of the Education Amendments of 1972 (when Mark was turned from a Complainant into a Respondent)[6]; Title VI of the Civil Rights Act of 1964, 42 U.S.C. § 2000d *et seq.*(based on Mark's Coptic identity, reciting verses from the bible, and his faith in Jesus Christ)[7]; and Section 504 of the Rehabilitation Act of 1973 (Mark was granted accommodation with the law school dean of student affairs who herself retaliated against him i.e., Lauren Levin). See also 29 U.S.C. § 794 *et seq.* Nondiscrimination under Federal grants and programs, including the procedural regulations for Title IX, 34 C.F.R. §§ 106.1-106.71; Title VI, 34 C.F.R. § 100.7; and Section 504, 34 C.F.R. §§ 104.11-104.14 and 104.61.

Mark was also discriminated and retaliated against by OCR leadership, mainly Melanie Velez the former director of OCR Atlanta and Kenneth Marcus the former OCR Secretary. Mark's OCR complaint went from a resolution agreement and enforcement action if a resolution is failed to be signed by the recipient to OCR tempering with witnesses and evidence, and dismissal of the OCR complaint after Mark Bochra filed several complaints with OIG DOE; first OIG DOE complaint was pertaining to OCR Atlanta and handled by special agent Neil Sanchez and later when Kenneth Marcus tried to implement the IHRA definition. See ECF No. 54 Exhibit 1 (Bochra Decl), and Exhibits 2-3 (resolution agreement), Exhibit 10 (Prof. Korin Munsterman's name and testimony were redacted from the findings after she was interviewed by OCR, her testimony in part was the school wanted to get rid of Mark and Mark was a good student). The history of OCR alone is extensive and long. Senator Dick Durbin was also involved sending 3 letters on Mark's behalf to former Secretary Betsy Devos, see ECF No. 54 Exhibit 12.

The district court granted defendants motion to dismiss without a hearing claiming in short 14 pages summary ruling that Mark lacks standing to lawsuit the department of education under the APA. The district court analysis also failed to evaluate Counts I to VI related to both the 2020 OCR Manual and the IHRA definition under the APA for injunctive and declaratory relief. See ECF Nos. 84-85. Mark filed a motion for reconsideration with more analysis in ECF

[6] Mark was assaulted, battered, and threatened to be killed by Michael Roy Guttentag (German Jewish). Mark Bochra (Coptic) was a complainant with the law school, see ECF No 54 page 29 for OCR finding.
[7] OCR considered the faith in Jesus Christ religion discrimination per se and didn't have jurisdiction over investigating religion discrimination but considered title vi with retaliation after discrimination was reported to the dean of the law school, Scott Devito.

No. 86 and the district court denied it without any written analysis in ECF No. 91 and was advised to appeal the decision with the 7th Circuit. In ECF No. 92 Mark requested an extension of time to file an appeal and was granted as good cause was shown, see ECF No. 94.

Mark timely appealed with the 7th Circuit and while on appeal Mark filed a motion with the district court in ECF No. 103 under FED. R. CIV. P. 60(b) in light of recent 5th and 8th Circuits' rulings under the APA, seeking leave to file an amended complaint but it was denied in ECF No. 105 for lack of jurisdiction. Mark filed a motion for reconsideration in ECF No. 106 with supplements ECF Nos. 108-109 under F.R.C.P 62.1 and F.R.A.P 12.1. If the district court chooses option 3 under F.R.C.P 62.1 then it can retain jurisdiction over the case and plaintiff can notify the 7th Circuit of the district court decision under F.R.A.P 12.1. The district court denied the motion without any analysis in ECF No. 110. Mark timely appealed those decisions as well and the 7th Circuit on its own consolidated the appeals.

I. FACTS AND PROCEDURAL HISTORY

Plaintiff, Mark Bochra is a Coptic, also the founder of the Abraham Accord, see ECF No. 9 Exhibits A & G.[8] Mark is a resident of Chicago city with an exemplary history in helping the community throughout high school and college. Mark through his educational journey in his high school and college has proven to be an exemplary student who received multiple awards and accolades regarding his performance in school and college, and his involvement in the community, which continues to this day. Mark provided various community services in the past such as: a) tutoring calculus to other students, b) coaching and taking care of children between the ages 7-14 in the Chicago Park District: Broadway Armory Park; among many other activities, c) providing more than 100 hours of community service such as painting mural walls to decorate his high school, d) a proud blood donor at University of Illinois Medical Center, e) a member of national honor society since 2006 at UIC (Phi Eta Sigma); among many other activities. Some of Mark's awards were a Presidential award signed by Former President George W. Bush and U.S. Secretary of Education Rod Paige, Junior Citizen Award from Chicago Park

[8] The Coptic Church is based on the teachings of Saint Mark who brought Christianity to Egypt during the reign of the Roman emperor Nero in the first century, a dozen of years after the Lord's ascension. He was one of the four evangelists and the one who wrote the oldest canonical gospel. Christianity spread throughout Egypt within half a century of Saint Mark's arrival in Alexandria as is clear from the New Testament writings found in Bahnasa, in Middle Egypt, which date around the year 200 A.D., [...]. The Coptic Church, which is now more than nineteen centuries old, was the subject of many prophecies in the Old Testament. Isaiah the prophet, in Chapter 19, Verse 19 says "In that day there will be an altar to the LORD in the midst of the land of Egypt, and a pillar to the LORD at its border."

District signed by Chicago Park District Superintendent and CEO Timothy Mitchell. To see list of awards, please see ECF No. 124 Exhibit A. Mark came to the district court not speaking about his past awards and character, he came speaking about Jesus Christ but many have not only mocked him like Ms. Sarah Terman in ECF No. 28 page 3 but others targeted his home and his place of work was next; see ECF Nos. 120-121. Mark spoke in parable but many looked and did not see, and listened but did not understand.

Mark graduated from University of Illinois at Chicago (UIC) with a Bachelor in liberal arts and science with a focus in pre-dental courses and Jewish studies. Mark's dream career greatly shifted toward the legal profession after he experience housing discrimination and settled the case in his family's favor with a permanent settlement in *Amin et al v. 5757 North Sheridan Rd Condo Assn. et al* (1:12-CV-00446), and he wanted to be a lawyer, even better a compassionate judge after interning with several law firms. This was a case of a Jewish Condo Association targeting a Coptic family in various ways; pain was there but Jesus Christ was in its midst.

A. Mark facing discrimination & retaliation at Florida Coastal School of Law

Mark with a career dream of becoming a lawyer, went to law school, Florida Coastal School of Law (FCSL), little did he knew was that he would be placed in another trial wherein, he will experience egregious forms of discrimination and retaliation because of his Coptic identity and his faith in Jesus Christ yet again at the hands of several Jewish people; see ECF No. 54 pages 29-31. The law school demanded from Mark to sign a waiver and release of all legal claims against it if he wishes to receive his education because Mark has turned into a liability for the law school, see ECF No. 54 Exhibit 20, but Mark refused and proceeded with a complaint with OCR under Title VI of the Civil Right Act of 1964, 42 U.S.C. § 2000d et seq for both intentional discrimination with retaliation and disparate impact discrimination for all affected students. Mark further during his phone evaluation with OCR Senior Attorney Ledondria H. Saintvil at OCR Atlanta, explained further violations to section 504, religion, and how several Jewish individuals discriminated against him i.e., the evil student Michael Roy Guttentag, his law professor Benjamin Priester, and the dean of student affairs who turned Mark from a Complainant into a Respondent and covered for Michael Roy Guttentag's crimes i.e., Lauren Levin.

Ms. Saintvill advised Mark that she won't investigate religion discrimination because OCR don't have jurisdiction over religion discrimination. After the phone call, OCR opened the case for investigation but redacted some of Mark's allegations including being threatened by his

tort professor, Prof Pingree; see ECF No. 54 page 33 Exhibits 16-17. All these chains of events which occurred were important to Mark's complaint, he wrote 3 detailed investigative memos for OCR Atlanta to understand how Mark was targeted, discriminated and retaliated against even after reporting discrimination to the dean of the law school; the head evil planner was Benjamin Priester after reading Mark's email to his professors reciting a verse from the bible ECF No. 54 Exhibit 19. Mark's subsequent e-mails to OCR and provided evidence also showed violations to Title IX and Section 504, OCR usual practice is when they find other violations during an investigation, they address it in a resolution agreement; see ECF No. 54 pages 35-44.

