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United States Department of Justice
Civil Division, Federal Programs Branch
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Attorneys for Defendants

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON
EUGENE DIVISION**

ELIZABETH HUNTER, *et al.*,

Plaintiffs,

v.

U.S. DEPARTMENT OF EDUCATION,
et al.,

Defendants.

Civil Action No. 6:21-cv-00474-AA

**DECLARATION OF
ELLIOTT M. DAVIS**

DECLARATION OF ELLIOTT M. DAVIS

I, Elliott M. Davis, pursuant to 28 U.S.C. § 1746, declare as follows:

1. I am a Trial Attorney with the United States Department of Justice, and one of the attorneys representing Defendants in the above-captioned action.

2. I respectfully submit this declaration in support of Defendants' Memorandum of Law in Opposition to Plaintiffs' Motion for a Temporary Restraining Order and Order to Show Cause Why Preliminary Injunction Should Not Issue.

3. Attached as Exhibit A is a true and correct copy of email correspondence between me and Plaintiffs' counsel.

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge and belief. Executed on August 13, 2021, in Washington, DC.

/s/ Elliott M. Davis
ELLIOTT M. DAVIS

EXHIBIT A

From: [Davis, Elliott M. \(CIV\)](#)
To: [Paul Southwick](#); [Joe Baxter](#); [Lauren Swain](#); tim@timvolpertlaw.com
Cc: [Federighi, Carol \(CIV\)](#)
Bcc: [Davis, Elliott M. \(CIV\)](#)
Subject: RE: Activity in Case 6:21-cv-00474-AA Hunter et al v. U.S. Department of Education et al Motion for Temporary Restraining Order
Date: Friday, August 13, 2021 2:57:00 PM

Thank you Paul.

Best,
Elliott

Elliott M. Davis
Trial Attorney
U.S. Department of Justice
elliott.m.davis@usdoj.gov

From: Paul Southwick <paul@paulsouthwick.com>
Sent: Friday, August 13, 2021 2:53 PM
To: Davis, Elliott M. (CIV) <Elliott.M.Davis@usdoj.gov>; Joe Baxter <joe@paulsouthwick.com>; Lauren Swain <lauren@paulsouthwick.com>; tim@timvolpertlaw.com
Cc: Federighi, Carol (CIV) <Carol.Federighi@usdoj.gov>
Subject: Re: Activity in Case 6:21-cv-00474-AA Hunter et al v. U.S. Department of Education et al Motion for Temporary Restraining Order

Elliott,

We just filed it. We corrected paragraph 7.

Paul

Director, REAP
Paul Southwick Law, LLC
paul@paulsouthwick.com
503-806-9517

From: Davis, Elliott M. (CIV) <Elliott.M.Davis@usdoj.gov>
Sent: Friday, August 13, 2021 11:37 AM
To: Paul Southwick <paul@paulsouthwick.com>; Joe Baxter <joe@paulsouthwick.com>; Lauren Swain <lauren@paulsouthwick.com>; tim@timvolpertlaw.com <tim@timvolpertlaw.com>
Cc: Federighi, Carol (CIV) <Carol.Federighi@usdoj.gov>
Subject: RE: Activity in Case 6:21-cv-00474-AA Hunter et al v. U.S. Department of Education et al Motion for Temporary Restraining Order

Hi Paul:

Thank you for letting me know. I recognize that mistakes can and do happen—hence my inquiry.

Please let me know if you have a timeframe for when you will be filing the amended declaration. As you know, our response is due to be filed today, and my other obligations will keep me from burning the midnight oil on this one.

Best,
Elliott

Elliott M. Davis
Trial Attorney
U.S. Department of Justice
elliott.m.davis@usdoj.gov

From: Paul Southwick <paul@paulsouthwick.com>
Sent: Friday, August 13, 2021 1:57 PM
To: Davis, Elliott M. (CIV) <Elliott.M.Davis@usdoj.gov>; Joe Baxter <joe@paulsouthwick.com>; Lauren Swain <lauren@paulsouthwick.com>; tim@timvolpertlaw.com
Cc: Federighi, Carol (CIV) <Carol.Federighi@usdoj.gov>
Subject: Re: Activity in Case 6:21-cv-00474-AA Hunter et al v. U.S. Department of Education et al Motion for Temporary Restraining Order

Elliott,

Thank you for bringing this to our attention. It looks like there was some confusion on our end regarding correspondence relating to a different OCR complaint. My apologies. We will file an amended declaration shortly.

