APPENDIX A

United States Court of Appeals
For the Eleventh Circuit

No. 22-14206
[Filed: April 10, 2024]

ROOBINA ZADOORIAN,

Plaintiff-Appellant,

versus

GWINNETT TECHNICAL COLLEGE,
KIMBERLY STRONG,
Director of Sonography Program,
JIM SASS,
Dean of Health Imaging & Informatics,
REBECCA ALEXANDER,
VP of Academic Affairs,
DEREK DABROWIAK,
Executive Director, Student Affairs -TCSG, et. al.

Defendants-Appellees.

Opinion of the Court

Appeal from the United States District Court
for the Northern District of Georgia
D.C. Docket No. 1:22-cv-00922-LMM

Before BRASHER, ABUDU, and ANDERSON, Circuit Judges.

PER CURIAM:

Roobina Zadoorian appeals the district court's order dismissing her Title VI discrimination lawsuit against Gwinnett Technical College ("GTC"), the Technical College System of Georgia ("TCSG"), and a number of school administrators and staff collectively with GTC and TCSG, the "State Defendants"). She also appeals the district court's dismissal of her Administrative Procedures Act ("APA") claim against the U.S. Department of Education's Office of Civil Rights ("OCR").

She argues that the district court erroneously dismissed her Title VI claims of intentional discrimination and retaliation against the State Defendants as time-barred because it incorrectly: (1) determined that her limitations period began before she alleges that she was aware of a similarly situated comparator; (2) failed to toll the limitations period due to State Defendants' fraud; and (3) relied on Georgia's two-year limitations period for personal injury claims, rather than the six-year period for contract claims.

Next, she argues that the district court erroneously dismissed her APA claim against OCR due to sovereign immunity because: (1) she had no adequate alternative remedy beyond an APA suit, because her OCR complaint related to disparate impact and not intentional discrimination; and (2) OCR failed to properly investigate her complaint pursuant to its own regulations.

We write only for the parties who are already familiar with the facts. Accordingly, we include only

such facts as are necessary to understand our opinion.

I. DISCUSSION

A. With respect to the State Defendants, did the district court err in its application of the statute of limitations?

"[W]e review *de novo* the district court's interpretation and application of the statute of limitations." *United States v. Frediani*, 790 F.3d 1196, 1199 (11th Cir. 2015) (quotation marks omitted). "A finding that equitable modification does not apply is subject to *de novo* review; however, this [C]ourt is bound by the district court's factual findings unless they are clearly erroneous." *Sturniolo v.Sheaffer, Eaton, Inc.*, 15 F.3d 1023, 1024 (11th Cir. 1994). Plaintiffs may "plead [themselves] out of court" by alleging facts inconsistent with the timeliness of their complaint. *See Villareal v. R.J. Reynolds Tobacco Co.*, 839 F.3d 958, 971 (11th Cir. 2016) (*en banc*).

Issues not raised in an initial brief are forfeited and generally deemed abandoned. *United States v. Campbell*, 26 F.4th 860, 871-72 (11th Cir. 2022) (*en banc*), *petition for cert. denied*, 143 S. Ct. 95 (2022). "[F]orfeiture is the failure to make the timely assertion of a right; waiver is the intentional relinquishment or abandonment of a known right." *Id.* at 872 (quotation marks omitted). "Waiver directly implicates the power of the parties to control the course of the litigation; if a party affirmatively and intentionally relinquishes an issue, then courts must respect that decision." *Id.*

Title VI states that "[n]o person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance." 42 U.S.C. § 2000d. Claims under Title VI are appropriately subjected to constitutional analysis. *Regents of Univ. of Cal. v. Bakke*, 438 U.S. 265, 286-87 (1978); *accord Grutter v. Bollinger*, 539 U.S. 306, 343 (2003). Further, standards that govern claims under Title VII are instructive in Title VI cases. *Ga. State Conf. of Branches of NAACP v. State of Ga.*, 775 F.2d 1403, 1417 (11th Cir. 1985).

"Title VI itself directly reaches only instances of intentional discrimination." *Alexander v. Sandoval*, 532 U.S. 275, 281 (2001) (quotation marks omitted, alterations adopted). "A plaintiff may prove a claim of intentional discrimination through direct evidence, circumstantial evidence, or through statistical proof." *Rioux v. City of Atlanta, Ga.*, 520 F.3d 1269, 1274 (11th Cir. 2008).

We have consistently applied iterations of the *McDonnell Douglas* burden-shifting framework to evaluate claims of intentional discrimination and retaliation that rely on circumstantial evidence and done so even when such claims arise in contexts other than employment. *See Johnson v. Miami-Dade*, 948 F.3d 1318, 1325 (11th Cir. 2020) (applying the framework to Title VII claims of unlawful employment discrimination and retaliation); *see also Alvarez v. Royal Atl. Devs.*, Inc., 610 F.3d 1253, 1264 (11th Cir. 2010) (relying on the

framework for a Title VII discrimination claim based on circumstantial evidence); *Branches of NAACP*, 775 F.2d at 1417 (applying the framework to a Title VI disparate impact claim raised in an educational context).

"[A] Title VII plaintiff proceeding under *McDonnell Douglas* must prove, as a preliminary matter, not only that she is a member of a protected class, that she suffered an adverse . . . action, and that she was qualified for the [benefit] in question, but also that she was treated less favorably than similarly situated individuals outside her class." *Lewis v. City of Union City, Ga.*, 918 F.3d 1213, 1224 (11th Cir. 2019) (*en banc*) (quotation marks omitted).

"To establish a prima facie case of retaliation, a plaintiff must show: (1) that [s]he engaged in statutorily protected expression; (2) that [s]he suffered an adverse . . . action; and (3) that there is some causal relationship between the two events." *Johnson*, 948 F.3d at 1325 (quotation marks omitted) (employment context).

Although the *McDonnell Douglas* framework is regularly employed in discrimination cases, we have also explained that, to survive a motion to dismiss, a complaint alleging discrimination "need not allege facts sufficient to make out a classic *McDonnell Douglas* prima facie case." *Surtain v. Hamlin Terrace Found.*, 789 F.3d 1239, 1246 (11th Cir. 2015) (quotation marks omitted) (citing *Swierkiewicz v. Sorema N.A.*, 534 U.S. 506 (2002)). "This is because

McDonnell Douglas's burden-shifting framework is an evidentiary standard, not a pleading requirement." *Id.*

Under this Circuit's prior-panel-precedent rule, "a prior panel's holding is binding on all subsequent panels unless and until it is overruled or undermined to the point of abrogation by the Supreme Court or by this [C]ourt sitting *en banc*." *United States v.Archer*, 531 F.3d 1347, 1352 (11th Cir. 2008). To constitute "overruling" under this rule, the intervening "Supreme Court decision must be clearly on point" and "actually abrogate or directly conflict with, as opposed to merely weaken, the holding of the prior panel." *United States v. Kaley*, 579 F.3d 1246, 1255 (11th Cir. 2009) (quotation marks omitted).

