No. 26-5057

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

RAMSI A. WOODCOCK

Plaintiff-Appellant,

- v. -

UNIVERSITY OF KENTUCKY; ELI CAPILOUTO, IN HIS OFFICIAL AND INDIVIDUAL CAPACITIES; ROBERT DIPAOLA, IN HIS OFFICIAL AND INDIVIDUAL CAPACITIES; WILLIAM EUGENE THRO, IN HIS OFFICIAL AND INDIVIDUAL CAPACITIES; JAMES C. DUFF, IN HIS OFFICIAL AND INDIVIDUAL CAPACITIES; LINDA MCMAHON, IN HER OFFICIAL CAPACITY AS UNITED STATES SECRETARY OF EDUCATION; RUSSELL MATTHEW COLEMAN, ATTORNEY GENERAL

Defendants-Appellees.

On Appeal from the United States District Court
for the Eastern District of Kentucky at Lexington
(Docket No. 5:25-cv-00424-DCR)

REPLY TO UNIVERSITY DEFENDANTS' RESPONSE TO PLAINTIFF'S MOTION FOR A RULING ON PLAINTIFF'S EMERGENCY MOTION FOR AN INJUNCTION PENDING APPEAL

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ARGUMENT

A. The Standard of Review Is De Novo

This Court reviews a motion for an injunction pending appeal de novo rather than for abuse of discretion as Defendants contend. *Randolph Inst. v. Husted*, 907 F. 3d 913, 917–18 (6th Cir. 2018) (rejecting both abuse of discretion and the Supreme Court's "indisputably clear" standard); Resp.15, Dkt.29. The Court normally considers likelihood of success on the merits, irreparable injury, harm to others, and the public interest in deciding whether to grant an injunction pending appeal. *Id*. But where, as here, plaintiff alleges an ongoing violation of constitutional rights, this Court focuses on likelihood of success and presumes that the other factors are satisfied.[1] *Bays v. City of Fairborn*, 668 F. 3d 814, 819 (6th Cir. 2012). Plaintiff has the burden of demonstrating likelihood of success. *Michigan Coalition v. Griepentrog*, 945 F. 2d 150, 153–54 (6th Cir. 1991). In the

[1] Plaintiff nevertheless provided evidence of irreparable harm, no harm to others, and a public interest, including that: the adverse actions chill his and others' speech, erode his professional skills, harm his reputation, and cause emotional distress to him and his family; no student or faculty member complained about Plaintiff and his colleagues support him but are afraid to speak publicly; and his speech is both political and scholarly (hence deserving of strong protection). Hearing, R.40, PageID##1885:16–1887:8, 1982:15–20; Woodcock 1/2/26 ¶¶2–9, 12–13, R.35, PageID##1608–12, 1614–15; Michael ¶7, R.19-7, PageID#1109; Donovan ¶¶5–7, R.19-12, PageID#1262; Bolter ¶7, R.19-9, PageID#1250; Lee ¶8, R.19-11, PageID#1258–59. Defendants insist on "restraint" from this Court but rely on a case that affirmed that courts "have not failed" to protect speech in schools. *Epperson v. Arkansas*, 393 U.S. 97, 104 (1968); Resp. 4 n.8, Dkt.29.

instant case, Plaintiff-Appellant Ramsi A. Woodcock ("Plaintiff") must show that this Court will likely rule in his favor based on its de novo review of the District Court's decision to abstain under *Younger*. PI Order, R.37, PageID#1771. Plaintiff must also show that if he prevails on abstention, he will likely win on the merits of his First Amendment or due process claims as well. First Reply 4, Dkt.22. Review of the merits is de novo because the District Court did not reach the merits, so there is no opinion to which this Court may defer.[2] PI Order, R.37, PageID#1771.