Paul

Director, REAP
Paul Southwick Law, LLC
paul@paulsouthwick.com
503-806-9517

From: Davis, Elliott M. (CIV) <Elliott.M.Davis@usdoj.gov>
Sent: Thursday, August 12, 2021 3:27 PM
To: Paul Southwick <paul@paulsouthwick.com>; Joe Baxter <joe@paulsouthwick.com>; Lauren Swain <lauren@paulsouthwick.com>; tim@timvolpertlaw.com <tim@timvolpertlaw.com>
Cc: Federighi, Carol (CIV) <Carol.Federighi@usdoj.gov>
Subject: RE: Activity in Case 6:21-cv-00474-AA Hunter et al v. U.S. Department of Education et al Motion for Temporary Restraining Order

Hi Paul:

The referenced email was not attached to Ms. Swain's declaration and, so far, my clients have not located an email that matches that characterization. That said, I've worked in government long enough to recognize that there could be multiple reasons for that (e.g., something got misfiled, the person who does these things is on leave for a month, IT issues, etc.). Since Plaintiffs reference this email, sent by an employee of my client, in briefing and a declaration, I figured that you would be able to provide me with a

copy. If you are not willing to send me this email, would you please let me know why?

I do not know the answer to your second inquiry. Please let me know which of your clients had their interviews cancelled so we can make the appropriate inquiries, and to the extent that I can pass along information, I will of course do so.

Best,
Elliott

Elliott M. Davis
Trial Attorney
U.S. Department of Justice
elliott.m.davis@usdoj.gov

From: Paul Southwick <paul@paulsouthwick.com>
Sent: Thursday, August 12, 2021 5:40 PM
To: Davis, Elliott M. (CIV) <Elliott.M.Davis@usdoj.gov>; Joe Baxter <joe@paulsouthwick.com>; Lauren Swain <lauren@paulsouthwick.com>; tim@timvolpertlaw.com
Cc: Federighi, Carol (CIV) <Carol.Federighi@usdoj.gov>
Subject: Re: Activity in Case 6:21-cv-00474-AA Hunter et al v. U.S. Department of Education et al Motion for Temporary Restraining Order

Elliott,

Could you let us know the purpose of your request?

Also, could you explain why multiple OCR offices have recently cancelled interviews with our clients?

Paul

Director, REAP
Paul Southwick Law, LLC
paul@paulsouthwick.com
503-806-9517

From: Davis, Elliott M. (CIV) <Elliott.M.Davis@usdoj.gov>
Sent: Thursday, August 12, 2021 9:54 AM
To: Paul Southwick <paul@paulsouthwick.com>; Joe Baxter <joe@paulsouthwick.com>; Lauren Swain <lauren@paulsouthwick.com>; tim@timvolpertlaw.com <tim@timvolpertlaw.com>
Cc: Federighi, Carol (CIV) <Carol.Federighi@usdoj.gov>
Subject: RE: Activity in Case 6:21-cv-00474-AA Hunter et al v. U.S. Department of Education et al Motion for Temporary Restraining Order

Dear Counsel:

Could I please trouble you to send me a copy of the August 2 email from Ms. Lee to Ms. Swain referenced in paragraph 7 of Ms. Swain's declaration, and which appears to be referenced below.

Thank you,
Elliott

Elliott M. Davis
Trial Attorney
U.S. Department of Justice
elliott.m.davis@usdoj.gov

From: Paul Southwick <paul@paulsouthwick.com>
Sent: Monday, August 09, 2021 8:24 PM
To: Catherine Kramer <Cathy_Kramer@ord.uscourts.gov>; Federighi, Carol (CIV) <Carol.Federighi@usdoj.gov>
Cc: Davis, Elliott M. (CIV) <Elliott.M.Davis@usdoj.gov>; Joe Baxter <joe@paulsouthwick.com>; Lauren Swain <lauren@paulsouthwick.com>; tim@timvolpertlaw.com
Subject: Re: Activity in Case 6:21-cv-00474-AA Hunter et al v. U.S. Department of Education et al Motion for Temporary Restraining Order

Ms. Kramer,

Thank you for the update. Plaintiffs' counsel is available on the 18th. However, several pending Title IX complaints are in immediate danger of being dismissed. Plaintiffs provided evidence in our TRO motion that at least one of the complaints could be dismissed any day now, based on the OCR investigator's statement that the religious exemption issue is about to be decided and could result in dismissal of the Title IX complaint, causing immediate dignitary harm to that plaintiff. The plaintiffs are suffering because they don't know whether Defendants are going to protect them before they return to their campuses. An expedited hearing on Plaintiffs' TRO motion, or some other direction from the Court, is necessary to avoid this harm.