B. OCR Case Processing Manual was applied selectively and differently on Mark compare to others: Witnesses & the Evidence were tempered with intent & malice

OCR knew after interviewing few witnesses including LT Larry Kitchen who was the first to be interviewed by providing Mark his cell phone to give it to OCR investigator, see ECF No. 54 pages 34-35. At some point during the investigation Mark found from his professor Korin Munsterman that OCR lied to him and did not interview her and canceled the interview with two professors i.e., Prof Munsterman and Prof. Pingree and proceeded with negotiating a resolution agreement with the recipient; see Am. Comp ECF No. 9 Exhibit B pages 4-5, the OCR manual section 302 dictates that if a resolution agreement is initiated, the parties needs to be notified including the complainant. Here Mark found an OCR investigator lied to him and he started to send letters to Secretary of OCR at that time Ms. Candice Jackson who appointed Enforcement Director Randolph Wills telling him "I need this case handled properly" see Am. Comp ECF No. 9 Exhibit D pages 9-12. See also later an OIG DOE complaint to the inspector general and a follow up e-mail from special agent Neil Sanchez in Am. Comp ECF No. 9 Exhibit D pages 13-14. See further analysis in ECF No. 54.

Mark's main communications were no longer with Ms. Ledondria H. Saintvil but directly with OCR HQ through Mr. Randolph Wills who is currently the deputy assistant secretary for enforcement overseeing all enforcement directors[9] and with Ms. Melanie Velez the former director of OCR Atlanta. While Ms. Candice Jackson was the Secretary of OCR, Mark was in good hands, Ms. Jackson was a Christian and she felt Mark's pain. Until came the dark day wherein, Kenneth Marcus joined OCR and he wasn't just any person, he was an agent acting on behalf of Israel betraying America and failing to register under (FARA).

[9] See https://www2.ed.gov/about/offices/list/ocr/contactus2.html

C. Mark started to report Kenneth Marcus and his use of the IHRA definition

Kenneth Marcus' hate toward the name Jesus Christ were shown within his writings, see Am. Comp ECF No. 9 Exhibit G pages 124-126. In a leaked Israeli documentary under the name "The Lobby USA" came the words of Kenneth Marcus; here you have the intent and later the act when he joined OCR.

> "The Goal is to have the Federal Government to establish a definition of anti-Semitism that is parallel to the state department definition"[10] said Kenneth Marcus.

The definition also brings in Jesus Christ into the debate by saying "Jews didn't kill Jesus Christ" which is an endorsed government view point discrimination. Kenneth Marcus failing to register under the Foreign Agents Registration Act (FARA) while working as agent on behalf of Israel betraying America by using the IHRA definition without Congress intent, without senior leadership approval at the department of education when he personally granted ZOA's appeal using the IHRA definition; see ECF No. 54 page 4. See also Am. Comp ECF No. 9 page 5.

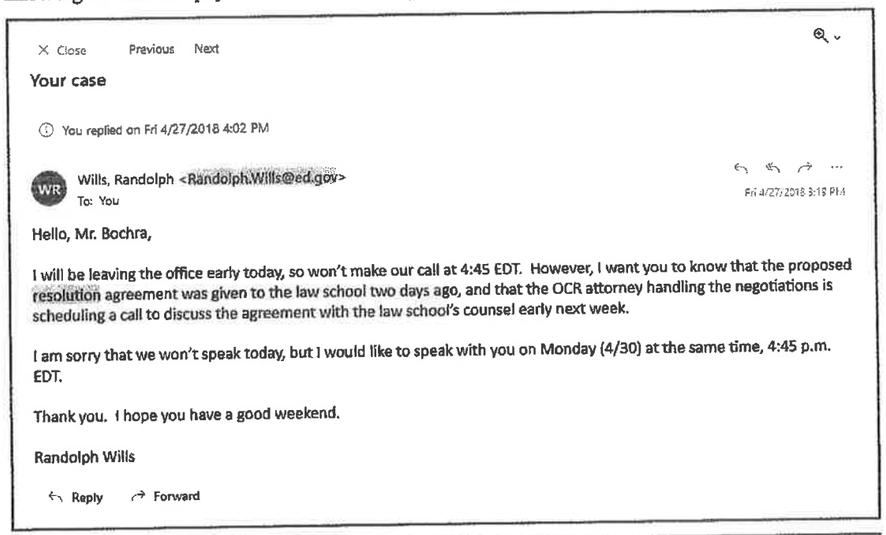
Mark reported Kenneth Marcus to every possible government agency from OIG DOE to OIG DOJ, to U.S. Office of Government Ethics but Mark found no rescue and solace; rather he was retaliated against when it came to his OCR Complaint. According to Melanie Velez on June 21, 2019 over the phone, she stated "the next step is enforcement action" if the recipient fails to sign the resolution agreement, the next step was not enforcement action because the recipient refused to sign a resolution agreement after OCR spend nearly 2 years in negotiation to the point Senator Dick Durbin sent 3 letters on behalf of Mark Bochra seeking inquiries from Secretary Betsy Devos and Ms. Melanie Velez responded 3 times to Senator Durbin's letters (3 responsive letters to Senator Durbin's office showing that the case has been in negotiation mode from December 11, 2018 to October 31, 2019) see ECF No. 54 page 34 and ECF No. 54 Exhibits 12. See Am. Comp ¶ 17, ECF No. 9 inspector general report regarding OCR non-compliance with federal civil right laws; OIG DOE were well aware of Mark's case with OCR.

> Dismissing complaints where investigations have been completed and/or are in resolution wastes time and effort spent by OCR staff investigating and working with those recipients, and identified issues that were in the process of being resolved *may be left unresolved* and *the recipient may remain in noncompliance*.

Melanie Velez with the approval of Kenneth Marcus at OCR HQ tempered with witnesses and the evidence, redacted witnesses' names i.e., Prof Korin Munsterman and LT Larry Kitchen

[10] See https://youtu.be/XytkI7afHcQ?si=XeyDoMoj88XoTYvZ&t=2004

along with their testimonies and destroyed Mark's OCR Complaint on the eve of covid lockdown knowing no one will pay attention to Mark's pleas during the pandemic lockdown.



× Close Previous Next

Your case

ⓘ You replied on Fri 4/27/2018 4:02 PM

WR Wills, Randolph <Randolph.Wills@ed.gov>
To: You
Fri 4/27/2018 3:13 PM

Hello, Mr. Bochra,

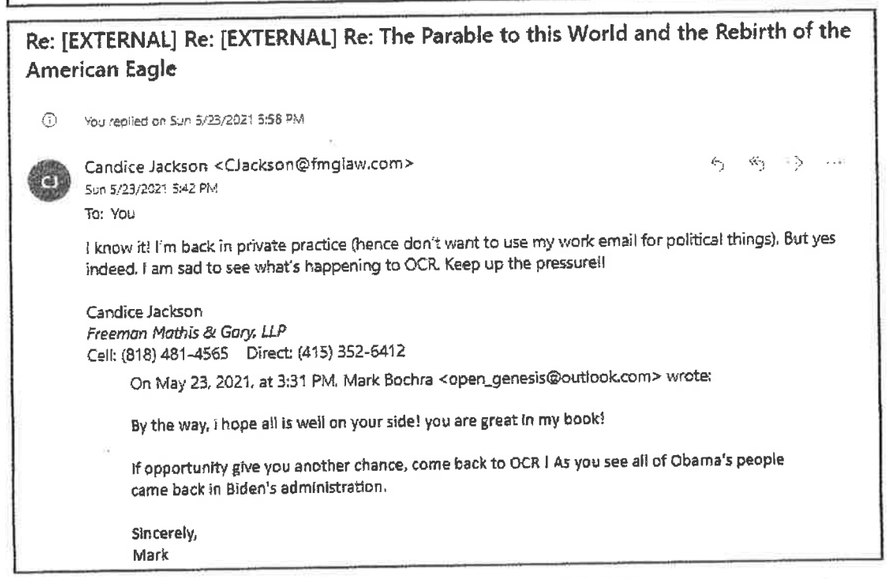
I will be leaving the office early today, so won't make our call at 4:45 EDT. However, I want you to know that the proposed resolution agreement was given to the law school two days ago, and that the OCR attorney handling the negotiations is scheduling a call to discuss the agreement with the law school's counsel early next week.

