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UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

Before The Honorable Rita F. Lin, Judge

AMERICAN ASSOCIATION OF UNIVERSITY PROFESSORS,	)	
Plaintiffs,	)	**NO. 3:25-cv-07864-RFL**
vs.	)	
TRUMP, et al,	)	
Defendants.	)	

San Francisco, California
Thursday, November 6, 2025

TRANSCRIPT OF MOTION HEARING

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Thursday, November 6, 2025 **10:53 a.m.**

P R O C E E D I N G S

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COURTROOM DEPUTY: Please sit down. Calling civil action 25-7864, American Association of University Professors, et al versus Trump, et al. Counsel, please approach the podium and state your appearances for the record beginning with counsel for plaintiffs.

MS. CHAN: Good morning, Your Honor. Connie Chan of Altshuler Berzon on behalf of plaintiffs AAUP, AFT, UCAFT, CNANNU, UAW, and CIR.

MS. LEYTON: Good morning, Your Honor. Stacey Leyton also from Altshuler Berzon on behalf of the same plaintiffs. With me from Altshuler Berzon I also have at counsel table Barbara J. Chisholm, Amanda Lynch, and Alexander Pecht.

I will also introduce other plaintiffs' counsel. We have from Democracy Forward representing the same plaintiffs, Cynthia Liao. From Schwartz Steinsapir Dohrmann & Sommers LLP, counsel for UAW Local 4811, is Dan Curry. From Leonard Carder LLP and this is representing UPTE, AFSCME Local 3299, UCAFT, the Council of UC Faculty Associations and the Member Associations, I have Eleanor Morton.

And then, finally, I have Hannah Shirey representing the Committee for Interns and Residents of SCIU and we did provide a printed copy of this to the courtroom deputy.

MR. KAMBLI: Good morning, Your Honor. Abhishek Kambli, Deputy Associate Attorney General and Heidy Gonzalez, trial attorney Federal programs branch for all of the defendants.

THE COURT: Good morning to all of you. Let me just start by giving you some initial thoughts about my review of the papers and how I see the case so far, and then what I would like to do is walk through each of the questions that I gave you all advanced notice of so that I could hear your thoughts about my main questions and then when we get to the end, I'll give you all an opportunity to tell me anything else that you think is important that I know about the case before I take the matter under submission.

So let me just start with my review of the papers of the case. It seems to me that plaintiffs have submitted just overwhelming evidence in this case. It shows that the administration publicly announced a campaign to purge woke and left viewpoints from our country's leading universities.

Agency officials have gone on the news and social media to say that their playbook is to initiate investigations about anti-semitism or other civil rights violations in order to justify cutting off millions of dollars in Federal funds. The universities are then told if you want the funding restored, then agree to change what you teach, change how you handle student protests, endorse the administration's preferred

views on gender.

Defendants have submitted nothing to refute this. It is undisputed that this exact playbook is now being executed at the University of California. The head of the administration's anti-semitism task force went on the news to say that the UC has been, quote, hijacked by the left and vowed to begin investigations.

On July 29th, DOJ issued findings against UCLA alleging anti-semitism in connection with 2024 student protests. None of the regular fact finding processes under Title VI were followed. Instead, within 72 hours, $584 million in research funding to UCLA was cancelled.

At least one agency says it is under instructions not to approve any future grants to UCLA. Then, eight days later, the administration proposed a settlement to restore funding that requires changes to DEI programs, student protests, and adoption of the administration's views of gender. The administration has been very clear that this is not ending with UCLA.

Their stated intention is to go after the entire UC system which gets over $17 billion a year in Federal funding. The UC president called it one of the gravest threats in UC's 157 year history. I don't see defendants really contesting any of these facts.

Instead, what I hear defendants saying is it is too

early for this Court to hear this lawsuit. It is not ripe, it is speculative whether the university might or might not agree to the terms that the administration has proposed. But I have declarations from dozens of faculty saying that they are suffering present harms today from the threat of funds being taken away or frozen or not granted to the UC.

They say that they have changed what they are going to teach, they have changed what they are going to research because they're afraid it is too left or too woke and they don't want to trigger more grant denials or other types of funding cuts. This looks to me like a classic predictable First Amendment injury, and it's exactly what the university -- excuse me -- it's exactly what the administration has said that it intends that it is trying to achieve. So I have a hard time understanding defendants' argument that this is too early for the Court to -- to consider or to intervene in the situation.

So I'd like to really focus on that issue and give defendants an opportunity to tell me if there's something that I'm not understanding about your position and that's why I want to start with question one. So let me ask counsel to come to the podium who would like to address question one. I'll start with defendants and give you the first opportunity to respond and then plaintiffs may have an opportunity to respond to what defendants say.

Just so we're all on the same page, I'm going to

repeat the question but I know you have it in advance.

So the question is imagine the following hypothetical, a future U.S. President, not the one we have now, a future U.S. President announces on social media repeatedly that he is tired of being criticized by faculty at universities that receive Federal grants and that agencies will be terminating grants to universities who keep employing faculty that criticize his administration. The administration then terminates grants to university A and university B and those universities agree to fire certain faculty members in exchange for having their grants restored.

Then, the administration sends a notice to university C that it intends to terminate all its Federal grants. Many faculty members at university C stop criticizing the administration because they're afraid of getting fired. In defendants' view, would the faculty at university C have standing to bring a First Amendment claim, when, if ever, would their claim be ripe, and in what court, if any, would they be permitted to bring their claim.

MR. KAMBLI: Thank you, Your Honor. So there's three things I would say in response to the Court's question. One, the hypothetical has a presupposition that once drilled into makes it less salient for this case. Two, even under the facts of the hypothetical, the standing would largely be foreclosed under the Supreme Court's precedent in Murthy v. Missouri.

And then, three, the facts of this particular case especially makes standing fatal so I'll take a moment to unpack each one of those.

So when we talk about one of the presuppositions, the presupposition in the hypothetical is that the cause of action has to be directed against the United States rather -- but there is an alternate option, the faculty members can just sue university C. And that's especially salient here today because University of California System, it's a public institution and the plaintiffs have the ability to bring a 1983 Claim if they suppress their speech in violation of the First Amendment. And that kind of points to a bigger problem with applying the third-party coercion doctrine in the First Amendment context in this case.

So when we think about the third-party coercion doctrine, we're thinking of cases like Murthy v. Missouri or NRA v. Vullo where you have the Government regulating a private party, and we all know that private parties are not bound by the First Amendment since they're not a Government actor so the Government is at that point putting a plaintiff in a position where they're using a private party that they have no recourse against in court as a method to engage in censorship that they could not otherwise do directly. Here, you have a public -- even if you accept the plaintiffs' facts as true, you have allegations that the Government is using another entity that

the plaintiffs can actually sue to engage in censorship.

So at that point, it's questionable whether the third-party censorship doctrine is even viable because the easiest path to complete relief for the plaintiff would be to sue the university directly.

THE COURT: I have a basic misunderstanding about what your position seems to be. Is it your view that if you have standing to sue party A, then you are prohibited from suing party B? I've just never seen that in the standing doctrine. Can you tell me what the basis for that theory would be?

MR. KAMBLI: Yes, Your Honor. When we're talking about the specifics of third-party coercion, it's a very hard doctrine to get standing for in general. And, in this case, there is an alternate option which is suing the university directly which is what I was getting at.

But even if --

THE COURT: But have the Courts ever said that it -- just because you've -- your rights have been violated by both the State of California and the United States, you may only sue one of those and it's got to be the State, not the Feds?

MR. KAMBLI: No, Your Honor. The point that I was making is the UC system would be the more direct violator while there's traceability and redressability problems with the United States which is why I'll now shift over into why the hypothetical, even on the Court's own terms, would largely be

foreclosed by Murthy v. Missouri.

So I think it's worth taking a moment to back up and talk about what was happening in Murthy v. Missouri and how it fits into the hypothetical of this case and putting aside the facts of this case focusing purely on the university C hypothetical.

So in Murthy v. Missouri, you had plaintiffs alleging that Facebook directly censored their speech based on a pressure campaign by -- direct by Biden -- by various actors within the Biden administration. And those specific plaintiffs offered specific content of theirs that was restricted or taken down and then they linked it to White House communications on policies as to why it was taken down. Yet, the Supreme Court in that case concluded that only one of the plaintiffs might have eked out standing.

It's even weaker in this case because you don't -- in the hypothetical -- because you don't have any evidence that the university C has engaged in any censorship of the plaintiff faculty members that are there. And the self censorship theory, the Supreme Court rejected that in Murthy v. Missouri. It stated that they -- the theory that they had self -- to self censor and not post on Facebook anymore because they wanted -- to avoid getting censored, the Court said that the plaintiffs at that point were manufacturing an article and injury to maintain Article III standing.