In *Guardians Ass'n v. Civ. Serv. Comm'n of City of New York*, the Supreme Court noted that Title VI's "legislative history clearly shows that Congress intended Title VI to be a typical 'contractual' spending power provision." 463 U.S. 582, 599 (1983). Thus, the Court reasoned "that compensatory relief, or other relief based on past violations of the conditions attached to the use of federal funds, is not available as a private remedy for Title VI violations not involving intentional discrimination." *Id.* at 602-03.

In *Barnes v. Gorman*, the Supreme Court "applied [a] contract- law analogy . . .[to] defin[e] the scope of conduct for which [federal] funding recipients may be held liable for money damages." 536 U.S. 181. 186-89 (2002). Because "punitive

damages, unlike compensatory damages and injunction, are generally not available for breach of contract," the Court held that "punitive damages may not be awarded in private suits brought under Title VI." *Id.* at 187-89.

We have held that Georgia's two-year statute of limitations for personal injury claims applies to claims under Title VI. *Rozar v. Mullis*, 85 F.3d 556, 560-61 (11th Cir. 1996) (citing O.C.G.A.§ 9-3-33). We reasoned that claims under 42 U.S.C. §§ 1983 and 1981 are subject to states' personal injury limitations periods, and thus, "[c]haracterizing section 2000d claims as personal injury actions for limitations purposes promotes a consistent and uniform framework by which suitable statutes of limitations can be determined for civil rights claims, and serves Congress' objectives by avoiding uncertainty and creating an effective remedy for the enforcement of federal civil rights." *Id.* at 561 (quotation marks omitted, alterations adopted). By contrast, "[w]ritten contract claims have a six-year statute of limitations under Georgia law." *Anthony v. Am. Gen. Fin. Servs.*, 626 F.3d 1318, 1322 (11th Cir. 2010) (citing O.C.G.A. § 9-3-24).

The Georgia Supreme Court issued emergency orders in the wake of COVID-19 which tolled limitations periods for all civil claims during a 122-day period between March 14, 2020, and July 14,

2020. Ga. Sup. Ct. Orders of March 14, 2020, and June 12, 2020.[1]

Equitable modification generally applies when a plaintiff alleges that a defendant was actively misleading as to the reasoning behind the adverse action taken against the plaintiff. *See Villarreal*, 839 F.3d at 972. Where a plaintiff does not allege that the defendant was actively misleading, "[t]he general test for equitable tolling" applies, which "requires the party seeking tolling to prove (1) that he has been pursuing his rights diligently, and (2) that some extraordinary circumstance stood in his way and prevented timely filing." *Id.* at 971-72 (quotation marks omitted); *see also Cocke v. Merrill Lynch & Co.*, 817 F.2d 1559, 1561 (11th Cir. 1987) ("Equitable tolling is a type of equitable modification, which often focuses on the plaintiff's excusable ignorance of the limitations period and on the lack of prejudice to the defendant." (quotation marks omitted, alteration adopted)).

"Under equitable modification, a limitations period does not start to run until the facts which would support a charge of discrimination are apparent or should be apparent to a person with a reasonably prudent regard for his rights." *Sturniolo*, 15 F.3d at 1025 (citing *Reeb v. Econ. Opportunity Atlanta, Inc.*, 516 F.2d 924, 931 (5th Cir. 1975)); *accord Rozar*, 85 F.3d at 561-62; *Villarreal*, 839 F.3d

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[1] *See Court Information Regarding The Coronavirus*, SUPREME COURT OF GEORGIA, https://www.gasupreme.us/court- information/court_corona_info (last visited March 1, 2024).

at 971-72. "Plaintiffs must know or have reason to know that they were injured, and must be aware or should be aware of who inflicted the injury." *Rozar*, 85 F.3d at 562. In practice, "[t]his rule requires a court first to identify the alleged injuries, and then to determine when plaintiffs could have sued for them." *Id.*

"It is not necessary for a plaintiff to know all the facts that support [her] claim in order to file a claim." *Sturniolo*, 15 F.3d at 1025. For example, a plaintiff in an age-based employment discrimination case "who is aware that he is being replaced in a position he believes he is able to handle by a person outside the protected age group knows enough to support filing a claim." *Id.* (alterations adopted).

"A corollary of [equitable modification], often found in cases where wrongful concealment of facts is alleged, is that a party responsible for such wrongful concealment is estopped from asserting the statute of limitations as a defense." *Reeb*, 516 F.2d at 930. This principle is evident in the Georgia statutes, which tolls the initiation of limitations periods until the plaintiff discovers a defendant's fraud in cases where such fraud deterred the plaintiff from bringing an action. O.C.G.A. § 9-3-96.

In *Sturniolo*, we reversed and remanded a district court's order granting summary judgment in favor of the defendants on the basis that Sturniolo's age-based employment discrimination claim was time-barred. 15 F.3d at 1024, 1026. We reasoned that it was improper for the district court to initiate the limitations period on the date

of Sturniolo's firing because, at the time, Sturniolo believed that his employer had legitimate, business-related reasons for firing him, and he did not learn that his employer had replaced him with a younger individual "until several months after his discharge." *Id.* at 1025-26. We explained that "[t]he date when Sturniolo knew or should have known that [his employer] had hired a younger individual to replace him is the date upon which the tolling period should commence." *Id.* at 1026.

In *Reeb*, our predecessor circuit reversed and remanded a district court's order dismissing Reeb's employment discrimination claim for lack of jurisdiction on the basis that her complaint before the Equal Employment Opportunity Commission was untimely.[2] 516 F.2d at 925, 931. The Court highlighted that Reeb alleged that her employer actively sought to mislead her as to its reasons for firing her and that she believed her employer's proffered reasoning for some six months. *Id.* at 930. When Reeb learned that she had been replaced by an allegedly less qualified male, "she immediately filed charges" that very same week. *Id.* at 926. The Court vacated and remanded the district court's judgment, noting that the district court "did not make any findings with respect to the allegations that [Reeb's employer] misled [her] or attempted to conceal the

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[2] Here, unlike *Reeb*, Plaintiffs need not exhaust administrative remedies prior to filing suits under Title VI. *Cone Corp. v. Fla. Dep't of Transp.*, 921 F.2d 1190, 1200 n.30 (11th Cir. 1991).

alleged discrimination . . ., nor did it make findings with respect to when a person similarly situated with a prudent regard for his rights would have discovered the discrimination in the absence of misleading statements or concealment" by the employer. *Id.* At 931.

As an initial matter, we address only Zadoorian's intentional discrimination and retaliation claims raised in Counts 1 and 4 of her complaint before the district court, as she expressly waived any challenge to her Title VI claims alleged in Counts 2, 3, and 5.

Here, the district court did not err in finding that Zadoorian's claims of intentional discrimination and retaliation under Title VI were time-barred. First, the district court appropriately applied Georgia's two-year personal injury limitations period to Zadoorian's Title VI claims, pursuant to this Court's holding in *Rozar*. 85 F.3d at 560-61; O.C.G.A. § 9-3-33. *Rozar* remains good law because both *Barnes* and *Guardians* related to what remedies are available to Title VI plaintiffs and did not address what statute of limitations applies to such claims. *Barnes*, 536 U.S. at 186-89; *Guardians*, 463 U.S. at 599, 602-03. Thus, neither case constitutes an intervening Supreme Court decision that is clearly on point or directly in conflict with *Rozar* such that this Court may decline to apply that case. *Archer*, 531 F.3d at 1352; *Kaley*, 579 F.3d at 1255.