I am sorry that we won't speak today, but I would like to speak with you on Monday (4/30) at the same time, 4:45 p.m. EDT.

Thank you. I hope you have a good weekend.

Randolph Wills

Reply Forward



Re: [EXTERNAL] Re: [EXTERNAL] Re: The Parable to this World and the Rebirth of the American Eagle

ⓘ You replied on Sun 5/23/2021 5:58 PM

CJ Candice Jackson <CJackson@fmglaw.com>
Sun 5/23/2021 5:42 PM
To: You

I know it! I'm back in private practice (hence don't want to use my work email for political things). But yes indeed. I am sad to see what's happening to OCR. Keep up the pressure!!

Candice Jackson
Freeman Mathis & Gary, LLP
Cell: (818) 481-4565 Direct: (415) 352-6412

On May 23, 2021, at 3:31 PM, Mark Bochra <open_genesis@outlook.com> wrote:

By the way, i hope all is well on your side! you are great in my book!

If opportunity give you another chance, come back to OCR ! As you see all of Obama's people came back in Biden's administration.

Sincerely,
Mark

Former Secretary of OCR Ms Candice Jackson telling Mark "keep up the pressure"

This was a journey of both Florida Coastal School of Law and Office for Civil Rights under Kenneth Marcus leadership participating in discrimination and retaliation against Mark Bochra essentially equal protection and equal rights were denied saying in plain language with action "Michael Roy Guttentag (Jewish) with all his crimes (including assault, battery, and threatening to kill Mark see ECF No. 54 page 29) will be a lawyer and Mark Bochra (Coptic) will not be a lawyer." If the goal of promoting equity truly were to treat everyone equally, there would be no need to catalogue different treatments.

With the use of the IHRA definition and for it to say "Jews didn't kill Jesus Christ" and Mark throughout this litigation with action proved that with words and action, OCR participated in discrimination and retaliation against Mark under Kenneth Marcus leadership; certain federal officials decided Mark will not be a lawyer and Mark wanted the truth written by OCR in order to presented to any future law school and any state bar he applies to. Mark's future dream career as a lawyer was destroyed by different federal officials who retaliated against Mark.

D. District Court proceedings

Mark as a *pro se* did his best to explain this painful journey in the Am. Comp ECF No. 9 and in ECF No. 54 his response to the Justice Department motion to dismiss, hoping afterward to mediate this lawsuit with the removal of the IHRA definition from DOE website and for OCR to write the truth related to what happened to Mark at Florida Coastal School of Law in terms of discrimination and retaliation, in addition to reforming the OCR manual which keeps changing without going through the regulatory channels. However, the task was too difficult for the district court or Hon. Judge Sara Ellis and for Ms. Sarah Terman who is representing the department of education; healing was too difficult for the human's hearts to accomplish.

The district court granted defendants' motion to dismiss and with prejudice in a 14 page rushed ruling without any rigorous analysis of the case and its facts, see ECF Nos. 84-85 and without holding any hearing on the merits of this case (hearing was canceled). This was a 5 years case history with many communications with different OCR senior leadership and other government officials, none of these major details and history would be revealed until discovery. The district court granted defendants' motion to dismiss, dismissing all 6 counts with prejudice holding that the plaintiff lacks standing under the APA to lawsuit the department of education while neglecting the facts of this case, the mentioned case laws, and never *once* mentioned the words "arbitrary and capricious" agency action; knowing too well that is what happened.

SUMMARY OF ARGUMENT

"This case begins and ends with standing." *Carney v. Adams*, 592 U. S. ___, ___. The Court's authority under the Constitution is limited to resolving "Cases" or "Controversies." Art. III, §2. The Court's jurisprudence has "established that the irreducible constitutional minimum of standing contains three elements" that a plaintiff must plead and—ultimately—prove. *Lujan v. Defenders of Wildlife*, 504 U. S. 555, 560. Those elements are: (1) a "concrete and particularized" injury that is (2) "fairly traceable" to the challenged action of the defendant and (3) "likely" to be "redressed by a favorable decision." Id., at 560–561 (alterations and internal quotation marks omitted).

The Supreme Court found, however, that when a statute affords a litigant "a procedural right to protect his concrete interests," the litigant may establish Article III jurisdiction without meeting the usual "standards for redressability and immediacy." Id., at 572, n. 7. For example, we hypothesized a person "living adjacent to the site for proposed construction of a federally licensed dam" and explained that this person "has standing to challenge the licensing agency's failure to prepare an environmental impact statement, even though he cannot establish with any certainty that the statement will cause the license to be withheld or altered." *Ibid.* In this context, the fact that the defendant might well come to the same decision after abiding by the contested procedural requirement does not deprive a plaintiff of standing; see *Sackett v. Environmental Protection Agency,* 598 U.S. ___ (2023) No. 21-454.

The district court failed to rigorously evaluate and analyze plaintiff's first 5 counts related to both the IHRA definition and the 2020 OCR Manual Count I-V (essentially there are 10 counts, 5 pertaining to the IHRA definition and 5 pertaining to the 2020 OCR manual under the APA) see ECF No. 9 ¶¶ 99-132 and see also plaintiff's response in ECF No. 54. The district court to its like comingled both the 2020 OCR Manual and the IHRA definition, sometime speaking about the OCR manual and another time speaking about the IHRA definition and dismissed the lawsuit based on lack of standing *with prejudice*. However, the Seventh Circuit explained that "'[a] suit dismissed for lack of jurisdiction cannot also be dismissed "with prejudice"; that's a disposition on the merits, which only a court with jurisdiction may render.'" Id. at 6 (quoting *Frederiksen v. City of Lockport*, 384 F.3d 437, 438 (7th Cir. 2004)). See *Johnson v. Wattenbarger*, 361 F.3d 991, 993 (7th Cir.2004). "No jurisdiction" and "with prejudice" are mutually exclusive. When the Rooker-Feldman doctrine applies, there is only one

proper disposition: dismissal for lack of federal jurisdiction. A jurisdictional disposition is conclusive on the jurisdictional question: the plaintiff cannot re-file in federal court. But it is without prejudice on the merits, which are open to future review. However, in this case, plaintiff had standing to lawsuit the department of education and challenge the IHRA definition seeking an injunction against it, removal of the IHRA definition from the department of education website, and declaring it unconstitutional by adequately challenging it under the Administrative Procedure Act ("the APA") on four bases: (1) arbitrary & capricious, 5 U.S.C. § 706(2)(A); (2) "contrary to a constitutional right, power, [or] privilege," id. § 706(2)(B); (3) exceeding statutory authority, id. § 706(2)(C); and (4) promulgated "without observance of procedure required by law," id. § 706(2)(D).

ARGUMENT

A motion to dismiss under Rule 12(b)(6) challenges the sufficiency of the complaint, not its merits. Fed. R. Civ. P. 12(b)(6); *Gibson v. City of Chicago*, 910 F.2d 1510, 1520 (7th Cir. 1990). In considering a Rule 12(b)(6) motion, the Court accepts as true all well-pleaded facts in the plaintiff's complaint and draws all reasonable inferences from those facts in the plaintiff's favor. *Kubiak v. City of Chicago*, 810 F.3d 476, 480–81 (7th Cir. 2016). To survive a Rule 12(b)(6) motion, the complaint must assert a facially plausible claim and provide fair notice to the defendant of the claim's basis. *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009); *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555 (2007); *Adams v. City of Indianapolis*, 742 F.3d 720, 728–29 (7th Cir. 2014). A claim is facially plausible "when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." *Iqbal*, 556 U.S. at 678.