And in many ways, this would be even weaker than Murthy v. Missouri because, at this point, the university hasn't done anything, university C in particular. And the self censorship when you're especially not going to include the university as a party on only the United States, that becomes problematic and points to a manufacture of injury to get standing for a First Amendment claim.

So that's one of the problems. But another big picture problem with the hypothetical is -- and what's behind the scenes in Murthy v. Missouri that's happening is third-party coercion is difficult to demonstrate in practice because you ultimately have a third party that's able to exercise its own independent judgment which presents problems for traceability and redressability. So, for instance, every third party even if other third parties have taken a certain direction, is going to have different ways that they handle the alleged coercion at stake.

So for instance, under -- in Murthy, the Supreme Court generally frowned upon the idea that you can issue injunctions that are based on actions of third parties that are not properly before the Court. And it's plaintiffs' burden to show that university C will act in a predictable manner and that's going to be a fact-intensive inquiry.

So in the Court's hypothetical, we know nothing about university C and we know nothing about university A and B for

that matter. And so there can be a multitude of ways that university C exercises its own independent judgment. They could, for instance, take the approach that Harvard did and sue the administration. They could decide to voluntarily forego Federal funding altogether if they believe that they can financially survive without it or they can negotiate a different deal than university A and B.

So without more information about university C and what they are doing, you cannot say they will act in a predictable manner by striking a deal that will result in firing a faculty and that becomes a traceability problem and then you also have redressability because --

THE COURT: Well, let me just stay with traceability for a moment -- well, before we get to traceability, I just want to be clear. The Government's view is that the faculty members at university C do not have standing to sue in the hypothetical from the question. Is that correct?

MR. KAMBLI: That's correct, Your Honor.

THE COURT: Okay. And then with respect to traceability, I recognize what you're saying that the university maybe -- who knows what the university will do. But how does that respond to the point about the present harms that are occurring, the self censorship that's already occurring. I have difficulty seeing how that's not traceable to what the stated intention and the whole point of this program is to

purge these viewpoints from the university, it's undisputed.

So when that happens, it doesn't seem like it's very hard to trace it to the administration's actions. Help me understand why you're saying that's not -- that's a third-party coercion situation. It seems like it's directly coercive.

MR. KAMBLI: So, Your Honor, it's a third-party coercion situation because it's -- the Government's action is directed at a university in the hypothetical which is to fire these faculty so it would be the university that is ultimately doing the faculty firings and has to be based on the direction from the Federal Government. And the self censorship theory was largely rejected by Murthy v. Missouri so that's the problem that the plaintiffs in that hypothetical would run into.

THE COURT: What the Supreme Court's opinion in Diamond Energy last term which, in that case, you have a bunch of fuel producers who are saying, oh, there's these new laws that are going to require cars to use less gas so that's really going to affect us. And the argument was, well, who knows what consumers will do, maybe they'll buy EVs, maybe they'll buy traditional gas cars, and maybe they won't care about having to pay more so this is all speculative that this is going to have a traceable effect because there's these third-party consumers who are going to make decisions one way or other. And in that context, the Supreme Court said that the injury -- that they

had standing in fact that there wasn't a traceability problem in a sense because you can predict that if the point of this program is to get people to buy less EVs, I think it's pretty predictable that that's -- sorry -- less gas cars, it's pretty predictable that that's what's going to happen.

And it seems, in this hypothetical, it is pretty predictable that people are going to stop criticizing the administration if this is the tack they're going to take. So help me understand why you have a different view of that.

MR. KAMBLI: Respectfully, Your Honor, Diamond Alternative was not a First Amendment case. And Murthy v. Missouri is more on point because it is direct allegations that the Federal Government was engaging in a pressure campaign against third-party censored speech that they would otherwise not want so we believe the Murthy v. Missouri case is much more on direct point with the hypothetical than Diamond Alternative Energy because that was a First Amendment case, that did involve allegations of self censorship, so we don't have to worry about how the Diamond Alternative would apply when we have Murthy v. Missouri that's directly on point.

And I -- that also leads to my other point because there is redressability issues because we're operating off the assumption that the Federal Government is the only factor pressuring the university so, for instance, they could be on the receiving end of multiple private lawsuits and that could

influence how they're enacting their behavior and that's very relevant for this case because UC is, in fact, facing multiple private lawsuits under Title VI and Title VII, one of which a judge gave a preliminary injunction to Jewish students for and all of that happened before the Trump administration even came into office so I'll re-attack that a little bit more.

But, basically, yeah, under the facts of the hypothetical, with not knowing what the university is going to do in response as well as what other factors are at play for the university C, it's going to be difficult for those plaintiffs to demonstrate traceability and redressability. And it's also important to note the posture that this case is at so this case is at a preliminary injunction posture versus a motion to dismiss so it can't just be facts alleged in the complaint. It has to be a direct link and they have to demonstrate the traceability and the link to the Government conduct as well as with an explanation for how the third-party doctrine really comes into play when you do have another State party that they could sue directly but are not for reasons that I'm not entirely sure of.

So those would be the issues with the hypothetical and assuming the Court has no questions, I can then talk a little bit about the facts of this case.

THE COURT: Let me just ask you do you think there's ever a point where the faculty at university C would be able to

have standing to challenge what is clearly -- I think we would all agree is clearly First Amendment violation by the administration.

MR. KAMBLI: Yes, Your Honor. So if they can satisfy the traceability and redressability prong. So, for instance, let's say that there was evidence or let's just say that the university then proceeded to say that as an extreme example we're going to restore Federal funding by firing every professor that's criticized the administration, and if you don't, then you can potentially keep your job.

So that's obviously a scenario where they, at that point, have a direct link to the action, but in the hypothetical as it stands right now, we have a third party with independent judgment whose actions we don't know so that would be the point in the hypothetical where it could conceivably -- basically when the university takes some action that's directed at their speech or fires them, that's when it would potentially become ripe. And they also have the option of suing the university directly too and that would give them complete relief without having to trace it back to the Government because if the Court, for instance, enjoined UC from doing anything that violates these professors' First Amendment rights, then it doesn't really matter what the administration does. The plaintiffs would have complete relief at that point so that's another factor at play and why the third-party

coercion doctrine doesn't work here when you can sue UC directly.

THE COURT: Like let's say, for example, the university C -- the same initials, UC -- let's say the university C in the hypothetical fires a faculty member who has criticized the administration but it's not someone who belongs to the union who is bringing the lawsuit. Is it your view that no one has standing still because that -- nobody specifically who is a member of the union has been fired -- even though the university has taken actions that suggest that it is likely to cave to the administration.

MR. KAMBLI: So, Your Honor, if that plaintiff can demonstrate that the firing was because of criticizing the administration, then it would definitely have an action against UC under 1983 for his firing so he could just sue the university and potentially get injunctive relief to get his job back. But it would be a fact specific inquiry as to what evidence the plaintiff presented so like what speech was he making, what were the communications between UC and him and how did they reflect on the administration. It would be -- under Murthy v. Missouri demonstrating when a third party pressures even if they have what's described as a pressure campaign is pretty rare because there were specific instances where Facebook in that case explicitly took down content of the plaintiffs and there was a White House policy that was directly

linked to the reasoning behind it and there was multiple communications between the White House and Facebook as to the problematic communications, yet the Supreme Court said maybe one of these plaintiffs has standing and that was just to get to standing much -- not necessarily even demonstrating a First Amendment retaliation claim.

So the idea --

THE COURT: Let me just be clear, in your view, if I'm a university professor at university C, the guy down the hall gets fired after he criticizes the administration. The university says we're firing him because he criticized the administration and the administration is out there saying we're going to cancel all of the grants and all of the funding to university C if you don't start firing everyone who criticizes the administration, and then I decide I'm not going to make that speech that I planned to make because it's going to be critical of the administration.

In your view, I would not have standing to bring a claim against the administration for First Amendment violation. Am I accurately characterizing the Government's view?

MR. KAMBLI: Respectfully, Your Honor, that hypothetical you presented is different than the hypothetical --

THE COURT: Right. I'm asking it now.

MR. KAMBLI: So we believe that, at that point, there

could be potential standing because there is a direct link between the university's actions and what the administrator said. And I pointed in my -- when you asked me when someone could have standing, I did say that if the university says we're firing someone because of this reason, then, at that point, the standing is not manufactured because it's based on someone else got fired that they saw.

THE COURT: So if university C fired someone, I could say, hey, even though I'm not the person who got fired, I can see that university C is about to cave to the administration and fire me and I have an imminent fear of that so I have standing, my claim is ripe, I can bring suit. Am I correct?

MR. KAMBLI: In the scenario where UC has stated that they fired the professor because of pressure from the administration, then, yeah, it's a much stronger case for standing.

THE COURT: And you would agree that there would be standing in that scenario?

MR. KAMBLI: Yes, Your Honor, because traceability becomes less of an issue. Now, redressability becomes another issue and that's also going to be another fact-intensive inquiry as to what other pressures were on the university and why they did that so it would still be a question mark on redressability but traceability would be less of an issue in that hypothetical.

