No. 24-0514

In The

# Supreme Court of the United States

**Dove MCMILLAN**

*Petitioner,*

v.

**BOARD OF REGENTS OF CITY UNIVERSITY OF LANTANA**

*Respondent.*

*On Writ of Certiorari to the United States Court of Appeals for the Thirteenth Circuit*

## BRIEF FOR RESPONDENT

**Team 30**
**Counsel for Respondent**

## QUESTIONS PRESENTED

1. When a trial judge amends a final judgment, does the time for filing a post-judgment motion challenging unchanged portions of the judgment run from entry of the original final judgment or the amendment?
2. Does a University violate the First Amendment by adopting a viewpoint-neutral policy of refusing to discipline students who interfere with speakers on campus?

## TABLE OF CONTENTS


OPINIONS BELOW ..... 1

STATEMENT OF JURISIDICTION ..... 1

CONSTITUTIONAL AND STATUATORY PROVISIONS INVOLVED ..... 1

STATEMENT OF THE CASE ..... 2

A. Procedural History ..... 2

B. Statement of the Facts ..... 3

I. THE UNIVERSITY PRESERVED ITS LIABILITY ARGUMENT WITH A TIMELY 50(B) MOTION BECAUSE THE TIMELINE FOR A POST-JUDGEMENT MOTION RAN FROM THE AMENDED FINAL JUDGMENT. ..... 7

a. The University's Post-Judgment Motion Deadline Should be Measured from the Amended Final Judgment due to Material Alterations to the Amended Judgment. ..... 9

i. Material alterations in amended judgments reset the deadline for post-judgment motions. ..... 10

ii. The Amended Final Judgment altered the University's legal rights and obligations, restarting the 28-day timeline for a Rule 50(b) motion. ..... 14

iii. Adopting a practical approach to finality supports judicial fairness and efficiency. ..... 16

b. The University's Rule 50(b) Motion "Bears Relationship" to the Final Amended Judgment and is Therefore Justified. ..... 18

i. A post-judgment motion based on the amended judgment is timely if it "bears relationship" to the alteration. ..... 18

ii. The University's Rule 50(b) is related to the Amended Final Judgment which imposed punitive damages. ..... 20

iii. The District Court Erred in its Interpretation of the University's Rule 50(b) Motion by Overlooking its Role in Renewing the Rule 50(a) Motion. 22

c. The Timeliness of the University's Rule 50(b) Motion May Stand Even if it Does not Directly Relate to the Specific Amendments in the Final Amended Judgment. ..... 24

i. Courts have the discretion to allow post-judgment motions in cases where there are substantial alterations in an amended judgment. ..... 25

ii. The "unique circumstances" doctrine extends the deadline for the University's Rule 50(b) motion. ..... 26

II. THE THIRTEENTH CIRCUIT CORRECTLY HELD THAT THE CITY UNIVERSITY OF LANTANA'S APPROACH TO STUDENT DISCIPLINE DID NOT VIOLATE PETITIONER'S FIRST AMENDMENT RIGHTS ..... 28

a. There Is No Causal Link Between the University's Approach and Petitioner's Alleged First Amendment Violation. ..... 29

i. The University cannot be held liable for individual actions by private actors who are not considered government officials for purposes of § 1983.....34

b. The University's Approach to Disciplinary Action Was an Incidential Regulation of Petitioner's Speech That Should Be Evaluated Under the *O'Brien* test. ..... 36

i. The policy at issue was justified, because universities have the authority to implement disciplinary procedures. ..... 38

ii. The Hedge Family Auditorium was a limited public forum, and the University was entitled to impose its viewpoint-neutral approach. ..... 40

c. This Court Should Uphold Its Ruling in *DeShaney,* because the Due Proces Clause Does Not Confer an Obligation Upon the Government to Take Affirmative Steps to Subsidize a Private Actor's Free Speech. ..... 43

i. Overruling *DeShaney* would open the door for an overly expansive interpretation of the Due Process Clause. ..... 45

ii. A university cannot subsidize the exercise of Petitioner's free speech rights without simultaneously depriving the students of their right to freedom of expression..... 47
iii. The heckler's veto doctrine prevents the University from interfering with student demonstrations against Petitioner's speech. ..... 49

## TABLE OF AUTHORITIES

### United States Supreme Court Cases

*Bethel Sch. Dist. v. Fraser*
478 U.S. 675 (1986) ..... 50

*BMW of North America, Inc. v. Gore*
517 U.S. 559 (1996) ..... 15

*Brandenburg v. Ohio*
395 U.S. 444 (1969) ..... 52

*Carlson v. Green*
445 U.S. 14 (1980). ..... 21

*Christian Legal Soc'y Chapter of the Univ. of Cal. v. Martinez*
561 U.S. 661 (2010) ..... 39, 43

*City of Austin v. Reagan Nat'l Adver., of Austin, LLC*
596 U.S. 61 (2022) ..... 38

*Daniels v. Williams*
474 U.S. 327 (1986) ..... 47

*Davis v. Monroe County Bd. of Educ.*
526 U.S. 629 (1999) ..... 40, 53

*DeShaney v. Winnebago Cnty. Dep't. of Soc. Servs.*
498 U.S. 189 (1989) ..... 46, 47, 48, 49

*Dickinson v. Petroleum Conversion Corp.*
338 U.S. 507 (1950) ..... 10, 11, 17

*Federal Power Comm'n v. Idaho Power Co.*
344 U.S. 17 (1952) ..... 9, 10

*FTC v. Minneapolis-Honeywell Regulator Co.*
344 U.S. 206 (1952). ..... *passim*

*Hazelwood Sch. Dist. v. Kuhlmeier*
484 U.S. 260 (1988) ..... 29

*Healy v. James*
408 U.S. 169 (1972) ..... 40, 45, 52

*Lindsey v. Normet*
405 U.S. 56 (1972) ..... 48

*Maher v. Roe*
432 U.S. 464 (1977) ..... 49

*McIntyre v. Ohio Elections Comm'n*
514 U.S. 334 (1995) ..... 38

*Monell v. Dep't of Soc. Services of City of New York*
436 U.S. 658 (1978) ..... 32

*Osterneck v. Ernst & Whinney*
489 U.S. 169 (1989) ..... 9, 13, 14, 27

*Perry Educ. Ass'n v. Perry Local Educators' Ass'n*
460 U.S. 37 (1983) ..... 42

*Progressive Indus., Inc. v. United States*
888 F.3d 1248 (2018) ..... 10, 12, 14

*Riley v. Nat'l Federation of the Blind of North Carolina, Inc.*
487 U.S. 781 (1988) ..... 30

*Sears, Roebuck & Co. v. Mackey*
351 U.S. 427 (1956) ..... 11

*Smith v. Wade*
461 U.S. 30 (1983). ..... 21

*Stromberg v. California*
283 U.S. 359 (1931) ..... 38

*Terminello v. Chi.*
337 U.S. 1 (1949) ..... 51

*Texas v. Johnson*
491 US. 397 (1989) ..... 37

*Tull v. U.S.*
418 U.S. 412 (1987) ..... 15

*U.S. v. O'Brien*
391 U.S. 367 (1968) ..... 37, 39

*United States v. Ibarra*
502 U.S. 1 (1991) ..... 11

*Widmar v. Vincent*
454 U.S. 263 (1981) ..... 44

*Wood v. Strickland*
420 U.S. 308 (1975) ..... 46

**Federal Court Cases**

*Abellan v. Lavelo Prop. Mgmt., LLC*
948 F.3d 820 (7th Cir. 2020) ..... 24

*Albright ex rel. Doe v. Mountain Home Sch. Dist.*
926 F.3d 942 (8th Cir. 2019) ..... 44

*Benefield v. Bd. of Trs. of the Univ. of Ala. at Birmingham*
214 F.Supp.1212 (N.D. Ala. 2002) ..... 40

*Berger v. NCAA*
843 F.3d 285 (7th Cir. 2016) ..... 36

*Bible Believers v. Wayne County*
805 F.3d 228 (6th Cir. 2015) ..... 52

*Bible Club v. Placentia-Yorba Linda Sch. Dist.*
573 F.Supp.2d 1291 (2008) ..... 44

*Bielevicz v. Dubinon*
915 F.2d 845 (3d Cir. 1990) ..... 31

*Bloedorn v. Grube*
631 F.3d 1218 (11th Cir. 2011) ..... 42

*Bolsta v. Johnson*
848 A.2d 306 (Vt. 2004) ..... 8, 22

*Catz v. Chalker*
142 F.3d 279 (6th Cir. 1998) ..... 18

*Charles v. Daley*
799 F.2d 343 (7th Cir. 1986) ..... 19

*Collard v. United States*
10 F.3d 718 (10th Cir. 1993) ..... 10, 12

*Conchatta Inc. v. Miller*
458 F.3d 258 (3d Cir. 2006) ..... 38

*Cornist v. Richland Par. Sch. Bd.*
479 F.2d 37 (5th Cir. 1973) ..... 7, 10, 13, 16

*Crue v. Aiken*
204 F.Supp.2d 1130 (C.D. Ill. 2002) ..... 38

*Dildy v. City of N. Charlestons*
2024 U.S. Dist. LEXIS 165106 (D. S.C.) ..... 32

*Doe v. Michigan*
721 F.Supp.852 (E.D. Mich. 1989) ..... 50

*Doe v. Ochsner Health Sys.*
2022 U.S. Dist. LEXIS 38335 (E.D. La.) ..... 40

*Dominguez v. Better Mortg. Corp.*
88 F.4th 782 (9th Cir. 2023) ..... 18

*Eknes-Tucker v. Governor*
114 F.4th 1241 (11th Cir. 2024) ..... 47

*Endicott Johnson Corp. v. Liberty Mut. Ins. Co.*
116 F.3d 53 (2d Cir. 1997) ..... 27, 28

*Estate of Roman v. City of Newark*
914 F.3d 789 (3d Cir. 2019) ..... 31, 32

*Flaherty-Ortega v. Horry Cnty.*
2022 U.S. Dist. LEXIS 159022 (D. S.C. 2022) ..... 32

*Fruit of the Loom, Inc. v. American Marketing Enterprises, Inc.*
192 F.3d 73 (2d Cir. 1999) ..... 28

*Gonzales-Bermudez v. Abbott Laboratories P.R. Inc.*
990 F.3d 37 (1st Cir. 2021) ..... 24

*Green v. Bisby*
869 F.2d 1070 (7th Cir. 1989) ..... 28

*Hale v. Fish*
899 F.2d 390 (5th Cir. 1990) ..... 21, 22

*Jackson v. Barnes*
749 F.3d 755 (9th Cir. 2014) ..... 34

*Keister v. Bell*
29 F.4th 1239 (11th Cir. 2022) ..... 43, 44

*Kestenbaum v. President & Fellows of Harvard Coll.*
2024 U.S. Dist. LEXIS 139180 (D. Mass.) ..... 41

*Kneipp v. Tedder*
95 F.3d 1199 (3d Cir. 1996) ..... 31

*Krieser v. Hobbs*
166 F.3d 736 (5th Cir. 1999) ..... 14

*Lawshe v. Hardwick*
2024 U.S. Dist. LEXIS 195944 (MD. Fla.) ..... 33

*Lindke v. Freed*
114 F.4th 812 (6th Cir.) ..... 32

*M.C. ex rel. Chudley v. Shawnee Mission Unified Sch. Dist. No. 512*
363 F.Supp. 3d 1182 (2019) ..... 50