Second, the district court did not err in determining that the limitations period for Zadoorian's Title VI claims began running by July

11, 2017, because Zadoorian had reason to believe that GTC had subjected her to intentional discrimination and retaliation by this date. This determination is supported by Zadoorian's July 12, 2017, email to TCSG's executive director, Dabrowiak. In that message, the following statements by Zadoorian show that she had the requisite knowledge to initiate the limitations period by that time: (1) that she had been discriminated against in the Program's admissions process; (2) that the process had been subject to "manipulation" by Director Strong in order to aid "white Americans;" and (3) that her interaction with Dean Sass "show[ed] his hostile *intention* and discrimination towards [her]." Further, Zadoorian had received the final selection criteria-that she alleges was altered after applications had been submitted in order to intentionally discriminate against her-approximately one month before she sent her email to Dabrowiak.

Therefore, because she knew of her alleged injury and who caused it, she could have sued for intentional discrimination based on these facts, and the district court did not err in determining that the limitations period for Zadoorian's intentional discrimination claim began running when she had her interaction with Dean Sass on July 11, 2017. *See Rozar*, 85 F.3d at 562.[3]

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[3] Thus, the district court properly held that Zadoorian's limitations period expired on July 11, 2019, more than two and one-half years before she filed suit on March 4, 2022. The limitations period also expired before the Georgia Supreme Court issued its emergency order tolling the 122 days between March 14, 2020, and July 14, 2020.

Similarly, the district court did not err in determining that the limitations period for Zadoorian's retaliation claim had begun running by this same date. Sass's allegedly retaliatory conduct took place on July 11, 2017, when he explicitly linked his demand for Zadoorian to leave the college to her complaint.[4] The very next day, she labeled this interaction as "[r]etaliation" in a complaint filed with OCR. Because she was aware that Sass had caused her alleged injury of retaliation immediately after the interaction occurred, she could have sued on July 11, 2017, and thus, the district court did not err in determining that her limitations period began running by this date. *Rozar*, 85 F.3d at 562.

There is no merit in Zadoorian's argument that the limitations period did not begin running until November 19, 2019 (when she asserts she first learned of a similarly situated comparator). First, as to her retaliation claim, a plaintiff need not identify a comparator to demonstrate a *prima facie* case of retaliation. *See Johnson*, 948 F.3d at 1325. Thus—even accepting as true Zadoorian's erroneous assertion that a limitations period does not initiate until the plaintiff is aware of all facts necessary to establish a *prima facie* claim—the date she performed her calculations and became aware of a

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[4] Although it not clear whether Sass was aware that Zadoorian had complained of discrimination to GTC staff or to OCR, Zadoorian told Sass on June 14, 20217, that she had a complaint and set up an appointment with Sass for the next day to talk about it.

comparator would not be dispositive of the initiation of the limitations period for her retaliation claim.

Next, as to Zadoorian's claim of intentional discrimination, it was not necessary for Zadoorian to be able to identify a discrete comparator to initiate this claim's limitations period. A complaint alleging discrimination "need not allege facts sufficient to make out a classic *McDonnell Douglas* prima facie case" in order to survive the motion to dismiss stage. *Surtain*, 789 F.3d at 1246; *see also Sturniolo*, 15 F.3d at 1025 ("It is not necessary for a plaintiff to know all the facts that support his claim in order to file a claim."). In evaluating when a limitations period began to run, courts look to whether a plaintiff could have sued for the alleged injury. *Rozar*, 85 F.3d at 562. As described above, the allegations from Zadoorian's July 12, 2017, email to Dabrowiak, as well as the portion of her OCR complaint labeled "[r]etaliation," "plausibly suggest that [Zadoorian] suffered an adverse . . . action due to intentional . . . discrimination," and thus, she could have sued for intentional discrimination immediately after her July 11, 2017, interaction with Sass such that her limitations period began running on this date. *Surtain*, 789 F.3d at 1246.

Even if identification of a comparator were necessary to initiate the limitations period—i.e. even if the comparator information from OCR's September 30, 2019, letter were necessary for Zadoorian to learn of the requisite facts to initiate the limitations period[5] —her filings before the district court concede

that she received this letter on October 4, 2019. Zadoorian fails to explain why "a person with a reasonably prudent regard for his rights" could not have performed the necessary calculations that same month. *See Sturniolo*, 15 F.3d at 1025. Thus, even if the information from OCR's September 30, 2019, letter were necessary for Zadoorian to learn of a comparator, and thus, to file a lawsuit, the limitations period would have initiated on October 4, 2019, when she received the letter and when a reasonably prudent person concerned for their rights would have performed the necessary calculations. *See id.*; *accord Rozar*, 85 F.3d at 561-62. Even accounting for the 122-day pause in limitations periods pursuant to emergency orders from Georgia Supreme Court, Zadoorian had until February 2, 2022, such that her March 4, 2022, complaint was not timely. Ga. Sup. Ct. Orders of March 14, 2020, and June 12, 2020; *Rozar*, 85 F.3d at 560-61; O.C.G.A. § 9-3-33.

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[5] Zadoorian does not clearly explain why the OCR's letter dated September 30, 2019, was necessary for her to identify a similarly situated comparator. Zadoorian already had access to the final selection criteria and believed that the criteria had been manipulated so that less-qualified applicants outside of her protected group could be admitted to the program instead of her. Thus, even if awareness of a comparator were necessary to initiate the limitations period, Zadoorian likely could had identified the comparator as "the lowest- scoring applicant outside of her protected group" after she received the final selection criteria and could have provided additional detail as necessary following discovery.

Zadoorian's reliance on *Sturniolo* is misplaced. For the reasons stated *supra*, it was not necessary for Zadoorian to be aware of a specific comparator in order for the limitations period to begin running. *Surtain*, 789 F.3d at 1246. In any event, in *Sturniolo*, this Court explained that a plaintiff in an age-based employment discrimination case "who is aware that he is being replaced in a position he believes he is able to handle by a person outside the protected age group knows" the necessary facts to initiate the limitations period. 15 F.3d at 1025 (alterations adopted). Here, Zadoorian's June 19, 2017, email to Alexander, and July 12, 2017, email to Dabrowiak, demonstrate that Zadoorian was aware of facts that would support her claims following her July 11, 2017, interaction with Sass. For example, just days after she was rejected from the Program, Zadoorian emailed Alexander stating that she was rejected, despite her higher qualifications, so that less-qualified applicants outside of her protected group would be admitted. Zadoorian's case is therefore unlike *Sturniolo*, where the plaintiff initially believed that he was fired for a legitimate reason and only learned several months after his firing that he was replaced by someone outside of his protected group. 15 F.3d at 1025-26. Thus, *Sturniolo* supports the district court's determination that the limitations period for Zadoorian's Title VI claims began to run by July 11, 2017.