Paul

Director, REAP
Paul Southwick Law, LLC
paul@paulsouthwick.com
503-806-9517

From: Catherine Kramer <Cathy_Kramer@ord.uscourts.gov>
Sent: Monday, August 9, 2021 4:57 PM
To: Paul Southwick <paul@paulsouthwick.com>; Federighi, Carol (CIV) <Carol.Federighi@usdoj.gov>
Cc: Davis, Elliott M. (CIV) <Elliott.M.Davis@usdoj.gov>; Joe Baxter <joe@paulsouthwick.com>; Lauren Swain <lauren@paulsouthwick.com>; tim@timvolpertlaw.com <tim@timvolpertlaw.com>
Subject: RE: Activity in Case 6:21-cv-00474-AA Hunter et al v. U.S. Department of Education et al Motion for Temporary Restraining Order

Good afternoon,

The Court's schedule is rather full the next few weeks. We could set a telephone hearing on either 8/18 at 2pm or 8/31 at 1pm. Do either of those work?

Thanks,
~Cathy

From: Paul Southwick <paul@paulsouthwick.com>
Sent: Monday, August 9, 2021 4:44 PM
To: Catherine Kramer <Cathy_Kramer@ord.uscourts.gov>; Federighi, Carol (CIV) <Carol.Federighi@usdoj.gov>
Cc: Davis, Elliott M. (CIV) <Elliott.M.Davis@usdoj.gov>; Joe Baxter <joe@paulsouthwick.com>; Lauren Swain <lauren@paulsouthwick.com>; tim@timvolpertlaw.com
Subject: Re: Activity in Case 6:21-cv-00474-AA Hunter et al v. U.S. Department of Education et al Motion for Temporary Restraining Order

CAUTION - EXTERNAL:

Thank you, Ms. Kramer. Plaintiffs look forward to receiving the Court's direction today and repeat their request for an expedited hearing as soon as possible.

Paul

Director, REAP
Paul Southwick Law, LLC
paul@paulsouthwick.com
503-806-9517

From: Catherine Kramer <Cathy_Kramer@ord.uscourts.gov>
Sent: Friday, August 6, 2021 3:15 PM
To: Federighi, Carol (CIV) <Carol.Federighi@usdoj.gov>
Cc: Davis, Elliott M. (CIV) <Elliott.M.Davis@usdoj.gov>; Joe Baxter <joe@paulsouthwick.com>; Lauren Swain <lauren@paulsouthwick.com>; tim@timvolpertlaw.com <tim@timvolpertlaw.com>; Paul Southwick <paul@paulsouthwick.com>
Subject: RE: Activity in Case 6:21-cv-00474-AA Hunter et al v. U.S. Department of Education et al Motion for Temporary Restraining Order

Good afternoon,

Judge Aiken is going to allow defendants an opportunity to respond to the Motion, but we will follow up about scheduling by the end of the day Monday.

Best,
~Cathy

From: Federighi, Carol (CIV) <Carol.Federighi@usdoj.gov>
Sent: Friday, August 6, 2021 2:19 PM
To: Catherine Kramer <Cathy_Kramer@ord.uscourts.gov>
Cc: ORDml Aiken CRD <Aiken_CRD@ord.uscourts.gov>; Davis, Elliott M. (CIV) <Elliott.M.Davis@usdoj.gov>; Joe Baxter <joe@paulsouthwick.com>; Lauren Swain <lauren@paulsouthwick.com>; tim@timvolpertlaw.com; Paul Southwick <paul@paulsouthwick.com>
Subject: RE: Activity in Case 6:21-cv-00474-AA Hunter et al v. U.S. Department of Education et al Motion for Temporary Restraining Order

CAUTION - EXTERNAL:

Dear Ms. Kramer:

Defendants request an opportunity to respond to Plaintiffs' 44-page motion for temporary restraining order, which was filed late yesterday evening (with the exhibits filed earlier today). This action has been pending since March 30 and Defendants are in the process of finalizing their motion to dismiss, which is due to be filed on Monday, August 9.

In past cases, it appears that the Court has afforded defendants an opportunity to respond to motions for temporary restraining order. *See, e.g., Hernandez v. Oregon House of Representatives*, No. 6:21-cv-238 (D. Or. filed Feb. 12, 2021), Doc. Nos. 2, 5 & 8 (allowing a Wednesday response to a TRO motion filed the preceding Friday).

