IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF KENTUCKY
LEXINGTON DIVISION

Ramsi A. Woodcock, Plaintiff, v. The University of Kentucky et al., Defendants.	Case No. 5:25-cv-00424 Honorable Danny C. Reeves

Plaintiff's Reply in Support of Motion for a Preliminary Injunction

Plaintiff Ramsi A. Woodcock ("Professor Woodcock"), through undersigned counsel, replies as follows to the response of Defendants University of Kentucky, Eli Capilouto, Robert DiPaola, William Thro, and James Duff (collectively "Defendants") to Plaintiff's motion for a preliminary injunction.

Introduction

Defendants are harassing Plaintiff in retaliation for speech that is clearly protected by the First Amendment. That might seem like rough justice when the speech is a call for international war against Israel. But political winds change. It is not hard to imagine Defendants' successors one day harassing a professor who might argue that because Palestinians committed genocide on October 7, 2023 Israel's killing of thousands of Palestinians in response, as well as the Trump Administration's proposal to expel Palestinians, were justified.[1]

I. Preliminary Injunction Harms and Interests

A preliminary injunction will issue upon a favorable balancing of these interrelated concerns: (1) Plaintiff has a strong likelihood of success on the merits and (2) would otherwise suffer irreparable

[1] Jacob Magid & Lazar Berman, *Hosting PM, Trump Urges Permanent Relocation of All Gazans,* Times of Israel (Feb. 5, 2025), https://www.timesofisrael.com/meeting-pm-trump-urges-permanent-relocation-of-all-gazans-that-place-has-been-hell/. The view that Israel's killing of Palestinians is justified goes far beyond anything Plaintiff has said in relation to Israel. Israel's post-October 7 actions in Gaza are internationally recognized as a genocide, so an attempt to justify the slaughter can reasonably be construed as genocide apology. Complaint ¶¶ 36 n. 14, 42. By contrast, Plaintiff has not attempted to justify any internationally recognized genocide and instead calls for war explicitly to stop genocide and colonization. Complaint ¶ 42. It follows that a ruling permitting retaliation against Plaintiff would *a fortiori* permit retaliation against a defender of Israeli and Trump Administration policy toward Palestinians in Gaza.

injury; (3) there would not be substantial harm to others; and (4) the public interest would be served.[2] Here, all of these conditions are met. Defendants argue that they have an interest in completing the investigation and disciplinary proceedings. They do not, because the University is circumventing routine processes rather than pursuing them.[3] The University proceeds under color of no extant regulation and in violation of written procedures—both those currently in effect and those that the University deleted after the start of the investigation.[4] The University is employing an extraordinary process that it invented specifically for Plaintiff, which transfers to Defendants responsibility for commencing and resolving a discrimination investigation that is normally initiated and resolved by the Office of Equal Opportunity (OEO).[5] The procedure employs an outside investigator publicly associated with a highly partisan thinktank that explicitly calls for suppression of pro-Palestine speech on campus.[6] It places the same university president who publicly described Plaintiff's views as

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[2] *Preterm-Cleveland v. McCloud*, 994 F.3d 512, 519 (6th Cir. 2021) (en banc).

[3] The irregular nature of the proceeding distinguishes this case from those in which courts typically decline to interfere with university proceedings. See, e.g., *Doe v. Transylvania University*, No. Civil Action No. 5: 20-145-DCR (Dist. Court Apr. 13, 2020) (rejecting motion for preliminary injunction where plaintiff quibbled with details of a sexual misconduct disciplinary process carried out by the university's Title IX Coordinator according to an established Sexual Misconduct Policy pursuant to which the Coordinator duly provided notice prior to imposing interim measures and disclosed investigatory report to plaintiff); *Doe v. University of Kentucky*, 860 F. 3d 365, 368 (6th Cir. 2017) (abstaining from deciding challenge to details of an investigation, hearing and university appeals process otherwise duly implemented pursuant to an extant university Code of Student Conduct). As the Sixth Circuit has noted, "academic freedom. . . is concerned with retaliatory censorship, not routine discipline." *Kaplan v. University of Louisville*, 10 F. 4th 569 (6th Cir. 2021). This is a retaliation case. Moreover, the unique, ad hoc character of the proceeding in this case ensures that grant of a preliminary injunction here will not invite every subject of a university disciplinary process to seek federal relief.

[4] Dkt. 29, Plaintiff's Response in Opposition to Defendants' Motion to Abstain at 3–4. The University has sent conflicting signals about how much process Plaintiff will receive if Defendant Capilouto decides to sanction him. The investigator promised that the University would follow "University regulations" only if Defendant Capilouto recommends termination. Letter of Thompson at 3 (Aug. 25, 2025) ("If Professor Woodcock is found responsible . . . the University President['s letter] will include any sanction for such a finding. Should the University President determine that termination of a tenured appointment may be appropriate, then the University shall comply with KRS 164.230 *and any applicable University regulations*." (emphasis added)). But in their response brief, Defendants extend that commitment to any sanction, not just termination. Resp. Mot. Prelim. Inj. at 6 (stating that "[i]f the University concludes [that Plaintiff violated procedures, without distinction as to associated sanction], then [he] will receive due process in accordance with the University's Administrative Regulations and Kentucky law.").

[5] Dkt. 29, Plaintiff's Response in Opposition to Defendants' Motion to Abstain at 3–4.