Finally, Zadoorian's assertion that the district court erroneously failed to consider if her claims should be subject to the principle of equitable modification fails. The district court *did* apply this

principle when it determined that—despite her assertions that she was blocked from accessing necessary information—Zadoorian's limitations period nevertheless began running by July 11, 2017, when a person with a reasonably prudent regard for his rights would have become aware of the facts necessary to support the claims. *Sturniolo*, 15 F.3d at 1025. In other words, even if there were fraud, it didn't prevent Zadoorian from becoming aware of the facts necessary to support her claims. For fraudulent concealment to toll the statute of limitations, a plaintiff must show "successful concealment of the cause of action." *Fedance v. Harris*, 1 F.4th 1278, 1287 (11th Cir. 2021).

Zadoorian points to *Reeb* in support of her contentions that: (1) the State Defendants should be estopped from asserting the statute of limitations; or (2) that her case should be remanded for lack of sufficient findings by the district court. Such reliance is misplaced. Here, unlike *Reeb*, the district court addressed: (1) Zadoorian's assertions that the State Defendants misled her in order to conceal their discriminatory intent; and (2) when Zadoorian became aware of the facts supporting her claim such that her limitations period began running. *Reeb*, 516 F.2d at 925-26, 930-31. The district court ultimately determined that the State Defendants did not conceal their alleged discrimination because Zadoorian became aware of the facts to support her claim on July 11, 2017. Accordingly, her argument that her case requires remand to address the issue of the State Defendants' alleged fraud fails.

Accordingly, we affirm as to this issue.

B. With respect to the APA claim against OCR, did the district court err in dismissing Zadoorian's claim for lack of jurisdiction because of sovereign immunity?

"We review *de novo* a district court's dismissal of a complaint for sovereign immunity." *Contour Spa at the Hard Rock, Inc. v. Seminole Tribe of Florida*, 692 F.3d 1200, 1203 (11th Cir. 2012) (quotation marks omitted). The federal government and its agencies are entitled to sovereign immunity from civil lawsuits, except to the extent it consents to be sued. *United States v. Mitchell*, 445 U.S. 535, 538 (1980). The plaintiff has the burden of showing an unequivocal waiver of sovereign immunity as to the specific claims that he seeks to bring against the government. *Id.* Further, we may affirm on any ground supported by the record. *Wright v. City of St. Petersburg, Fla.*, 833 F.3d 1291, 1294 (11th Cir. 2016).

Chapter 5 of the APA contains a waiver of the immunity for claims that allows for judicial review for "[a] person suffering legal wrong because of agency action, or adversely affected or aggrieved by agency action within the meaning of a relevant statute" but limits the waiver to claims "seeking relief other than money damages." 5 U.S.C. § 702. The APA expressly provides, however, that this waiver does not "affect[] other limitations on judicial review or the power or duty of the court to dismiss any action or deny relief on any other appropriate legal or equitable ground" or "confer[] authority to grant relief if any other statute that grants consent

to suit expressly or impliedly forbids the relief which is sought." *Id.*

Significant for this appeal, judicial review under the APA is available only for an "[a]gency action made reviewable by statute and final agency action for which there is no other adequate remedy in a court." 5 U.S.C. § 704. Where there is no private right of action otherwise, parties can seek review under either a "specific authorization in the substantive statute" or under the general review provisions of the APA. *Lujan v. Nat'l Wildlife Fed'n*, 497 U.S. 871, 882 (1990); *see also Ouachita Watch League v. Jacobs*, 463 F.3d 1163, 1173 (11th Cir. 2006) (noting that, because the statute at issue did not provide for a private right of action, any challenge to agency action must be brought under the APA).

In *Cannon v. Univ. of Chicago*, 441 U.S. 677 (1979), the Supreme Court stated that "lawsuits to end discrimination [] would be the preferable and more effective remedy" for discrimination in federally funded programs than placing on individual plaintiffs "the burden of demonstrating that an institution's practices are so pervasively discriminatory that a complete cut-off of federal funding is appropriate." 441 U.S. at 688-89, 704-06 & n.38 (holding that a plaintiff could raise a claim of discrimination directly against a medical school).

In *Guardians*, the Supreme Court held "that compensatory relief, or other relief based on past violations of the conditions attached to the use of federal funds, is not available as a private remedy

for Title VI violations not involving intentional discrimination." 463 U.S. at 602-03. In *Alexander v. Sandoval*, the Supreme Court held that Title VI prohibits intentional discrimination only, and thus, there is no private right of action to enforce disparate impact claims under Title VI. 532 U.S. at 281, 285-86.

The district court properly held that Zadoorian's claim against OCR was barred by sovereign immunity because her claim against the State Defendants is an adequate alternative remedy. Zadoorian argues on appeal that her administrative claim against OCR was for disparate impact, not intentional discrimination. And because there is no private cause of action for disparate impact under Title VI, she argues that there was no alternative remedy and therefor, there was no sovereign immunity bar to her claim against OCR. We disagree; the district court correctly read Zadoorian's OCR complaint as one for intentional discrimination—not one for disparate impact. Thus, the district court properly held that her claim against the State Defendants was an adequate alternative remedy and properly dismissed Zadoorian's APA claim against the OCR due to sovereign immunity. Although Zadoorian's administrative complaint to the OCR alleged that the Program's admission criteria benefited "white Americans" to the detriment of non-native English speakers, her OCR complaint averred that this effect was intentional, rather than the unintended consequence of otherwise neutral admissions criteria. For example, Zadoorian contended that GTC

"manipulated the data" and implied that her rejection and ranking as the highest-scoring non-alternate was "intentional." Further, although Zadoorian's OCR complaint requested a mandate that GTC "try to fix the problem and correct the selection process" as relief, she tied this remedy to her personal rejection and even requested OCR "to send the wrongly selected students home" so that she could study in the program.

Additionally, OCR made clear in its January 9, 2018, letter that it would only investigate Zadoorian's claim of "different treatment," and Zadoorian replied with her consent signature. It is true that Zadoorian sent a follow-up email to OCR highlighting the disparate impact of—what was purportedly intentionally discriminatory— selection criteria. However, she made this assertion in furtherance of her own claim of intentional discrimination, alleging that Strong intentionally designed the discriminatory criteria to benefit "her favorite white American students[]," and explicitly raising the disparate impact of the criteria "[i]n defending [her] case against [State Defendants'] claim" that they did not intentionally discriminate because the same scoring criteria was used for all applicants.

As further evidence that Zadoorian's complaint before the OCR related to intentional discrimination, the APA claim that she raised before the district court alleged that OCR ignored the assertions from her OCR complaint that: (1) Strong changed the admissions criteria after applications had been submitted; (2) her evidence constituted "proof of

[GTC's] *intention*"; and (3) GTC "never *intended* to get the higher qualified students in their program."

Contrary to Zadoorian's assertion, the OCR's September 30, 2019, letter to her did not suggest that her OCR complaint had asserted a disparate impact claim. Rather, it expressly stated that OCR had interpreted her complaint as one for disparate treatment, **Doc. 35-3 at 1**, and it expressly found insufficient evidence to sustain such a claim. "Based on the preponderance of evidence, OCR has determined that there is insufficient evidence to support a finding that the Complainant was subjected to different treatment on the basis of national origin as alleged in this complaint." ***Id.* at 5.** Also, OCR's explicit recognition that her complaint "alleged that the College subjected [her] to different treatment on the basis of national origin in its Sonography Program," as well as OCR's earlier indication that it would only investigate a claim of intentional discrimination, undercuts any argument that the OCR understood her complaint as—or that the complaint, in fact, was—related to disparate impact.