*Martinson v. Regents of the Univ. of Mich.*
2011 U.S. Dist. LEXIS 165164 (E.D. Mich.) ..... 36, 37

*McDougald v. Garber*
73 N.Y.2d 246 (N.Y. 1989) ..... 22

*McNabola v. Chicago Transit Auth.*
10 F.3d 501 (7th Cir. 1993) ..... 8, 18, 19, 20

*Mitchell v. Gales*
61 A.3d 678 (D.C. 2013) ..... 17

*Ovadal v. City of Madison*
416 F.3d 531 (7th Cir. 2005) ..... 53

*Pierre v. Univ. of Dayton*
143 F.Supp.3d 703 (S.D. Oh. 2015) ..... 41

*Santa Monica Nativity Scenes Comm. v. City of Santa Monica*
784 F.3d 1286 (9th Cir. 2015) ..... 52, 53

*Sewell v. Town of Lake Hamilton*
117 F.3d 488 (11th Cir. 1997) ..... 33

*Stauber v. Kieser*
810 F.2d 1 (10th Cir. 1982) ..... 27

*Students for Life USA v. Waldrop*
162 F. Supp. 1216 (S.D. Ala. 2016) ..... 42, 43

*Tru-Art Sign Co., Inc. v. Local 137 Sheet Metal Workers Int'l Ass'n*
495 F.3d 217 (2d Cir. 2017) ..... 8, 18, 19, 20

*U.S. v. Swisher*
811 F.3d 299 (9th Cir. 2016) ..... 39

*United States ex rel. Familian Northwest v. RG & B Contractors*
21 F.3d 952 (9th Cir. 1994) ..... 10, 12

*United States v. Antonie*
953 F.2d 496 (9th Cir. 1991) ..... passim

*United States v. Doe*
374 F.3d 851 (9th Cir. 2004) ..... passim

*Walker v. City of New York*
974 F.2d 293 (2d Cir. 1992) ..... 34

*Washington v. Balt. Police Dep't*
457 F.Supp.3d 520 (D. Md. 2020) ..... 32

*Watson v. Mann (In re Weston)*
18 F.3d 860 (10th Cir. 1994) ..... 27

*Wilmington Sav. Fund Soc'y, FSB v. Meyers*
95 F.4th 981 (5th Cir. 2024) ..... 13, 15

*Wooten v. LaSalle Corr.*
2024 U.S. Dist. LEXIS 163220 (M.D. Ga.) ..... 36, 37

*Workplace Techs. Rsch., Inc. v. Project Mgmt. Inst., Inc.*
644 F. Supp. 3d. 1142 (S.D. Cal., 2003)..... 24, 25

**Other Authorities**

11 Wright, Miller & Kane, *Federal Practice & Procedure* § 2801. ..... 17

1987 U.S. S. Ct. Briefs LEXIS 226 ..... 47

1988 U.S. S. Ct. Briefs LEXIS 1346 ..... 46

Black's Law Dictionary (4th ed. 1968) ..... 48

Bohlen, *The Moral Duty to Aid Others as a Basis of Tort Liability,* 56 U. Pa. L. Rev. 217.....46

*The Pragmatic Approach to Appealability in Federal Court*, 75 COLUM. L. REV. 1, 91 (1975)..... 17

**Rules**

Fed. R. Civ. P. 50(b) ..... 23, 24

Fed. R. Civ. P. 6..... 29

**Treatises**

1 LCRS Ed. Law § 2.04(4) ..... 36

42 U.S.C §1983 ..... 30

Restatement (Second) of Torts §908(1) (1979)..... 21

## OPINIONS BELOW

The opinion of the United States District Court for the Eastern District of New Tejas is unpublished and may be found at *McMillan v. Board of Regents University of Lantana*, D.C. No. 21-cv-1285 (D. New Tejas). The opinion of the United States Court of Appeals for the Thirteenth Circuit is unpublished and may be found at *Board of Regents University of Lantana v. McMillan*, C.A. No. 22-0514 (15th Cir. 2023).

## STATEMENT OF JURISIDICTION

The United States Court of Appeals for the Thirteenth Circuit entered a final judgment on this matter on May 10, 2023. (R. 1a.) Petitioner then filed a writ of certiorari, and this Court granted certiorari. Order Granting Cert., Oct. 7, 2024, No. 24-0514. This Court has jurisdiction over this matter pursuant to 28 U.S.C. § 1254(1).

## CONSTITUTIONAL AND STATUATORY PROVISIONS INVOLVED

The appendix contains the pertinent text of the following constitutional and statutory provisions relevant to this case: Fed. R. Civ. P. 4, 6(b)(2), 50(a), 50(b), and 42 U.S.C § 1983, U.S. CONST. amend. I.

## STATEMENT OF THE CASE

### A. Procedural History

This case stems from Petitioner's suit against the Board of Regents of the City University of Lantana for the alleged violation of her First Amendment rights under 42 U.S.C. §1983. (R. 7a.) At trial, the University moved for judgment as a matter of law under Rule 50(a). (*Id.*) The District Court for the Eastern District of New Tejas denied that motion. (*Id.*) The jury ultimately decided to award McMillan $12,487 in compensatory damages and $350,000 in punitive damages. (*Id.*) After the trial concluded, on January 20, 2022, the district court entered an Amended Final Judgment, signed by Judge Sarah Andrews, which stated that the court ordered McMillan to recover $12,487 in compensatory damages from the University. (R. 21a.) The order omitted punitive damages. *Id.* It also stated that all relief not granted herein is denied. (See Amended Final Judgment.) Seven days later, on January 27, 2022, the district court *sua sponte* modified the judgment in an Amended Final Judgment and added punitive damages in the amount of $350,000. (R. 7a.)

Twenty-eight days from the Amended Final Judgment, on February 24, 2022, the University filed a renewed motion for judgment as a matter of law under Rule 50(b). (R. 7a.) The district court ruled that the University's Rule 50(b) motion was untimely and denied it without regard to its merits. (R. 7a.) The University then appealed the decision to the Thirteenth Circuit Court of Appeals who concluded that

the University preserved its arguments in a timely Rule 50(b) motion and that the district court erred in denying judgment as a matter of law on this basis. (R. 10a.)

### B. Statement of the Facts

Respondent, City University of Lantana (the "University") is one of the oldest and most preeminent educational public institutions in New Tejas. (R. 2a.) The University is committed to academic excellence, civic engagement, and leadership for the common good, as reflected in their school motto – "Forever Learning". (R. 2a.) In addition to its successful athletics program, the University boasts over 60 student organizations, including political, gender and sexuality, religious, and social action groups. (R. 3a.)

The University's Dean of Student Affairs, Mason Thatcher, believes in a "hands-off" approach to student discipline. (R. 5a.) In his view, students should be left to their own devices and just "need a good talking to, not any kind of punishment." (R. 5a.) While not a formally adopted university policy, campus security and other employees within the Department of Student Affairs follow Dean Thatcher's approach. (R. 5a.) The University has enjoyed much success under Dean Thatcher's appointment, including a rise in alumni engagement and donations for the University. (R. 4a.)

In recent years, the University has had several incidents of student unrest, including senior pranks and disrupting campus speaker events. (R. 3a, 5a.) Speakers who have been "heckled" by students have included guests who are

invited to speak on topics such as institutional racism, Second Amendment rights, the legalization of recreational marijuana, and climate change. (R. 5a.)

Petitioner Dove McMillan is a well-known vegan rights advocate who was invited to speak at the University campus in the Hedge Family Auditorium by the Campus Vegan Alliance. (R. 6a.) Petitioner intended to speak about how the human species has been exploiting and murdering animals in the name of consumerism and that people should abstain from consuming animal products to save humanity and the world. (R. 6a.) On February 8, 2020, McMillan presented her speech at the University. (R. 5a.) About five minutes into her speech, students began to protest Petitioner's speech, including carrying banners and wearing costumes. (R. 6a.) Eventually, Petitioner chose to leave the stage and end her speech. (*Id.*) The students stayed in the auditorium for one hour before they voluntarily dispersed. (*Id.*) Campus security was present at the event but did not engage with the student protestors, and the students were not disciplined for protesting Petitioner's speech. (R. 7a.) Petitioner now alleges that the Board of Regents of the University violated her First Amendment rights and sued under 42 U.S.C. § 1983. (R. 7a.)

## ARGUMENT SUMMARY

**This Court should affirm the decision of the Thirteenth Circuit because Respondent, the University, filed a timely Rule 50(b) motion based on the Amended Final Judgment.** First, a material alteration in an amended judgments reset the timeline for post-judgment motions. Here, the Amended Final Judgment entered on January 27, 2022, effectively resets the 28-day period for filing a Rule 50(b) motion, and the University timely submitted within this period. Second, the University's Rule 50(b) motion "bears relationship" to the Amended Final Judgment, as the inclusion of punitive damages directly pertains to liability – an issue central to the University's motion. Third, and in the alternative, the timeliness of the University's Rule 50(b) motion may be upheld even if it does not precisely relate to the amendments within the judgment, based on the "unique circumstances" doctrine and the growing trend in lower circuit courts allowing judicial discretion for post-judgment motions and appeals to promote fairness and justice. Therefore, United States Court of Appeals for the Thirteenth Circuit correctly found that the University preserved its argument in a timely Rule 50(b) motion, and the district court erred in denying judgment as a matter of law on this ground.

**This Court should also affirm the finding of the Thirteenth Circuit that the University is not liable under § 1983, because the University did not violate Petitioner's First Amendment rights.** First, Petitioner cannot prove that there is a causal link between the University's hands-off approach to student disciplinary action and her alleged First Amendment violation, because, to Petitioner's own

admission, it was the students' demonstrations, not the University, that interfered with her campus speech. The University cannot be held liable for the individual actions of private actors, or its students, for purposes of § 1983. Moreover, the University's approach to disciplinary action was not a custom or usage that was formally adopted or understood to be applied in all circumstances such that liability may be attached under the statute. Second, the University's approach to disciplinary action was an incidental regulation to Petitioner's speech that should be evaluated under the *O'Brien* test, because the University was not attempting to directly restrict speech by not disciplining students. Universities should be afforded wide discretion in implementing disciplinary procedures given their expertise and knowledge in academic regulations. Moreover, the Hedge Family Auditorium in which Petitioner attempted to deliver her speech was a limited public forum and thus, the University's conduct, viewed under a reasonableness standard, was justified pursuant to its greater educational purpose. Finally, this Court should uphold its ruling *DeShaney,* because obligating the government to take affirmative steps to subsidize an individual's action invites an overly expansive interpretation of the Due Process Clause that would inherently suppress those exercising their freedom to assemble and protest.

## ARGUMENT

### I. THE UNIVERSITY PRESERVED ITS LIABILITY ARGUMENT WITH A TIMELY 50(B) MOTION BECAUSE THE TIMELINE FOR A POST-JUDGEMENT MOTION RAN FROM THE AMENDED FINAL JUDGMENT.

This Court should affirm the ruling of the Thirteenth Circuit and find that the University preserved its arguments in a timely Rule 50(b) motion and that the district court erred in denying judgment as a matter of law on this basis. In *Honeywell*, this Court determined that when "a lower court changes matters of substance, or resolves a genuine ambiguity, in a judgment previously rendered" then "the period within which an appeal must be taken or a petition for certiorari filed begins to run anew." *FTC v. Minneapolis-Honeywell Regulator Co.,* 344 U.S. 206, 211-12 (1952). The principles set worth in *Honeywell* are directly applicable to the University's Rule 50(b) motion.