THE COURT: I know you want to tease out differences between the hypothetical and our case, I promised at the end you'll have an opportunity to give me anything else you want me to know about the case but let me give plaintiffs an opportunity respond to what you said.

MR. KAMBLI: Sure, Your Honor.

MS. CHAN: Thank you very much, Your Honor. I do want to respond to several points that opposing counsel made. The first is he seems to have acknowledged that under the hypothetical here, if university C were a private university that the plaintiffs, the faculty there would have standing, they would have a ripe cause of action to be able to bring against the Federal Government.

As Your Honor pointed out, the fact that the University of California is a state actor that may have also have independent obligations to its faculty and students and staff does not mean that those plaintiffs do not have the same standing and the same ripe causes of action against the Federal Government for the same unlawful coercive actions that the Federal Government is taking as against the state actor. If anything, it makes the constitutional violations even more egregious because the Federal Government is using its coercive force in order to coerce the University of California into violating its own independent legal obligations, and, furthermore, violating the Tenth Amendment in doing so.

The facts of this case show that the Federal Government is using the threat of legal and financial sanctions in order to coerce the University of California and to commandeer the University of California in imposing its own idealogical and political agenda and that is precisely what the Tenth Amendment prohibits.

I wanted to also address the point opposing counsel made about ripeness. I believe he said --

THE COURT: Before you do that, let me just ask Government counsel or counsel for defendants is that accurate? If university C were a private university, is it your view that the faculty members would have standing?

MR. KAMBLI: No, Your Honor. That's not accurate. The reason I was bringing up the public private distinction is a matter of whether -- because the -- how the third-party coercion doctrine applies at all. But whether there's standing is not based on whether it's a public or private entity, it's based on what the facts are of the case.

THE COURT: So, in your view, if university C is a private entity, there's still no standing?

MR. KAMBLI: It would still be the exact same inquiry because it still has to -- it still goes back to because it was private entities that were at issue in Murthy v. Missouri so the analysis would still be the same.

THE COURT: You may continue.

MS. CHAN: Thank you, Your Honor. I did want to turn to Murthy versus Missouri next and this idea of traceability as well as ripeness here. The idea that the University of California could in any way be viewed acting as an independent actor that breaks somehow the causal relationship between the Federal Governments acts of coercion and the direct injuries and harms not only to chill but of course the additional concrete and irreparable harms that the plaintiffs and their members are facing every day as a result of the funding cuts and the threats that are looming against the entire University of California system is a complete farce and unsupported by anything in the record.

As Your Honor pointed out, defendants of course did not present any evidence and that is a major distinction between this case and Murthy versus Missouri. There, there was evidence that social media intermediaries had engaged in some of the same conduct in regulating the types of posts that were being facilitated on the social media websites. Here, defendants have presented zero evidence that the University of California is itself motivated or taking actions independent of the pressure that they are facing by the Federal Government to extinguish or purge woke or left ideas.

In fact, it is the fact that the University of California is allowing faculty and students to engage in this type of protected First Amendment speech that has made the

University of California the target of the Federal Government's coercion campaign. One very stark example opposing counsel said that the point at which the controversy would become ripe in this hypothetical is when the university actually begins to change its conduct or begins to actually take action to chill speech.

We have that evidence in our case, Your Honor. I would point Your Honor to the declaration of Professor Blair who is a member of UCLA's Faculty Association, and I believe he's in the courtroom today as well. He explained in his declaration that he had submitted with his colleagues a private grant proposal that was centered around academic freedom and centering specifically around the context of pro Palestinian speech.

And previously the UCLA endorsed that grant proposal, threw its support behind it. After August 1, after the Federal Government issued the notice of findings and followed the next day by summarily cutting off $584 million in funding and then presenting the University of California with a demand that they pay $1 billion and -- and secede to a host of wide ranging idealogical views and reforms that would suppress speech and suppress academic freedom throughout the University of California as a condition of regaining access to the $584 million, as a condition of regaining its eligibility for future Federal funding without, quote, unquote, disfavored treatment

after presented with those demands and those coercive threats and that termination of concrete funding that threatened the entire research apparatus of the University of California, UCLA pulled its support from this grant.

UCLA told Professor Blair UCLA will no longer provide the institutional support for this particular grant proposal, and as a result, that grant proposal which was otherwise basically green lit, is no longer even eligible, is basically disqualified from being able to receive this private grant. That is just one concrete example. Of course as Your Honor noted, we have submitted dozens of declarations from faculty members and from staff and others who are specifically suffering the harms on a concrete and ongoing basis whose speech is being chilled, who are being forced to have to modify their academic curriculums, to modify the content of the course work they are teaching, to modify the type of protected speech that they engage in at conferences and on social media and in other context and to be able to contribute in general to a civil discourse.

These are all concrete harms that flow directly from the ongoing threats that the Federal Government is bringing to bear now against the UC. None of plaintiffs' claims depend on how UC reacts to these demands. The First Amendment case law is very clear and the Government assiduously avoids engaging with any of the relevant First Amendment case law on the

theories of coercion and retaliation.

The Government didn't even cite Vullo or Bantam Books or Kennedy versus Warren which is a recent Ninth Circuit decision that very carefully lays out four non exhaustive factors that courts look to in determining whether the Government's conduct crosses the line into impermissible coercion. And the test there is whether the Government's conduct, objectively viewed, would chill a person of ordinary firmness from engaging in the protected First Amendment activities.

In Your Honor's hypothetical, the faculty members at the university C clearly do have standing because the defendant's conduct even in that hypothetical make very clear under these four factors laid out in Kennedy versus Warren that the Government's conduct, viewed objectively, would chill a person of ordinary firmness from engaging in protected First Amendment speech. There, the president made an explicit statement that universities that allowed faculty to criticize the administration would lose their funding.

The Government has the ability whether lawfully or not to actually cut off the funding, the Government then followed through on its threat and actually did cut off funding from universities A and B. And universities A and B clearly perceived the Government's conduct as a direct threat by responding by terminating the faculty who were engaged in the

dissenting speech.

And of course university C having been faced with a threat that they too will lose all of their Federal funding, naturally, the faculty at university C, their speech has been chilled as a result of the direct conduct of the Government, viewed objectively. All of these factors are present here in our case as well. And of course, as Your Honor noted, we have submitted voluminous evidence that makes the record even stronger and makes it even clearer that plaintiffs here have standing to pursue their First Amendment claims under the retaliation and coercion theories as well as unconstitutional conditions theory and furthermore makes clear the plaintiffs are likely to succeed on the merits of those claims.

Plaintiffs' claims under the First Amendment and Tenth Amendment are ripe because the Government's threats are present and ongoing and they are not sort of an amorphous -- plaintiffs are not simply challenging the Government's general statements, you know, back in February perhaps when it had announced that they had formed this task force policy and announced that this task force policy was going to involve, as Your Honor described, announcing investigations sort of under the guise of civil rights enforcement and then following it up with threats to take away the money and then demanding various idealogical concessions in exchange for restoration of those funds.

All of these task force policies have already been

executed. They have been executed at Columbia. They have been executed at Harvard. And now they have been executed at the University of California.

There was nothing speculative. The target is happening, the -- the Government's targeting of the UC is happening now.

I do want to also note that, as I had stated earlier, how the University of California responds to the threats is not relevant to plaintiffs' claims. Certainly I think it's self evident that it's not relevant to plaintiffs' likelihood of success on the Title VI or Title IX claims or the on arbitrary and capricious claims but it is not legally relevant to our constitutional claims under the First or Tenth Amendment or separation of powers either.

The -- excuse me. First, the Government's conduct at Columbia and Harvard has laid out very clearly that no matter what path the University of California chooses there will be irreparable harms as a result. It will either capitulate and then it will sacrifice fundamental First Amendment free speech and academic freedoms just as was done at Columbia. Or if it rejects the Government's demands, it will be faced with an immediate and severe and pushing consequences.

In Harvard, in the case of Harvard, the very next day after Harvard rejected the Government's demands, the Government -- the task force -- the task force announced a

freeze of $2.2 billion and followed up shortly thereafter with an announcement that another eight agencies, including agencies many of whom are the defendants in our case today that those agencies were going to terminate another $450 million in grants. That was the immediate and direct consequence of Harvard's rejection of the claims.

More to the point though, the Ninth Circuit said in that same Kennedy versus Warren case that to establish coercion, the intermediary need not admit that it bowed to Government pressure. In fact, the intermediary need not bow to the Government's pressure at all. The Ninth Circuit wrote, indeed, it is not even necessary for the recipient to have complied with the official's request because a credible threat may violate the First Amendment even if the victim ignores it and the threatener folds his tent.