I. MARK HAS A STANDING TO CHALLENGE THE USE OF THE IHRA DEFINITION ON THE DEPARTMENT OF EDUCATION'S WEBSITE

Therefore whoever confesses me before men, him I will also confess before My Father who is in heaven. But whoever denies me before men, him I will also deny before My Father who is in heaven. [Matthew 10:32-39]. This is a simple verse known to the Coptic community.

The parable is as follows, if federal Judges can't implement the IHRA definition which also in part says "Jews didn't kill Jesus Christ" which contradicts with biblical prophecy Isaiah 53, see ECF No. 9 Exhibit A pages 25-26 and Exhibit G pages 110-114; if the Judicial Branch can't implement the IHRA definition as part of the Employment Dispute Resolution Plan (EDR

Plan) or as part of the Judicial Conduct and Disability Act of 1980 ("Act"), 28 U.S.C. §§ 351–364 and the Rules for Judicial-Conduct and Judicial-Disability Proceedings, if they can't apply it on their own, then they can't apply it on the rest of America i.e., the entire Education Sector (which included judges' children too because they too attend colleges and universalities), IHRA is unconstitutional because it violates the Establishment Clause of the First Amendment of the United States Constitution; it is a government endorsed view point discrimination.

A. The IHRA Definition Violates the Administrative Procedure Act

Defendants failed to challenge plaintiff's lawsuit in ECF No. 9 and his response in ECF No. 54 wherein, he mentioned Kenneth Marcus, how he used the IHRA definition to personally grant Zoa's appeal and the communication history between Mark Bochra and Kenneth Marcus. In fact, Defendants waived their rights to challenge many of Mark's legal arguments which challenges the IHRA definition under the APA on four bases: (1) arbitrary & capricious, 5 U.S.C. § 706(2)(A); (2) "contrary to a constitutional right, power, [or] privilege," id. § 706(2)(B); (3) exceeding statutory authority, id. § 706(2)(C); and (4) promulgated "without observance of procedure required by law," id. § 706(2)(D). See *CFPB v. All Am. Check Cashing, Inc.*, 33 F.4th 218, 241 (5th Cir. 2022) (Jones, J., concurring).

In ECF No. 54, Mark's response, he first (a) established the role of OCR; see ECF No. 54 pages 53-54; (b) Mark also spoke about Kenneth Marcus, an agent acting on behalf of Israel and how he used the IHRA definition by personally granting Zoa's appeal ECF No. 54 pages 4, Defendants never challenged Plaintiff's assertions surrounding Kenneth Marcus and his use of the IHRA definition as a force of law (the definition was used by Kenneth Marcus and is on the department of education website to this very day); (c) Defendants failed to challenge who are members of the Semitic tribe including the Copts, see ECF No. 54 pages 18-20; (d) Defendants never challenged how the IHRA definition harmed Mark Bochra as a plaintiff, ECF No. 54 pages 22-24; (e) Defendants never challenged that congress did not authorize defendants to adopt the IHRA definition ECF No. 54 pages 66-67 and a president cannot amend a regulation through an executive order ECF No. 54 pages 71-76; (f) Defendants never challenged Plaintiff's argument that the IHRA definition lacks statutory authority and is arbitrary and capricious ECF No. 54 pages 82-84; (g) Defendants never challenged Plaintiff's argument that the IHRA definition was in violation of notice and comment requirement, is a major rule in violation of congressional review act, and falls under the ongoing coercion doctrine, ECF No. 54 pages 86-88 & 95-96; (h)

Defendants never challenged that a budget must be created to use the IHRA definition, see Kenneth Marcus' own words ECF No. 54 pages 47, 72-73, 87-88.

> In order to codify a regulation, it must be formally proposed through the federal register, provide time for public comment, and be approved by the Department of Justice, Office of Management and Budget and the Small Business Administration, Marcus said

Last Defendants deceptively tried to convince the court that OCR protects Christians when OCR don't have jurisdiction over religion discrimination and never undertook the religion discrimination portion of Plaintiff's OCR Complaint (during the evaluation process with OCR senior attorney Ledondria H. Saintvil) relative to Benjamin Priester and his direct hate toward Mark when he read Plaintiff's email reciting a verse from the bible and Jesus Christ, ECF No. 54 Exhibit 19. Benjamin Priester was the individual who added additional charges after Mark complained to the Dean of discrimination and retaliation; at that point retaliation should have been ceased but it didn't and the law school was not able to justify how they turned Mark from a complainant and a victim into a respondent; ECF No. 54 pages 70, 68, 43, 40 (OCR findings showing how the perpetrator was only given a referral to write a paper on professionalism i.e., Michael Roy Guttentag after he assaulted, battered, and threaten to kill Mark Bochra).

> Repeatedly, the 7th Court has tried to get this point across: it did so again just this term in *Weyerhaeuser v. U.S. Fish and Wildlife Service*, 139 S. Ct. 361 (2018). The Court explained—again unanimously—that the "Administrative Procedure Act creates a 'basic presumption of judicial review [for] one 'suffering legal wrong because of agency action.'" *Weyerhaeuser*, 139 S. Ct. at 370 (citing *Abbott Labs. v. Gardner*, 387 U.S. 136, 140 (1967) (quoting 5 U.S.C. § 702)). In *Weyerhaeuser*, the Court explained that federal agencies sometimes fail to properly apply the law and even violate the law, and will continue to do so if those decisions are shielded from judicial review. *Id.* at 370. "That is why this Court has so long applied a strong presumption favoring judicial review of administrative action." *Id.* (quoting *Mach Mining, LLC v. EEOC*, 135 S. Ct. 1645, 1652-1653 (2015)).

The Biden administration came up with a new definition called the "nexus definition" yet he still promised a sector of the Jewish lobby that the white house is supporting the use of the IHRA definition; see ECF No. 121 pages 9-14. See also ECF No. 54 page 24-27.

In *Rojas v. City of Ocala, Fla.*, No. 18-12679 (11th Circuit), a group of atheists lawsuit the City of Ocala under the Establishment Clause of the First Amendment to the United States Constitution arguing the government cannot initiate, organize, sponsor, or conduct a community prayer vigil. Yet, the same event in private hands would be protected by the First Amendment.

See *Bd. of Ed. of Westside Comm. Schs. v. Mergens*, 496 U.S. 226, 250, 110 S.Ct. 2356, 110 L.Ed.2d 191 (1990) (opinion of O'Connor, J.) ("[T]here is a crucial difference between government speech endorsing religion, which the Establishment Clause forbids, and private speech endorsing religion, which the Free Speech and Free Exercise Clauses protect.") (emphasis in original). In this way, the rights of all citizens—religious and non-religious—are preserved. The 11th Circuit reasoned with the following

> After this appeal was filed, however, the Supreme Court drove a stake through the heart of the ghoul and told us that the Lemon test is gone, buried for good, never again to sit up in its grave. Finally and unambiguously, the Court has "abandoned Lemon and its endorsement test offshoot." *Kennedy v. Bremerton Sch. Dist.*, 142 S.Ct. 2407, 2427 (2022). In the course of doing so, the Court asserted that it had already done it – "long ago," id. - which was news to a third of the Court's Justices, see id. at 2434 (Sotomayor, J., dissenting, joined by Breyer and Kagan, JJ.) ("Today's decision . . . overrules Lemon ....").

The 11th Circuit directed lower court to reconsider the ruling that found the prayer vigil unconstitutional and the Supreme Court declined to hear the City's case at this time.[11]

B. An Endorsed Government View Point Discrimination: The IHRA Definition

Freedom of speech is not just about speech. It is also about the right to debate with fellow citizens on self-government,[12] to discover the truth in the marketplace of ideas,[13] to express one's identity,[14] and to realize self-fulfillment in a free society.[15] That freedom is of first importance to many Americans such that the United States Supreme Court has relaxed procedural requirements for citizens to vindicate their right to freedom of speech,[16] while making it harder for the government to regulate it.[17] This case is about one such regulation.