The Fifth and Ninth Circuits align with the reasoning articulated in *Honeywell* in regard to post-judgment motions. *Cornist v. Richland Par. Sch. Bd.* 479 F.2d 37-38-39 (5th Cir. 1973); *U.S. v. Doe*, 374 F.3d 851, 854-54 (9th Cir. 2004); *see also U.S. v. Antonie*, 953 F.2d 496, 497 (9th Cir. 1991). These courts have held that when a superseding judgment substantively modifies the legal rights and obligations of the parties, it resets the timeline for filing post-judgment motions. *Id.* This rule is applicable in this case. When the district court entered an Amended Final Judgment on January 27, 2022, adding punitive damages, after entering a judgment on January 20, 2022, the court altered substantive matters. (R. 21a.)

This alteration disrupted the legal rights and obligations of the parties which had been plainly and properly settled with finality. (R. 21a.)

Additionally, the University's Rule 50(b) motion is timely and justified because it "bears relationship" to the amendment in the Amended Final Judgment. *McNabola v. Chicago Transit Auth.,* 10 F.3d 501, 502 (7th Cir. 1993); *Tru-Art Sign Co., Inc. v. Local 137 Sheet Metal Workers Int'l Ass'n*, 495 F.3d 217, 221 (2d Cir. 2017). The motion directly addressed the material change of punitive damages which was introduced in the Amended Final Judgment. (R. 21a.) The imposition of punitive damages on the University altered the University's culpability, therefore impacting liability. *Bolsta v. Johnson*, 848 A.2d 306, 308 (Vt. 2004). Moreover, the University's Rule 50(b) motion was necessarily constrained by its original, timely Rule 50(a) motion on liability, as Rule 50 requires that an argument for judgment as a matter of law remain consistent with those raised initially. The University's prompt Rule 50(a) motion during trial further underscores its intent and commitment to file a timely Rule 50(b) motion post-judgment.

Even if this Court finds that the University's motion does not "bear relationship" to the Amended Final Judgment, courts should still retain discretion to permit post-judgment motions in the interest of justice. Although Rule 6(b) precludes extending the timeline for Rule 50(b) motions based on "excusable neglect," the "unique circumstances doctrine" should be applied to allow flexibility in such specific circumstances. *Osterneck v. Ernst & Whinney*, 489 U.S. 169, 179 (1989). The amended final judgment, without any other notice from the court,

served as an implicit assurance that the timeline for filing a post-judgment motion would begin anew, starting from the entry of that judgment. Denying litigants the opportunity to file post-judgment motions under certain circumstances, such as these, would strip them of a vital means to seek clarity and justice when the finality of a judgment remains unclear. Accordingly, this Court should hold that when the trial judge amended the judgment of January 20, 2022, the deadline for filing a Rule 50(b) motion was reset to run from the entry of the Amended Final Judgment on January 27, 2022. (R. 21a.)

a. The University's Post-Judgment Motion Deadline Should be Measured from the Amended Final Judgment due to Material Alterations to the Amended Judgment.

Substantive changes to a judgment – whether affecting the legal rights or financial obligations of the parties – fundamentally alter the finality of the original decision and, therefore, reset the deadline for filing any post-judgment motions. *Honeywell*, 344 U.S. at 211–12; *Federal Power Comm'n v. Idaho Power Co.*, 344 U.S. 17, 19-22 (1952). This rule ensures that parties are given an adequate opportunity to address the material changes in the judgment that have impacted their legal rights and obligations differently than the original judgment.

The timeline for review should only be reset when the amended judgment alters substantial legal rights, as opposed to addressing merely collateral issues such as costs or clerical mistakes. *Progressive Indus., Inc. v. U.S.,* 888 F.3d 1248, 1253 (2018); *Collard v. United States*, 10 F.3d 718, 719 (10th Cir. 1993); *U.S. ex rel. Familian Northwest v. RG & B Contractors*, 21 F.3d 952, 954-55 (9th Cir. 1994).

Decisions such as *Doe, Antoine*, and *Cornist*, illustrate that when an amended judgment revises the substance of a case, such as by altering a party's sentence or legal status, the clock for filing motions begins anew. *U.S. v. Doe*, 374 F.3d 851, 854-54 (9th Cir. 2004); *U.S. v. Antonie*, 953 F.2d 496, 497 (9th Cir. 1991); *Cornist v. Richland Par. Sch. Bd.*, 479 F.2d 37, 38-39 (5th Cir. 1973). The Amended Final Judgment revised the substance of the Petitioner's case by altering her damage award. (R. 8a.) A practical, flexible understanding of finality ensures that the application of finality does not unduly harm litigants, like the University. *See Dickinson v. Petroleum Conversion Corp.*, 338 U.S. 507, 511 (1950) (explaining courts struggle to balance the creation of a standard of appealability and finality with the need to address exceptional cases). This pragmatic approach balances judicial efficiency with the need for thorough review, highlighting the importance of flexibility in deadlines when a party's rights are substantially altered by a new judgment.

i. Material alterations in amended judgments reset the deadline for post-judgment motions.

Substantive material alterations made to judgments following an initial judgment fundamentally change the legal rights and obligations of parties and therefore extend the timeline for filing a post-judgment motion. *Honeywell*, 344 U.S. at 211–12; *Federal Power Comm'n*, 344 U.S. at 19-22. When issues that parties have litigated in court are not fully resolved, the judgment is "tentative, informal, or incomplete," and therefore not final. *Dickinson*, 338 U.S. at 514-15 (holding that a decree was final only when the issues affecting the defendant were fully resolved,

while the remaining issues were internal to an intervening interest). Consequently, when a court issues an amended judgment that substantively alters the initial judgment, the period for filing post-judgment motions should be measured from the date of the amended judgment, as the determination of the parties' rights and obligations is only finalized once modified. *Id.*

This approach ensures that parties are granted a fair opportunity to contest the ultimate decision, aligning with the rationale in *Ibarra*, where the Court recognized that a timely motion for reconsideration renders the original judgment nonfinal, thereby resetting the appeal period to allow comprehensive review of substantive changes. *U.S. v. Ibarra*, 502 U.S. 1, 4 (1991). Just as reconsideration renders the original judgment nonfinal, a substantial amendment to the original judgment by a circuit court judge should also render it nonfinal. Further, in *Sears, Roebuck & Co.*, this Court outlined that for Rule 54(b) determinations, a "final judgment" is "final" in the sense that it is an "ultimate disposition" of an individual claim entered in the course of a multiple claims action." *Sears, Roebuck & Co. v. Mackey*, 351 U.S. 427, 436 (1956). While different from a Rule 50(b) motion, the sentiments regarding finality apply. The procedural timeline should be based on the judgment that is the "ultimate disposition," and in this case, the judgment of January 20 was not an "ultimate disposition." Instead, it was the Amended Final Judgment on January 27, 2022. (R. 8a.)

This reasoning does not make proceedings less efficient or protracted because the period for review is not extended every time a judgment is revised in an

"immaterial way," such as altering a collateral issue or correcting a clerical mistake. *Honeywell,* 344 U.S. 206, 211 (1952); *Progressive,* 888 F.3d at1253 (holding that issues of costs and attorney fees in the amended judgment were merely collateral and therefore did not restart the time period for filing a 59(e) motion); *Collard*, 10 F.3d at 719 (determining that an amended judgment which solely awarded costs did not extend the deadline based on the amended judgment because costs are an issue that was wholly collateral to the judgment); *U.S. ex rel. Familian Northwest v. RG & B Contractors*, 21 F.3d 952, 954-55 (9th Cir. 1994) (finding that attorney fees are "always collateral" and that a 59(e) motion was untimely based on attorney fees rather than the date of judgment). Instead, only substantive changes that affect the rights and obligations of the parties reset the timeline, ensuring that judicial efficiency is balanced with fairness. *Id.*

In *Honeywell,* this Court stated that the test for whether the time period runs anew is a "practical one" and hinges on the question of whether "the lower court, in its second order, has disturbed or revised legal rights and obligations which, by its prior judgment, had been plainly and properly settled with finality." *Honeywell*, 344 U.S. at 211–12. The Ninth and Fifth Circuits have adopted the reasoning from *Honeywell* and provided clarity on what it means to disturb or revise legal rights and obligations. *Doe*, 374 F.3d at 854-54; *Antonie*, 953 F.2d at 497; *Cornist,* 479 F.2d at 38-39; *see also Wilmington Sav. Fund Soc'y, FSB v. Meyers,* 95 F.4th 981, 982 (5th Cir. 2024). In *Doe,* the district court revised the legal rights and obligations of the defendant because they reduced his sentence from

thirty months to eight months. *Doe*, 374 F.3d 851, 852 (9th Cir. 2004). Similarly, in *Cornist,* the Court found that when a second judgment omitted a paragraph of substance concerned with the possible reinstatement of another individual that was not included in the initial judgment, the time for filing motions began to run with entry to the amended judgment. *Cornist,* 479 F.2d 37, 39 (5th Cir. 1973). The Tenth Circuit has also handled the issue similarly in unpublished opinions. *See* 2019 U.S. App. LEXIS 40497 (10th Cir.) (finding that a later clarifying order which changed matters of substance and disturbed legal rights reset the time to file a notice of appeal).

The reasoning in *Osterneck* also supports the principle that a substantive amendment to a judgment – such as the addition of prejudgment interest that was not previously included – constitutes a material modification that impacts the legal rights and obligations of parties, thereby warranting a reset of the post-judgment motion filing timeline. *Osterneck*, 489 U.S. at 178. In *Osterneck,* this court reasoned that discretionary prejudgment interest, unlike attorney's fees, forms part of the plaintiff's compensation rather than merely covering costs. *Id.* at 177. Therefore, it directly affects the merits of the judgment as opposed to serving as a collateral issue. *Id.* at 176. This distinction aligns with the argument in *Honeywell* that an amended judgment, when materially altered, resets the post-judgment motion deadline, as it recalibrates the parties' financial obligations. *Honeywell*, 344 U.S. 206 at 211. The principle underlying the triggering date for calculating interest under 28 U.S.C. § 1961 also reinforces this argument. *Krieser v. Hobbs*, 166 F.3d

736, 742 (5th Cir. 1999). In *Krieser,* the court held that if the amended judgment modifies the damages, interest begins from the date of the amended judgment. *Id.* This analysis underscores the broader legal principle that substantive changes in a judgment – whether altering the financial obligations of the parties or their legal rights – resets the clock for all relevant procedural timelines.

ii. The Amended Final Judgment altered the University's legal rights and obligations, restarting the 28-day timeline for a Rule 50(b) motion.

The Amended Final Judgment on January 27, 2022, fundamentally altered the legal rights and obligations of the University by introducing a material modification in the form of punitive damages, thereby restarting the Rule 50(b) deadline. *Progressive Indus.*, 888 F.3d at 1253 (contrasting the case at hand because the amended judgment in *Progressive* only modified collateral issues of cost). The parties agree that the change did not involve a collateral issue or clerical error, but that the addition of punitive damages to the Amended Final Judgment consisted of a material modification. (R. 8a, 23a). The issue of punitive damages was genuine ambiguity that was not resolved until the Amended Final Judgment was entered. *Wilmington Sav. Fund Soc'y,* 95 F.4th at 982 (explaining that genuine ambiguities in judgments render it nonfinal).