The Seventh Circuit held the same in Backpage.com versus Dart. The Supreme Court stated this principle similarly in Koontz versus St. Johns River Water Management District at 570 U.S. 595. The Government said there in the context of an unconstitutional conditions claim, regardless of whether the Government ultimately succeeds in pressuring someone into forfeiting a constitutional right, the unconstitutional conditions doctrine forbids burdening the constitution's enumerated rights by coercively withholding benefits from those who exercise them.

That is precisely the posture that we have now. The Government is withholding these benefits. The Government is withholding the $584 million which it has restored only pursuant to this Court's preliminary injunction orders.

But the Government, NSF, is categorically refusing to award any new grants to the UCLA. NSF has put UCLA on a black list for no reason other than this ongoing dispute. It is part of the Government's coercive leverage.

The Government has also threatened the University of California by bringing additional -- there are no less than seven pending investigations that are open against the UC system. And as UC President Milliken pointed out and as Your Honor noted in your opening remarks, President Milliken said this poses one of the gravest threats to the UC in our entire 157 year history. Right now the target is UCLA but there are other investigations that are pending against the UC. And as the experience at Harvard shows, the Federal Government is not going to stop at UCLA.

It will continue to use its leverage in bringing these investigations that -- without basis and using its power to pull funding and using its power to black list UC schools and researchers from receiving funds, including those like Professor Shlyakhtenko and Professor Houk and Roper and Clark, all of whom are extremely distinguished world renowned mathematicians and scientists, some of whom have been funded by

the NSF for decades. And the world now is going to lose on these critical benefits because of the Government's retaliatory and coercive and unlawful campaign and clear violation of the First Amendment and the Tenth Amendment.

These harms are occurring now, they are ongoing, they are concrete, and they are irreparable. There is nothing speculative about the harms that are being directly caused and that are directly traceable to the Government's conduct.

THE COURT: I'm sure defendants have a lot to say in response to that but let's hold it until the end. I want to make sure I get through my questions, and as I said, I'll give you an opportunity for final response.

So let's move to question two. This is also a question for defendants. Plaintiffs have submitted evidence that defendants follow an unwritten policy of suspending grants without completing the regular process that's described in Title VI and Title IX and that defendants are carrying out that policy with respect to the UC. Defendants argue this policy is not an agency action and is not final and therefore cannot be challenged under the administrative procedures act.

In defendant's view, what more would be required for plaintiffs to be able to challenge that policy as a final agency action?

MR. KAMBLI: Yes, Your Honor. So the problem with plaintiffs' theories reflected in the -- later in Court's

question number four where different agencies are doing different things is that there is no unified task force policy but basically a hodgepodge of government actions that the plaintiffs take issue with. And no legal consequences flow from the alleged task force policy prior to a grant termination.

So one thing I would flag immediately, it's pretty rare that an unwritten policy is final agency action because typically if it's a consummation of agency's decision making, it's pretty rare that it would ever be written. But setting that aside, what you have ultimately is multiple instances of grant cuts to various schools under separate authority than Title VI and Title IX but those represent a small subset of the total Title VI and Title IX investigations out there.

So, for instance, in one publicly available investigation into the Department of Education -- who is one of the defendants here -- is doing, they're investigating 52 schools under the PHD project and that's just one of their many investigations so you probably have hundreds of investigations that are going through the Title VI and Title IX process. So if there was this unified policy to generally go after schools and cut funding first without following the process, you would expect more than just a handful of examples that the plaintiffs have pointed out.

So what you don't have is unified agency policy, what

you have instead is actions directed on a school by school basis so that would not be final agency action for that purpose. And the other thing is that legal consequences only flow through the grant cuts which this Court already addressed through the Thakur case. So putting aside the issue of whether those claims belong in the Court of Federal Claims versus District Court, if the Court is of the opinion that those are APA eligible claims to be heard in Federal District Court, the grant terminations -- because the problem is the case law is pretty clear that investigations in and of themselves do not count as final agency action.

It's when there's some legal consequence at the end of it and the legal consequence in this case was the grant termination.

THE COURT: I suppose it might make sense for me to hear your answer to question three then at the same time because that's related.

Of the instances in which defendants have terminated or suspended a university's funding across the board for the university, based on a task force investigation, how many times did defendants follow the process in Title VI or Title IX?

MR. KAMBLI: So, Your Honor, we concede that in those instances that plaintiffs point to, they were used under different authorities related to the terms of the grant and the policy priorities of the United States. So the procedures laid

out in Title VI and Title IX were not followed in those cases.

THE COURT: So let me just make sure I understand. So in every instance in which defendants have terminated or suspended a university's funding based on a task force investigation, they did not follow the process in Title VI or Title IX. Correct?

MR. KAMBLI: Yes, Your Honor, because of the authority that they were using to cut the funds.

And I would add one fact to that. In Department of Education v. California when the Supreme Court was deciding this issue, the funding cuts at issue were cuts to grants based on unlawful DEI and discrimination so those obviously were cuts without the Title VI process as well. So that's -- it was under separate authority which was the policy of the United States so that's what the authority was that they were using -- so that was the authority they were using, they naturally did not follow the Title VI and Title IX processes which was meant under a different authority.

THE COURT: Let me give plaintiffs an opportunity to respond.

MS. LEYTON: Thank you, Your Honor. I can address question -- starting with question two. Initially, I would just point out that it's clear in the circuit that plaintiffs do not need to wait for consequences to flow before they can challenge a policy as final policy action. There are the two

prongs of the Bennett test and the purpose of that test is to make sure that courts are not interfering prematurely before the agency has really finished its decision making process and adopted a policy.

And, here, we've presented substantial evidence, most notably because the policy has actually been implemented, not only at the UC but at all of the previous universities. I would just like to mention a few cases in the Ninth Circuit that make clear this court does not need to wait for the consequences to flow before finding that something is final agency action.

In the Prutehi case, P-R-U-T-E-H-I, I'm not sure if I'm pronouncing it correctly. The Ninth Circuit in 2025 said a Federal agency's assessment plan or decision qualifies as final agency action even if the ultimate impact of that action rests on some other occurrence; for instance, a cite specific application, a decision by another administrative agency, or conduct by a regulated party. So that makes clear that plaintiffs do not need to wait to challenge the task force policy until it is actually implemented.

Of course, it has been implemented by at least three agencies here that we know of, possibly more. We only know of the National Science Foundation's policy because some professors inquired and found out their future funding was frozen. But that case as well as the Gill case from the Ninth

Circuit makes clear that we do not need to wait for the consequences to flow.

There's also the San Francisco Herring Association case versus the Department of Interior where the Ninth Circuit said it would not be fair to require plaintiffs to go ahead and endure the consequences and then challenge the policy. If plaintiffs had been told that they must comply and threatened with consequences, that is enough for final agency action to be established.

Second point I would like to make is that defense counsel mentioned that challenges to unwritten policies are rare. That is true. Her majesty, the Queen, we cited in our papers that the policy does not need to be written, what matters is the effect of the policy, not its form. But the reason that it is rare is that typically an administration announces what it is doing through an executive order or through a written policy.

Here, defendants are resting on the fact that the Government has not, other than in social media statements and on TV, but they have not adopted a formal written policy that says here is what we're doing on all of these universities, we're cutting off their funding without going through the required procedures while investigations are still pending and we'll follow that up by making demands that go outside of the bounds of what is permitted under the civil rights laws.

The fact that they have not written out the task force policy the way we have delineated it and as supported by the evidence does not insulate it from challenge. And then the last point I would like to address on question two is the fact that different agencies are implementing it also does not shield this from being final agency action. As I mentioned in the prior Ninth Circuit cases, it has been clear that you may challenge an over-arching policy even if that policy has yet to be implemented by specific agencies.

Here, it has been implemented by at least three agencies. Other agencies have implemented it at Harvard. Other agencies have implemented it in relation to other schools. But even if that were not the case, we would not need to wait for that.

And I think an example for this court to look to is the New York versus Trump case, the First Circuit decision where there was an OMB written policy that categorically terminated Federal funding. That written policy was withdrawn. There was ambiguity about whether it had been withdrawn but then different agencies were categorically terminating funding. And the First Circuit said you may challenge multiple agency actions. You may challenge the overarching policy and you may challenge the individual agency implementation of that policy. And we have produced evidence that the agencies are implementing the policy and so we have met that test.

Just briefly on question three. Defense counsel has said that the funding cutoff to Harvard was not based on Title VI or Title IX, it was based on agency regulations and agency priorities. That defense was rejected by Judge Burroughs in the Harvard case and for good reason. The record there, as the record here, showed that the terminations were being carried out pursuant to civil rights enforcement, not based on some other nebulous agency priority.

As Judge Burroughs found in that case, the agency priority was enforcement of the civil rights laws. And the Federal Government cannot avoid scrutiny of its actions by calling something agency priorities and using that to override the statutory command by Congress that requires the administration to go through specified procedures in order to -- in order to withdraw funding or refuse to fund under Title VI.