In *Kennedy v. Bremerton School District* (21-418)[18] in a 6–3 opinion written by Justice Gorsuch, the court held that the First Amendment's free speech and free exercise clauses protect

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[11] See https://www.supremecourt.gov/orders/courtorders/030623zor_f2bh.pdf
[12] See N.Y. Times v. Sullivan, 376 U.S. 254 (1964) (establishing a heightened standard to find defamation because the government may not chill criticism of public figures).
[13] See Abrams v. United States, 250 U.S. 616, 630 (1919) (Holmes, J., dissenting) ("[T]hat the best test of truth is the power of the thought to get itself accepted in the competition of the market.").
[14] W. Va. State Bd. of Educ. v. Barnette, 319 U.S. 624 (1943) (holding that refusing to salute the American flag is a protected right to express dissent as a form of autonomy and self-expression).
[15] Procunier v. Martinez, 416 U.S. 396, 427 (Marshall, J., concurring).
[16] Broadrick v. Oklahoma, 413 U.S. 601, 612 (1973).
[17] Reno v. ACLU, 521 U.S. 844, 874 (1997); Ashcroft v. ACLU, 535 U.S. 564, 573 (2002); see also Brown v. Ent. Merchs. Ass'n, 564 U.S. 786, 794 (2011).
[18] See ruling 21-418 Kennedy v. Bremerton School Dist. (06/27/2022) (supremecourt.gov)

a high school football coach's right to pray on the 50-yard line of the school football field after a game in a quiet, publicly visible religious observance. The court held that the school district had violated both his free speech and religious liberty rights by suspending him. The coach was engaged in private speech, not government speech in his capacity as a school employee, by leading the prayers on the 50-yard line after games. The court also held that the school district's tolerance of Kennedy's prayers did not violate the establishment clause, and cast aside the court's Lemon test for evaluating whether government acts appear to endorse religion. Instead, Justice Gorsuch wrote that the court should look to historical practices and understandings to evaluate whether conduct offends the establishment clause.

In *Carson v. Makin* (20-1088)[19] in a 6–3 decision, Chief Justice Roberts wrote that the free exercise clause prohibited Maine from discriminating against religious schools by excluding those schools from a tuition assistance program open to nonsectarian schools in rural areas without free-standing public schools. Because the Maine Constitution requires that every town provide children with free public education, the state offered tuition assistance to private, nonsectarian schools in rural Maine towns lacking the funds and population to support a free public school. Two families who wanted to use the state tuition payments to send their children to Christian schools sued when the state refused to provide the state tuition assistance to the schools. The court held that Maine had discriminated against religious schools by excluding them from the program. Chief Justice Roberts wrote that Maine could not promote "stricter separation of church and state than the Federal Constitution requires" while penalizing parents for the free exercise of their religion by denying them tuition payments available to every other parent.

See *Shurtleff et al v. City of Boston et al* (20–1800).[20] This case was the definition of what constituted a government endorsed view point or not. The Supreme Court held that the Boston's flag-raising program does not express government speech. Pp. 5–12 and so everyone is entitled to fly their preferred flag.

> The Free Speech Clause does not prevent the government from declining to express a view. See *Pleasant Grove City v. Summum*, 555 U. S. 460, 467–469. The government must be able to decide what to say and what not to say when it states an opinion, speaks for the community, formulates policies, or implements programs. The boundary between government speech and private expression can blur when, as here, the government invites

[19] See ruling 20-1088 Carson v. Makin (06/21/2022) (supremecourt.gov)
[20] See 20-1800 Shurtleff v. Boston (05/02/2022) (supremecourt.gov)

the people to participate in a program. In those situations, the Court conducts a holistic inquiry to determine whether the government intends to speak for itself or, rather, to regulate private expression. The Court's cases have looked to several types of evidence to guide the analysis, including: the history of the expression at issue; the public's likely perception as to who (the government or a private person) is speaking; and the extent to which the government has actively shaped or controlled the expression. See *Walker v. Texas Div., Sons of Confederate Veterans, Inc.*, 576 U. S. 200, 209–213. Considering these indicia in Summum, the Court held that the messages of permanent monuments in a public park constituted government speech, even when the monuments were privately funded and donated. See 555 U. S., at 470–473. In Walker, the Court found that license plate designs proposed by private groups also amounted to government speech because, among other reasons, the State that issued the plates "maintain[ed] direct control over the messages conveyed" by "actively" reviewing designs and rejecting over a dozen proposals. 576 U. S., at 213. On the other hand, in *Matal v. Tam*, the Court concluded that trade marking words or symbols generated by private registrants did not amount to government speech because the Patent and Trademark Office did not exercise sufficient control over the nature and content of those marks to convey a governmental message. 582 U. S.___, ___. Pp. 5–6.

Because the flag-raising program did not express government speech, Boston's refusal to let petitioners fly their flag violated the Free Speech Clause of the First Amendment. When the government does not speak for itself, it may not exclude private speech based on "religious viewpoint"; doing so "constitutes impermissible viewpoint discrimination." *Good News Club v. Milford Central School*, 533 U. S. 98, 112. Boston concedes that it denied petitioners' request out of Establishment Clause concerns, solely because the proposed flag "promot[ed] a specific religion." App. to Pet. for Cert. 155a. In light of the Court's government-speech holding, Boston's refusal to allow petitioners to raise their flag because of its religious viewpoint violated the Free Speech Clause. Pp. 12–13.

The Justice Department in its Amicus Curiae Brief to the Supreme Court stated that "the government-speech doctrine allows the government to rely on contributions from private actors, but does not apply when the government creates a forum for a diversity of private views." The justice Department added that because the City's flag-raising program is a forum for private speech, the denial of petitioners' application was impermissible viewpoint discrimination and they cited many case laws within their brief.[21]

> *Adderley v. Florida*, 385 U.S. 39 (1966); *American Legion v. American Humanist Association*, 139 S. Ct. 2067 (2019); *A.N.S.W.E.R. Coalition v. Jewell*, 153 F. Supp. 3d 395 (D.D.C. 2016), affirmed on other grounds, 845 F.3d 1199 (D.C. Cir. 2017); *Arkansas Educational Television Commission v. Forbes*, 523 U.S. 666 (1998); *Capitol Square Review & Advisory Board* v. *Pinette*, 515 U.S. 753 (1995); *Community for Creative Non-Violence* v. *Lujan*, 908 F.2d 992 (D.C. Cir. 1990); *Cornelius* v. *NAACP Legal Defense & Educational*

[21] See brief http://www.supremecourt.gov/DocketPDF/20/20-1800/201010/20211122165123662_20-1800tsacUnitedStates.pdf

Fund, Inc., 473 U.S. 788 (1985); *Good News Club* v. *Milford Central School*, 533 U.S. 98 (2001); *Greer* v. *Spock*, 424 U.S. 828 (1976); *International Society for Krishna Consciousness, Inc.* v. *Lee*, 505 U.S. 672 (1992); *Johanns* v. *Livestock Marketing Association*, 544 U.S. 550 (2005); *Lamb's Chapel* v. *Center Moriches Union Free School District*, 508 U.S. 384 (1993); *Legal Services Corp.* v. *Velazquez*, 531 U.S. 522 (2001); *Lehman* v. *City of Shaker Heights*, 418 U.S. 298 (1974); *Matal* v. *Tam*, 137 S. Ct. 1744 (2017); *Minnesota Voters Alliance* v. *Mansky*, 138 S. Ct. 1876 (2018); *National Endowment for the Arts* v. *Finley*, 524 U.S. 569 (1998); *Perry Education Association* v. *Perry Local Educators' Association*, 460 U.S. 37 (1983); *Pleasant Grove City* v. *Summum*, 555 U.S. 460 (2009); *Rosenberger* v. *Rector & Visitors of University of Virginia*, 515 U.S. 819 (1995); *Rust* v. *Sullivan*, 500 U.S. 173 (1991); *United States Postal Service* v. *Council of Greenburgh Civic Associations*, 453 U.S. 114 (1981); *Walker* v. *Sons of Confederate Veterans*, 576 U.S. 200 (2015); *Widmar* v. *Vincent*, 454 U.S. 263 (1981)

C. The Unanimous Supreme Court ruling in Axon Enterprise v. Federal Trade Commission provides the Plaintiff with a Standing to challenge the IHRA definition seeking an injunction against it

The Supreme Court held that district courts may ordinarily hear those challenges by way of 28 U. S. C. §1331's grant of jurisdiction for claims "arising under" federal law. See *Thunder Basin*, 510 U. S., at 207–212; *Elgin v. Department of Treasury*, 567 U. S. 1, 10–15 (2012); see also *Free Enterprise Fund v. Public Company Accounting Oversight Bd.*, 561 U. S. 477, 489 (2010) (noting that statutory schemes for agency review "[g]enerally" are "exclusive"). The agency effectively fills in for the district court, with the court of appeals providing judicial review.