[6] Dkt. 1 (Complaint) ¶¶ 28, 33. The University's chapter of the American Association of University Professors identified the appearance of partiality of the investigator as the most important problem with the University's actions. Email of Jennifer Cramer (Dec. 3, 2025). OEO policy declares that an "investigator" must "not have a conflict of interest or bias for or against . . . an individual . . . respondent". Office of Equal Opportunity Policy at 10 (Nov. 17, 2025), *available at* https://oeo.uky.edu/sites/default/files/2025-11/equal-opportunity-policy.pdf.

"repugnant" in charge of choosing the sanction to impose upon him based on an investigator's secret report—whereas under the normal OEO process, a hearing panel of impartial decisionmakers would take the first crack at identifying a sanction based on an investigator's report disclosed to Plaintiff.[7] Even though the University claims that the investigation is almost over and could acquit Plaintiff, it did not assign him classes for the spring even on an understudy basis, contrary to past practice when there was a question whether Plaintiff could teach.[8] These actions suggest that Defendants' real interest is not in completing a routine proceeding but executing a campaign of harassment in retaliation for speech that they consider offensive. Neither the public nor the University can countenance such an interest. Indeed, Section 1983, *Ex Parte Young*, and the exceptions to *Younger* were fashioned precisely to afford emergency relief in federal court from such abuses of power by state actors.[9]

Even if the University has an interest in completing the investigation, that interest is weak. If the Court ultimately finds in favor of Plaintiff on the merits, the University's investment in completing the investigation and disciplinary process (approximately $100,000 per month so far[10]) will be wasted and Defendants' liability to Plaintiff for these adverse actions increased whereas if the Court halts the investigation, the order would shield Defendants from liability for any resulting community harm. Such harm would in any case be limited because Plaintiff does not call for an end to Israel in class. Defendants acknowledge that the investigation has failed to silence Plaintiff's off campus calls to end

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[7] Dkt. 1 (Complaint) ¶¶ 53, 62, 95; Office of Equal Opportunity Policy at 11 (Nov. 17, 2025) (*available at* https://oeo.uky.edu/sites/default/files/2025-11/equal-opportunity-policy.pdf) (stating that if "the result of a finding or a policy violation is sufficiently severe that it may result in the suspension of an employee for more than five days [or] termination of employment, the case will be referred to the Equal Opportunity Hearing Board"); Due Process – Equal Dignity §§ I.C.1, I.E.2 (*available at* https://regs.uky.edu/sites/default/files/2025-10/policy_due-process_equal-dignity.pdf *)* (providing for disclosure of "final investigative report" and tasking hearing panel with recommending sanctions); Administrative Regulation – Due Process (Interim) § II.D.4 (*available at* https://regs.uky.edu/sites/default/files/2025-10/ar-due-process-interim.pdf) ("Any member of a hearing/appeals panel who has a conflict of interest must immediately recuse themselves[.]").

[8] Dkt. 1 (Complaint) ¶ 63.

[9] *Mitchum v. Foster*, 407 U.S. 225, 239 (1971) ("The very purpose of § 1983 was to . . . protect the people from unconstitutional action under color of state law[.]"); *Ex Parte Young*, 209 U.S. 123, 159–60 (1908); Fred O. Smith, Jr., *Abstention in the Time of Ferguson*, 131 Harv. L. Rev. 2283, 2296–2303 (2018) (discussing *Younger* exceptions).

[10] Dkt. 19-3, Ex. 28.

Israel so the decision whether to grant the injunction will not likely reduce any harm from that speech unless the University continues the disciplinary process through to termination months from now. But at that point Plaintiff might well obtain an injunction because termination would make Plaintiff's retaliation case even stronger. So even running the process through to termination would not necessarily reduce any harm. Moreover, while grant of an injunction would prevent Defendants from circumventing established anti-discrimination processes to retaliate against Plaintiff, it would not prevent the University from using established processes to respond to further complaints. OEO would be free to handle any new complaints through routine processes and to impose an interim suspension if the "threat to physical health or safety" standard contained in its written policies is met.[11]

By contrast, the harms to Plaintiff and the public of continuing the investigation and disciplinary process are great. The deprivation of Plaintiff's constitutional rights, which is irreparable harm as a matter of law, will continue.[12] In addition, the investigation will culminate in a letter by Defendant Capilouto, which, if negative, would transform the University's official position from neutrality to guilt, significantly increasing the emotional and reputational harm to Plaintiff caused by Defendants' actions, as well as the chilling effect of those actions on Plaintiff's and the community's speech.[13] Moreover, the suspension and ban would continue to prevent Plaintiff from teaching—a skill that, like playing an instrument, decays rapidly without practice—for at least nine more months and possibly years. Denial of access to office and law library, as well as the investigator's command to Plaintiff to "stop immediately" his speech on Palestine, further limit his ability to conduct research.[14] Eventual termination and the burden associated with contesting it would further magnify these harms pending

[11] Office of Equal Opportunity Policy at 15 (Nov. 17, 2025) ("The Executive Director . . . may impose interim suspension on Respondent in cases where the allegations present a threat to the physical health or safety of . . . the University community.") (*available at* https://oeo.uky.edu/sites/default/files/2025-11/equal-opportunity-policy.pdf).
[12] *ACLU of Ky. v. McCreary County, Ky.*, 354 F.3d 438, 445 (6th Cir. 2003); *Obama for Am. v. Husted*, 697 F.3d 423, 436 (6th Cir. 2012) ("When constitutional rights are threatened or impaired, irreparable injury is presumed.").
[13] Dkt. 1 (Complaint) ¶ 62.
[14] Dkt. 19-3 at p. 283 (Letter of Thompson) (July 22, 2025) ("If you are doing anything that *might* violate University policy, you should stop immediately." (emphasis added)).

a final ruling in this case. A final ruling in Plaintiff's favor is unlikely to make either the community or plaintiff whole because the community cannot recover damages from Defendants and the vagaries of qualified immunity doctrine may limit Plaintiff's recovery. Moreover, lost opportunity to develop as a teacher and scholar through practice cannot be valued. The imbalance of interests in Plaintiff's favor is greatly magnified by Plaintiff's strong likelihood of success on the merits.