In addition to the party's mutual agreement that there was a substantive modification, it is well established that damage awards impact both the legal rights and obligations of a party – particularly an award of $350,000 in punitive damages. (R. 7a.); *Tull v. U.S.,* 418 U.S. 412 (1987) (explaining that damages influence legal

rights in the context of civil penalties.) An award of $350,000 in punitive damages, as opposed to the initial judgment which only awarded $12,487 in compensatory damages, had such a large impact on the University's rights, that it may even rise to an infringement on the University's constitutional rights. *BMW of North America, Inc. v. Gore*, 517 U.S. 559, 607 (1996). The Due Process Clause of the 14th Amendment imposes limitations on the amount of punitive damages that a jury may permissibly impose on a tortfeasor. *Id.* Punitive damages have often been questioned when the ratio of compensatory to punitive damages greatly exceeds the injury suffered. *State Farm Mut. Auto. Ins. Co. v. Campbell*, 538 U.S. 408, 425 (2003) (arguing that few awards exceeding a "single-digit ratio between punitive and compensatory damages" will satisfy due process.) Here, the ratio of $350,000 to $12,487 is nearly thirty times more than the damages awarded in the initial judgment. (R. 7a.) While the procedural issue of the timeline of post-judgment motions is not determinative on merits of the punitive damages and whether the damages are excessive, an award that alters the judgment in a way to potentially impact a party's constitutional rights is a material alteration that effects the University's legal rights and obligations.

The fact that the district court *sua sponte* modified the judgment to include the punitive damages award to the jury, and did not intentionally exclude the punitive damages award is not relevant. (R. 7a.) Whether it was intentional or unintentional, the initial judgment is materially different from the Amended Final Judgment and altered the parties' rights and obligations. As in *Cornist*, it is

apparent that the second judgment was intended to supersede the first because it "omitted a paragraph of substance." *Cornist,* 479 F.2d at 38–39. Therefore, the Amended Final Judgment on January 27, 2022, is the final judgment, and replaces the judgement of January 20, 2022.

iii. Adopting a practical approach to finality supports judicial fairness and efficiency.

"There is no more ambiguous word in all the legal lexicon" than "final," Justice Black, joined by Justice Douglas, noted in dissent of *Honeywell*. *Honeywell,* 344 U.S. at 217. Justice Black went on further to note that the Court has found ways to grant review to litigants "deviled and confused by the judicially created fog of finality." *Id.* To fail to afford litigants the opportunity to file post-judgment motions would be to deny them a crucial avenue for seeking clarity and justice when the finality of a judgment remains unclear. *Id.* Justice Black's observation highlighted this Court's responsibility to acknowledge the importance of finality while interpreting it in a way that avoids undue hardship to litigants – allowing them the procedural fairness necessary to address any significant changes made after the initial ruling. *See Mitchell v. Gales*, 61 A.3d 678, 684 (D.C. 2013) (stating that a fundamental principle of litigation is the importance of finality.)

The adoption and application of a strict final judgment rule can be problematic, as adherence to a traditional definition can lead to difficulties in cases where an order dissolves the dispute, but it is not technically the "final" judgment. *The Pragmatic Approach to Appealability in Federal Court*, 75 COLUM. L. REV. 1, 91 (1975). Courts have found ways to approach final judgments with flexibility,

particularly when it comes to appeals, applying a pragmatic approach to balance judicial economy and the need for timely justice. *Id.* This Court recognized that "among the considerations that always compete in the question of appealability, the most important…are the inconvenience and cost of a piecemeal review on the one hand and the danger of denying justice by delaying the other." *Dickinson*, 338 U.S. at 511. While the appeal of a decision is different from post-judgment motions, such as a Rule 50(b) motions, the same logic applies. The time limits applicable to post-judgment motions, like Rule 50(b) motions represent a careful balance between, on the one hand, the accuracy of judgments and the court's historic power to see that justice is done and, on the other hand, the interest in finality and repose. *See* 11 Wright, Miller & Kane, *Federal Practice & Procedure* § 2801.

After this Court's decision in *Honeywell*, Federal Rule of Appellate Procedure Rule 4(a)(4) was amended to toll the time for filing an appeal when a party files a Rule 60 motion addressing clerical errors, reflecting the intent of the rules to provide flexibility for correcting judicial mistakes. Fed. R. App. P. 4.*, Catz v. Chalker*, 142 F.3d 279 (6th Cir. 1998); *see also Dominguez v. Better Mortg. Corp.*, 88 F.4th 782, 789 n.3 (9th Cir. 2023) (stating that the holding in *Honeywell* was superseded by statute, citing to Rule 4, as explained in *Catz.*) Rule 4(a)(4) further supports extending post-judgment deadlines to ensure a thorough review of amended judgments. Fed. R. App. P. 4. Specifically, it pauses the appeal deadline when post-judgment motions under Rules 50, 52, 54, 59, or 60 are filed, with the clock restarting only once the last of these motions is resolved. *Id.* This structure

demonstrates that the procedural rules are designed to allow parties sufficient time to address all aspects of a judgment before appeal deadlines are finalized, ensuring fairness and comprehensive consideration of potential errors.

b. The University's Rule 50(b) Motion "Bears Relationship" to the Final Amended Judgment and is Therefore Justified.

A post-judgment motion is timely if it "bears relationship" to the amended judgment, as the motion must relate to substantive modifications that altered the rights and obligations of the parties. *McNabola,* 10 F.3d at 502; *Tru-Art Sign Co., Inc.*, 495 F.3d at 221. In this case, the punitive damages included in the Amended Final Judgment substantially altered the University's liability, thereby justifying the filing of a Rule 50(b) motion. Courts consistently hold that a motion is timely if it pertains to changes made in an amended judgment.

The University's motion, which contests its liability, is related to the Amended Final Judgment. The consecutive Rule 50 motions address both general liability in the case as well as newly imposed financial obligations and the underlying severity of the defendant's conduct. (R. 8a.) Thus, the motion is justified and timely under the "bears relationship" standard, as it directly challenges both unchanged portions and substantive changes made in the Amended Final Judgment.

i. A post-judgment motion based on the amended judgment is timely if it "bears relationship" to the alteration.

When both an initial judgment and a second judgment exist, the timeliness of a post-judgment motion will be determined based on the second judgment only if the

motion "bears some relationship" to the basis for altering the original judgment, for example, that the damages were excessive. *McNabola,* 10 F.3d at 502; *Tru-Art Sign Co., Inc.*, 495 F.3d at 221. Put simply, a party who is aggrieved by the amendment must make their timely appeal or motion based upon that amendment. *Id.* For example, in *Charles*, the party who filed the second motion had been aggrieved by the amended judgment because the court had added it as a party responsible for an attorney's fee award. *Charles v. Daley*, 799 F.2d 343, 347 (7th Cir. 1986). The alteration was "enough to make the judgment a new one, affording aggrieved parties time to seek alteration or to appeal," and the motion was related, and therefore granted. *Id.*

This rule is also applied when a court determines the appropriate timeline for the calculation of prejudgment interest. *McNabola*, 10 F.3d at 520. When both an initial judgment and a judgment that is entered after remittitur exist, the timeliness of a motion for prejudgment interest should be determined based on the second judgment only if the Rule 59(e) motion "bears some relationship" to the basis for altering the original judgment, for example, that the damages were excessive. *Id.* Several district courts in the Second Circuit also adopted this rule in similar contexts. *See Kazazian v. Bartlett,* 2007 U.S. Dist. LEXIS 94243 (determining that a plaintiff's new Rule 59(e) motion to change an amended judgment will only be considered timely to the extent it seeks to amend something altered by the previous amendment).

The standard for "bears some relationship" has not been clearly established by this Court but the circuit courts provide examples of what does not qualify. In *Tru-Art,* the Seventh Circuit concluded that the plaintiff's post-judgment motion did not "bear some relationship" because while the district court entered a second judgment, the appellant sought to amend the first judgment and had nothing to do with the appeal that gave rise to the second judgment. *Tru-Art Sign Co.,* F.3d 217 at 222. Therefore, this Court should consider whether the University's Rule 50(b) motion "bears some relationship" to the amendment on January 27, 2022, in other words, whether the motion on liability issues relates to the addition of punitive damages. (R. 21a.)

ii. The University's Rule 50(b) is related to the Amended Final Judgment which imposed punitive damages.

The Restatement (Second) of Torts illustrates that punitive damages are awarded in the jury's discretion "to punish [the defendant] for his outrageous conduct and deter him and others like him from similar conduct in the future." Restatement (Second) of Torts §908(1) (1979). If conduct reaches a certain level of severity, it is fitting to allow a jury to evaluate punitive damages. *Carlson v. Green,* 445 U.S. 14, 22 (1980). This assessment remains justified even if the plaintiff encounters a higher standard for actionability. *Smith v. Wade,* 461 U.S. 30, 53 (1983). In other words, society has a vested interest in deterring and penalizing all intentional reckless violations of other's rights, even though it may not choose to hold individuals liable for lesser degrees of fault. *Id.* Punitive damages should only be awarded if the defendant's culpability, after having paid compensatory damages,

is so reprehensible as to warrant the imposition of further sanctions to achieve punishment or deterrence. *State Farm*, 538 U.S. at 419. The Fifth Circuit notes that "punitive damages are never available as a matter of right, no matter how egregious the defendant's conduct may be…the question of whether punitive damages should be awarded is one left to the finder of fact." *Hale v. Fish*, 899 F.2d 390, 404 (5th Cir. 1990).

Punitive damages may be awarded in § 1983 cases where the defendant's conduct demonstrates egregious intent, callousness, or recklessness in violating federally protected rights. *Smith*, 461 U.S. 30 at 103. The Court clarified that when considering punitive damages under 42 U.S.C. § 1983, it is the severity of the defendant's conduct, not the standard for compensatory damages, that governs the availability of punitive damages. *Id.* at 56. In *Smith*, the Court applied this standard even when the underlying standard of liability for compensatory damages, such as recklessness, is lower, emphasizing that punitive damages are designed to address conduct that is substantially more severe. *Id.* The determination of whether punitive damages are warranted is entrusted to the jury, as such damages are not automatically available, even for egregious conduct. *Hale,* 899 F.2d at 404. The heightened standard that is required for punitive damages illustrates how it impacts the type of liability that a party is held accountable for.

The imposition of punitive damages on the University substantially alters its culpability and therefore liability, justifying the filing of a Rule 50(b) motion that encompasses liability. In other words, punitive damages hold the defendant to a

different standard of liability because punitive damages are meant to punish the defendant for exceptionally bad conduct. *Bolsta*, 848 A.2d at 308. Ordinary negligence allows only compensatory damages, and there must be more than ordinary negligence to support punitive damages. *McDougald v. Garber*, 73 N.Y.2d 246, 254 (N.Y. 1989). The Court here is deciding whether the University was intentionally trying to restrict petitioner's speech by implementing its viewpoint neutral policy. (R. 12a.) The school's policy, which Petitioner has not alleged otherwise, was viewpoint neutral, which means they were not intentional in the restriction of her speech, connecting the issue of whether punitive damages should be awarded. *Id.* Therefore, punitive damages are inherently tied to liability in the determination of the facts and merits of this case, meeting the standard of "bears relationship" for the University's Rule 50(b) motion.

iii. The District Court Erred in its Interpretation of the University's Rule 50(b) Motion by Overlooking its Role in Renewing the Rule 50(a) Motion.