> The Court identified three considerations designed to aid in that inquiry, commonly known now as the Thunder Basin factors. First, could precluding district court jurisdiction "foreclose all meaningful judicial review" of the claim? Id., at 212–213. Next, is the claim "wholly collateral to [the] statute's review provisions"? Id., at 212 (internal quotation marks omitted). And last, is the claim "outside the agency's expertise"? *Ibid.* When the answer to all three questions is yes, "we presume that Congress does not intend to limit jurisdiction." Free Enterprise Fund, 561U. S., at 489. But the same conclusion might follow if the factors point in different directions. The ultimate question is how best to understand what Congress has done— whether the statutory review scheme, though exclusive where it applies, reaches the claim in question.

The first Thunder Basin factor recognizes that Congress rarely allows claims about agency action to escape effective judicial review. See, e.g., *Bowen v. Michigan Academy of Family Physicians*, 476 U. S. 667, 670 (1986). The second and third reflect in related ways the point of special review provisions—to give the agency a heightened role in the matters it customarily handles, and can apply distinctive knowledge to. This recent Supreme Court ruling provides Plaintiff with a standing seeking judicial review to challenge the IHRA definition that it is unconstitutional to use or endorse on the government's website in direct violation of the APA.

D. The IHRA Definition states "Jews didn't kill Jesus Christ" then another definition can claim "Muhammad is not the Prophet of Islam" and "Moses did not receive the 10 commandments from God": Government Endorsed View Point Discrimination

The IHRA definition is unconstitutional under the Administrative Procedure Act ("the APA") on four bases: (1) arbitrary & capricious, 5 U.S.C. § 706(2)(A); (2) "contrary to a constitutional right, power, [or] privilege," id. § 706(2)(B); (3) exceeding statutory authority, id. § 706(2)(C); and (4) promulgated "without observance of procedure required by law," id. § 706(2)(D).

> "An elective despotism was not the government we fought for; but one which should not only be founded on free principles, but in which the powers of government should be so divided and balanced . . . , as that no one could transcend their legal limits, without being effectually checked and restrained by the others." The Federalist No. 48 (J. Madison)(quoting Thomas Jefferson's Notes on the State of Virginia (1781)). In particular, as George Mason put it in Philadelphia in 1787, "[t]he purse & the sword ought never to get into the same hands." The Records of the Federal Convention of 1787, at 139–40 (M.Farrand ed. 1937). These foundational precepts of the American system of government animate the Plaintiffs' claims in this action. They also compel our decision today.

The 5th Circuit ruled in favor of the Plaintiff under the APA in *Consumer Financial Protection Bureau v. Community Financial Services* Ass'n of *America*, Ltd., 21-50826. The IHRA definition violates the Establishment Clause of the First Amendment; the same is true with Equal Protection Clause under the 5th amendment; Jews vs. Gentiles is the definition of IHRA.

E. The IHRA Definition injured the Plaintiff and Many others

The district court's own reasoning is that the IHRA definition does not trace any *concrete injury* ECF No. 84 page 8, while the district court ignored many of plaintiff's arguments in ECF No. 54 which were waived by the Defendants because they did not challenge them; moreover this IHRA definition offends the Coptic faith greatly when it says "Jews didn't kill Jesus Christ" going against biblical prophecy Isaiah 53, Isaiah 19 and many more. However, destiny allowed for Mark to be subject to employment discrimination at Chicago Public School and again the IHRA definition was revisited in several OCR Complaints; the first complaint handled by Mr. Jeffery Tunrbull, OCR claimed no jurisdiction over religion discrimination but in order to cure what DOE/OCR told the district court that they protect Christians, they came up with a new definition on January 4, 2023 under Title VI called "shared ancestry" and it was put to the test yet again along with the IHRA definition, in another OCR complaint handled by Ms. Melissa Howard, during the evaluation phase, Ms. Howard failed to apply what the district court advised that

IHRA has to be part of the OCR complaint in order to be subject to a judicial review, see ECF No. 123, Exhibit A. This was a liberal vs. a conservative ruling and it failed America because it could not see the danger of this danger for all of American, many would say "why the Jews and not me too?"

> OCR did not use or discuss the IHRA definition in its deliberations. Docs. 28-2, 28-3. The Department did not use the contested definition in Bochra's situation, and a change in the Department's use of this definition would not provide him redress. See Sierra Club v. Morton, 405 U.S. 727, 739–740 (1972) (The APA requires "that the party seeking review must himself have suffered an injury" and does not "authorize judicial review at the behest of organizations…; wrote Judge Sara Ellis.

See also Exhibit "C" as part of the filed Appellant's Separate Appendix, email communication to Kenneth Marcus, Ms. Melanie Velez, and Mr. Randolph Wills at OCR showing how the IHRA definition when applied has injured Mark the Coptic. The Jewish student had the right to self-determination and became a lawyer in New York despite being the perpetrator committing crimes (assault, battery, and threatening to kill Mark while deceiving 3 state judges) while Mark Bochra the victim did not have the right to self-determination (his legal education and career was destroyed). Mark needed the truth written by OCR in order to present it to any future law school and state bar. This is the same as the case of *Caryn Strickland v. US*, No. 21-1346 (4th Cir. 2022).

> The Supreme Court held that the dismissal of Logan's complaint violated Logan's due process right to use the statutorily mandated procedures for adjudicating his discrimination claim. Logan had a protectable property interest in his handicap-discrimination claim, the Court held, and the dismissal of that claim as a result of the Commission's procedural error frustrated Logan's due process right "to have the Commission consider the merits of his charge . . . before deciding whether to terminate his claim." Id. at 434.

In a post-Logan case, the Seventh Circuit explained that

> The reason that there is a right of access to adjudicatory procedures is not because litigants have property interests in the procedures themselves. Rather, access to adjudicatory procedures is important because it serves to protect the litigants' underlying legal claims, which are the true property interests. . . . In short, the property interest in Logan was the underlying discrimination claim; the adjudicatory process constituted the process that was due in connection with the deprivation of that property interest.
>
> *Shvartsman v. Apfel*, 138 F.3d 1196, 1199 (7th Cir. 1998); see also *Howard v. Defrates*, 811 F. App'x 376, 378 (7th Cir. 2020) (holding that "[t]he state-established right to pursue a discrimination claim through adjudicatory procedures can be a property interest, the deprivation of which implicates the Due Process Clause.").

F. Defendants waived their rights to challenge Plaintiff's claims

Defendants waived their rights on appeal to challenge plaintiff's arguments under the (law of the case, waiver, and judicial estoppels).[22] See *Bradley v. Vill. of Univ. Park, Ill.* No. 22-1903 (7th Circuit), this court explained "we explain how defendants previously waived the issue of Bradley's property interest in his job and why we hold them to that waiver. . . defendants intentionally and permanently abandoned the right to contest Bradley's property interest."