Therefore, because Zadoorian's OCR complaint related to intentional discrimination, she had an adequate alternative remedy in the form of a private suit against GTC. *Guardians*, 463 U.S. at 602-03. This precluded Zadoorian from filing a claim under the APA due to sovereign immunity. 5 U.S.C. § 704; *Cannon*, 441 U.S. at 704-06 & n. 38. Thus, this Court need not reach Zadoorian's additional arguments as to the merits of her jurisdictionally

barred-APA claim. *See Wright*, 833 F.3d at 1294. Accordingly, we affirm.

AFFIRMED.

APPENDIX B

United States Court of Appeals
For the Eleventh Circuit

No. 22-14206

[Filed: June 20, 2024]

ROOBINA ZADOORIAN,

Plaintiff-Appellant,

versus

GWINNETT TECHNICAL COLLEGE,
KIMBERLY STRONG,
Director of Sonography Program,
JIM SASS,
Dean of Health Imaging & Informatics,
REBECCA ALEXANDER,
VP of Academic Affairs,
DEREK DABROWIAK,
Executive Director, Student Affairs -TCSG, et. al.

Defendants-Appellees.

Order of the Court

Appeal from the United States District Court
for the Northern District of Georgia
D.C. Docket No. 1:22-cv-00922-LMM

ON PETITION(S) FOR REHEARING AND
PETITION(S) FOR REHEARING EN BANC

Before BRASHER, ABUDU, and ANDERSON,
Circuit Judges.

PER CURIAM:

The Petition for Rehearing En Banc is DENIED, no judge in regular active service on the Court having requested that the Court be polled on rehearing en banc. FRAP 35. The Petition for Rehearing En Banc is also treated as a Petition for Rehearing before the panel and is DENIED. FRAP 35, IOP 2.

No.

IN THE
SUPREME COURT OF THE UNITED STATES

Roobina Zadoorian

Petitioner

v.

Gwinnett Technical College (GTC)
Ms. Kimberly Strong, Director of Sonography Program
Mr. Jim Sass, Dean of Health Imaging & Informatics
Ms. Rebecca Alexander, VP of Academic Affairs
Mr. Derek Dabrowiak, Executive Director, Student Affairs, TCSG
Technical College System of Georgia (TCSG)
Office for Civil Rights (OCR) (Atlanta & Dallas)

Respondents

On Petition For Writ Of Certiorari To
The United States Court Of Appeals
For The Eleventh Circuit

SUPPLEMENTAL APPENDIX TO THE PETITION FOR WRIT OF CERTIORARI

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APPENDIX C (SUPPLEMANTAL)

In The United States District Court
For The Northern District of Georgia
Atlanta Division

No. 1:22-cv-00922-LMM
[Filed: November 8, 2022]

ROOBINA ZADOORIAN,

Plaintiff,

v.

GWINNETT TECHNICAL COLLEGE, ET AL,

Defendants.

Judge: Leigh Martin May.

ORDER

This matter is presently before the Court on a motion to dismiss filed by Defendants Rebecca Alexander, Derek Dabrowiak, Gwinnett Technical College ("GTC"), Jim Sass, and Kimberly Strong, Dkt. No. [32]; a motion to dismiss filed by those same defendants, plus Defendant Technical College System of GA ("TCSG"), Dkt. No. [51]; a motion to dismiss filed on behalf of Defendant Office for Civil

Rights ("OCR"), [1] Dkt. No. [35]; two motions to strike filed by Plaintiff Roobina Zadoorian, Dkt. Nos. [37, 42]; Plaintiff's motion to amend one of the motions to strike, Dkt. No. [62]; and Plaintiff's motion to lift the stay of discovery, Dkt. No. [55]. After due consideration, the Court enters the following Order.

I. MOOT MOTIONS

As an initial matter, the undersigned notes that after the Court granted Plaintiff's motion to amend her complaint to add TCSG as a party defendant, Dkt. No. [48], Alexander, Dabrowiak, GTC, Sass, Strong, and TCSG filed a new motion to dismiss that reiterated the arguments raised in Alexander, Dabrowiak, GTC, Sass, and Strong's original motion to dismiss and added arguments for dismissal as to TCSG. Compare Dkt. No. [32] with Dkt. No. [51]. The Court approves of Defendants' having filed the renewed motion to dismiss, since the amended complaint superseded the original complaint, and the original motion to dismiss sought dismissal of the superseded complaint. Because the original motion seeks dismissal of a complaint that has been superseded and is itself superseded by the new motion to dismiss, the original motion, Dkt. No. [32], is **DENIED AS MOOT**. Because the motion to dismiss has been denied as moot, Plaintiff's motion to strike that motion, Dkt. No. [37], and Plaintiff's

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[1] The motion to dismiss was filed on behalf of OCR by the U.S. Department of Education and its Secretary. Dkt. No. [35] at 1.

motion to amend the motion to strike, Dkt. No. [62], are likewise **DENIED AS MOOT**.

Second, the Court notes that although Plaintiff titled the document filed at Docket Entry [42] as her "Motion to strike the affirmative defenses of the Department (OCR, et. al.,) Doc. 35 'APA,' " OCR has not yet pleaded any defenses, and Plaintiff's filing is in fact Plaintiff's response opposing OCR's motion to dismiss. Accordingly, the motion to strike, Dkt. No. [42], is **DENIED AS MOOT**, and the Court construes the filing as Plaintiff's response filed in opposition to OCR's motion to dismiss, Dkt. No. [35].

II. MOTIONS TO DISMISS

A. Background[2]

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[2] Where the contents of an exhibit properly before the Court contradict or clarify the amended complaint's description of the contents of the exhibit, the Court will refer to the contents of the exhibit. See Fin. Sec. Assurance Inc. v. Stephens, Inc., 500 F.3d 1276, 1284 (11th Cir. 2007) (explaining that when adjudicating a motion to dismiss a complaint, the court may consider documents outside the complaint when (1) the "plaintiff refers to a document in its complaint"; (2) "the document is central to [the plaintiff's] claim"; (3) "its contents are not in dispute"; and (4)"the defendant attaches the document to its motion to dismiss."); Griffin Indus., Inc. v. Irvin, 496 F.3d 1189, 1205-06 (11th Cir. 2007) ("Our duty to accept the facts in the complaint as true does not require us to ignore specific factual details of the pleading in favor of general or conclusory allegations. Indeed, when the exhibits contradict the general and conclusory allegations of the pleading, the exhibits govern."). Otherwise, for the purposes of this Order, the Court presumes that the well-pleaded factual allegations in the amended complaint, Dkt. No. [49], are true. St. George v.

Plaintiff is of Armenian descent and immigrated to the United States from Iran in 2009. Dkt. No. [49] ¶¶ 6, 11. In 2016, she decided to continue her education at GTC. Id. ¶¶ 12-13. To that end, on June 27, 2016, she received a letter from GTC accepting her as a student in its Healthcare Science Certificate program for the fall 2016 semester "in preparation for the competitive health program selection process." Id. ¶ 13; Dkt. No. [49-1] at 4. Plaintiff took several classes that fall and obtained a 4.0 grade point average ("GPA"). Dkt. No. [49] ¶¶ 12, 34.