The Appellant may seek to leverage the district court's rationale to argue that the University could have filed a timely post-judgment motion challenging the award of punitive damages in the Amended Final Judgment. (R. 23a.) However, this perspective overlooks the critical nature of substantive modifications introduced in the Amended Final Judgment and corresponding implications for the University's procedural options. The University intended to request a renewed motion for judgment as a matter of law, seeking to change the jury's verdict despite the denial

of its earlier Rule 50(a) motion, and filed a Rule 50(b) motion with reason and timeliness, which the district court misunderstood.

Rule 50 has both pre-verdict and post-verdict motions. Fed. R. Civ. P. 50(b). Under Rule 50(b), a party must have first moved for JMOL under Rule 50(a) at the close of all the evidence to preserve the right to renew that same JMOL motion after the jury returns its verdict. Fed. R. Civ. P. 50; *Gonzales-Bermudez v. Abbott Laboratories P.R. Inc.*, 990 F.3d 37, 45 (1st Cir. 2021). A post-verdict Rule 50(b) motion is "only a renewal" of a pre-verdict Rule 50(a) motion and may be granted "only on grounds advanced in the preverdict motion." *Abellan v. Lavelo Prop. Mgmt., LLC*, 948 F.3d 820, 827 (7th Cir. 2020) (quoting Fed. R. Civ. P. 50(b) advisory committee's notes to 2006 amendment). This requirement ensures two main purposes: (1) it preserves the sufficiency of the evidence as a legal question, enabling the trial court to revisit its initial decision without reexamining the jury's findings, and (2) it alerts the court and parties to any evidence issues while the opposing party can still address them. *Id.* Although an imprecise or informal trial motion can suffice, a Rule 50(b) motion cannot introduce entirely new or separate arguments not raised during the trial. *Workplace Techs. Rsch., Inc. v. Project Mgmt. Inst., Inc.*, 644 F. Supp. 3d. 1142, 1162 (S.D. Cal., 2003).

Because the University raised the issue of liability in its Rule 50(a) motion, its Rule 50(b) motion is limited to the same issue. (R. 21a.); *Id.* The arguments raised by the University in the motion pending in its Rule 50(b) motion were properly preserved in its Rule 50(a) motion at trial. *Id.* By filing its renewed motion

for judgment, it had to follow the specific grounds raised in the first motion. *Id.* If the University had introduced new arguments into its Rule 50(b) motion, the Court may have found that its motion was invalid as it eviscerated the requirement for a party to set forth specific grounds in a Rule 50(a) motion. *Workplace Techs. Rsch., Inc.*, 644 F. Supp. 3d. at 1164. Therefore, because the University was required by the motion to limit its arguments generally to liability, and the issue of liability still remains connected to punitive damages, the University filed a proper and timely Rule 50(b) motion.

c. The Timeliness of the University's Rule 50(b) Motion May Stand Even if it Does not Directly Relate to the Specific Amendments in the Final Amended Judgment.

To ensure justice and procedural fairness, courts have recognized that certain unique situations regarding post-judgment motions may necessitate flexibility in strict procedural deadlines. Specifically, even when an amended judgment does not directly alter the post-judgment issue being contested, courts have determined that the appeal window resets to maintain fairness. *Antonie*, 953 F.2d at 497; *Doe*, 374 F.3d at 854-54. Additionally, the "unique circumstances" doctrine provides that when a party acts in reliance on a judicial officer's assurance that their procedural step was properly executed, deadlines may be postponed. *Osterneck*, 489 U.S. at 179. Such exceptions algin with the principle that adherence to established local procedural rules or judicial guidance should protect parties from unjust procedural penalties rather than punish them.

i. Courts have the discretion to allow post-judgment motions in cases where there are substantial alterations in an amended judgment.

Even in cases where the post-judgment action does not relate to the change in the amended judgment, district courts determined that the timeline period begins anew at the sake of judicial and procedural fairness. *Antonie*, 953 F.2d at 497; *Doe*, 374 F.3d at 854-54. Both *Doe* and *Antoine* applied this rule even when the appeal concerned a different matter from that revised by the district court in the amended judgment. *Id.* In *Antonie*, the Ninth Circuit found the appeal was timely even though it related to an issue that was not altered by the amended judgment. *Antonie*, 953 F.2d 496 at 497. Later, following *Antonie*, in *Doe*, the appellant did not challenge the extent of the district court's sentence reduction but contested an unrelated aspect of the sentence contained in the district court's amended judgment. *Doe*, 374 F.3d at 854. The Ninth Circuit determined that because the district court entered an amended judgment that revised legal rights or obligations, the period for filing began anew and that the rule should still be applied even where the appeal concerned a different matter from that revised by the district court. *Id.*

The Ninth Circuit's interpretation of *Honeywell* provides an alternative path for preserving the University's Rule 50(b) motion. When the district court "revised legal rights and obligations" by altering the damages assigned to the University, *Doe* and *Antoine* would argue that the University should automatically be permitted to file its post-judgment motion anew based on the amended judgment. This should hold true regardless of whether this Court finds that it "bears

relationship" to the Amended Final Judgment, to ensure unambiguous and fair procedural deadlines.

ii. The "unique circumstances" doctrine extends the deadline for the University's Rule 50(b) motion.

Alternatively, even if the Court does not apply the reasoning of *Honeywell* to the University's motion, the "unique circumstances" doctrine provides for an extension of the timeline in this case. The "unique circumstances" doctrine applies "only where a party has performed an act which, if properly done, would postpone the deadline for filing his appeal and has received specific assurance by a judicial officer that this act has been properly done." *Osterneck*, 489 U.S. at 179; *see also Watson v. Mann (In re Weston)*, 18 F.3d 860, 863 (10th Cir. 1994) (holding that the "doctrine of unique circumstances" applies where an affirmative action by the court misled the parties). While Rule 50(b) unambiguously requires that a renewed motion for judgment as a matter of law be filed within 28-days of the entry of judgment, there are circumstances where a rigid application of this deadline may not be just. *Stauber v. Kieser*, 810 F.2d 1, 1-2 (10th Cir. 1982) (stating that the time to file a motion to alter or amend a judgment extended because plaintiffs relied to their detriment upon district court's statements and action.)

Courts have found the doctrine not to apply in situations where there would be no unfairness, and the court did not take an affirmative action to assure the parties. *Endicott Johnson Corp. v. Liberty Mut. Ins. Co.*, 116 F.3d 53, 57 (2d Cir. 1997) (outlining what is required for the doctrine of "unique circumstances" to apply and determining there was no assurance from the court.) *Endicott* is significantly

different from this case because the district court had already granted an extension. *Endicott*, 116 F.3d 53 at 57. Simply signing the orders presented to the court, without issuing a new order, did not amount to "unique circumstances." *Id.* In contrast, the district court wrote, modified, and entered a judgment that had substantial additions from the prior judgment. (R. 7a.) The amended judgment was titled "Amended Final Judgment," conveying to the parties that this was the final judgment from which to base their procedural deadlines. (See Amended Final Judgment.)

This reasoning aligns with the holding in *Fruit of the Loom,* which recognizes that the specific circumstances of a case should inform the application of procedural rules. *Fruit of the Loom, Inc. v. American Marketing Enterprises, Inc.*, 192 F.3d 73, 75–76 (2d Cir. 1999). Again, the Amended Final Judgment provided judicial assurance to the University that they had 28-days from January 27, 2022, to file their Rule 50(b) motion. (R. 8a.) A permanently materially altered Amended Final Judgment labeled "final" is more significant than a mere order and constitutes an affirmative act, seen in cases where the doctrine did not apply. *Green v. Bisby*, 869 F.2d 1070, 1072 (7th Cir. 1989) (holding that magistrate judge's entry of a minute order granting appellant's request for an extension of time on a Rule 59(e) motion was not an act of affirmative representation by a judicial officer sufficient to invoke the unique circumstances doctrine). Applying the doctrine in this case addresses the specific circumstances and ambiguities arising from the circuit split on the issue.

Given the differing conclusions of the district court and the court of appeals regarding whether the Amended Final Judgment extended the timeline, it is clear that unique circumstances were present, necessitating an understanding of extraordinary conditions. Invoking this doctrine does not bypass the exception under Rule 6(b)(2), which bars extensions for "excusable neglect," because the extension here is grounded in a genuine misunderstanding stemming from the district court's assurances in the form of the Amended Final Judgment. Fed. R. Civ. P. 6. The University's initial 50(a) motion further supports that they intended to file a timely Rule 50(b) motion and reasonably relied on the district court's Amended Final Judgment as assurance that their post-judgment motion had to be filed within 28 days of that judgment, not the initial one. (R. 23a.) Ultimately, recognizing these unique circumstances upholds procedural fairness and consistency in cases involving amended judgments.

## II. THE THIRTEENTH CIRCUIT CORRECTLY HELD THAT THE CITY UNIVERSITY OF LANTANA'S APPROACH TO STUDENT DISCIPLINE DID NOT VIOLATE PETITIONER'S FIRST AMENDMENT RIGHTS

> "Students...do not shed their constitutional rights to freedom of speech or expression at the schoolhouse gates."

Justice Byron White, *Hazelwood Sch. Dist. v. Kuhlmeier,* 484 U.S. 260, 266 (1988).

Throughout history, student activism has been a fundamental aspect of discourse within American universities. Today, the Petitioner attempts to quell a centuries-long cornerstone of educational institutions and misconstrues her alleged right to be protected against affirmative government *interference*, by asking this

Court to compel the government to take affirmative steps to *subsidize* her actions. Such a position would exceed the intended scope of the Due Process Clause of the Fourteenth Amendment and effectively halt universities and students at the proverbial gates of their right to be afforded discretion in implementing policies that best achieve their greater educational purpose and their First Amendment rights, respectively. As articulated by this Court, "the government, even with the purest of motives, may not substitute its judgment as to how best to speak for that of speakers and listeners. *Riley v. Nat'l Federation of the Blind of North Carolina, Inc.,* 487 U.S. 781, 790 (1988). For discourse on college campuses to flourish, it cannot be controlled by the government. *Riley,* 487 U.S. 781 at 790. Yet, the Petitioner today asks this Court to create such a standard. The First Amendment, contrary to Petitioner's implication, does not exist without limitations. Judicial precedent does not support an unbounded interpretation of free speech that would hinder municipalities, including universities, from establishing necessary regulations in their institutional interest.

a. There Is No Causal Link Between the University's Approach and Petitioner's Alleged First Amendment Violation.

§ 1983 attaches liability to any person who, under the color of the law, deprives another of "any rights, privileges or immunities secured by the Constitution and laws..." 42 U.S.C § 1983. While the statute creates a remedy for a violation of a federally protected right, it does not create any rights itself. A § 1983 claim must allege that (1) an individual subjected the plaintiff to conduct that occurred under color of state law, and (2) the conduct deprived the plaintiff of

rights, privileges, or immunities guaranteed under the Constitution or federal law. *Id.* To satisfy a § 1983 claim, Petitioner must allege that the policy or custom at issue was the driving force or proximate cause of her alleged constitutional violation by demonstrating an "affirmative link" between the municipality action and the violation. *Estate of Roman v. City of Newark,* 914 F.3d 789, 798 (3d Cir. 2019); (citing *Kneipp v. Tedder,* 95 F.3d 1199, 1213 (3d Cir. 1996). Although a formally adopted policy is not necessary to establish a causal link between the alleged constitutional violation and the University's conduct, Petitioner must be able to show that the University was aware of similar "*unlawful*" conduct in the past and failed to take necessary precautions that would have prevented the Petitioner's constitutional violation. *Bielevicz v. Dubinon,* 915 F.2d 845, 851 (3rd Cir. 1990) (emphasis added). Petitioner does not satisfy this requirement. Dean Thatcher's "hands-off" approach to student discipline does not constitute a custom or usage for purposes of § 1983.