Defendants respectfully request that the Court permit them to file an opposition brief by Wednesday, August 11.

Regards,

Carol Federighi
Senior Trial Counsel
United States Department of Justice
Civil Division, Federal Programs Branch
P.O. Box 883
Washington, DC 20044
Phone: (202) 514-1903
Email: carol.federighi@usdoj.gov

From: Paul Southwick <paul@paulsouthwick.com>
Sent: Friday, August 06, 2021 3:10 PM
To: cathy_kramer@ord.uscourts.gov

Cc: aiken_crd@ord.uscourts.gov; Federighi, Carol (CIV) <Carol.Federighi@usdoj.gov>; Davis, Elliott M. (CIV) <Elliott.M.Davis@usdoj.gov>; Joe Baxter <joe@paulsouthwick.com>; Lauren Swain <lauren@paulsouthwick.com>; tim@timvolpertlaw.com

Subject: Fw: Activity in Case 6:21-cv-00474-AA Hunter et al v. U.S. Department of Education et al Motion for Temporary Restraining Order

Ms. Kramer:

Attached please find Plaintiffs' recently filed Motion for a Temporary Restraining Order. Plaintiffs respectfully request a hearing on their TRO as soon as possible. Will the Court be able to hear the motion today?

Best,

Paul

Director, REAP
Paul Southwick Law, LLC
paul@paulsouthwick.com
503-806-9517

From: info@ord.uscourts.gov <info@ord.uscourts.gov>

Sent: Thursday, August 5, 2021 11:53 PM

To: nobody@ord.uscourts.gov <nobody@ord.uscourts.gov>

Subject: Activity in Case 6:21-cv-00474-AA Hunter et al v. U.S. Department of Education et al Motion for Temporary Restraining Order

This is an automatic e-mail message generated by the CM/ECF system. Please DO NOT RESPOND to this e-mail because the mail box is unattended.

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U.S. District Court
District of Oregon

Notice of Electronic Filing

The following transaction was entered by Southwick, Paul on 8/5/2021 at 11:53 PM PDT and filed on 8/5/2021

Case Name: Hunter et al v. U.S. Department of Education et al

Case Number: [6:21-cv-00474-AA](https://ecf.dco.uscourts.gov/caselist/6:21-cv-00474-AA)

Filer: Victoria Joy Bacon
Avery Bonestroo
Nathan Brittsan
Hayden Brown
Consolata Bryant
Devin Bryant
Brooke C.
Gary Campbell
Tristan Campbell
Natalie Carter
Saren Criag
Alex Duron
Mortimer Halligan
Rachel Held
Lauren Hoekstra
Chandler Horning
Elizabeth Hunter
Louis James
Jonathan Jones
Jamie Lord
Ashtin Markowski
Cameron Martinez
Joanna Maxon
Mackenzie McCann
Darren McDonald
Scott McSwain
Faith Millender
Jaycen Montgomery
Rachel Moulton
Journey Mueller
Veronica Bonifacio Penales
Jake Picker
Danielle Powell
Zayn Silva
Megan Steffen
Daniel Tidwell-Davis
Justin Tidwell-Davis
Spencer J. Vigil
Lucas Wilson
Audrey Wojnarowisch

Document Number: [44](#)

Docket Text:

Motion for Temporary Restraining Order . Oral Argument requested.Expedited Hearing requested. Filed by All Plaintiffs. (Southwick, Paul)

6:21-cv-00474-AA Notice has been electronically mailed to:

Carol Federighi carol.federighi@usdoj.gov

David A. Cortman dcortman@adflegal.org, lmeadows@alliancedefendingfreedom.org,
ppaulk@adflegal.org

Gene Schaerr gschaerr@schaerr-jaffe.com

Herbert G. Grey herb@greylaw.org

Joshua James Prince jprince@schaerr-jaffe.com, 9822110420@filings.docketbird.com

Kristen Waggoner kwaggoner@adflegal.org, arossiter@adflegal.org

Mark Lippelmann mlippelmann@adflegal.org, msouthwick@adflegal.org

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Paul J.C. Southwick paul@paulsouthwick.com, lauren@paulsouthwick.com

Ryan J Tucker rtucker@ADFlegal.org, echristoph@adflegal.org, jperske@adflegal.org,
msouthwick@adflegal.org

6:21-cv-00474-AA Notice will not be electronically mailed to:

The following document(s) are associated with this transaction:

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b9cdcddf95e61a28daee7349fae651a3f7992a7c45a2b330590255e45]]

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