B. Plaintiff Has a Strong Likelihood of Success on His First Amendment Claim

For his First Amendment claim, Plaintiff has the initial burden of showing a likelihood of success on causation, adverse action, and protection for his speech.[3] *Griepentrog*, 945 F. 2d at 153–54. Plaintiff meets his initial burden on causation by showing that his speech was a motivating factor behind the adverse actions undertaken by Defendants-Appellants Capilouto, Thro, DiPaola, and Duff ("Defendants"). *Lemaster v. Lawrence County, Kentucky*, 65 F. 4th 302, 309 (6th Cir. 2023). The burden then shifts to Defendants to show that they acted for other reasons. *Id*. Plaintiff meets his initial burden on speech protection by showing that

[2] That the District Court did not reach the merits is no bar to their consideration by this Court. *Fischer v. Thomas*, 52 F.4th 303, 307, 309 (6th Cir. 2022).
[3] For Plaintiff's due process and abstention arguments, *see* First Mot. 8–14, 20–21, Dkt.6-1.

he spoke as an academic or private citizen about a matter of public concern. *See Sheppard v. Beerman*, 317 F. 3d 351, 355 (2d Cir. 2003). The burden then shifts to Defendants to show that the potential for disruption of University operations due to Plaintiff's speech outweighs Plaintiff's First Amendment interest in speaking ("*Pickering* balancing"). *Myers v. City of Centerville, Ohio*, 41 F. 4th 746, 764–65 (6th Cir. 2022).

1. Defendants Do Not Challenge Causation

Plaintiff has shown a strong likelihood of success on causation. Plaintiff argues that his posting of a petition for military action to AALS discussion groups on July 6, 2025 caused the investigation, suspension, and ban (the "adverse actions") because: the University acted days later; the Vice Provost did not suggest that the University was contemplating the adverse actions when she questioned Plaintiff about his conference statements on July 9; Defendants referred exclusively to the petition in announcing the investigation; the first notice of investigation cites the petition, and Defendant Thro has confirmed that the posting of the petition is a ground for the suspension. PI Reply, R.34, PageID#1599–1600; Am. Compl. ¶ 54–55, 57, R.36, PageID#1633–34; Capilouto Message, R.19-3, PageID#496; Thro 7/18/25, R.19-3, PageID#491; First NOI, R.19-15, PageID#1559; Thro 10/30/25, R.19-4, PageID#1085. This is sufficient to show that the petition's posting was a motivating factor. *Lemaster*, 65 F. 4th at 310 (action

within "days or weeks" sufficient). Defendants have made no effort to rebut the resulting presumption.

2. Plaintiff Has Shown Adverse Action

Plaintiff has a strong likelihood of success on the adverse action prong.[4] To decide adversity, this Court asks whether a person of ordinary firmness would be deterred from speaking by the alleged actions, taking context into account. *Bell v. Johnson*, 308 F. 3d 594, 603, 606 (6th Cir. 2002). Plaintiff provided evidence that because of the adverse actions, his colleagues and students fear to support him publicly or to speak about Palestine. Hearing, R.40, PageID##1885:16–1887:8; Woodcock 1/2/26 ¶¶ 2–9, 12–13, R.35, PageID##1608–12, 1614–15; Michael ¶ 7, R.19-7, Page ID#1109; Bolter ¶ 7, R.19-9, PageID#1250; Lee ¶ 8, R.19-11, Page ID#1258–59; Donovan ¶¶ 5–7, R.19-12, PageID#1262. One colleague is planning on retiring as a result of the adverse actions. *Id*. at ¶ 7. This evidence strongly suggests that the adverse actions, when considered together, would dissuade a person of ordinary firmness from speaking. PI Reply, R.34, PageID#1596 & n.23. Defendants have not contested this evidence but instead have argued that Plaintiff

[4] Defendants contend that the District Court "disagreed" that there is adversity, but the court's opinion did not reach the question. Resp. 13–14 n.34, Dkt.29; PI Order, R.37, PageID#1771. The hearing remarks Defendants quote instead reflect the District Court's initial disregard for the presumption of irreparable harm in civil rights cases.

still speaks. First Resp. 19–20, Dkt.14-1. But Plaintiff need not be personally deterred for the actions to be adverse.[5] First Reply 10 n.9, Dkt.22.