Municipalities may be sued directly under the statute under two avenues: (1) the Petitioner makes a showing that the alleged unconstitutional action executes a policy officially adopted by the municipality or its officers, or (2) the Petitioner makes a showing of a custom or usage that, although not officially adopted by the municipality, "is so well-settled and permanent as to virtually constitute law." *Monell v. Dep't of Soc. Services of City of New York,* 436 U.S. 658, 690 (1978); *Estate of Roman,* 914 F.3d at 794; *see also Flaherty-Ortega v. Horry Cnty.,* 2022 U.S. Dist. LEXIS 159022 at *9 (D. S.C. 2022) (noting that for a plaintiff to make a

showing that an adopted custom or usage invites § 1983 liability, plaintiff must show that the custom was "persistent" and "widespread"). The Thirteenth Circuit held that the University's approach of not disciplining students is an adopted custom for purposes of the statute. (R. 11a.) Respondent disagrees. What is considered to be a sufficient number of prior incidents to satisfy the "custom or usage" requirement depends on the specific nature of the case. *Flaherty-Ortega v. Horry Cnty.,* 2022 U.S. Dist. LEXIS 159022 at *12 (D.C. S.C. 2022). For example, the Fourth Circuit has held that an official custom or pattern was established where a similar number of incidents occurred over a similar timeframe. *Washington v. Balt. Police Dep't,* 457 F.Supp.3d 520, 536 (D. Md. 2020) (emphasis added); *see also Dildy v. City of N. Charleston,* 2024 U.S. Dist. LEXIS 165106 at *4 (D. S.C.) (noting that sporadic incidents are not sufficient to establish a custom or usage for purposes of the statute) (internal quotation and citation omitted). Rules or understandings may constitute a custom or usage where there exists a "fixed plan" to be applied consistently over time. *Lindke v. Freed,* 114 F.4th 812, 817 (6th Cir.). While it is true that the University applied its hands-off approach consistently over time, there is no indication in the record that such an approach was an "understanding" or "planned" by Dean Thatcher or any other faculty of the University. (R. 3a, 5a.) Nor is there any evidence that the University has *never* issued disciplinary action against any of its students in any circumstance. As such, without an adopted understanding or plan by the University, its approach in disciplining students cannot be considered a custom or usage for purposes of § 1983.

In the alternative, the University's alleged indifference or failure to address student demonstrations still does not constitute a custom or usage that resulted in the constitutional violation of Petitioner's First Amendment rights. (R. 14a.) To allege as much, the Petitioner would have to prove that the University's "custom" was one of "deliberate indifference" to her constitutional right. *Lawshe v. Hardwick,* 2024 U.S. Dist. LEXIS 195944 at *8 (MD. Fla.). That Dean Thatcher preferred a "boys will be boys" approach to student discipline, and that other University officials adhered to his approach, does not constitute a custom or usage. (R. 5a.) There is no indication in the record that prior incidents of student demonstration violated University policy nor that University officials were instructed by Dean Thatcher to ignore students who did violate University policy such that the approach was permanent or expected of university officials. *Sewell v. Town of Lake Hamilton,* 117 F.3d 488, 490 (11th Cir. 1997). As noted by the Second Circuit, it is not sufficient to merely allege that the university's alleged inaction would result in a constitutional violation. *Walker v. City of New York,* 974 F.2d 293, 299-300 (2d Cir. 1992). Petitioner would need to make a showing that there is a "likelihood that the failure to train or supervise [its officers] will result in…making the wrong decision." *Walker,* 974 F.2d 293 at 299-300. That is not what Petitioner is asserting today. In fact, the Petitioner does not indicate that the University failed to properly supervise its campus security or train them in addressing concerns with student demonstrations. Rather, Petitioner argues that the *students'* interference

prevented her speech and thus, she could not exercise her constitutional rights. (R. 13a.) (emphasis added).

Even if the University was aware of the prior student demonstrations against guest speakers on campus, there is no indication in the record that such conduct was unlawful, or even contrary to any University policy. (R. 5a). Moreover, there is no evidence that the students would not have protested Petitioner's speech on campus but-for the University's approach to student discipline. *See Jackson v. Barnes,* 749 F.3d 755, 763 (9th Cir. 2014) (explaining that a plaintiff that alleges deliberate indifference on the part of the government must show that the government was on notice that their alleged inaction would result in a constitutional violation). In other words, Petitioner cannot prove that had the University implemented stricter disciplinary procedures in the past, the students would have been deterred from protesting against Petitioner. In fact, studies indicate that student-suspension policies do not act as an effective deterrent to student "misconduct" and can disproportionately harm minority students.[1] The number of university associations that belong to a wide variety of subject matters, such as gender and sexuality, religious, and political, points to the fact that the university bolsters diversity of thought and its disciplinary policy supports and effectuates that purpose. (R. 3a.)

Additionally, that students may protest Petitioner's speech was a reasonable risk, not because the University had previously not disciplined students, but

[1] Perea and Dilberti, *What does the research say about how to reduce student misbehavior in schools?,* BROOKINGS (Sept. 21, 2023).

because of the nature of the Petitioner's speech. Petitioner was invited to speak on campus regarding a controversial topic. (R. 6a.) Similar to previous guest speakers, Petitioner intended to deliver a speech that was reasonable to cause unrest or disagreement amongst students: how the human species is exploiting and murdering animals and veganism was necessary to save humanity. (R. 6a) Such speech is likely to invite protest, irrespective of how the University would have responded. Therefore, there is no showing that the University's action in disciplinary action was the cause of Petitioner's alleged deprivation of her First Amendment right.

i. The University cannot be held liable for individual actions by private actors who are not considered government officials for purposes of § 1983.

Petitioner today places blame on the University's policy for the alleged violations of her First Amendment right. However, the facts paint a different picture. As noted by the Thirteenth Circuit, and to Petitioner's own admission, it was the student protestors, not the University, that ultimately led Petitioner to end her speech prematurely. But, "without government *action,* there can be no First Amendment violation." *Wooten v. LaSalle Corr.,* 2024 U.S. Dist. LEXIS 163220 at *16 (M.D. Ga.) (emphasis added) At the crux of this case is Petitioner's claim that it was the University's *inaction*, rather than *action,* that allegedly silenced her speech.

Petitioner's claims are entirely misguided. The student protestors' actions do not attach liability to the University. For purposes of a § 1983 claim, an institution or its employees may be considered "persons" under the statute. 1 LCRS Ed. Law §

2.04(4). However, *respondeat superior* liability is not enforceable under § 1983 and thus, an educational institution cannot be held liable solely because an employee of the institution violates someone's rights. *Id.* Here, the students would not be considered employees of the institution. *See Berger v. NCAA,* 843 F.3d 285, 293 (7th Cir. 2016) (noting that students who participate in extracurricular activities, such as interscholastic athletes, are not considered employees of the university). Petitioner does not qualify for a remedy where she asserts that her right to free speech was abridged by private actors – here, students. *Wooten v. La Salle Corr.,* 2024 U.S. Dist. LEXIS 163220 at *16 (M.D. Ga.) Petitioner may argue that the University should be liable for the failure of its campus security to take action against the student protestors during the demonstration. However, as noted above, municipalities cannot be liable under § 1983 solely because security is employed by the University, or because the University controls or supervises its employees. *Martinson v. Regents of the Univ. of Mich.,* 2011 U.S. Dist. LEXIS 165164 at *14 (E.D. Mich.)

Nor do the students qualify as federal actors such that the University may still be liable. Private individuals may be considered federal actors only where "(ii) the private entity performs a traditional, exclusive public function…; (ii)…the government compels the private entity to take a particular action…; or (iii)…the government acts jointly with the private entity." *Id.* at *17. Although a public university, the state of New Tejas is not responsible for implementing and enforcing disciplinary policies against students. *Wooten v. La Salle Corr.,* 2024 U.S. Dist.

LEXIS 163320 at 18 (M.D. Ga.) ("The inquiry…becomes whether such personnel matters have been performed "traditionally *and* exclusively" by the government.") (emphasis included) (internal citation and quotation omitted). There is no evidence that Dean Thatcher's approach to student discipline was directed by state action or regulations. Rather, his approach was based on testimony indicating a personal belief that students just need to "blow off a little steam." (R. 5a.)

b. The University's Approach to Disciplinary Action Was an Incidental Regulation of Petitioner's Speech That Should Be Evaluated Under the *O'Brien* test.

This Court's ruling in *O'Brien* established a fundamental principle: regulations that incidentally impact First Amendment freedoms may be permissible when grounded in a "sufficiently important governmental interest" that is not aimed at suppressing free expression. *U.S. v. O'Brien,* 391 U.S. 367, 376 (1968)*; see also Texas v. Johnson,* 491 US. 397, 407 (1989). In conformity with this Court's precedent, absent a policy that has been designed to regulate the subject-matter of speech, the University's policy should not be subjected to strict scrutiny. *City of Austin v. Reagan Nat'l Adver., of Austin, LLC,* 596 U.S. 61, 69 (2022). The evidence in the record does not indicate that the University's "hands-off" approach was specifically designed to regulate speech, to limit individual expression, or to dictate permissible speech on campus such that it would be subjected to a strict scrutiny analysis. On the contrary, the University actively promotes civic engagement and supports various student organizations addressing a wide array of issues, including those related to gender and sexuality, religion, and social action. (R. 3a.)

Moreover, the policy in question does not resemble the direct restrictions on free speech previously identified by this Court. *See Conchatta Inc. v. Miller,* 458 F.3d 258, 261 (3d Cir. 2006) (holding that liquor statute that prohibited lewd entertainment burdened expression); *see also McIntyre v. Ohio Elections Comm'n,* 514 U.S. 334, 345 (1995) (holding that requirement that literature designed to influence voters in election contain name and address of persons responsible for documents is "a direct regulation of the content of speech"); *see also Stromberg v. California,* 283 U.S. 359, 366 (striking down part of a statute that penalized those who expressed their "opposition to organized government by displaying "any flag, badge, banner, or device."). For example, a university's ban on all contact with prospective student athletes violated the students' free speech rights. *Crue v. Aiken,* 204 F.Supp.2d 1130, 1147 (C.D. Ill. 2002). There is no direct restriction on free speech here. Rather, the university *invites* free speech from its students and speakers, as evidenced by its approach to student discipline and its history of guest speakers invited on campus to speak about a wide range of topics. (R. 5a.) Moreover, the approach is not narrowed to specific kinds of content, nor does it give preference to particular points of views. (R. 5a, 11a.)

The *O'Brien* court sought to safeguard compelling governmental interests while allowing for incidental regulations that may constrain free expression, as is the case at issue here. *O'Brien,* 391 U.S. at 377 (1968). Consequently, the University's policy should be assessed under the *O'Brien* test. *See U.S. v. Swisher,* 811 F.3d 299, 312 (9th Cir. 2016) ("If the purpose of a law regulating conduct is

aimed *at the conduct itself*… the regulation is subject to lesser scrutiny…and the *O'Brien* test applies.") (emphasis added).

i. The policy at issue was justified, because universities have the authority to implement disciplinary procedures.