II. Plaintiff is Likely to Succeed on his First Amendment Retaliation Claim.

A. Plaintiff's Speech Caused Defendants to Take Adverse Action Against Him.

Defendants retaliated in violation of the Free Speech Clause if (1) Plaintiff engaged in protected speech, (2) an adverse action was taken against him that would deter a person ordinary firmness from continuing to speak, and (3) there is a causal connection between the protected speech and the adverse action.[15] The investigation, suspension and ban are adverse actions taken by Defendants in response to the speech described in the two notices of investigation, all of which is protected. A plaintiff creates a presumption of but-for causation by showing that speech was a "motivating factor" in Defendants' actions, after which the burden shifts to the defendant to try to rule out but-for causation by showing by a preponderance of the evidence that "they would have taken the same action even if the plaintiff had not spoken."[16] The motivating factor requirement is met in this case because the allegations provide the basis for the investigation and the allegations are all directed at speech.[17] Moreover, Defendants maintain that each allegation also serves as the basis for the suspension and banishment.[18] Defendant Capilouto's characterizations of plaintiff's petition as "repugnant", "calling for the destruction of a people based on national origin", and "express[ing] hate" are further evidence that Plaintiff's speech was a motivating factor.[19] Courts sometimes permit an inference of motivation if the

[15] *Thaddeus-X v. Blatter*, 175 F. 3d 378, 394 (6th Cir. 1997) (en banc).
[16] *Lemaster v. Lawrence County, Kentucky*, 65 F. 4th 302, 309 (6th Cir. 2023).
[17] Dkt. 1 (Complaint) ¶¶ 64–65.
[18] Dkt. 19-4 at p. 35.
[19] Email of Capilouto (Jul. 18, 2025). As if to highlight the ideological character of the University's action, the University's response brief opens with a quote from the Israeli declaration of independence. Resp. Mot. Prelim. Inj. at 2.

adverse action followed the speech within "days or weeks."[20] Plaintiff shared his petition on AALS listservs on July 6, 2025 and the University acted twelve days later, permitting such an inference.[21]

B. Defendants Have Taken Adverse Action Against Plaintiff.

The University has taken multiple adverse actions. The courts have emphasized that the ordinary firmness inquiry is meant to "weed out only inconsequential actions."[22] Adverse actions include: suspensions; bans; defamation or invasion of privacy if the resulting emotional distress would be sufficiently severe; the seizure of files; and threats to deprive the target of a benefit, such as employment, through actions, such as an investigation, for which the deprivation is a possible outcome.[23] Actions that do not individually count as adverse can be collectively adverse.[24]

Here, as part of the investigation, the University has suspended and banned Plaintiff. The University has also threatened him with termination by linking the investigation to a determination of sanctions—all other investigative processes described in university rules save the determination of sanctions for the end of the hearing stage.[25] The investigator provided Plaintiff with a set of

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Defendants' failure to follow established procedures in implementing the investigation, suspension, and ban further reinforces the conclusion that the content of Plaintiff's speech was a motivating factor. Complaint ¶¶ 83–95.

[20] *Lemaster v. Lawrence County, Kentucky*, 65 F. 4th 302, 310 (6th Cir. 2023).

[21] *See Dye v. Office of the Racing Com'n*, 702 F. 3d 286 (6th Cir. 2012) ("A lapse of two months . . is sufficient to show a causal connection[.]").

[22] *Thaddeus-X v. Blatter*, 175 F. 3d 378, 398 (6th Cir. 1997).

[23] *Michael v. Caterpillar Financial Services Corp.*, 496 F. 3d 584, 596 (6th Cir. 2007) (paid suspension); *Howard v. Livingston Cnty., Michigan,* No. 21-1689, 2023 WL 334894, at *9 (6th Cir. Jan. 20, 2023) (ban); *Mattox v. City of Forest Park*, 183 F. 3d 515, 521 (6th Cir. 1999) (defamation or invasion of privacy); *Bell v. Johnson*, 308 F. 3d 594, 604–05 (6th Cir. 2002) (document seizure); *Pickering v. Board of Ed. of Township High School Dist. 205, Will Cty.*, 391 U.S. 563, 574 (1968) ("the threat of dismissal from public employment is . . . a potent means of inhibiting speech"); *Thomas v. Eby*, 481 F. 3d 434, 441 (6th Cir. 2007) (holding that prison guard's issuance of a sexual misconduct ticket was adverse action because "inmates convicted of major-misconduct charges lose their ability to accumulate disciplinary credits for a month" even though inmate himself was not actually deterred from speaking); *Fritz v. Charter Tp. of Comstock*, 592 F. 3d 718, 726 (6th Cir. 2010) (encouraging employer to terminate contract constituted adverse action where defendants' power over employer's business made the threat "tangible"); *White v. Lee*, 227 F. 3d 1214, 1230 (9th Cir. 2000) (discrimination investigation); *Ulrich v. City and County of San Francisco*, 308 F. 3d 968, 977 (9th Cir. 2002) (hospital investigation and revocation of clinical privileges). The University suggests incorrectly that the court in *Cunningham v. Blackwell* held that a reassignment is not an adverse action; that case was decided on causation and unprotected speech, not adverse action grounds. 41 F. 4th 530, 542-44 (6th Cir. 2022). Defendants also incorrectly cite *Kaplan v. University of Louisville* for the same proposition; that case was decided on causation grounds. 10 F. 4th 569, 587 (6th Cir. 2021).