I'll quote from Judge Burroughs' decision. Congress has, however, passed a law that explicitly provides for when and how an agency can terminate Federal funding to address this type of discrimination and that law is Title VI. And she found that allowing use of the agency priorities regulation to cancel grants based on discrimination would effectively nullify that statutory scheme and an agency cannot by regulation nullify a statutory scheme.

I would also just briefly on that question three like

to point out that I agree with defense counsel that Title VI and Title IX procedures were not followed in relation to the terminations at Harvard, at Columbia, at Penn, at Brown, at -- and certainly not at the UCs. But it is actually exceedingly rare for the Federal Government to terminate funding based on violations of the civil rights laws because there are so many steps that the Federal Government must go through before it terminates funds, and those steps are protective of the regulated entities and protective also of those who would be impacted by actions against the regulated entities.

And, in fact, I'm only aware of one other incident where the Federal Government has actually gotten to the point of cutting off funds after going through the required processes. That's the case Grove City versus Bell which is a case from the 1980s where the agency did go through all of the steps and all of the agency procedures, through the administrative enforcement proceedings that the secretary did approve that the Federal funds would be cut off.

The university challenged that and it went all the way up to the Supreme Court which issued a decision in 1984, the cite is 465 U.S. 555 and issued a decision that then led to the Civil Rights Enforcement Act of 1986 to clarify some of the ambiguities in the civil rights enforcement.

And the reason that I raise that is because it highlights why these procedural protections are so important to

allow universities and colleges to have the due process before their funds are cut off and those proceedings also provide for other interested parties to participate in the proceedings. And I would like to just highlight one quote that demonstrates probably most clearly, although there are plenty of quotes that very clearly demonstrate this what the administration is doing and that is pursuant to Title VI and that's from Task Force Chair Terrell, and it's Exhibit 36 at 4.

And Mr. Terrell said under Title VI, we're taking away their money. We're going to bankrupt those universities. We are going to take away every single Federal dollar. That is why we are targeting these universities and why we filed a notice of investigation to investigate the entire UC system in California.

We are investigating the UC system. I went to UCLA. The academic system in this country has been hijacked by the left and that goes on. And that shows the administration cannot now disclaim they are relying on Title VI to investigate these universities. And even if there are other investigations pending that these investigations, which we do not contend are final agency action, but these investigations are the predicate for defendants to invoke their task force policy which is to cut off funding before an investigation or any other procedures have been completed and then to make demands that go outside of the bounds of what can be -- what can be obtained under the

civil rights laws.

THE COURT: That does bring up a broader question for me. I know this is a little broader than the question I posed initially but are defendants aware of any situations in which there have been terminations or suspensions of a university's funding under the current administration for violating Title VI or Title IX in which the process was actually followed?

MR. KAMBLI: So, Your Honor, there are court cases where we're going through that process, but none of those have been completed at this time. And I would also point --

THE COURT: So just to be clear, the administration has never terminated or suspended a university's funding based on a civil rights investigation after going through the required process?

MR. KAMBLI: So, Your Honor, not based on the authority that they cited. And I would point this Court's attention -- because she mentioned the Harvard case -- there is also the Columbia case. And that's American Association of University Professors versus U.S. Department of Justice and the citation is 2025 WL 1684817.

The Southern district of New York said that the Title VI is not the exclusive process to deal with anti-semitism and that can definitely fit under the priorities of the administration. So it is not an open and shut question as plaintiffs make it appear to be. Different circuits have come

out different ways on that issue at this point and those are still being litigated in court.

THE COURT: Let me turn to question four which was a question for plaintiffs. What evidence supports plaintiffs' view that all of the defendants as to whom a preliminary injunction is sought follow the unwritten policy that we were talking about earlier in question two, the policy to suspend grants without going through the regular or Title VI, Title IX process?

MS. CHAN: That's a good question, Your Honor. Starting with the DOJ which is, you know, Exhibit 47, the announcement of the DOJ task force announces this pan agency task force that will include DOJ and be led by defendant Terrell and that include not only DOJ but also the education department, HHS, as well as other agencies as it develops.

Talking to the -- talking about the funding agency defendants that are the subject of this motion, plaintiffs, to be clear, have moved for preliminary injunction against only those funding agency defendants that provide grant funding to UC that specifically supports the work of plaintiffs' members. So plaintiffs have not moved at this time for preliminary injunction against other funding agency defendants where we have not submitted evidence that the plaintiffs' members are directly benefitting from those funds. Now all agency defendants are clearly part of this task force based on the

evidence that's in this record and there are multiple pieces of evidence that I would call Your Honor's attention to.

First, the anti-semitism executive order itself that's in the record at Exhibit 46 to the declaration of Drew Mammel. And that directs all agencies within 60 days of the date of this order, the head of each executive department or agency shall submit a report to the President identifying all civil and criminal authorities or actions within the jurisdiction of that agency that might be used to curb or combat anti-semitism and containing an inventory and analysis of all pending administrative complaints involving institutions of higher education alleging civil rights violations related to or arising from post October 7, 2023 campus anti-semitism.

So the executive order itself directs all executive agencies to participate in the work that the task force ultimately executes. Then Exhibit 47, as I pointed to earlier, that announces the creation of this multi agency task force and says that it will expand to include other agencies as it develops. Exhibit 36, at page 6, there is an interview with DOJ task force head Leo Terrell on May 9th, 2025, and he answers the interviewer's question you asked me about the ed department.

The answer is yes. This task force, every agency's involved, every agency. He says homeland security is involved, the FBI is involved, HHS, the ed department, the treasury

department.

The task force is going to use its force to coordinate all of the Federal agencies in order to bring all of the Federal Government's coercive force to bear on universities that do not capitulate. That same exhibit, 36 at page 1, defendant Terrell says -- this is the same quote that my colleague Ms. Leyton referenced. Under Title VI, we're taking away their money.

We're going to bankrupt these universities. We're going to take away every single Federal dollar. That of course includes all of the dollars that are being supplied by all of our defendant agencies here that are funding the University of California.

Again, Exhibit 85, that is evidence that when Harvard rejected the administration's demands, the task force froze $2.2 billion in grants that spanned virtually all of the agencies that were funding Harvard at the time. And, in addition, I would point out that none of the defendants have declined -- have disavowed that they will terminate funds. And, in fact, the Government's opposition brief reiterates that, quote, if defendants find that UC has failed to comply or that funding UC grants no longer comports with Government priorities, then defendants may withhold further payments. The defendants are not only disavowing that they will terminate the funds, but they are doubling down on their threats that they

could take away all funding from the University of California.

Now, in addition to this evidence that spans across all of the agencies, the fact that this is a pan agency coordinated effort coordinated by the DOJ, there is, of course, additional evidence specifically about NSF, NIH, and DOE with which I know Your Honor is very familiar from the Thakur proceedings. Of course those agencies in this case have already suspended $584 million in grants the day after the DOJ issued its July 29th notice of findings. And of course the internal NSF emails that are attached to Professor Shlyakhtenko's declaration in the record at ECF 40-3 indicates NSF froze future awards following DOJ's notice of findings.

And it says we have been instructed to, strongly suggesting that there is, again, coordination between DOJ and the funding agencies. There is also additional evidence in the record about specific termination of grants by defendant agency CDC, DOD, USDA, and commerce although those funding defendant agencies have not yet terminated funds against the UC, all of them were among the eight agencies that terminated the $450 million in grants from Harvard immediately after Harvard rejected the administration's demands. And that is cited in Judge Burroughs' decision at 2025 WL 2528380 at page 7.

And, finally, I'll just note that all of the funding defendant agencies can be enjoined pursuant to Rule 65 of the Federal Rules of Civil Procedures acting in concert with DOJ

and all of the other defendants as to whom there are these additional evidentiary support for their participation in the task force policy.

THE COURT: Let me give defendants an opportunity to respond.

MR. KAMBLI: Yes, Your Honor. So this also follows another issue with the Murthy v. Missouri case and one of the critiques that the Supreme Court had with the Fifth Circuit is that they bunched all of the plaintiffs and all of the defendants as a holistic whole without doing an individual analysis of what each one was doing. And I'll discuss this more when I talk about the standing and redressability for this individual case but they're also seeking forward looking relief so they have to demonstrate from this particular point in time which agencies are at issue so the Court has to do analysis not just because of the task force, it's a coordinating instrument for agencies to be in communication with each other but each agency ultimately makes its own individual determination.

So the Court has to look at where in the landscape are we with Thakur and what specific defendants are supposed to be enjoined and has to go through each plaintiff how their claim relates to each defendant and then decide an injunction through that, especially when you have a First Amendment claim as part of it in there.

THE COURT: You -- explain what you mean by your view

that each -- the Court has to go through each plaintiff as to each defendant. I understand the view that I have to go through for the -- for each individual defendant and determine whether that there is a likelihood that that defendant will act in a way that harms the members of the plaintiff associations generally. Are you saying something different than that or more specific than that?