Plaintiff then turned her attention to applying to GTC's sonography program ("the Program"). In February 2017, GTC provided applicants to the Program with a "checklist" that set forth criteria for admission into the Program. Id. ¶ 33; Dkt. No. [49-1] at 1. "Points" were assigned to each item on the list, for a total of 103 potential "points." Dkt. No. [49-1] at 1. For example, an applicant's GPA was given 40 points; an applicant's score on the Test of Essential Academic Skills ("TEAS") was given 30 points[3]; and applicants could obtain up to six extra points by volunteering as a patient in GTC's sonography lab. Dkt. No. [49] ¶ 15; Dkt. No. [49-1] at 1.

Pinellas Cnty., 285 F.3d 1334, 1337 (11th Cir. 2002) (explaining that upon a motion to dismiss, the facts alleged in the complaint are accepted as true, and all reasonable inferences are drawn in the plaintiff's favor).

[3] The TEAS measures basic skills in the areas of mathematics, reading, science, English, and language usage. Dkt. No. [49] ¶ 29.

Plaintiff decided to take the opportunity to earn the extra points for volunteering in the sonography lab. Dkt. No. [49] ¶ 16. During the first volunteer session, she was anxious because she "was not sure that sonography was safe, especially when done by the students who were not professionals." Id. As a result, when the lab coordinator instructed a student to scan Plaintiff, she told the lab coordinator that she "was willing to wait to be scanned later." Id. The lab coordinator then "shouted" at Plaintiff and told her that she should follow her orders and have the scan or "[she] would not . . . be accepted [into] the program." Id. Thereafter, the director of the Program, Defendant Kimberly Strong, walked up to Plaintiff, "ridiculed" her for thinking that sonography might not be safe, and "harassed" her by saying that "[i]t was none of [Plaintiff's] business" and that Plaintiff should have "followed her associate's orders." Id. ¶ 17.

Nevertheless, Plaintiff applied to the Program on May 20, 2017. Id. ¶ 26. She was "very positive" she would be accepted into the Program because she had a 4.0 GPA and a TEAS score of 86%, which was higher than 96% of all students who had taken the examination nationwide. Id. ¶¶ 34-35. On June 12, 2017, however, she received an e-mail from GTC notifying her that she had not been accepted into the Program. Id. ¶ 35.

Two days later, on June 14, 2017, Plaintiff met with Director Strong to talk about why her application had been rejected. Id. Director Strong revealed the GPAs and TEAS scores of some of the

applicants who had been accepted ahead of Plaintiff. Id. ¶ 37. Upon Plaintiff's request, Director Strong also gave her a copy of the criteria according to which she made her final admissions selections. Id. That document shows that up to 40 points could be awarded for an applicant's GPA. Dkt. No. [49-1] at 2. It also disclosed the scale by which GPA points were awarded: 24 points were awarded for GPAs between 2.01 and 2.25, and two additional points were added for each additional .25, topping out with 40 points given to GPAs between 3.751 and 4.0. Id.

The next day, June 15, 2017, Plaintiff met with Defendant Jim Sass, Dean of Imaging Programs, and asked why she had not been given more points for her essay. Dkt. No. [49] ¶ 39. Dean Sass responded by getting angry and telling her, in what she perceived as a hostile and condescending manner, "If I were [Director Strong] I would have given you zero points [on the essay]." Id.

On June 19, 2017, Plaintiff wrote a letter to Defendant Rebecca Alexander, GTC's Vice President of Academic Affairs, that detailed her meeting with Dean Sass, her encounter in the sonography lab with Director Strong, and her belief that Director Strong had changed the criteria after applications had been submitted and had used a different scale for assigning points to applicants' GPAs. Id. ¶ 48.

On July 11, 2017, Plaintiff met with the Program's support specialist to find out how her qualifications compared to those of the accepted students. Id. ¶ 60. However, Dean Sass interrupted the meeting, shouted at Plaintiff, instructed the

support specialist to stop speaking with her, and told Plaintiff that she needed to leave or else he would call the police. Id. ¶ 61. Plaintiff left of her own accord. Id. When she walked into the parking lot, she saw a police officer standing by his car, which caused her to feel distressed, humiliated, oppressed, and treated like a criminal. Id. ¶ 62.

The next day, on July 12, 2017, Plaintiff sent an e-mail to Defendant Stanley Dabrowiak, the Assistant Commissioner of Student Affairs at TCSG, to explain how she was "unjustly rejected from the program." Id. ¶ 68. He responded that TCSG does not overturn academically related decisions and that GTC followed their procedure for selection into the Program. Id.

Plaintiff then initiated a complaint with OCR in which she alleged discrimination based on race, color, and national origin (Iran). Dkt. No. [35-1]; Dkt. No. [49] ¶ 70. In the complaint, she alleged that the selection criteria were discriminatory because TEAS scores were weighted more heavily than GPAs, and native English speakers had an advantage on the TEAS exam because the score was based half on English skills (25% reading, 25% grammar) and only 25% each on math and science. Dkt. No. [35-1] at 2. She additionally mentioned the encounter in the sonography scan room, complained that her health essay had been unfairly scored, and described her confrontation with Dean Sass in the program support specialist's office. Id.

By letter dated January 9, 2018, OCR informed Plaintiff that it had identified two discrete allegations in her complaint:

(1) The College subjected you to different treatment on the basis of national origin in its Sonography Program (Program) during the 2016-2017 school year because you were denied admission into the Program in June 2017 while white students with lower criteria were granted admission.

(2) The College retaliated against you after you refused to allow a student enrolled in the Program to scan you in the sonography scanning lab.

Dkt. No. [35-2] at 1. The letter stated that OCR would proceed with an investigation of the first allegation but that according to information provided by Plaintiff, the second allegation did not concern discrimination based on race, color, national origin, sex, disability, age, or retaliation for the purpose of interfering with any rights or privileges secured by the civil rights laws enforced by OCR and that OCR therefore did not have jurisdiction to investigate it. Id. at 1- 2. Plaintiff responded with her consent signature, and OCR started the investigation. Dkt. No. [49] ¶ 70.

By letter dated September 30, 2019, OCR recited evidence discovered during its investigation of Plaintiff's claim and stated that it had found, based on a preponderance of the evidence, that there was insufficient evidence to support a finding that

Plaintiff had been subjected to discriminatory treatment within the context of Title VI of the Civil Rights Act of 1964 ("Title VI"), 42 U.S.C. § 2000d et seq. Dkt. No. [35-3]; Dkt. No. [49] ¶ 71. Plaintiff appealed, and by letter dated September 30, 2021, the regional director for the Dallas OCR office, where Plaintiff's appeal had been forwarded, summarily stated that the issues raised in Plaintiff's appeal did not warrant a change in OCR Atlanta's disposition of her case. Dkt. No. [35-4]; Dkt. No. [49] ¶ 82; Dkt. No. [49-1] at 25.