[24] *Thaddeus-X v. Blatter*, 175 F. 3d 378, 398 (6th Cir. 1997).

[25] Dkt. 1 (Complaint) ¶ 62 (stating that investigation will culminate in letter from Defendant Capilouto determining sanctions); Due Process — Equal Dignity § I.E.2 (tasking hearing panel with determining sanctions in the first instance);

"allegations against" him that has the appearance of formal charges.[26] The investigator specified that Defendant Capilouto would issue a letter to Plaintiff based on her report that would determine sanctions, including possible "termination", and cited the Kentucky statute authorizing the board of trustees to terminate an employee with cause.[27] So long as the investigation continues, the threat that Defendant Capilouto will move to terminate him based on its outcome hangs over Plaintiff.[28] Defendants enhanced the threat of termination by implementing a process that has the appearance of bias. In addition to the indicia of bias already discussed,[29] Defendant Capilouto discouraged witnesses from participating in the investigation by signaling extreme displeasure with Plaintiff, including by publicly condemning his views, suspending him, and banning him.[30] The University further enhanced the threat of termination by taking over an investigation process that university regulations commit to the OEO, inventing a procedure specifically for Plaintiff, and deleting or disregarding conflicting regulations, as discussed above.[31] The University claims that it is following a "protocol" and "routine" procedures but has not identified a single administrative precedent or the text of the protocol.[32]

Office of Equal Opportunity Policy at 11 (Nov. 17, 2025) (discussing investigation outcomes without mentioning determination of sanctions).

[26] Letter of Thompson at 1 (Jul. 22, 2025).

[27] Letter of Thompson at 3 (Aug. 25, 2025).

[28] The investigation is an adverse action even if there is a possibility that the University will acquit Plaintiff because the adversity stems from the threat of termination rather than its completion. Many of the investigations that courts have held to be adverse actions ultimately acquitted the plaintiff. *White v. Lee*, 227 F. 3d 1214, 1220 (9th Cir. 2000).

[29] *See* page 2 *supra*. Defendants point out that constitutional due process does not require that a decisionmaker be impartial "at the pretermination stage". But that does not prevent the appointment of an apparently biased investigator and use of a structurally biased decisionmaking process from reinforcing a threat to terminate relevant to First Amendment adverse action analysis.

[30] Defendant Capilouto's email did not mention Plaintiff by name, but Defendant Capilouto had no reason to issue a statement if he thought no one would know who he was talking about. He referenced a petition that contained Plaintiff's name and university affiliation, which he should have known would permit anyone to find Plaintiff through a quick google search. Email of Capilouto (Jul. 18, 2025). In the event, it took exactly 56 minutes for the first journalist to contact Plaintiff after the announcement. Ex. 1, Woodcock Decl. ¶ 14. Finally, Defendant Capilouto would have known that someone in the college of law would notice that Plaintiff had disappeared from course listings and his office. *Cf. Stringer v. Wal-Mart Stores, Inc.,* 151 S.W. 3d 781, 794 (Ky. 2004) (stating that "plaintiff need not be specifically identified in the defamatory matter itself so long as it was so reasonably understood by plaintiff's 'friends and acquaintances . . . familiar with the incident.'").

[31] This includes imposing a suspension in violation of an OEO policy that permits interim suspension only upon a showing of a "threat to physical health or safety," which Plaintiff does not meet. Office of Equal Opportunity Policy at 15 (Nov. 17, 2025).

[32] Defendants further reinforced the threat to terminate Plaintiff in their response brief when they argued that the investigation must continue in order to allow them to determine whether Plaintiff made any remarks that are vulgar,

Defendant Capilouto's public statement that Plaintiff advocates destruction of a people also defamed Plaintiff and Defendants caused Plaintiff further emotional and reputational harm by tasking an investigator with reaching out to Plaintiff's students, faculty colleagues, and law professors around the world and informing them that the University is investigating him.[33] Finally, the University caused Plaintiff emotional harm by insisting upon seizing Plaintiff's personal files even though the files dated from 2021 and were irrelevant to an investigation of statements made starting in 2024.[34] Even if some of these actions would not individually count as adverse, they were part of a single campaign of harassment organized collaboratively by defendants and count as adverse in gross.

The University might argue that the investigation has not deterred Plaintiff from speaking. But Plaintiff need only show that others of ordinary firmness might be deterred by the University's actions.[35] In any case, Plaintiff's speech has been chilled.[36] The University also appears to argue that there is no adverse action because it merely seeks information. But the University has gone far beyond information collection in suspending and banning Plaintiff, ordering him to "stop immediately", and embedding its search for information in a process for which the threat of termination is an explicit and integral part, as discussed above.[37] Finally, defendants contend without basis that Plaintiff has

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vituperative, or ad hominem. Resp. Mot. Prelim. Inj. at 16. Defendants have no basis for searching for vulgar speech because none of the University's allegations suggest that Plaintiff engaged in it. The implication is that Defendants view the investigation as a vehicle for finding dirt on Plaintiff.

[33] Dkt. 1 (Complaint) ¶¶ 51, 60.