MR. KAMBLI: So, Your Honor, one of the points that we tried to make in our brief is the plaintiffs are not entitled to duplicative relief that they already have in the Thakur case so we have to see -- and Murthy v. Missouri talks about this -- when you're talking about standing, you're not only looking at where the standing is at the time they bring the case but where they are in the present time. So knowing that all of this funding was restored, which agencies are still a threat to the plaintiffs and why is something that the Court has to decide.

THE COURT: But other than -- just setting aside the existence of the Thakur injunction, I understand your point about that but let's assume that -- assume the Court doesn't agree with you and that I still think that there is a potential harm and danger to the members of plaintiff associations regardless of the Thakur preliminary injunction so let's just set aside that point for a moment.

Is there some other reason that you believe that the Court needs to do a more searching analysis beyond looking at

each defendant to see if they are likely to follow this task force policy of not going through the regular Title VI, Title IX process?

MR. KAMBLI: Your Honor, we do believe that Murthy v. Missouri requires it because one of the things that the Supreme Court chided the Fifth Circuit on was treating all of the defendants as a whole rather than looking into the actions of each individual one. So, for instance, especially on the First Amendment claims, let's just take, you know, accepting as plaintiffs' claims true on NSF, that's in a different boat than some of the other agencies that might not have even cut funding yet, so there still has to be analysis especially for the First Amendment context which claim the plaintiff has and which defendants -- or set of defendants it's related to so that has to be done because standing can't be dispensed in gross for plaintiffs and defendants can't also be dispensed in gross, it has to be an individualized analysis by the Court as to each.

THE COURT: From the response from plaintiffs.

MS. CHAN: Thank you, Your Honor. First, plaintiffs have submitted evidence as to each plaintiffs -- which entity defendants they have standing against. And just one example among many, Your Honor can look at the declaration of Rafael Jaime. That's in the evidence at ECF 29-23 and he explains how the UAW 4811 represents members who are funded by all of the defendant agencies that are the subject of this motion so

plaintiffs have satisfied their burden to establish standing on a plaintiff by plaintiff against defendant by defendant basis.

Defendants have put in zero evidence that the agencies are terminating grants or refusing to award new grants based on independent decisions. And, in fact, again, the declaration of Professor Shlyakhtenko at ECF 40-3 suggests directly to the contrary. He says following the Justice Department finding yesterday, we have been instructed to suspend all active awards to UCLA with immediate effect.

Defendants have put in zero evidence to the contrary, zero evidence to suggest that the agencies are acting independently. The $584 million from the NSF and the NIH and the DEO -- and of course the DEO grants have not yet been restored even pursuant to the Thakur preliminary injunctions, but those are the largest funders to UCLA. So the Government is making directed decisions to the funding decisions where they can cause the most pain.

MR. KAMBLI: Your Honor, if I may, just one other issue. So one of the reasons why we do believe that the Thakur should be separated from this, there are -- there is relief that the Thakur principals on the contract are seeking in that case so it would create a messy record if the Court also dealt with it in this case as well. And when you take away the principals what you have is people under the team, under the principal that are potential downstream beneficiaries of the

contract and their standing analysis is different than the one whose principals' names' on the contract.

So that's why we have to go through each plaintiff, see what their claims are, and against which defendant especially when it comes to contract cuts or the First Amendment claims.

THE COURT: I understand the argument. Let me just move to the last question.

Are defendants aware of any case -- I just want to go to the Tucker Act issue. Are defendants aware of any case in which a First Amendment claim was found to be a disguised contract claim under the Tucker Act and thus within the exclusive jurisdiction of the Court of Federal Claims?

MR. KAMBLI: Yes, Your Honor. So one is directly on point, the other is a little bit less on point and more dicta. But the one on point is one I'm familiar with since I argued that case. It's Board of Education for the Silver Consolidated Schools v. McMahon. And the citation is 791 F.Supp. 3d 1272 and that's District of New Mexico 2025.

So in that case, what the -- the school district was challenging a grant cut and they were challenging a dear colleague letter that was sent by the Department of Education on how they plan to implement students for fair admission and there was a First Amendment claim as part of that. So what the judge -- he analyzed all of the claims and he basically said

what is the claim in its essence and it's ultimately to pay up and he concluded that the correct venue for that was the Court of Federal Claims. And even though it was in the posture of a preliminary injunction, he did a sua sponte dismissal without prejudice and the plaintiffs never appealed so that's a final judgment right now.

And then we also have a AAUP versus Department of Justice in the Southern District of New York. This was a little bit less direct. But the Court did talk about even with the First Amendment claims they would still have the additional hurdle of demonstrating that the Court of Federal Claims was not the proper venue so we do have those two cases, Your Honor.

THE COURT: Other than those two -- are you aware of any others?

MR. KAMBLI: No, Your Honor. And some -- a lot of these cases are still being litigated as we speak.

THE COURT: Is there anything further on that issue from plaintiffs?

MS. CHAN: Well, Your Honor, I'm not familiar with these two particular cases since they were not cited in the Government's opposition brief. I can say that as Your Honor cited in your Thakur decision and as the Ninth Circuit has said as well, you know, plaintiffs were not otherwise aware of any case where First Amendment claim was channelled to the -- excuse me -- the Court of Federal Claims and in fact there was

authority from the Federal Circuit and court -- the Federal Claims Court itself expressly saying that they do not have jurisdiction under the Tucker Act over First Amendment claims and that is equally true of claims under the Tenth Amendment and separation of powers claims as well as Title VI claims.

We cited some of those authorities in our briefing but in addition to Stevens versus United States, which is cited in Your Honor's Thakur decision, Cooper versus United States, that's a Federal circuit 2019 decision is that holds the Court of Federal Claims has no jurisdiction over First Amendment claims. United States versus Connolly, 198 F.2d 882, a 1983 Federal Circuit en banc decision that holds the same.

LeBlanc versus --

(Court reporter interrupts for clarification.)

MS. CHAN: My apologies.

LeBlanc versus United States 50 F3rd 1025, a 1995 Federal Circuit decision that holds that the Tucker Act does not confer jurisdiction to the Court of Federal Claims over separation of powers claims.

Patterson versus United States. That's a Federal circuit 2007 Federal Circuit decision that holds the same as to Tenth Amendment claims. And Manuel versus United States, 115 Fed. Cl. 105, a 2014 Claims Court decision saying no claims court jurisdiction over Title VI claims because none of these statutory or constitutional provisions are money mandating.

And as the Ninth Circuit has held, which is controlling authority in this court in both the Community Legal Services of East Palo Alto and in Thakur, if there was no jurisdiction in the Tucker Act -- if there's no Tucker Act jurisdiction in the claims court, then it cannot be exclusive jurisdiction in the claims court.

The Federal Government's position takes the extreme position that plaintiffs here who have viable constitutional and statutory claims and who are seeking to vindicate their constitutional and statutory rights should have no recourse and have no forum in which to bring their claims. That cannot be right and the Supreme Court certainly did not hold as much in California or the APH decisions. As Your Honor noted in the recent Thakur preliminary injunction, neither of those cases dealt with the types of claims that are at issue in our case involving constitutional and statutory rights.

The relief that plaintiffs are seeking here flows directly from the harms that they seek to redress that flow from their constitutional and statutory injuries. Plaintiffs are not seeking to enforce contract rights. None of plaintiffs' claims require even looking to the terms of any specific contracts, and, furthermore, defendants have offered no response to our additional grounds for why there is clearly jurisdiction here, namely the express jurisdiction granting provisions under Title VI and Title IX, as well as the fact

that the Tucker Act simply has no applicability whatsoever to our ultra vires claims.

THE COURT: I promised everyone an opportunity to tell me whatever else you wanted me to know. We've been going for a while so I'll ask you to be conscious of time as you make your responses, but I'll given defendants an opportunity to tell me anything else I should know and plaintiffs before I take it under submission.

MR. KAMBLI: Yes, Your Honor. So before I get to the other points, I wanted to make one more point to the Court's last question. So the issue since the Court was specifically focused on First Amendment, there have been other circuits that have said constitutional claims in statutory claims where the ultimate goal is money would be in the Court of Federal Claims the DC circuit has held that in Widakuswara case and the Fourth Circuit has held that in the Sustainability Institute case and would we add that we are seeking en banc review of Thakur as well.

And then the issue of Title VI and Title IX granting explicit jurisdiction, at least one court has come down the other way. So in the Fairfax and Arlington case versus the Department of Education -- I don't have the citation on me, but it's another case that I did litigate. That was an EDVA and the Court dismissed that on the Tucker Act grounds because it states that the Title VI and Title IX jurisdictional hooks are

only there if it's not otherwise subject to judicial review and that case was dismissed for lack of subject matter jurisdiction and Fairfax and Arlington sought an injunction pending appeal in the Fourth Circuit and the Fourth Circuit denied that on a reasoned order.