> Defendants never challenged Plaintiff's assertions surrounding Kenneth Marcus and his use of the IHRA definition as a force of law (the definition was used by Kenneth Marcus and is on the department's website); (a) Defendants failed to challenge who are members of the Semitic tribe including the Copts, see ECF No. 54 pages 18-20; (b) Defendants never challenged how the IHRA definition harmed Mark Bochra as a plaintiff, ECF No. 54 pages 22-24; (c) Defendants never challenged that congress did not authorize defendants to adopt the IHRA definition ECF No. 54 pages 66-67 and a president cannot amend a regulation through an executive order ECF No. 54 pages 71-76; (d) Defendants never challenged Plaintiff's argument that the IHRA definition lacks statutory authority and is arbitrary and capricious ECF No. 54 pages 82-84; (e) Defendants never challenged Plaintiff's argument that the IHRA definition was in violation of notice and comment requirement, is a major rule in violation of congressional review act, and falls under the ongoing coercion doctrine, ECF No. 54 pages 86-88 & 95-96; (f) Defendants never challenged that a budget must be created to use the IHRA definition, see Kenneth Marcus' own words ECF No. 54 pages 47, 72-73, 87-88.

The district court never evaluated any of Plaintiff's presented arguments concerning "arbitrary and capricious" agency action, in fact it never even mentioned the words "arbitrary and capricious" under the APA once in its decision, rather the court pretended it never read them while the Defendants abandoned their rights to challenge many of Plaintiff's raised arguments.

II. THE 2020 OCR MANUAL: ONGOING HARM

"Justice delayed is justice denied" said former Secretary for OCR Ms. Candice Jackson. Like the IHRA definition, the district court failed to evaluate the changes to the OCR Manual along with how it was applied selectively and differently on Mark because of his Coptic identity compare to others; a case went from a resolution agreement for several years and enforcement action as the next step, to dismissal by tempering with witnesses and the evidence. The district court failed evaluate the changes to the OCR Manual and how it was not followed in Mark's OCR complaint

[22] These doctrines of-ten overlap. See, e.g., *Carmody v. Board of Trustees of Univ. of Illinois*, 893 F.3d 397, 407–08 (7th Cir. 2018) (discussing relationship between mandate rule and law-of-the-case doctrine); *United States v. Husband*, 312 F.3d 247, 250–51 (7th Cir. 2002) (remand does not include issues "waived or decided"). See *Eddie Bradley v. Village of University Park et al* No. 22-1903 (7th Circuit)

under the Administrative Procedure Act ("the APA") on four bases: (1) arbitrary & capricious, 5 U.S.C. § 706(2)(A); (2) "contrary to a constitutional right, power, [or] privilege," id. § 706(2)(B); (3) exceeding statutory authority, id. § 706(2)(C); and (4) promulgated "without observance of procedure required by law," id. § 706(2)(D). See also *Delgado v. United States Department of Justice*, No. 19-2239 (7th Cir. 2020). The district court reasoned in ECF No. 84 page 7 in the footnote that OCR has the discretion of seeking enforcement action or not but the OCR manual doesn't dictate such reasoning at all and OCR is not EEOC or DOJ.

Defendants also argued that a 10 page double space is not a substantive rule subject to notice and comment ECF No. 84 pages 10-11 unlike the removal of the entire appeal process without notice and comments, which is a substantive rule and Defendants did just that in July 18, 2022 Manual update by removing the entire "appeal" process and it has affected Mark's current employment discrimination OCR complaints, he was able to appeal a portion of the 1st OCR Complaint No. 05-22-1497 because it fell under the old manual but the new OCR complaints Nos. 05-23-1148, 05-23-1149, and 05-23-1574 are not subject to appeals but judicial reviews. See ECF No. 123 pages 5-11. Defendants told the district court one thing and did the direct opposite. See also ECF No. 54 pages 48-49 when OCR brought back all the dismissed complaints when litigation was raised and the appeal process was removed.

A. Due Process Violations under the 5th Amendment

Much of Plaintiff's argument related to due process violation in terms of liberty and property deprivation was in ECF No. 61 sureply pages 14-20 reciting several notable 7th Circuit Court cases. The merits was that Mark stated a claim that federal officials deprived him of protected property and/or liberty interests without due process by subjecting him to a fundamentally unfair process related to resolving his discrimination and retaliation complaint because it went from a resolution agreement and enforcement action right to tempering with witnesses and evidence along with violating its own OCR manual. No one spends nearly 2 years negotiating a resolution when the manual stated 30 days is the only time frame allowed for negotiation under section 302 of the manual; this allowed many witnesses to escape being interviewed by OCR.[23]

See *Doe v. Purdue University*, No. 17-3565 (7th Cir. 2019) in a 30 pages memorandum the 7th Circuit explained what is due process violation under the fourteenth amendment based on

[23] Many witnesses left FCSL and school faculty from the witness list also left FCSL after they were scheduled for an interview. OCR also redacted witnesses they interviewed along with their testimony; Melanie Velez did all this.

property interest (procedural deprivation) or liberty interest (free from discrimination), sex discrimination, and sham investigation under Title IX.[24] The same is true in *Geinosky v. City of Chicago* (2012) No. 11–1448 when the 7th Circuit ruled in favor of Geinosky under the Equal Protection Clause "Class–of–One". Equal protection clause was recited in Mark's OCR appeal as well along with many of the past e-mails to OCR senior leadership. See ECF No. 54 Exhibit 15.

B. Official and Individual Capacity: Due Process and Equal Protection

Mark names the Department of Education and officers in their official and individual capacities, seeking declaratory and prospective injunctive relief to remedy due process and equal protection violations. The official and individual capacities are: Former Secretary Betsy Devos, Former Secretary Kenneth Marcus, Former Acting Secretary Suzanne Goldberg, Current Secretary Miguel Cardona, and Current Secretary Catherine Lhamon.

Mark's claims for damages and equitable reliefs under *Bivens v. Six Unknown Fed. Narcotics Agents,* 403 U.S. 388 (1971) for equal protection violations, and under 42 U.S.C. §§ 1985(2) and (3), 42 U.S.C. § 1986 for conspiring to violate Mark's constitutional rights and neglecting or refusing to prevent such violations along with acting with deliberate indifference toward his OCR complaint; a complaint that went from a resolution agreement and enforcement action to tempering with witnesses and evidence in order to destroy Mark's OCR complaint.

("The test is whether the official's conduct was 'clearly unreasonable' or 'deliberately indifferent,' which describes defendants' conduct here." (Quoting *Feminist Majority Found.*, 911 F.3d at 701–02)); see also J.A. 1320 ("[T]here was a conscious failure to act here."). Mark's allegations that federal officials responded with deliberate indifference to his Coptic identity under title vi support his equal protection claim independent of his allegations of mixed retaliation and continued discrimination under Wilcox. Mark raised all 3 claims with OCR under Title VI, Title IX, and Section 504 and OCR knew many of Mark's rights were violated and for that reasons a negotiated resolution was in work for 2 years but the recipient refused to sign it. OCR next option was enforcement action but Melanie Velez after telling Mark about the next step being enforcement action, came and destroyed Mark's OCR complaint.

Here federal officials and with their dismissal of Mark's OCR complaint responded in a manner clearly unreasonable in the light of known circumstances. Federal officials did not engage in any efforts that were 'reasonably calculated to end the discrimination' rather they

[24] See https://law.justia.com/cases/federal/appellate-courts/ca7/17-3565/17-3565-2019-06-28.html

participated in it. Id. at 689 (quoting *Zeno v. Pine Plains Cent. Sch. Dist.*, 702 F.3d 655, 669 (2d Cir. 2012)). "[H]alfhearted investigation or remedial action" does not suffice to shield a defendant from liability. *S.B. ex rel. A.L. v. Bd. of Educ. of Harford Cnty.*, 819 F.3d 69, 77 (4th Cir. 2016). Moreover, the fact that a defendant "dragged its feet" and delayed before implementing remedial action shows deliberate indifference. *Zeno*, 702 F.3d at 669; see also id. at 669 n.13 (listing cases in which delays of up to six months constituted deliberate indifference). And once a defendant "is aware of its ineffective response," its failure to do more may be deemed to have "effectively caused" further harassment. Zeno, 702 F.3d at 670; see also *Wills v. Brown Univ.*, 184 F.3d 20, 26 (1st Cir. 1999).