[34] Plaintiff had a constitutional right of privacy in the files. *See O'Connor v Ortega*, 480 U.S. 709, 715 (1987) (Fourth Amendment applies to searches by public employers); *Ontario v. Quon*, 560 U.S. 746, 759-760 (2010) (declining to rule out privacy interest of police officer in data stored on work phone). Defendants' claim that delay in returning a laptop that had not been used since 2021—a fact that the University could have verified from its own cloud logs or metadata proffered by Prof Woodcock—would have delayed an investigation into conduct that started in February 2024 is not credible. The University has not explained why it waited more than a month to make a commitment not to review personal files that it could have made from day one.

[35] *Bell v. Johnson*, 308 F. 3d 594, 606 (6th Cir. 2002) (stating that whether an action is adverse "does not depend on how the particular plaintiff reacted").

[36] Ex. 1, Woodcock Decl. ¶¶ 3–5.

[37] *See ACLU v. National Sec. Agency*, 493 F. 3d 644, 663 (6th Cir. 2007) (holding that mere data collection is not adverse action but only if "government regulation, prescription, or compulsion" are not involved). If Defendants merely sought information, they would have responded to Plaintiff's July 9 offer to Vice Provost Jasinski to chat about his conference statements instead of acting against him without warning nine days later. Dkt. 1 (Complaint) ¶ 50.

failed to participate in the investigation or sought to delay it. However, neither the suspension, ban, threats of termination, procedural irregularities, biased structure, defamatory statements or attempts to seize personal files that render the investigation an adverse action are due to Plaintiff.[38]

C. Plaintiff Has Engaged in Protected Speech.

Plaintiff's speech is protected if it is (1) on a matter of public concern, (2) either academic speech or private citizen speech, and (3) Plaintiff's interest in speaking outweighs the University's interest in efficient operations.[39] Alternatively, plaintiff's speech is protected if it takes place in a public forum or falls within the speaker and content parameters of a limited public forum and can therefore be regulated only if the University has a compelling interest in doing so.[40]

Defendants mistakenly suggest that Plaintiff must show that all of his speech is protected in order to prevail.[41] Instead, Plaintiff prevails if he can show that *any* of his speech was protected and a but-for cause of Defendant's actions, even if the rest of his speech is not protected.[42] Plaintiff's post of the petition for military action to AALS discussion groups on July 6 is likely to have been the but-for cause of the suspension, ban, and investigation because Defendant Capilouto initiated the

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[38] In any case, the University maintains that Plaintiff is not required to participate in the investigation and he is under no obligation to assist an adverse action that violates his First Amendment rights. Letter of Thompson at 1 (Aug. 18, 2025) ("You are welcome to but not required to participate in this investigation."). Defendants also misconstrue a letter of Plaintiff's attorney as objecting to Thompson's neutrality based on her Christian faith. Letter of Childers (Aug. 22, 2025). The letter makes clear, however, that the objection is not to Thompson's Christian faith per se but rather to the possibility that she believes that she has a divine responsibility to support Israel. *Id.* at 1–2; c*f. Missouri Department of Corrections v. Finney*, No. 23-203 (U.S. Feb. 20, 2024) (Alito, J.) (noting that the Missouri Supreme Court recently affirmed the dismissal of jurors based on their religious opposition to homosexuality because the dismissal was "not on the basis of their religious status, but on the basis of their religious beliefs"). Defendants also complain that Plaintiff has not yet responded to the more than forty questions submitted to him by the investigator on December 1. Dkt. 26-4. But Plaintiff has not missed a deadline in responding to those questions because the investigator agreed to an extension. See Exhibit 1, attached hereto, Kapitan Decl. at ¶ 2. Plaintiff does not challenge the length of the investigation on either First Amendment or Due Process grounds, so any delay that may be attributable to him did not contribute to the constitutional violations that he claims.

[39] *Meriwether v. Hartop*, 992 F. 3d 492, 504–08 (6th Cir. 2021); *Noble v. Cincinnati & Hamilton Cty. Pub. Library*, 112 F. 4th 373, 380–81 (6th Cir. 2024).

[40] *Kincaid v. Gibson*, 236 F. 3d 342, 348, 354 (6th Cir. 2001).
Speech advocating war is protected unless it goes beyond mere advocacy to incite imminent lawless violence, meets the definition of a threat, or constitutes fighting words. Defendants do not claim that Plaintiff's speech falls within any of these First Amendment exceptions.

[41] Resp. Mot. Prelim. Inj. at 12 (stating that Plaintiff has not shown that "*all* of his speech and conduct is protected").

[42] Thaddeus-X v. Blatter, 175 F. 3d 378, 394 (6th Cir. 1997) (listing elements of retaliation claim).

investigation a mere nine days later and referenced only the petition in his announcement.[43] The University had likely known about Plaintiff's posts to the faculty listserv and statement at the George Mason conference for more than a year by then but had not acted.[44] Accordingly, Plaintiff need only demonstrate that the petition alone was protected in order to prevail.[45] However, Plaintiff has nevertheless shown that all of the speech identified in the two notices of investigation was protected.[46]

Defendants argue that they cannot determine whether Plaintiff's speech is protected until they complete the investigation because they need to ascertain what Plaintiff actually said. That is not so because Plaintiff has shown that the speech is protected even if the allegations are taken as true. A possible exception is the conclusory allegation that Plaintiff advocates genocide.[47] But no factual inquiry is required to discount that allegation, because nowhere in the notices of investigation (or anywhere else) does the University cite an example in which Plaintiff actually engages in such advocacy, so there is no basis for inquiring about it further.

Defendants suggest that *Garcetti v. Ceballos* ended protection for academic speech and that Plaintiff's speech was therefore protected only to the extent that he spoke as a private citizen.[48] As Defendant Thro noted in a recent book, that is not the case: Academic speech is protected.[49] Even if

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[43] Email of Capilouto (Jul. 18, 2025).