So, you know, I did want to spend some time on this because plaintiffs were focused a lot on the specific facts of this case as it presents to the first hypothetical rather than the terms of the hypothetical itself so I did want to spend a little bit of my time on that. So one of the big picture issues in this case -- and let's start with the hypothetical and I can take that on head-on.

So let's just say, yes, this plaintiff was denied a private contract by the university based on some alleged pressure from the United States. The problem is the Court can't redress that because it's a private grant and the university is not a defendant in this case so it can't restore that grant to that plaintiff. So that's where redressability becomes a real problem in a case like this because even if the Court granted the injunction, that contract is still going to be not with that plaintiff so that's an issue of redressability as well.

So when we look at the specific facts of this case and we're thinking about how the independent judgment of the university --

THE COURT: Let me just ask about that. What I hear you saying is that the Court can't undo the chilling of speech that has already been chilled on some level, which is always true in the First Amendment context, but that doesn't necessarily prevent the Court from acting now to stop the bleeding, in a sense, and to prevent future chilling. So help me understand why that -- why that isn't a valid reason to find that an injunction here would redress future chilling.

MR. KAMBLI: Yeah. So, Your Honor, that's why it's also important -- and Murthy v. Missouri made that point -- to examine each of plaintiffs' claims and rather than treating them as a holistic group, this plaintiff was basically -- the injury was not getting this contract. I don't believe that that particular plaintiff had self censorship as the issue.

So, in that case, the injury is not self censorship. It's the losing of the contract which the Court can't restore.

THE COURT: But the injury -- I think the point is this is the scenario we were talking about where they fire the guy down the hall so I'm afraid to speak. So the injury there would be that the guy down the hall didn't get the grant and the university wouldn't support him getting the grant because of the way he spoke so now I'm afraid to speak.

MR. KAMBLI: So, Your Honor, that's a problem. You have a long list of downstream effects before you get to the traceability but it goes back to my original point, they could

have gotten direct relief by suing the school and the Court could have ordered the school to turn that grant on if they were a proper defendant in this case and highlights the importance of that university being missing from this case.

THE COURT: I think we have talked about that point already so I won't belabor it. Please continue.

MR. KAMBLI: There's three points I do want to make. So we have to acknowledge where we are in the process so this wasn't a case, you know, let's just say Columbia, for instance, when they struck a deal with the administration to enter into certain terms. What you have right now is the university not accepting the opening offer and there's no evidence that any type of deal with the United States is going to be happening in the immediate future, and it's especially salient since three months have passed since that opening offer so there's no impending threat to require them to self censor anything and, at that point, it becomes manufactured self-censoring if you're worried in the future as to how things might turn out when, at this point, the university hasn't agreed to anything with the United States.

Second, redressability is a problem for two big reasons here. So, for instance, first, plaintiffs concede that defendants can conduct Title VI and Title VII investigations which are happening right now against the UC system. And if you look at 20 USC 1682 -- and I forget what the equivalent

statutory cite is for Title VI but that's for Title IX.

It requires us to get voluntary means of cooperation with the university. So it is possible that through the Title VI or Title IX process after findings that the university could agree to a deal that is fully in line with Title VI, and then, at that point, the Court wouldn't be able to prevent us from getting a deal with the university to satisfy the Title VI or Title IX claims because that is a required part of the statutory process.

THE COURT: But aren't you supposed to do that voluntary compliance process before you terminate or suspend the grants?

MR. KAMBLI: So, Your Honor, that's a separate issue from whether plaintiffs still can have their injuries redressed. So, for instance, you know, just the fact that sometimes, you know, for instance, a corporation just by the fact that they're being investigated might take certain steps to avoid being on the Government's radar, so -- and the Court can't order the United States not to investigate or conduct an investigation that was brought under valid Title VI or Title VII theories.

So we can't demonstrate that the restoring the funding cuts or preventing the agency action or this task force policy would necessarily make the university reach a different decision. They could reach the same decision based on the fact

they're being investigated by the United States.

So, for instance, let's say the Court gives everything the plaintiffs want, it's possible the university could do the same thing anyway, so that's where the redressability problem comes into play. And then --

THE COURT: So if there is an independent actor who might also violate your rights, settlement court can't do anything to protect you from an actor -- sorry. I didn't say that very well.

Let's say we have two actors, the State and the Federal Government. If I enter an injunction preventing the Federal Government from violating plaintiffs' rights, that does not prevent the State Government from coming along and violating their rights in the same way, I suppose that's true in many cases. But I don't understand why that's a redressability problem.

MR. KAMBLI: Yes, Your Honor. Because it's a redressability problem because if their belief is they have to self censor, and the most direct actor is not one properly before the Court, then you're essentially ordering someone who has less direct and less traceable connection to the injury, if you take them out of the picture, that still leaves the one with the most direct connection to the injury.

So it's -- because if UC is not properly before the Court, they can still take the actions that are consistent with

the -- say, for instance, the deal that was presented on August 8th that involves some regulation of the process moving forward, that could still be the culmination of a Title VI investigation or a Title VII investigation and plaintiffs concede if we go through the Title VI or Title VII process, that could be an outcome that's allowed.

And then the other issue is UC is facing multiple private lawsuits for exactly the same thing that the United States is investigating them for. So, for instance, there's the Frankel case and that's 2:24-cv-4702 which addresses anti-semitism in the wake of the encampments that were happening at UCLA. In 2024, Judge Scarsi in the Central District of California issued a preliminary injunction -- and this was before the United States ever came into the picture because the administration hadn't been elected yet -- and to take actions to fix their policies going forward for these exclusions though and then earlier this year, they entered a consent decree with the plaintiffs in the case to resolve their claims and also had a $6 million fine at the end of it.

So there's that that's pushing the university on the anti-semitism side because that consent decree requires them to take action to ensure that Jewish students and faculty are not excluded in the future and sometimes the university can take actions within the bounds of what they believe plaintiffs are okay with and sometimes they may go outside of that. So, at

that point, there's still a redressability because that could influence them.

And then on the unlawful DEI in admissions, there's two private lawsuits that are happening right now against the UC. So there's the Do No Harm lawsuit, 2:25-cv-4131. And then there's Students Against Racial Discrimination versus UC Regents. That's 8:25-cv-192 both in front of Judge Holcomb in the Central District of California. Both of those deal with discriminatory practices in admissions which is also the subject matter of the investigations against the UC system. And trial and merits in both of those cases is set for 2027 so the -- even if you take the United States out of the picture, some of the reforms that the United States has asked for might happen anyway because of these private lawsuits.

So it is going to be difficult for the Court to redress, especially when the traceability with the United States is limited and we don't even know what a final agreement, if any, between the United States and the school might look like. So that's the big problem when you're talking about third-party coercion when there's not third-party that has independent judgment that's not properly before the Court and why Murthy v. Missouri says it's very difficult to maintain standing for those types of claims.

And then, third, and I think it's very important here, plaintiffs here are seeking forward looking relief on what is

effectively a third-party censorship claim. So in Murthy, the Court was explicit that you not only have to demonstrate standing at the time that you bring the lawsuit but you must maintain it thereafter. So past exposure -- like the illegal conduct can have some predicted value but they still have to demonstrate that that harm is likely to continue in the future so you have to look at where you are with the landscape.

And the difficulty that plaintiffs in Murthy v. Missouri had is that they found one instance of the plaintiff that might have satisfied even the past injury when they had much more direct censorship than what's at play here because you had instances where the platform was directly taking down their speech, versus here there might be some motivation of the United States behind actions that an independent third party might take. But even then they have to demonstrate that that harm is likely to continue in the future. And that is going to be problematic because the funding, at this point, has been restored through the Thakur injunction.

And then, at that point, they have to demonstrate knowing that this deal was not accepted, knowing that the funding cuts were preliminarily enjoined, what is that future threat to their speech and why are they self censoring and that's why even after going through that whole analysis of the past harm, the Court in Murthy v. Missouri rejected the self censorship claim.

So I also wanted to discuss a little bit -- touch a little bit on final agency action. So the issue is that you have a small universe of funding cuts combined with -- it would be -- if I had to guess, it would be at least a hundred other Title VI and Title IX investigations so there is no real policy at place. You have a body, an anti-semitism task force -- and that's another thing.

The task force that they're talking about has dealt with the anti-semitism. There's other investigations into UC going on such as unlawful DEI admissions. So the task force to the extent that it exists is for anti-semitism and it's more of a coordinating force for agencies to get together to address a problem.

So when you have different issues such as Title IX which is not part of this task force, Title VI when you're talking about unlawful discrimination via DEI, that's also not part of the task force. So they have to demonstrate what the coherent agency action is and what you just have is multiple agency actions that are -- have happened at separate times against distinct universities while, at the same time, you have over 100 investigations going on without any cuts at all and are just going through the standard Title VI and Title IX process.