On March 4, 2022, Plaintiff filed the present lawsuit against GTC, Strong, Sass, Alexander, Dabrowiak, and OCR, and she later added TCSG as a defendant by way of an amended complaint. Dkt. Nos. [1, 49]. In Count 1, Plaintiff asserts claims of discrimination in admission to the Program in violation of Title VI against GTC, Strong, Sass, Alexander, Dabrowiak, and TCSG. Dkt. No. [49] at 44- 95. In Count 2, Plaintiff alleges breach of contract against "the College" on grounds that (1) the letter she received from GTC on June 27, 2016, that accepted her into the Healthcare Science Certificate program was a contract to prepare her for the Program, and (2) the applicant assessment checklist GTC provided to Program applicants "constituted an offer to have our credentials appraised under the terms described by the College." Id. at 96-109. In Count 3, Plaintiff alleges "fraudulent and deceitful misrepresentation" based on GTC's alleged failure to follow its own selection criteria for the Program as set forth in the applicant assessment checklist. Id. at

109-26. In Count 4, Plaintiff alleges retaliation in violation of Title VI on grounds that on July 11, 2017, Dean Sass responded to her complaints about the admissions process by stating that he would have given her essay zero points, refusing to give her any information regarding her "point status" on her application to the Program, and threatening to call the police if she did not leave the support specialist's office. Id. at 126-32. In Count 5, Plaintiff asserts claims against Strong, Sass, Caldwell, Alexander, and "the College" for violating the Thirteenth Amendment's prohibition on involuntary servitude by awarding up to six points to applicants to the Program who volunteered as patients in the sonography lab. Id. at 132-40. In Count 6, Plaintiff alleges that "the College" engaged in false advertising by stating in the applicant checklist that "[c]lasses may be retaken in efforts to increase one's GPA" because GPA was in fact not an important component of the admissions criteria. Id. at 140-43. In Count 7, Plaintiff alleges claims against OCR under the Administrative Procedure Act, 5 U.S.C. §§ 701, 706 ("APA"), on grounds that it did not follow its own procedures as to her complaint or properly investigate her allegations. Id. at 144- 65.

B. Discussion

Each defendant argues that Plaintiff's claims are due to be dismissed as a matter of law. Dkt. Nos. [35, 51]. For the reasons set forth below, the Court agrees.

1. Time-Barred Claims (Counts 1, 3, 4, 5, and 6)

GTC, TCSG, Strong, Sass, Alexander, and Debrowiak (hereinafter, "the Program Defendants") contend that, with the exception of the breach-of-contract count, all of the claims Plaintiff asserts against them are time-barred. Dkt. No. [51-1] at 10-13. The argument is well taken.

Each of the claims carries a limitations period of two years. The Georgia Tort Claims Act is the exclusive cause of action by which a plaintiff may raise a claim for loss caused by the tort of any state officer or employee committed while acting within the scope of his or her duties. O.C.G.A. §§ 50-21-22, 50-21-25(a). Thus, Plaintiff's claims for misrepresentation and false advertising are governed by the Georgia Tort Claims Act, which provides that "any tort action brought pursuant to this article is forever barred unless it is commenced within two years after the date the loss was or should have been discovered." O.C.G.A. § 50-21-27(c); accord Foster v. Ga. Reg'l Transp. Auth., 777 S.E.2d 446, 447-49 (Ga. 2015); Burroughs v. Ga. Ports Auth., 793 S.E.2d 538, 540 (Ga. App. 2016).

Constitutional tort claims against state actors, such as the claim Plaintiff alleges under the Thirteenth Amendment, are not asserted directly under the United States Constitution but instead are filed via 42 U.S.C. § 1983. See Johnson v. City of Shelby, Miss., 574 U.S. 10, 10-12 (2014) (per curiam); Williams v. Bennett, 689 F.2d 1370, 1390 (11th Cir. 1982). Section 1983 claims are subject to the statute

of limitations governing actions for personal injury where the § 1983 action was filed. Owens v. Okure, 488 U.S. 235, 236 (1989); Boyd v. Warden, Holman Corr. Facility, 856 F.3d 853, 872 (11th Cir. 2017). In Georgia, this limitation period ends "within two years after the right of action accrues," O.C.G.A. § 9-3-33—in other words, two years "from the date the facts which would support a cause of action are apparent or should be apparent to a person with a reasonably prudent regard for his rights," Brown v. Ga. Bd. of Pardons & Paroles, 335 F.3d 1259, 1261 (11th Cir. 2003) (internal quotation marks omitted).

Claims asserted under Title VI are also governed by the statute of limitations that applies to § 1983 claims, and they are therefore also subject to the same two-year limitations period.[4] Rozar v. Mullis, 85 F.3d 556, 561 (11th Cir. 1996).

Plaintiff contends that her claims for discrimination, breach of contract, "fraudulent and deceptive misrepresentation," and false advertising are timely because the Program Defendants blocked her from accessing any information regarding the other applicants' points, and the clock therefore did not begin to run on the claims until November 19, 2019, when she reviewed OCR's letter stating its investigation findings. Dkt. No. [58] at 3-8. While this later accrual date would have resulted in a limitation period that expired on November 19, 2021, prior to the date Plaintiff filed this lawsuit, Plaintiff

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[4] Title VI does not require plaintiffs to exhaust their administrative remedies prior to filing suit. Cone Corp. v. Fla. Dep't of Transp., 921 F.2d 1190, 1200 n.30 (11th Cir. 1991).

further argues that because the Georgia Supreme Court paused the limitations period for 122 days during the statewide judicial emergency caused by the COVID-19 pandemic, the time for filing the claims did not expire until March 21, 2022, after she filed this lawsuit. Id. at 3. She additionally suggests that the Thirteenth Amendment claim was timely because the claim did not become apparent to her until she conducted legal research on September 30, 2021. Id. at 8.

Plaintiff's arguments ignore the fact that the statute of limitations begins to run from the time that the facts that would support a claim *should* have been apparent to her, regardless of whether she understood the import of those facts at the time. See Perez v. Florida, 519 F. App'x 995, 997 (11th Cir. May 28, 2013) (per curiam) (explaining that "lack of a legal education and related confusion or ignorance about the law" do not excuse a pro se plaintiff's failure to file in a timely fashion and that pro se litigants "are deemed to know of the [applicable] statute of limitations"). As the Program Defendants correctly point out, according to the pleadings, all of the conduct underlying these claims had taken place by July 11, 2017: Plaintiff volunteered in the sonography lab in or before May 2017, Dkt. No. [49] ¶¶ 16, 17; she knew that she had not been accepted into the Program by June 12, 2017, id. ¶ 35; two days later, Director Strong provided her with the allegedly discriminatory selection criteria she allegedly fraudulently and deceitfully used to determine admission to the Program, id. ¶ 37; Dkt. No. [49-1] at

2; and on July 11, 2017, Plaintiff had her allegedly retaliatory run-in with Dean Sass, Dkt. No. [49] ¶ 61. Dkt. No. [51-1] at 10-13.

For these reasons, the undersigned concludes that the statute of limitations on Counts 1, 3, 4, 5, and 6 began to run on or before July 11, 2017, and had expired by July 11, 2019—more than eight months before the Supreme Court of Georgia declared the statewide judicial emergency caused by the COVID-19 pandemic[5] and more than two years and seven months before Plaintiff filed this lawsuit. Accordingly, those claims are subject to dismissal for lack of timely filing.