[44] Testimony of Sarah Mudd; Letter of Thompson at 2 (Jul. 22, 2025) (describing complaint about February 23, 2024 conference statement).

[45] This is true even if the investigation leads to additional allegations involving speech that is not protected. The unearthing of allegations pursuant to a retaliatory investigation is itself retaliation if the new allegations lead to an adverse action such as termination. That is because the cause of the termination would ultimately be the speech that triggered the retaliatory investigation. For the same reason, Plaintiff need not show that the speech alleged in the second notice of investigation is protected.

[46] Mem. L. Support Mot. Prelim. Inj. & Expedited Consid. at 8–18. Defendants do not contest that all of the speech described in the University's allegations can count as both academic or private citizen speech on a matter of public concern. Nor do they contest that Plaintiff's speech in a campus discussion forum, on the faculty listserv or in downtown Cincinnati is protected under limited public forum or public forum doctrine and is subject to viewpoint discrimination by Defendants. The university claims that Plaintiff's conference speech was "off topic", but *Meriwether* rejected such a germaneness challenge. *Meriwether v. Hartop*, 992 F. 3d 492, 507 (6th Cir. 2021) (stating that academic speech is protected "whether that speech is germane to the contents of the lecture or not").

[47] Letter of Thompson at 1–2 (Sept. 8, 2025).

[48] Resp. Mot. Prelim. Inj. at 13; 547 U.S. 410 (2005).

[49] William E. Thro & Charles J. Russo, The Constitution on Campus: A Guide to Liberty and Equality in Public Higher Education 21 (Bloomsbury Jun. 2022) (stating that in *Meriwether v. Hartop* "[t]he Sixth Circuit decided that there is an exception to Garcetti for a faculty member's speech in the context of teaching and research" and observing that *Garcetti*

only private citizen speech were protected, however, all of Plaintiff's speech can be understood as private citizen speech and is therefore protected on that ground.[50] Defendants also argue that they must continue the investigation in order to know how to apply the *Pickering* balancing test.[51] But, unlike in other contexts, including K-12 education, in higher education, preventing offense is not an efficiency interest because controversial speech is an essential part of a university's mission to advance thought.[52] As there is no weight on the University's side of the scale, and Plaintiff's speech implicates core First Amendment interests in protecting political and academic speech, the outcome of *Pickering* analysis is "plain".[53] Defendants further suggest that Title VI withdraws speech that creates a hostile environment from First Amendment protection and requires the University to act against it.[54] That is not so because the Constitution is the supreme law of the land. Title VI requires that universities not show "deliberate indifference" to "actual notice" of a hostile environment.[55] But it does not permit

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may be applicable only when faculty "perform administrative work, serve on an institutional committee, or represent their institution in a nonacademic setting"); *Meriwether v. Hartop*, 992 F. 3d 492, 504–06 (6th Cir. 2021).

[50] *Vaughn v. Lawrenceburg Power System*, 269 F. 3d 703, 716 (6th Cir. 2001) (recognizing that a person may speak in professional and private capacities at the same time). Speech in limited public and public fora is also protected regardless of the capacity in which a professor speaks. *Cf. Kincaid v. Gibson*, 236 F. 3d 342, 354 (6th Cir. 2001) (discussing strict scrutiny).

[51] Resp. Mot. Prelim. Inj. at 14–16. Defendants also suggest that courts are unable to determine the likelihood of success of a retaliation claim that requires *Pickering* balancing. *Id.* This is not so. *See, e.g., Amalgamated Transit Union Local 85 v. Port Auth.*, 39 F. 4th 95, 104-05 (3rd Cir. 2022) (evaluating likelihood of success on claim requiring *Pickering* balancing).

[52] *Meriwether v. Hartop*, 992 F. 3d 492, 511 (6th Cir. 2021) ("The mere fear or apprehension of disturbance is not enough to overcome the right to freedom of expression.") (cleaned up); *Rodriguez v. Maricopa Cty. Community College Dist.*, 605 F. 3d 703, 710 (9th Cir. 2009) ("We . . . doubt that a college professor's expression on a matter of public concern . . . could ever constitute unlawful harassment and justify the judicial intervention that plaintiffs seek.").

[53] *White v. Lee*, 227 F. 3d 1214, 1229–30 (9th Cir. 2000) (investigation not needed because constitutional violation obvious). Even if Defendants' *Pickering* argument were good, it would not justify continuation of the investigation with respect to Plaintiff's faculty listserv, campus discussion forum, and downtown Cincinnati speech, all of which is also protected under limited public or public forum doctrine, which Defendants do not contest.

[54] This appears to be a longstanding misconception of Defendant Thro, who once wrote, incorrectly, that because the Court has "held that public school districts incur monetary liability for responding with deliberate indifference to one student's harassment of another student[,] by inference, expression that amounts to harassment is not within the freedom of speech." William Thro, *Follow the Truth Wherever It May Lead: The Supreme Court's Truths and Myths of Academic Freedom*, 45 U. Dayton L. Rev. 261, 269 n.40 (2020). Leading free speech scholars disagree. *See, e.g.,* Mark Tushnet, *Some Thoughts About Free Speech and Hostile Environment Discrimination on College Campuses*, Harvard Law School at 27 (2024), https://hls.harvard.edu/bibliography/some-thoughts-about-free-speech-and-hostile-environment-discrimination-on-college-campuses/ (ruling out retaliation against speakers who create a hostile environment through general statements because that is "pure political speech).