This Court has held that threats, such as the threats of termination that Defendants built into their investigation, suspension, and ban, can be adverse actions. *Kubala v. Smith*, 984 F. 3d 1132, 1139–40 (6th Cir. 2021). Defendants have repeated their threats of termination throughout their briefing but implausibly argue that this case is unlike *Elrod v. Burns* because there is no threat of termination. Resp. 9–10, Dkt.29; *see, e.g.*, MTD, R.23, PageID#1298 (threatening "tenure revocation or a lengthy suspension without pay").[6] Moreover, Defendants do not challenge Plaintiff's argument that a ban is also independently an adverse action. PI Reply, R.34, PageID#1596 & n.23.

3. Plaintiff's Speech Is Protected

[5] In any case, Plaintiff provided evidence that his rates of academic output, blog posting, AALS discussion posting, and social media posting have fallen. Woodcock 1/2/26 ¶3, R.35, PageID##1608–09. Defendants offered no evidence to rebut the decline. In this Court, they produced a single additional example of speech by Plaintiff. First Resp. 20, Dkt.14-1.

[6] This Court has looked to the law of Title VII discrimination for guidance on whether paid suspensions are adverse actions. *Sensabaugh v. Halliburton*, 937 F.3d 621, 629 (6th Cir. 2019); *cf.* Resp. 13–15, Dkt.29 (suggesting that this Court look to the law of Title VII retaliation instead). That law now suggests that temporary paid suspensions are adverse. *Blick v. Ann Arbor*, 105 F.4th 868, 885 (6th Cir. 2024).

a) Defendants Do Not Challenge Public Concern and Plaintiff Has Shown that He Spoke as an Academic or Private Citizen

Plaintiff has a strong likelihood of success on speech protection. All the concrete examples of speech alleged by Defendants in the notices of investigation, including the petition, concern colonization, apartheid, or genocide in the context of Israel or Palestine. *Id*. Defendants do not contest that these are matters of public concern, so Plaintiff's likelihood of success on this element is strong.

Plaintiff has also shown that all the speech examples alleged in the notices of investigation, including the petition, are academic or private speech.[7] PI Memo, R.19-1, Page ID##198–208. He testified that his speech about Palestine at conferences and via his petition reported research conclusions and that this speech was on topic.[8] Hearing, R.40, PageID##1815:19–1821:4, 1824:13–1828:25; 1830:23–1831:23; 1835:23–1836:19, 1853:6–19; 1881:23–1883:21; Am. Compl.,

[7] The conclusory allegation in the second notice of investigation that Plaintiff calls for genocide must be set aside. Second NOI, R.19-15, PageID#1574. Defendants point to no example of Plaintiff calling for genocide and Plaintiff rejects such a call. *See* Woodcock 12/12/25 ¶13, R.19-3, PageID#225; Hearing, R.40, PageID#1829:18–24. Defendants point to Plaintiff's testimony that: decolonization and resistance are "often inhumane and . . . awful struggles"; war is sometimes justified; and Palestinians would not have been guilty of genocide on October 7 even if they had beheaded forty babies because they intended "to liberate their country from colonial domination" not to destroy a people as required by the Genocide Convention. Resp. 2 n.2, Dkt.29. These are not calls for genocide.

[8] Plaintiff's petition indicated that his signature did "not imply institutional endorsement." *Petition*, ALSM (Nov. 12, 2024), https://antizionist.net/petition-for-military-action-against-israel/.