2. Breach of Contract (Count 2)

Defendants contend that Plaintiff's breach-of-contract claims are barred by Eleventh Amendment immunity. Dkt. No. [51-1] at 14-15. Plaintiff does not respond to the argument, see generally Dkt. No. [58], and it is therefore deemed unopposed, see LR 7.1(B), NDGa ("Failure to file a response shall indicate that there is no opposition to the motion.").

The argument also has merit. Absent a waiver by the state or a valid congressional override, the Eleventh Amendment to the United States Constitution bars federal-court actions against a

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[5] The Supreme Court of Georgia issued the order declaring a statewide judicial emergency and suspended the statute of limitations on March 14, 2020. See Am. Ord. Declaring Statewide Jud. Emergency (Mar. 14, 2020), available at https://www.gasupreme.us/wp-content/uploads/2020/03/CJ-Meltonamended-Statewide-Jud-Emergency-order.pdf

state, its agencies, and its officials when the state is the real party in interest or when any monetary recovery would be paid from state funds. Bd. of Trs. of Univ. of Ala. v. Garrett, 531 U.S. 356, 363 (2001) ("The ultimate guarantee of the Eleventh Amendment is that nonconsenting States may not be sued by private individuals in federal court."); Kentucky v. Graham, 473 U.S. 159, 169 (1985) (discussing Eleventh Amendment bar to suits for monetary recovery); Pennhurst State Sch. & Hosp. v. Halderman, 465 U.S. 89, 100-01 (1984) ("Th[e] [Eleventh Amendment] jurisdictional bar applies regardless of the nature of the relief sought."). The state of Georgia "has not waived its Eleventh Amendment immunity from suit in federal court for breach of contract claims." Barnes v. Zaccari, 669 F.3d 1295, 1308-09 (11th Cir. 2012). As a consequence, Plaintiff's breach-of-contract claims (Count 2) are barred by the Eleventh Amendment.

3. APA Claim Against OCR (Count 7)

OCR contends that the APA claim Plaintiff asserts against it for failure to properly investigate and pursue her Title VI claims is barred under the doctrine of sovereign immunity.[6] Dkt. No. [35] at 11-

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[6] Title VI prohibits recipients of federal funds from discriminating based on race, color, or national origin. 42 U.S.C. § 2000d. Congress directed each federal agency to adopt regulations to effectuate Title VI. 42 U.S.C. § 2000d-1. The Department regulations require a prompt investigation whenever information indicates possible noncompliance. 34 C.F.R. § 100.7(c). The investigation should include, where appropriate, a review of the funding recipient's pertinent

16. In response, Plaintiff concedes that money damages are barred by the doctrine of sovereign immunity, but she suggests that so far as she seeks equitable and mandamus relief, her APA claims against OCR may proceed. Dkt. No. [42] at 2-3. The Court finds OCR's argument persuasive.

Absent a waiver, the United States and its agencies are immune from suit. Ishler v. Internal Revenue, 237 F. App'x 394, 397-98 (11th Cir. Mar. 13, 2007). "The basic rule of federal sovereign immunity is that the United States cannot be sued at all without the consent of Congress." Block v. N. Dakota ex rel. Bd. of Univ. & Sch. Lands, 461 U.S. 273, 287 (1983); accord Ishler, id. ("Sovereign immunity, when applicable, is 'a complete bar to lawsuits' against the United States."). Because "[s]overeign immunity is jurisdictional in nature," FDIC v. Meyer, 510 U.S. 471, 475 (1994), Congress's "waiver of [it] must be unequivocally expressed in statutory text and will not be implied," Lane v. Pena, 518 U.S. 187, 192 (1996) (citations omitted).

"The APA excludes from its waiver of sovereign immunity . . . claims for which an adequate remedy is available elsewhere." Transohio Sav. Bank v. Office of Thrift Supervision, 967 F.2d 598, 607 (D.C. Cir. 1992), abrogated in part on other grounds as recognized in Perry Capital LLC v. Mnuchin, 864 F.3d 591, 620 (D.C. Cir. 2017); accord 5 U.S.C. § 704 (specifying that district court review is only available

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policies and practices, the circumstances under which the possible noncompliance occurred, and any other factors relevant to a compliance determination. Id.

when "there is no other adequate remedy in a court"); accord Thompson v. U.S. Dep't of Hous. & Urban Dev., 348 F. Supp. 2d 398, 423 (D. Md. 2005) (holding that the APA did not provide a right of action for racial discrimination in public housing because a direct remedy against the funding recipients was available). Such is the case where, as here, a direct suit for discrimination against an educational institution was available under Title VI. See, e.g., Merchant v. U.S. Dep't of Educ., Case No. 8:21-cv-195-WFJ-JSS, 2021 WL 3738835, at *5 (M.D. Fla. Aug. 24, 2021) (holding that the availability of a direct cause of action against the university precluded action under the APA); Doe v. U.S. Dep't of Health & Human Servs., 85 F. Supp. 3d 1, 10-11 (D.D.C. 2015) (concluding that an APA action was not an appropriate vehicle for plaintiff's claim that she was a victim of discrimination at a federally funded institution); Wash. Legal Found. v. Alexander, 984 F.2d 483, 486 (D.C. Cir. 1993) (holding that because students had an implied right of action under Title VI against discriminating colleges and law schools, APA claims were barred); Women's Equity Action League v. Cavazos, 906 F.2d 742, 750-51 (D.C. Cir. 1990) (holding that plaintiff's implied right of action under Title VI against the specific institutions was an adequate remedy to redress discrimination and thus barred suit under the APA).

As discussed above, Plaintiff's Title VI claims are not viable because they are untimely. See supra Part II.B.i. That does not change the fact that she had an

adequate remedy that precluded a claim against OCR under the APA. See Avery v. U.S. Dep't of Air Force, Civ. Action No. 7:15-cv-00419-LSC, 2015 WL 5736827, at *1 (N.D. Ala. Oct. 1, 2015) (dismissing APA claim because an adequate remedy would have existed if the plaintiff had timely filed a complaint); cf. Martinez v. United States, 333 F.3d 1295, 1320 (Fed. Cir. 2003) ("The fact that the complaint was untimely filed . . . does not mean that the court could not offer a full and adequate remedy."); Merchant, 2021 WL 3738835 at *5 (holding that even though the plaintiff had lost on her claims of discrimination against the university, the availability of those claims precluded action under the APA).

For these reasons, sovereign immunity bars the APA claims asserted against OCR (Count 7).

III. CONCLUSION

In accordance with the foregoing, the original motion to dismiss, Dkt. No. [32], the motion to strike that motion, Dkt. No. [37], and the motion to amend the motion to strike, Dkt. No. [62], are **DENIED AS MOOT**; the motion to strike affirmative defenses, Dkt. No. [42], is **DENIED AS MOOT**, and the Court construes the filing as Plaintiff's response filed in opposition to OCR's motion to dismiss, Dkt. No. [35]; and the motions to dismiss, Dkt. Nos. [35, 51], are **GRANTED**. All claims having been dismissed, Plaintiff's motion to lift the stay of discovery, Dkt. No. [55], is **DENIED AS MOOT**, and the Clerk is **DIRECTED** to close the case and enter judgment in favor of Defendants.

IT IS SO ORDERED this 8th day of November, 2022.

/S/ Leigh Martin May

Leigh Martin May
United States District Judge