[55] *Wamer v. University of Toledo*, 27 F. 4th 461, 466–67 (6th Cir. 2022) (articulating standard in context of Title IX, which is the sex harassment analogue of Title VI).

the University to retaliate against protected speech in violation of the constitution.[56] Universities, states and federal administrative agencies are similarly powerless to cancel protection for speech by redefining it as hateful, offensive, or antisemitic.

Suppose that speech that creates a duty for the University to act under Title VI were automatically denied First Amendment protection, as Defendants maintain. Even then, Plaintiff's speech would remain protected because it is not harassment so severe or pervasive and objectively offensive that it effectively bars access to an educational opportunity or benefit offered by the University, as required for a hostile environment to exist.[57] If it were otherwise, then any scholar who called for war to help Ukrainians creates a hostile environment.[58] Even if Plaintiff's speech did create a hostile environment, the University had no duty to respond with a ban, suspension, and investigation threatening termination because the "deliberate indifference" standard sets a low bar.[59]

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[56] *Davis v. Monroe County Bd. of Ed.*, 526 U.S. 629, 649 (1999) (noting that "it would be entirely reasonable for a school to refrain from a form of disciplinary action [for the creation of a hostile environment] that would expose it to constitutional . . . claims); *Saxe v. State College Area School District*, 240 F. 3d 200, 204 (3rd Cir. 2000) ("There is no categorical "harassment exception" to the First Amendment's free speech clause.") (Alito, J.). Defendants cite to *DeJohn v. Temple University* for the contrary proposition, but the opinion, which is in any case not a model of clarity, supports the view that Title VI does not defeat First Amendment protection. 537 F. 3d 301, 319 (3rd Circ. 2008) (stating that "some speech that creates a 'hostile or offensive environment' may be protected speech under the First Amendment"). This does not mean that a university may never discipline a professor based on Title VI. Universities can freely retaliate against harassment that takes the form of non-expressive conduct or unprotected speech such as fighting words, threats, or defamation.

[57] *Wamer v. University of Toledo*, 27 F. 4th 461, 466–67 (6th Cir. 2022) (hostile environment standard). Every court that has considered pro-Palestine speech such as Professor Woodcock's agrees. Mem. L. Support Mot. Prelim. Inj. & Expedited Consid. at 16, 21 (collecting cases). Plaintiff has used more direct language in calling for war than do many other scholars, who prefer the euphemism of "military intervention." But he can hardly be faulted for employing a term that the Trump Administration itself favored in renaming the Department of Defense the "War Department." Joseph Gedeon, *Trump Signs Executive Order Rebranding Pentagon as Department of War*, The Guardian (Sep. 5, 2025), https://www.theguardian.com/us-news/2025/sep/05/department-war-defense-trump-executive-order-pentagon.

[58] *See, e.g.,* Sashko Shevchenko, *"Defeating Russia Is The Best Thing We Could Do For Russia": Historian Timothy Snyder On The Ukraine War*, Radio Free Europe/Radio Liberty (Aug. 7, 2024), https://www.rferl.org/a/timothy-snyder-russia-ukraine-war-victory/33067942.html. Calls for military intervention that might lead to conflict with the United States are no more objectively offensive than other calls for war. *Cf. Tinker v. Des Moines Independent Community School Dist.*, 393 U.S. 503, 514 (1968) (holding that students wearing black armbands to show opposition to Vietnam War did not cause disruption to school operations).

[59] For example, when U.S. Department of Education investigated a Hunter College professor who "demoniz[ed]" Israel in class, it directed only that Hunter contemplate providing training. Hunter College Resolution Agreement at 9 (June 10, 2024). None of the allegations in the first notice of investigation could have created liability for the University for the additional reason that all four of the complainants were faculty at other schools. *See Snyder-Hill v. Ohio State University*, 48 F. 4th 686, 708 (6th Cir. 2022). The university was further protected from liability in relation to plaintiff's speech in

III. Plaintiff is Likely to Succeed on his Due Process Claim.

A. Plaintiff Has a Property Interest in His Teaching Position.

Defendants contest only Plaintiff's property interest claim and do not contest the liberty interest claim. The contours of state employees' property interests are determined by state rules.[60] Applying that principle, the Sixth Circuit and other courts have repeatedly found property interests in the terms and conditions of employment.[61] In *Hulen v. Yates*, for example, the court held that reassignment of a professor to a different department implicated a property interest because the value of a tenured position extends beyond pay to include the "terms and conditions" of the appointment and the "unanimous custom and practice of the university."[62] *A fortiori*, the University's reassignment of Plaintiff to "professional development" when university rules characterize teaching, research, and service as the essential elements of his tenured faculty position implicates a property interest.[63] Defendants appeal to *Parate v. Isibor* for the proposition that Plaintiff has no interest in teaching, but *Parate* did not involve a tenured faculty position, and in any case it held only that a faculty member does not have a right to teach a particular class.[64] The question whether a faculty member has a right to teach at all was not before the court.[65] Defendants also cite *Kaplan v. University of Louisville* for the

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Hong Kong because Title VI does not apply extraterritorially. *See, e.g., Doe v. University of Central Missouri,* No. 4:20-00714-CV-RK (W.D. Missouri Dec. 28, 2020).

[60] *The Bd. of Regents of State Colleges v. Roth*, 408 U.S. 564, 578 (1972) ("the respondent's 'property' interest in employment at Wisconsin State University-Oshkosh was created and defined by the terms of his appointment.").