While this Court is not obligated to afford deference to a university in its examination of alleged free speech violations, educational institutions possess "on-the-ground" expertise that informs sound educational policy. *Christian Legal Soc'y Chapter of the Univ. of Cal. v. Martinez,* 561 U.S. 661, 685 (2010). This Court has previously advised other courts against replacing a university's decision with that of their own judgment in this regard. *Christian Legal Soc'y,* 561 U.S. 661 at 686. As noted by this Court in *Healy,* in the context of universities, "where state-operated educational institutions are involved, this Court has long recognized the need for affirming the comprehensive authority of the States and of school officials, consistent with fundamental constitutional safeguards, to prescribe and control conduct in the schools." *see also Healy v. James,* 408 U.S. 169, 180 (1972) Further, the First Amendment should be contextualized within the unique circumstances of the educational environment, and school administrators should be given deference, without the general need for second-guessing by the judiciary, when making disciplinary decisions. *Doe v. Ochsner Health Sys.,* 2022 U.S. Dist. LEXIS 38335 at *19 (E.D. La.); *Christian Legal Soc'y,* 561 U.S. 661 at 686. A university, unlike a public school, should be afforded more flexibility in its disciplinary authority and control over its students. *Davis v. Monroe County Bd. of Educ.,* 526 U.S. 629, 649 (1999). This includes a university's reasonable discretion to not impose a particular

disciplinary action that would open the door for constitutional or statutory liability. *Id.* Doing so does not extinguish *any* liability that a university may be exposed to as a result of its actions – rather, providing universities with such discretion avoids unreasonably burdening universities as a result of constraints on their authority. *Davis,* 526 U.S. at 649. Colleges, in which its students are typically adults, can make the reasonable assumptions that its student body is capable and mature enough to decide which moral standards they choose to adhere to, amongst other decisions. *Benefield v. Bd. of Trs. of the Univ. of Ala. at Birmingham,* 214 F.Supp.1212, 1223 (N.D. Ala. 2002). Additionally, where a university imposes speech restrictions on a non-student for safety and administrative reasons, it is reasonable for a state official to believe that a "more loosely scrutinized limited public forum [that] did not directly involve a prior restraint" was permissible. *Id.* at 880.

Absent an abuse of discretion, courts will not interfere with a university's judgment in enforcing regulations and disciplinary authority. *Pierre v. Univ. of Dayton,* 143 F.Supp.3d 703, 711 (S.D. Oh. 2015). The issue is not whether the university's decision to not discipline its students was "sound" but rather, whether the university acted arbitrarily in its approach. *Pierre,* 143 F.Supp.3d at 713. As noted above, how a university chooses to implement its policies is well within its bounds of authority. *Id.* In fact, had the University chosen to discipline its students for the demonstrations against Petitioner, it would likely go *against* "notions of basic fairness", because students would not have reasonably expected restraint on

their freedom of expression should they have engaged in the protest. *Id.; see also Kestenbaum v. President & Fellows of Harvard Coll.,* 2024 U.S. Dist. LEXIS 139180 at *16-17 (D. Mass.) (holding that university's response to student protests was unreasonable, because university did not enforce disciplinary action against students despite contradictory statements made to the public). The University's approach to student discipline has been consistent in recent years such that it was reasonable for it to apply the same approach during the instance at issue.

ii. The Hedge Family Auditorium was a limited public forum, and the University was entitled to impose its viewpoint-neutral approach.

The right to free speech is not absolute, and the government has the power to impose restrictions on its property, including with regards to speech, for the "use of which it is lawfully dedicated". *Perry Educ. Ass'n v. Perry Local Educators' Ass'n,* 460 U.S. 37, 46 (1983); *see also Turning Point USA,* 973 F.3d at 875. The scope of the government's authority to restrict or control conduct and speech within its property depends upon which forum category the property falls within: traditional public forum, designated public forum, or limited public forum. *See Bloedorn v. Grube,* 631 F.3d 1218, 1230 (11th Cir. 2011). Here, the Hedge Family Auditorium, where Petitioner attempted to deliver her speech, would be considered a limited public forum. *See Students for Life USA v. Waldrop,* 162 F. Supp. 1216, 1223 (S.D. Ala. 2016) (noting that a government does not create a designated public forum merely by inaction, but rather must make a forum "generally open" for public discourse or indiscriminate use); *see also Bloedorn,* 631 F.3d at 1231 ("Traditional

public fora are public areas such as streets and parks that, since "time out of mind, have been used for purposes of assembly, communicating thoughts between citizens, and discussing public questions.") While the record does not indicate whether the University has previously, either in policy or practice, made the auditorium available to the general public, that the auditorium has previously been utilized for forms of student demonstrations does not necessarily mean that the University intended for the auditorium to be a designated public forum. (R. at 3a, 5a); *Students for Life USA,* 162 F. Supp. 1216 at 1229 (noting that a handful of occurrences of student speech at the university forum at issue was insufficient to determine that the University had intentionally allowed for public discourse in the area). Here, Petitioner was invited by a student organization, the Campus Vegan Alliance, and was not merely a member of the public utilizing the auditorium for public discourse purposes. (R. 5a); *see also Keister v. Bell,* 29 F.4th 1239, 1252 (11th Cir. 2022) (explaining that university public speaking areas are often classified as limited public fora). As such, the Hedge Family Auditorium should be considered a limited public forum, thus permitting the University's inaction as a means to avoid controversy. *Students for Life USA,* 162 F. Supp. 1216 at 1229.

Once a limited public forum has been established, whether a university's restrictions on speech were acceptable is dependent on whether the restriction is viewpoint neutral and is evaluated based on its reasonableness. *Christian Legal Socy,* 561 U.S. 661 at 679. Petitioner does not allege that the University's approach

to discipline was viewpoint discriminatory. (R. 11a.) As such, the question turns on whether the University's approach was reasonable.

A university is unlike a public square. Its educational mission inherently involves the teaching of discriminating amongst ideas: in classrooms, students are often taught to pick sides, to distinguish between the ideas they agree with and the ideas they do not agree with. The free flow of ideas pursuant to the First Amendment does not exist without limitations, particularly in the context of a limited public forum on a university campus. *See Keister,* 29 F.4th 1239 at 1252 ("…universities have a mission to educate. So, when it comes to their campus and facilities, universities generally may issue reasonable regulations that are consistent with that mission.") As institutions of knowledge, universities must afford students the opportunity to divulge in diversification of thought and "be exposed to...challenging views..." *Bible Club v. Placentia-Yorba Linda Sch. Dist.,* 573 F.Supp.2d 1291, 1301 (2008). The mission of a university is education. *Widmar v. Vincent,* 454 U.S. 263, 267 (1981). More specifically, the City University of Lantana's mission is intrinsically tied to its commitment to academic excellence, *civic engagement,* and leadership for the common good. (R. at 2a.) (emphasis added). Taking into account the circumstances surrounding Petitioner's speech, courts "will not substitute [their] own notions of sound educational policy for those of the school authorities which [they] review." *Albright ex rel. Doe v. Mountain Home Sch. Dist.,* 926 F.3d 942, 948 (8th Cir. 2019) (internal quote omitted). A university is reasonably justified in excluding non-university affiliated persons from speaking at

the university campus, particularly where the university has not indiscriminately enforced its policies. *Turning Point USA,* 162 F. Supp. at 878. While Petitioner may argue that the University's "hands-off" approach is vague, vagueness on its own is not sufficient to bypass the university's justification in implementing its policy, absent a showing that the university treated one classification of students different than another. *Id.* Further, creating an environment where students feel comfortable is considered a legitimate governmental interest for the purposes of analyzing whether a constitutional violation exists. *Id.*

Much like the university in *Turning Point USA,* the City University of Lantana's campus security conforms to Dean Thatcher's "hands-off" approach, because the university desired to leave students "to their own devices" (R. 5a.) Universities represent the "marketplace of ideas", and a policy aimed at encouraging such an environment is well within the bounds of a university's authority and fits squarely within the University's purpose. *Healy,* 408 U.S. 169 at 180.

c. This Court Should Uphold Its Ruling in *DeShaney,* because the Due Process Clause Does Not Confer an Obligation Upon the Government to Take Affirmative Steps to Subsidize a Private Actor's Free Speech.

At the heart of Petitioner's claim is that, by way of the Due Process Clause, Petitioner was entitled to affirmative governmental action against the student protestors in support of her alleged First Amendment right to speak at the University. (R. 12a.) To require the University to subsidize Petitioner's conduct is to go well beyond the purpose and powers of the Due Process Clause and would only

open the door for every private action, irrespective of its conduct, to be entitled to governmental action without considering the real implications it may have for those also exercising their First Amendment right to protest, and thus disagree, with another's view. There is simply no avenue to do both: this much was held by this Court in its *DeShaney* decision.

In *DeShaney,* this Court explained that the purpose of the Due Process Clause was to protect against governmental abuse of power used to oppress individuals. *DeShaney v. Winnebago Cnty. Dep't. of Soc. Servs.,* 498 U.S. 189, 196 (1989). However, the Due Process Clause is not a blanket prohibition on any and all damage caused by governmental action, or inaction. Petitioner attempts to effectively implement a "form of strict liability", intentionally not available as a remedy under § 1983. 1988 U.S. S. Ct. Briefs LEXIS 1346. Under such an approach, federal courts would be flooded with any case in which a university would be held liable for simple knowledge of a potential harm, even where the university itself is not the cause of such harm. 1988 U.S. S. Ct. Briefs LEXIS 1346. Even if this Court views the University's approach to student disciplinary action as unwise, "federal courts [cannot] set aside decisions of school administrators which the court may view as lacking a basis in wisdom or compassion. *Wood v. Strickland,* 420 U.S. 308, 326 (1975) (overruled on other grounds). The University being obligated to interfere with student demonstrators' opposition to Petitioner's view will create a "new harm…a positive loss." Bohlen, *The Moral Duty to Aid Others as a Basis of Tort Liability,* 56 U. Pa. L. Rev. 217. But their inaction in not providing law enforcement

protection, or other aid, to Petitioner in the midst of such demonstrations does not leave the Petitioner worse off than when she entered the University campus. *Id.* ("In the other, by failing to interfere in the plaintiff's affairs, the defendant has left him just as he was before; no better off, it is true, but still in no worse position; he has failed to benefit him, but he has not caused any injury nor created any new injurious situation.")

i. Overruling *DeShaney* would open the door for an overly expansive interpretation of the Due Process Clause.

Petitioner's proposal requires a reimagining of the founders' intent in drafting the Due Process Clause and creates liability under § 1983 even with an absence of affirmative abuse of power. 1987 U.S. S. Ct. Briefs LEXIS 226. Adoption of this proposal would threaten judicial overreach and "the doctrine of judicial self-restraint requires [the Court] to exercise the utmost care whenever [they]…break new ground." *Eknes-Tucker v. Governor,* 114 F.4th 1241, 1251 (11th Cir. 2024) (quoting *Collins v. City Harker Heights,* 503 U.S. 115, 125 (1992). While the Due Process Clause ensures protection to private individuals against the government, that same protection was not intended to extend to the protection of private individuals from *each other*. *DeShaney,* 498 U.S. 189 at 195 (emphasis added). What Petitioner alleges today against the University is an issue of mere negligence – that is, the University failed to exercise care or oversight in its decision to not discipline student protestors. However, mere negligence does not apply when asserting the deprivation of a *constitutional* right. *Daniels v. Williams,* 474 U.S.

327, 329 (1986) (emphasis added). To do so would be to "grossly [ ] distort the meaning and intent of the Constitution." *Daniels,* 474 U.S. 327 at 329.