R.36, PageID##1626–32; Woodcock 12/12/25 ¶14, R.19-3, PageID#225. Defendants counter only that off-topic academic speech and speech that violates Title VI are not protected.[9] First Resp. 16–17, Dkt.14-1; Resp. 6 & n.13, Dkt.29 (misrepresenting *Josephson v. Ganzel* as imposing a germaneness requirement, 115 F.4th 771, 786 (6th Cir. 2024)). But this Court has rejected an exemption for off-topic speech, none of the complainants were covered by Title VI, antizionist speech standing alone does not violate Title VI, and Title VI does not repeal the First Amendment.[10] First Mot. 14–18, Dkt. 6-1.

b) Defendants Offer No Evidence of Potential Disruption Under *Pickering*

There is no hint in the record that Defendants can meet their high burden of showing disruption under *Pickering* balancing at trial. *See* Resp. 13, Dkt.29 (conceding that "this Court . . . simply [has] none of the raw material with which to engage in *Pickering* balancing"); Reply 9, Dkt.22 (high). Defendant Duff testified that he suspended and banned Plaintiff in the absence of complaints from any University student or faculty member. Hearing, R.40, PageID#1982:15–20.

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[9] Defendants also cite a case about faculty administrative speech. *Porter v. Trustees of N.C. State.*, 72 F.4th 573, 583–84 (4th Cir. 2023). But there is no allegation that Plaintiff spoke as an administrator.

[10] Defendants claim that Plaintiff asserts a right to "engage in the same conduct" in the classroom. Resp. 4, Dkt.29. But Plaintiff does not call for Israel's end in class, the notices of investigation allege no classroom speech, and Plaintiff's briefing has not addressed his classroom speech rights. Hearing, R.40, PageID#1819:10–13; Am. Compl. ¶51, R.36, PageID#1632.

Defendants have made no effort to rebut Plaintiff's contention that no student complained about Plaintiff's comments at the optional lecture or in the car. Am. Compl., R.36, PageID#1641; Reply 10 n.8, Dkt.22. Despite taking statements regarding Plaintiff from "over twenty students, professors, and others" between July and December 2025, Defendants called no witnesses at the injunction hearing and submitted no statements from community members. Thompson, R.26-4, PageID#1451. *Pickering* balancing can be difficult, but only if there is evidence of potential disruption. Resp. 11, Dkt.29. There is none here.[11]

Defendants argue that they need more time to complete their investigation. *Id*. at 12–13. But there is no investigation exception to the law of retaliation for protected speech. *See White v. Lee*, 227 F. 3d 1214 (9th Cir. 2000) (rejecting

[11] Plaintiff also showed that his speech is protected under forum doctrine because the University never regulated speech at optional lectures or on the faculty listserv and his speech in the car was directed at strangers on a public street. PI Memo, R.19-1, PageID##199–200; Am. Compl. ¶¶7, 92, R.36, PageID##1641–42, 1647; Woodcock 12/12/25 ¶¶3, 11, R.19-3, PageID#220–21, 224; Woodcock 2/11/26 ¶5, Dkt.27-2. He further showed that Defendants' actions are viewpoint discrimination because Defendants have not investigated other professors who engage in spamming, omit affiliation disclaimers, use University resources to share their views, or support military intervention against nation states by participating in annual on-campus wargames with the U.S. Army War College, or raising money for anticolonial war against Russia. PI Memo, R.19-1, PageID#209; Am. Compl. ¶¶96–98, 100, 103–04, R.36, PageID##1648–51; PI Mot. Ex.2, R.19-3, Page ID##378–96. Defendants have not responded.

investigation where protection "plain")[12]; c*f*. Resp. 9 n.22, Dkt.29 (relying on *O'Connor v. Ortega*, 480 U.S. 709, 714 (1986), an inapposite Fourth Amendment seizure case). If Defendants wished to investigate without violating the Constitution, they could have defeated the protected speech element by waiting until they received a complaint alleging unprotected speech or defeated the adverse action element by conducting their investigation without termination threats, a suspension, and a ban.[13]

C. Plaintiff Faces Ongoing Constitutional Harm

In their response, Defendants confirmed Plaintiff's contention that he faces ongoing constitutional harm.[14] Second Mot. 7–12, Dkt.13-1. They affirmed that if he exercises his First Amendment right to engage in academic speech by submitting an article for publication as he normally does using University funds and his work email address, and then claims credit for the article in performance evaluations, Defendants will sanction him because they happen to disagree with

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[12] Defendants argue *Lee* did not involve *Pickering* balancing, but, absent evidence of disruption, there is nothing to balance here either. Resp. 11, Dkt.29.