[61] *Gunasekera v. Irwin*, 551 F.3d 461, 468 (6th Cir. 2009) (graduate faculty status and advising privileges were property interests requiring pre-deprivation process) (citing *Ridpath v. Bd. of Governors Marshall Univ.,* 447 F.3d 292, 310 (4th Cir.2006) (an unwanted job transfer was a deprivation of a property interest) and *Newman v. Commonwealth,* 884 F.2d 19, 25 n. 6 (1st Cir.1989) (prohibiting faculty member from voting on degrees and from serving on important university committees or as chair of her department was a deprivation of a property interest in her position); *Fed. Deposit Ins. Corp. v. Mallen*, 486 U.S. 230, 240–42 (1988) (a prolonged suspension is a "deprivation" for due process purposes).

[62] 322 F.3d 1229, 1241–44 (10th Cir. 2003) (holding that reassignment of a professor to a different department implicated a property interest).

[63] Dkt. 19-8 (Law Faculty Rules and Policies) at p. 96-97 (indicating that faculty with more than five years of law teaching experience are expected to engage in a minimum of 40% teaching time, 35% research time, and 5% service time). "Professional development" is defined nowhere in university regulations.

[64] 868 F.2d 821, 827 832 (6th Cir. 1989); Def. Resp. at p. 17.

[65] *Parate,* 868 F.2d at 827, 832.

proposition that universities can suspend tenured faculty whenever there are pending misconduct allegations.[66] But in *Kaplan*, the employee's administrative position as chair was not tenured.[67]

B. The Reassignment and Building Ban Violate Plaintiff's Due Process Rights.

Pre-deprivation process is the "root requirement" of the Due Process Clause, which is "an opportunity for a hearing *before* [an individual] is deprived of any significant property interest."[68] Pre-deprivation process can only be circumvented in "extraordinary situations" where there is a "special need for very prompt action."[69] This rule is not limited to terminations. In *Gunasekera v. Irwin*, for example, the court held that a hearing was required before deprivation of advising privileges.[70]

Defendants fail to identify a need for prompt action against Plaintiff. They claim a vague interest in protecting Plaintiff and the community, and in addressing a hostile environment under Title VI. But at the time that Defendants acted on July 18, 2025, they had received no complaints about Plaintiff from any student or faculty member at the University.[71] They acted in summer when Plaintiff was not teaching and the law building was mostly empty, in response to complaints by faculty at other schools who were likely not covered by Title VI either because they had no intention of accessing university resources or because they were located abroad, on the basis of statements made in Hong Kong, Washington, DC and on the Internet.[72] Defendants labeled the suspension a reassignment presumably because they could not show the threat of imminent or physical harm needed to obtain an interim suspension, banned Plaintiff from the law building but not the surrounding campus in which vulnerable undergraduates predominate, and acted without warning days after Plaintiff offered to meet

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[66] Dkt. 26, Def's Resp. at p. 10.
[67] *Kaplan v. University of Louisville*, 10 F.4th 569, 577 (6th Cir. 2021) (observing that university regulations at Louisville stated that chairs "serve[] at the pleasure of the Board of Trustees").
[68] *Hieber v. Oakland Cnty., Michigan*, 136 F.4th 308, 321 (6th Cir. 2025) (emphasis in original).
[69] *United States v. James Daniel Good Real Prop.*, 510 U.S. 43, 53 (1993); *Thomas v. Cohen*, 304 F.3d 563, 576 (6th Cir. 2002).
[70] 551 F.3d at 469.
[71] Testimony of Defendant Duff and OEO Director Sarah Mudd.
[72] Dkt. 1 (Complaint) ¶ 64; *see supra* note 59.

with the Vice Provost to answer questions.[73] Very prompt action was not needed and Defendants do not appear to have really thought that it was.

The contrast with the cases Defendants cite is stark. In *Levy v. Louisiana State*, the university responded to a genuine emergency: a report from a student that a law professor had made vulgar and threatening statements in class.[74] The law dean nevertheless took the time to meet with the professor to confirm the validity of the complaint before suspending him. In *Cunningham v. Blackwell*, the university learned that medical school professors were signing off on others' clinical notes. The University investigated and met with the professors for eight months before implementing targeted suspensions that relieved them from clinical duties but not teaching.[75] In *Kaplan*, a medical school department chair entered into one unauthorized lease agreement, reneged on another, and explored an unauthorized sale of the department's practice.[76] The university implemented a targeted suspension from chair duties without notice but let the professor continue teaching until, after investigating for a month, the university apparently uncovered more wrongdoing and broadened the suspension.

In short, there is no extraordinary circumstance that justified Defendants having departed from the standard due process requirement of a pre-deprivation hearing.

Because Plaintiff seeks relief against Eli Capilouto, Robert DiPaola, William Thro, and James Duff acting in their official capacities, sovereign immunity does not apply.[77]

Conclusion

WHEREFORE, Plaintiff begs this Court to grant Plaintiff's preliminary injunction motion.

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[73] Dkt. 1 (Complaint) ¶¶ 50, 89; Office of Equal Opportunity Policy at 15 (Nov. 17, 2025).
[74] *Levy v. Bd. of Supervisors of La. State Univ. & A&M Coll.*, 2025 WL 3124859, at *2.
[75] *Cunningham v. Blackwell*, 41 F.4th 530, 537 (6th Cir. 2022).
[76] *Kaplan v. University of Louisville*, 10 F. 4th 569, 575 (6th Cir. 2021).
[77] *Morgan v. Bd. of Pro. Resp. of the Supreme Ct. of Tennessee*, 63 F.4th 510, 516 (6th Cir. 2023) (parties may obtain prospective injunctive relief to end a continuing violation of federal law).

Respectfully submitted,

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