And even if the plaintiffs are correct that they don't have to wait for the harm to legal consequences to flow, the

Court has to make a determination of what the legal consequences are. And there's two legal consequences, one is an investigation, and the other is grant terminations. Investigations can't be something where legal consequences flow because it's essentially a fact-finding mission to determine if something happened and what to do about it.

So Courts have repeatedly held that an investigation in itself cannot be final agency action. But when it culminates in grant cuts or in pending grant cuts, that's when it would be final agency action assuming this court has jurisdiction.

And the last point we would make is on the discovery issue. The defendants highly object to any discovery that's given as part of relief in a preliminary injunction posture. That should be dealt with in the ordinary course of discovery to the extent that the Court believes it's relevant. And --

THE COURT: I thought plaintiffs withdrew their discovery request, is that accurate, for the preliminary injunction?

MS. CHAN: At this time, yes.

MR. KAMBLI: Okay. So I'll put that aside since they did get the settlement negotiation because they did in their initial preliminary injunction also ask for communications between us and the university but I'll leave that aside.

But I think big picture the big point that I wanted to

point out is that UC is a necessary party in this case because a lot of this hinges on how they react to our actions. And, at this point, the Court doesn't have very much information on what exactly they're going to do, especially since even if you accept that they might have been influenced by our actions, in some of the recent exhibits presented by plaintiffs, the president of the university acknowledged that there are problems with anti-semitism and there was problems with unlawful discrimination in administrations so there are a whole host of measures they can take independent of the Federal Government that are going to pose problems to any relief that the Court can grant.

And that's all I have. Thank you, Your Honor.

THE COURT: Thank you. Any last word for plaintiffs.

MS. CHAN: A few brief responses on some of the jurisdictional points and then Ms. Leyton would like to make a few brief points as well responding to the final agency action arguments.

First on redressability, redressability does not require plaintiffs to show their relief would insulate plaintiffs from ever being harmed by any third party at all. Redressability asks whether the injuries that are being caused by defendants' conduct are redressable and those certainly are, regardless of whether there are any private lawsuits pending, those lawsuits are not withholding $584 million from the UC.

Those lawsuits are not withholding future awards of grants from the NSF.

Those are not -- those are not actions that are causing the harms that are at issue in our lawsuit. Second, I want to point out that the requested relief in our proposed order would not preclude the University of California from entering into a voluntary resolution with the Government to actually resolve any actual violations of Title VI. Nothing in our proposed order would preclude that.

But as long as the coercive threats are hanging over the UC, as long as the Federal Government is allowed to continue to threaten the UC with these unsubstantiated investigation threats as well as financial sanctions, there can be no free and voluntary negotiations. There can be no free and voluntary resolution of any Title VI claims pursuant to the procedures that Title VI requires. And it is those injuries that are resulting directly from the defendants' own conduct that plaintiffs are seeking to redress through this preliminary injunction.

MS. LEYTON: Thank you, Your Honor. Just a couple of brief points.

First, I would like to -- plaintiffs would like to urge this court to also reach our ultra vires claims that are predicated on the constitutional claims including separation of powers and our statutory claims. In the AFGE case we is cited

in our papers, the Ninth Circuit made clear that courts may address both APA and ultra vires claims and likely success on that.

In terms of the separation of powers claim, we submitted the City of San Francisco versus Trump, the Ninth Circuit case stating that the president does not have the power to suspend funds that were appropriated by Congress on grounds that Congress has not authorized. In that case, the president did so by executive order. Here, the Executive Branch is doing so through these funding terminations and defendants failed to respond to that.

This case is even worse than the City of San Francisco versus Trump case because the administration is acting on grounds that were expressly prohibited by Congress because Title VI and Title IX do not allow the suspensions so we would encourage the Court to reach that constitutional claim as well. In addition, we have the statutory ultra vires claims and defendants cited the Griffith case from the DC Circuit as establishing the standard. They've also cited the Nuclear Regulatory Commission case from the Supreme Court.

We fully meet that standard. Griffith says there are cognizable ultra vires claims when Federal officials have disregarded an unambiguous statutory command or violated a specific statutory command. We've shown that here.

In the Nuclear Regulatory Commission case, the Supreme

Court said that an ultra vires claim lies when an agency has taken action entirely in excess of its delegated powers and contrary to a specific prohibition in a statute. We have shown both of those things here so we would encourage the Court to reach those claims as well.

Just a couple of brief points --

THE COURT: It seems to me that if you were to prevail on your APA claim that there -- and the Court were to find a final agency action and that the -- that the agencies have acted in a way that's prohibited by Title VI and Title IX, I don't really see what the ultra vires separation of powers or statutory ultra vires claims at the scope of relief that plaintiffs could obtain so what is the purpose of reaching those?

Frequently, courts exercise their discretion not to reach those issues that -- because they're unnecessary to the relief sought, but is there something more I should know about that?

MS. LEYTON: Your Honor is correct. Reaching those claims is not necessary to the scope of relief that we've requested. However, to the extent that defendants have argued that there is no final agency action or that the Tucker Act precludes the relief here, those arguments would not apply to our ultra vires claims here. So that would better insulate this Court's decision if a higher court were to disagree with

this court on those points and you were to rule there was final agency action so those would be the reasons to reach it here.

THE COURT: The other question I had about the ultra vires claims, particularly the separation of powers claim, it seems me the San Francisco v. Trump situation is a little different in the sense that it's a whole program and there -- they're -- not -- the Federal agencies are not allocating any money whereas we have a situation where there is some funding allocation, it's just to other universities or to -- it's not quite the same in terms of the level of separation of powers encroachment that the executive is alleged to have engaged in in this case.

So help me understand how this is enough over the line that it is similar enough to San Francisco versus Trump.

MS. LEYTON: Your Honor, it's true that it's not a wholesale termination of funds that Congress authorized. In that way, it's similar to the case from the Western District of Washington that we cited where the Trump administration was withholding research grants to medical institutions that provided gender-affirming care to transgender minors. And the Court there reasoned that that was an -- that that was a separation of powers violation because Congress had appropriated the funds and Congress had placed only its own conditions on the funds and the administration was withholding funds to those medical institutions based on conditions that

the executive did not have the power to add so we would submit this is an analogous circumstance.

Just briefly on the scope of relief, I would note we are not asking this Court to enjoin pending investigations. We would agree that that is unnecessary. What we are asking this Court to do is to remove the coercive effect that the funding termination threat has. Defendants really had no response to that portion of the preliminary injunction that it would be somehow inappropriate for this court to order that funds may not be terminated without going through required proceedings.

Defendants argued that it -- that the UC might take steps to take these actions anyway because there are these other lawsuits. I would just note that one of our points in our arbitrary and capricious claim was that the Frankel consent judgment had already been entered and the Department of Justice voluntary settlement had already been entered about the very acts that were supposedly the basis for the July 29th findings and the Department of Justice failed to address those or acknowledge those, and the termination letters failed to acknowledge the efforts that UCLA had made to address anti-semitism and so that really just highlights our point.

The two prongs of the relief that we're seeking, one is the point that I just mentioned, to remove the coercive threat of the termination of funds. The other is that we have asked also for this court to enjoin the administration from

conditioning funds based on agreement to demands that fall outside of the scope of the civil rights statutes because those are having a coercive effect to insist on penalties and fines, to insist on conditions that violate the First Amendment or violate the Tenth Amendment or to insist on conditions that would violate the rights of the plaintiffs or their members in this case of which there are wide ranging provisions that the Government has sought. Of course, we don't know whether or what the UC's response has been.

We have withdrawn our request for further communications back and forth. If those exist about further administration demands, we likely will be returning to the Court to ask for a discovery so we can understand the status of those demands, but we have withdrawn our request because it is unnecessary given that the demands have been made and that the suspensions have taken place so that is sufficient for the scope of relief that we've requested.

THE COURT: Thank you all for the argument. I appreciate it. I'm going to take the matter under submission and issue a written order.

I am conscious of the parties' request that I move promptly on the case. At the same time, the record is voluminous and the cases that you all have cited are many so it will take me some time to put together my thoughts and to issue a written order. I anticipate it will probably be Friday next

week or possibly Monday following that.

I just want you all to be prepared that it's going to take some time for me to put everything together but I appreciate all of the work that you've put into this. And I will just say that I thought that the briefing in this case was excellent and very helpful to the Court. So I appreciate the hard work.

Be well.

MS. LEYTON: Thank you, Your Honor.

COURTROOM DEPUTY: Court is adjourned.

(Proceedings adjourned at 12:48 p.m.)

CERTIFICATE OF REPORTER

I certify that the foregoing is a correct transcript from the record of proceedings in the above-entitled matter.

DATE: Monday, November 17, 2025.

Andrea K Bluedorn

Andrea K. Bluedorn, RMR, CRR
Official United States Reporter