The Supreme Court has identified "[c]ertain attributes of 'property' interests protected by procedural due process." *Bd. of Regents of State Colls. v. Roth*, 408 U.S. 564, 577 (1972). "To have a property interest in a benefit, a person clearly must have more than an abstract need or desire for it." Id. "He must have more than a unilateral expectation of it." Id. "He must, instead, have a legitimate claim of entitlement to it." Id. Importantly, "[p]roperty interests . . . are not created by the Constitution," but rather "are created and their dimensions are defined by existing rules or understandings that stem from an independent source such as state law rules or understandings that secure certain benefits and that support claims of entitlement to those benefits." Id. A "person's interest in a benefit is a 'property' interest for due process purposes if there are . . . rules or mutually explicit understandings that support his claim of entitlement to the benefit and that he may invoke at a hearing." *Perry v. Sindermann*, 408 U.S. 593, 601 (1972). "[T]he types of interests protected as 'property' are varied and, as often as not, intangible, relating to the whole domain of social and economic fact." *Logan v. Zimmerman Brush Co.*, 455 U.S. 422, 430 (1982) (internal quotation marks omitted).

III. FLORIDA COASTAL SCHOOL OF LAW IS NOT A FEDERALLY FUNDED RECIPIENT: NO ALTERNATIVE ADEQUATE REMEDY

When Plaintiff looked closely at the court's reasoning, the court claimed that Mark has an alternative and adequate remedy to lawsuit the recipient rather than the department while neglected to factor in that OCR itself participated in discriminating and retaliating against Mark under Kenneth Marcus leadership for being a whistleblower against Kenneth Marcus himself.

The district court only reason is that "[U]nder the APA, judicial review is appropriate for an agency action only when 'there is no other adequate remedy in a court." The court reasoned

there is an adequate remedy against the recipient but the recipient i.e., the law school was shut down by the department of education ECF No. 54 pages 59-66.

Not only that, in order to qualify as an adequate remedy, the recipient must be recognized as a federal funding under Title VI, the district court claim "Bochra can sue Florida Coastal School of Law as the alleged discriminator and a *recipient of federal funds under Title VI*…", and the department of education denied FCSL funds to Title IV in May 13, 2021 press release. Therefore, *Alexander v. Sandoval*, 532 U.S. 275, 279 (2001) ("[P]rivate individuals may sue to enforce § 601 of Title VI and obtain both injunctive relief and damages.") is inapplicable.

The recipient is not a recognized federally funded receiver under Title IV and was shut down by the department of education itself. See ECF No. 9 Exhibit G pages 131-134. The district court's own reasoning was overruled by the recent Supreme Court ruling in *Axon Enterprise v. Federal Trade Commission* and the current litigated Supreme Court case in *Loper Bright Enterprises v. Raimondo* No. 22-451 related to the "Chevron doctrine".

> No wonder that many judges in the lower courts seem prepared to write the doctrine's eulogy. They are eager to stop aiding and abetting an "erode[d]" "role of the judiciary" and "diminishe[d]" "role of Congress." *Egan v. Del. River Port Auth.*, 851 F.3d 263, 279 (3d Cir. 2017) (Jordan, J., concurring in the judgment). They are ready for the "Article III renaissance [that] is emerging against the judicial abdication performed in Chevron's name." *Waterkeeper All. v. EPA*, 853 F.3d 527, 539 (D.C. Cir. 2017) (Brown, J., concurring). And along with so many state courts, they are tired of seeing "our constitutional separation of powers" "disordered." *Valent v. Comm'r of Soc. Sec.*, 205 L. Ed. 2d 417, 524 (6th Cir. 2019) (Kethledge, J., dissenting); see also, e.g., *Voices for Int'l Bus. & Educ., Inc. v. NLRB*, 905 F.3d 770, 781 (5th Cir. 2018) (Ho, J., concurring) ("Misuse of the Chevron doctrine means collapsing the[] three separated government functions into a single entity."); *Aqua Prod., Inc. v. Matal*, 872 F.3d 1290, 1334 (Fed. Cir. 2017) (Moore, J.) ("Chevron has affected a broad transfer of legislative and judicial function to the executive."). See ECF No. 122 Exhibits A & B.

IV. DISTRICT COURT ABUSED ITS DISCRETION

The district court abused its discretion many times and showed bias under 28 U.S.C. § 455 towards Mark's Coptic identity when

> (a) it denied class certification without rigorous analysis of its elements in ECF Nos. 34, 39, 45, 49 see *Eddlemon v. Bradley Univ.*, No. 22-2560; (b) when it denied amending the complaint once as a matter of right knowing Mark's lawsuit is not futile see *Runnion ex rel. Runnion v. Girl Scouts of Greater Chi. & Nw. Ind.*, 786 F.3d 510, 519 (7th Cir. 2015); (c) when it denied Mark's filed sureply which provided a cure to property and liberty due process deprivation ECF Nos. 61, 64-65, and 67; (d) when a judicial misconduct complaint was pending review before the 7th Circuit Judicial Council and Hon. Judge Sara Ellis refused to postpone the hearing or recuse from the case but

> retaliation occurred when the scheduled hearing among parties was canceled and a 14 page ruling was issued without any oral arguments or in-depth analysis of Plaintiff's pleadings, see ECF Nos. 78 (sealed not by the Court), 80, 81-82, and 84. For more details on judge shopping and what transpired many of Mark's painful journey, see ECF Nos. 120 and 121.

In *Lee McKay v. City of Chicago* 22-1251 ECF No. 35, the 7th Circuit explained to a *pro se* litigant what abuse of discretion and bias means after 4 years in discovery; compare to Mark who didn't see the light of this case but was targeted because of it.

> After four years of contentious discovery—including the exchange of thousands of documents, many hours of depositions, two motions to compel, and allegations of discovery misconduct from each side—both parties moved for summary judgment. The district court granted the City's motion and denied McKay's. McKay's assertion of judicial bias, *see* 28 U.S.C. § 455, fails because she points to nothing that could support this allegation. . . Regardless, impatience, annoyance, and even anger are not sufficient evidence of bias. *See Liteky v. United States*, 510 U.S. 540, 555–56 (1994); *United States v. Betts-Gaston*, 860 F.3d 525, 534–36 (7th Cir. 2017). . . See *Shipley v. Chi. Bd. Of Election Comm'rs*, 947 F.3d 1056, 1062–63 (7th Cir. 2020). She does not identify any specific rulings as erroneous, present grounds for sanctioning the defendants, explain how she was prejudiced, or otherwise develop her arguments. ***We cannot fill the void for her***. Id.; see *Klein v. O'Brien*, 884 F.3d 754, 757 (7th Cir. 2018).

See also abuse of discretion declared by the 7th Circuit when the district court failed to evaluate all elements of a class certification, true Mark was a *pro se* in this case compare to others but the only element Mark didn't satisfy was being a lawyer to represent the class, but the court could have cured this elements after rigorous analysis by appointing council. See *Eddlemon v. Bradley Universityx*, No. 22-2560 (7th Cir. 2023); 7th Circuit vacated and remand because the district court did "'not separat[e] its analysis' of the plaintiff's claims. 23 F.4th at 713. There, we stated: "A one size (or one claim) approach is at odds with the 'rigorous analysis' required at the class certification stage."

The alternative to a class certification is a preliminary and permanent injunctive relief against the IHRA definition and the use of the 2020 OCR Manual.

CONCLUSION

For the forgoing reasons, this honorable court should reverse the decision of the district court and remand for further proceedings.

Respectfully submitted,

/s/ Mark Bochra
Plaintiff, Pro Se

CERTIFICATE OF COMPLIANCE

In accordance with Federal Rule of Appellate Procedure 32(g)(1) and Circuit Rule 32, I certify that this brief:

(i) Complies with the type-volume limitation of Circuit Rule 32 because it contains 12,273 words, including footnotes and excluding the parts of the brief exempted by Rule 32(f); and

(ii) Complies with the type volume limitation imposed by Fed. R. App. P. 32(a)(7)(B).

Respectfully submitted,

/s/ Mark Bochra
Plaintiff, Pro Se

Date: August 10, 2023