According to Black's Law Dictionary, "deprivation" is defined as "the taking away" or "confiscation" without due process. Black's Law Dictionary (4th ed. 1968). "Deprivation", as stated in the Due Process Clause, should be reasonably limited to only active deprivations by the government's deliberate decision to not act to prevent loss. *Parratt v. Taylor,* 451 U.S. 527, 548 (1981) (Blackmun, H., concurring) (overruled on other grounds). Petitioner's argument would effectively erase the clear distinctions articulated by this Court between the right, under the Due Process Clause, to be protected against unwanted government interference and the assumption that an individual is entitled to "protective services" by the government. *DeShaney,* 489 U.S. 189 at 196 ("the [Due Process] Clause is phrased as a limitation on the State's power to act, not as a guarantee of certain minimal levels of safety and security…..its language cannot be fairly be extended to impose an affirmative obligation on the State that those interests do not come to harm through other means"). Further, the Constitution does not guarantee remedies for "every social and economic ill." *Lindsey v. Normet,* 405 U.S. 56, 74 (1972) (holding that the judiciary cannot guarantee that an individual has housing).

The University's approach to student discipline is not a means of subsidization of student protestors by encouraging students to demonstrate against guest speakers they disagree with due to the absence of a disciplinary policy. Even if, *arguendo*, the student protestors were bolstered by the expectation that they

would not be disciplined for their actions, government subsidization of one course of conduct is not necessarily unconstitutional where such subsidization does not restrict access to exercise another constitutional right. *Maher v. Roe,* 432 U.S. 464, 475-476 (1977) (holding that Medicaid payments for medical services incident to childbirth did not entitle others to payments for medical unnecessary abortions where government subsidization did not restrict access to abortion). Much like in *Maher,* the University's approach does not place any obstacle in the way for Petitioner to have delivered her speech. Petitioner was permitted to speak on campus, was invited by a student group, with no evidence in the record indicating that the University otherwise opposed her invitation and was still able to speak briefly on stage before students began to convene and protest. (R. 6a.); *see DeShaney,* 489 U.S. 189 at 196 ("…a State's failure to protect an individual against private violence simply does not constitute a violation of the Due Process Clause.") That the University did not affirmatively protect Petitioner's speech through campus security or law enforcement does not negate the well-established precedent that defines the scope of one's rights pursuant to the Due Process Clause – the facts here surpass the Clause's bounds and Petitioner's argument advocates for an unconstrained application to its purpose.

ii. A university cannot subsidize the exercise of Petitioner's free speech rights without simultaneously depriving the students of their right to freedom of expression.

A University cannot proscribe speech merely because the speech is offensive, even if such speech is offensive to a large group of people. *Doe v. Michigan,* 721

F.Supp.852, 863 (E.D. Mich. 1989). As acknowledged by Petitioner, her speech was curtailed by the actions of private individuals, the students, not because of the University. (R. 14a). Yet, the Petitioner attempts to shift liability to the University by way of a policy that Petitioner has in no way alleged interfered with her speech. To do so would be to effectively silence students engaging in the act of protest, a right constitutionally enshrined in the First Amendment. Fear of potential disturbance to the University environment is not sufficient justification for the University to be obligated to suppress the students' right to freedom of expression. *M.C. ex rel. Chudley v. Shawnee Mission Unified Sch. Dist. No. 512,* 363 F.Supp. 3d 1182, 1195 (D. Kan. 2019). While this Court has carved out narrow exceptions, those exceptions do not apply here. *Chudley,* 363 F.Supp.3d 1182 at 1195 (explaining that student speech may be restricted where the content is lewd or vulgar or the speech is school sponsored in a nonpublic forum and its restrictions are grounded in a reasonable pedagogical concern) (internal citation omitted). Although the student protestors may be characterized as "rowdy" or even disruptive, their actions do not arise to the kind of vulgarity necessary to apply the exception, particularly given that the protest was organized in a university setting. (R. 6a.); *see Bethel Sch. Dist. v. Fraser,* 478 U.S. 675, 683 (1986) (reasoning that speaker's speech involving sexual innuendos to audience of minor was lewd and offensive); *see also Cohen v. Cal.,* 403 U.S. 15, 19-20 (1971) (holding that four-letter expletive word imprinted on individual's jacket was not offensive conduct that could be restricted by the government and the "First and Fourteenth Amendments must

be taken to disable the States from punishing public utterance of this unseemly expletive in order to maintain…suitable level of public discourse…").

Speech cannot be censored or punished merely due to public annoyance or unrest. *Terminello v. Chi.,* 337 U.S. 1, 4 (1949). Speech, in its nature, invites disagreement and dispute and "may indeed best serve its high purpose when it *induces a condition of unrest*, creates dissatisfaction with conditions as they are, or even stirs people to anger." *Terminello,* 337 U.S. 1 at 4 (emphasis added). In its dissent, the Thirteenth Circuit argues that adopting the framework established in *DeShaney* would allow the majority viewpoint to undermine those with a minority viewpoint. (R. 17a.) However, it is construing the Due Process Clause in the way that the dissent, and Petitioner, prefers that would lead to the "standardization of ideas…of dominant political or community groups." *Terminello,* 337 U.S. 1 at 4. If the University is obligated to punish students who choose to speak against a viewpoint they are in opposition with, then in order to avoid applying such punishment on a viewpoint-discriminatory basis, students on the other spectrum, who hold a minority view and attempt to protest against a majority view, will also effectively be shut down. In other words, the University simply cannot enforce disciplinary action against students on the basis of their opposition to a guest speaker's views without infringing on the students' rights to free expression.

iii. The heckler's veto doctrine prevents the University from interfering with student demonstrations against Petitioner's speech.

The Heckler's Veto doctrine prevents the government from restricting speech due to the anticipated reactions of the speech's opponents. *Bible Believers v. Wayne County,* 805 F.3d 228, 243 (6th Cir. 2015). Where governmental suppression is content-neutral, applying to all speech rather than targeting specific conduct, the doctrine does not apply. *Santa Monica Nativity Scenes Comm. v. City of Santa Monica,* 784 F.3d 1286, 1292 (9th Cir. 2015). A university cannot deny recognition of a group of students or restrict expressive speech without violating its student body's First Amendment rights. *See Healy,* 408 U.S. 149 at 266 (holding that college could not deny recognition of anti-war student organization due to fear of disruption on campus); *see also Brandenburg v. Ohio,* 395 U.S. 444, 447 (1969) (holding that speech can only be prohibited if it is likely to direct or induce "imminent lawless action").

Here, the doctrine would have prevented the University from interfering with the student protestors against Petitioner's speech, because to do so would be to target specific conduct – student demonstrations. *See Santa Monica Nativity Scenes,* 784 F.3d 1286 at 1294 ("The heckler's veto doctrine is concerned with the possibility that *particular* speech will be wrongfully excluded from the marketplace of ideas merely because it is 'offensive to some of [its] hearers.") (emphasis included) (internal citation omitted). By nature of Petitioner's argument, the University would be allowed on an ad hoc basis to determine when and which kind of student demonstrations they want to suppress dependent upon the student's reaction to a speaker's speech, thus becoming content-based and violating the doctrine. *Ovadal v.*

*City of Madison,* 416 F.3d 531, 536-37 (7th Cir. 2005). Requiring that the University provide law enforcement protection to the Petitioner on the basis of potential adverse reactions to Petitioner's speech opens the door for arbitrary application. *Santa Monica Nativity,* 784 F.3d 1286 at 1295. The University is justified in refraining from disciplining students in this regard in recognition that doing so would violate the doctrine and subject the University to liability. *Davis,* 526 U.S. 629 at 649.

## CONCLUSION

For these reasons, this Court should conclude that the University preserved its arguments in a timely Rule 50(b) motion. Further, this Court should hold that the City University of Lantana is not liable under 42 U.S.C. § 1983 for the violation of Petitioner's First Amendment rights.

Respectfully submitted,

**TEAM 30**

*Counsel for Respondent*

## CERTIFICATE OF COMPLIANCE

The undersigned, counsel for Respondent, hereby certifies that, in compliance with Competition Rule 2.6 and Supreme Court Rule 33.1, Respondent's brief contains 13,175 words, beginning with the Statement of Jurisdiction through the Conclusion, including all headings and footnotes, but excluding the Certificate of Service, Certificate of Compliance, and the attached Appendix.

Respectfully submitted,

**TEAM 30**

*Counsel for Respondent*

# APPENDIX

## CONSTITUTIONAL PROVISIONS

The First Amendment of the Constitution provides:

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

## STATUATORY PROVISIONS

42 U.S.C. Code § 1983. Civil action for deprivation of rights.

Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress, except that in any action brought against a judicial officer for an act or omission taken in such officer's judicial capacity, injunctive relief shall not be granted unless a declaratory decree was violated or declaratory relief was unavailable. For the purposes of this section, any Act of Congress applicable exclusively to the District of Columbia shall be considered to be a statute of the District of Columbia.

## FEDERAL RULES OF CIVIL PROCEDURE

**Fed. R. Civ. P. 6(b)(2).** Extending Time

*Exceptions.* A court must not extend the time to act under Rules 50(b) and (d), 52(b), 59(b), (d), and (e), and 60(b).

**Fed. R. Civ. P. 50.** Judgment as a Matter of Law in a Jury Trial; Related Motion for a New Trial; Conditional Ruling

(a) *Judgment as a Matter of Law.*

(1) *In General.* If a party has been fully heard on an issue during a jury trial and the court finds that a reasonable jury would not have a legally sufficient evidentiary basis to find for the party on that issue, the court may:

(A) resolve the issue against the party; and

(B) grant a motion for judgment as a matter of law against the party on a claim or defense that, under the controlling law, can be maintained or defeated only with a favorable finding on that issue.

(2) *Motion.* A motion for judgment as a matter of law may be made at any time before the case is submitted to the jury. The motion must specify the judgment sought and the law and facts that entitle the movant to the judgment.

(b) *Renewing the Motion After Trial; Alternative Motion for a New Trial.* If the court does not grant a motion for judgment as a matter of law made under Rule 50(a), the court is considered to have submitted the action to the jury subject to the court's later deciding the legal questions raised by the motion. No later than 28 days after the entry of judgment—or if the motion addresses a jury issue not decided by a verdict, no later than 28 days after the jury was discharged—the movant may file a renewed motion for judgment as a matter of law and may include an alternative or joint request for a new trial under Rule 59. In ruling on the renewed motion, the court may:

(1) allow judgment on the verdict, if the jury returned a verdict;

(2) order a new trial; or

(3) direct the entry of judgment as a matter of law.

## FEDERAL RULES OF APPELLATE PROCEDURE

**Fed. R. App. P. 4.** Appeal as of Right – When Taken

(4) *Effect of a Motion on a Notice of Appeal.*

(A) If a party files in the district court any of the following motions under the Federal Rules of Civil Procedure—and does so within the time allowed by those rules—the time to file an appeal runs for all parties from the entry of the order disposing of the last such remaining motion:

(i) for judgment under Rule 50(b);

(ii) to amend or make additional factual findings under Rule 52(b), whether or not granting the motion would alter the judgment;

(iii) for attorney's fees under Rule 54 if the district court extends the time to appeal under Rule 58;

(iv) to alter or amend the judgment under Rule 59;

(v) for a new trial under Rule 59; or

(vi) for relief under Rule 60 if the motion is filed within the time allowed for filing a motion under Rule 59.