[13] Defendants argue that they need more time to investigate because speech that is vulgar, ad hominem, or the like is not protected. Resp. 11, Dkt.29. But neither notice of investigation alleges speech of that kind.

[14] Plaintiff raised the ongoing harm to his speech below and in his first motion. PI Reply, R.34, PageID#1594 (district court); Mot. 7, Dkt.6-1 (first motion). This Court can consider additional evidence of that harm. *See* Second Reply AG 4–9, Dkt.31; *compare* First Resp. 20, Dkt.14-1 (discussing new evidence of Plaintiff's speech introduced by Defendants in this Court).

the viewpoint expressed in the article.[15] Resp. 5–6, Dkt.29. An injunction pending appeal would greatly reduce this threat to Plaintiff's First Amendment rights. *Cf.* Resp. 9–10, Dkt.29 (misconstruing Plaintiff as citing *Fischer v. Thomas* for public employee speech protection rather than the urgency of providing relief for constitutional harm, 52 F.4th 303, 313 (6th Cir. 2022)). Defendants counter that it would be burdensome to return Plaintiff to teaching after the semester's start. Resp. 4, Dkt.29. However, Plaintiff asks only for best efforts to return to teaching. Proposed Order, R.43, PageID#2122. Stopping the adverse actions would reduce the speech chill and preserve Plaintiff's access to prospective relief regardless of whether he teaches this semester and without any material burden on Defendants.[16]

CONCLUSION

Plaintiff respectfully urges this Court to grant his emergency motion for an injunction pending appeal.

February 18, 2026

[15] Defendants rely on an unpublished legal brief to suggest, for the first time, that advocating military intervention to end Israel is "professionally incompetent." Resp. 7, Dkt.29. The brief decries Plaintiff's views as "factual lies" without citing any authority. Ofer Raban, SSRN No. 6016574 at 5–7 (Jan. 2026), https://ssrn.com/abstract=6016574.

[16] Defendants claim that Plaintiff "delay[ed]" the investigation by accepting an extension from Defendants to allow this Court to decide his emergency motion. Resp. 4 n.6, 15 n.39, Dkt.29; Thompson 1/23/26, Dkt.14-2. Plaintiff does not challenge the investigation's length so the relevance of delay is unclear.

Respectfully submitted,

/s/ Rima Kapitan

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TYPE-VOLUME CERTIFICATION

Pursuant to Federal Rule of Appellate Procedure 32(g), Rima Kapitan hereby certifies that this motion complies with the type-volume limitation in Rule 26(d)(2)(C) because, as counted by the Microsoft Word word count tool, this motion contains 2,606 words, excluding the parts exempted by Rule 32(f). This motion complies with the typeface requirements in Rule 32(a)(5)(A) and the type-style requirements in Rule 32(a)(6) because this motion has been prepared in proportionally spaced 14-point Times New Roman font.

Dated: February 18, 2026

/s/ Rima Kapitan
RIMA KAPITAN

CERTIFICATE OF SERVICE

I certify that on February 18, 2026, I electronically filed the foregoing with the Clerk of the Court for the United States Court of Appeals for the Sixth Circuit using the CM/ECF system. I also certify that all participants in the case are registered CM/ECF users and that service will be accomplished by the CM/ECF system.

/s/ Rima Kapitan
RIMA KAPITAN