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**UNITED STATES DISTRICT COURT**  
**DISTRICT OF ARIZONA**

American Muslims for Palestine and Dr.  
Hatem Bazian,  
Plaintiffs,

vs.

Arizona Board of Regents for and on  
behalf of Arizona State University; and  
Mark Brnovich, in his official capacity  
as Attorney General Of Arizona,  
Defendants.

Case No: 2:18-cv-00670-PHX-JJT

**DEFENDANTS' JOINT MOTION TO  
DISMISS**

**Oral Argument Requested**

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1 Pursuant to Rules 12(b)(1) and 12(b)(6) of the Federal Rules of Civil Procedure,  
2 Defendants jointly move to dismiss Plaintiffs’ Complaint.

### 3 INTRODUCTION

4 This case began as a First Amendment challenge to a clause in an outdated speaker  
5 contract, which rapidly proved to be wholly unnecessary—and indeed could have been  
6 resolved with a simple phone call rather than seeking the accelerated intervention of this  
7 Court. But regardless of whether this case was ever within this Court’s jurisdiction, it  
8 assuredly is not now because it is doubly moot.

9 Specifically, Plaintiffs’ challenge is now moot both because: (1) Plaintiffs have  
10 now spoken at the April 3 event at issue without any hindrance by Defendants, rendering  
11 academic the issue of whether Plaintiffs could speak at that event without agreeing to the  
12 relevant anti-boycott clause, and (2) the challenged clause was removed *last year* by  
13 Defendant Arizona Board of Regents for and on behalf of Arizona State University  
14 (“ABOR”) from its speaker contracts—prior to any invitation to Plaintiffs to speak—and  
15 all Defendants agree the statute the clause sought to implement, A.R.S. § 35-393.01(A)  
16 (the “Act”), does not apply to guest speaker invitations. Either one of these two factors  
17 equally eliminate Article III justiciability here. Together they leave no doubt that  
18 dismissal is required.

19 Plaintiffs cannot avoid this outcome by relying on either the capable-of-repetition,  
20 yet-evading-review or voluntary-cessation exceptions to mootness. Neither exception  
21 applies here. But even if this case is not moot within the meaning of Article III, it  
22 satisfies the requirements for prudential mootness. At best, justiciability is hanging by a  
23 thread here and the relief requested is, at the very least, uncomfortably close to an  
24 advisory opinion. Moreover, Plaintiffs’ litigation conduct demonstrates that the core of  
25 this suit—the “dispute” about whether Plaintiffs could speak at the April 3 event—was  
26 little more than a pretense to challenge the Act.

27 Plaintiffs’ challenge also fails for lack of ripeness. Here there is no credible threat  
28 of enforcement against Plaintiffs—and indeed all Defendants have affirmatively

disavowed any intent to enforce the Act in this context. Because any threat of enforcement is thoroughly *incredible*, Plaintiffs’ claim is unripe.

Finally, this case must be dismissed against the Attorney General because (1) he enjoys sovereign immunity against Plaintiffs’ claim, (2) that claim lacks standing and ripeness as to the Attorney General, and (3) Plaintiffs have not asserted that he took, or is about to take, *any* action whatsoever that could serve as the basis of liability.

Similarly, ABOR must be dismissed because Plaintiffs have not alleged any actions *by* ABOR that purportedly violated Plaintiffs’ rights, because the incorrect contract was sent to Plaintiffs by a third party and ABOR has *never*—at *any* point—insisted that Plaintiffs sign a contract with the anti-boycott provision as a condition of speaking at the April 3 event.

## FACTUAL BACKGROUND

### *The Anti-Boycott Act*

Concerned about the use of boycotts as “economic warfare” against Israel, the Arizona Legislature enacted, and the Governor signed, the Act. *See* 2016 Ariz. Sess. Laws. Ch. 46, § 2 (2d Reg. Sess.). The Act was passed by bipartisan supermajorities: 42-16 in the House and 23-6 in the Senate. *See* Ensign Decl. Exs. A-B. The relevant provision of the Act prohibits public entities from “enter[ing] into a contract with a company to acquire or dispose of services, supplies, information technology or construction” unless the company provides “a written certification that the company is not currently engaged in, and agrees for the duration of the contract to not engage in, a boycott of Israel.” A.R.S. § 35-393.01(A).

### *ABOR’s Speaker Form Contract*

Arizona State University (“ASU”) utilizes a template speaker’s contract that is used both for speakers invited by ASU itself and for speakers invited by student organizations when material resources of ASU are required. 2d Cárdenas Decl. ¶ 2. Student groups are not required to use the template contract when only nominal or incidental resources are required (*e.g.*, the use of classrooms). *Id.*

After enactment of the Act, ASU incorporated an anti-boycott clause into its standard form contracts, including its speaker's contract in September 2016. *Id.* ¶ 3. In December 2017, however, ABOR determined that the Act did not apply to on-campus speeches and therefore removed the anti-boycott clause from its speaker contract and posted that revised version of the contract on its website in December 2017. *Id.* ¶ 4. Although the form has been revised since, no subsequent version of the form has ever included an anti-boycott clause. *Id.* ¶ 5. The current version of the speaker form is attached as Exhibit C to the Second Cárdenas Declaration. *Id.* ¶ 5 & Ex. C.

### ***Plaintiffs' April 3 Speaking Invitation***

On February 22, 2018, a student member of the Muslim Students Association of Arizona State University ("MSA") invited Plaintiffs to speak at an April 3, 2018 event. *Id.* ¶ 6 ; Complaint ¶ 31; Doc. 9-2 Ex. A. No other events/dates were included in that invitation. As part of that invitation, without consultation with ASU officials, the student sent an outdated version of the ASU speaker contract that included an anti-boycott provision, paragraph 20. Complaint ¶¶ 31, 35; Doc. 17-1 at 1 ¶¶ 3-4.

### ***This Suit And Subsequent Events***

Plaintiffs filed the instant suit on March 1 without first contacting Defendants. Doc. 1; 2d Cárdenas Decl. Ex. E. Plaintiffs sought a preliminary injunction the next day, again without notifying Defendants. *See* Doc. 9. When ABOR/ASU heard about the suit through media inquiries, it contacted counsel for Plaintiffs, both local and in D.C., to explain that the correct version of the contract does not contain the boycott provision. 2d Cárdenas Decl. ¶ 11. Although ABOR explained the need to speak with counsel prior to Plaintiffs' March 2 press conference, ABOR was advised counsel was in a meeting and unable to speak; ABOR therefore released a press release stating that the Act did not apply to Plaintiffs' April 3 speaking event. *Id.* ¶¶ 11-12; Ex. E. When ABOR finally was able to speak to Plaintiffs' counsel on March 6 it told them that the speaker form sent to Plaintiffs and attached to their declarations was an obsolete version. *Id.* Ex. O. On

1 March 8, ABOR’s counsel provided Plaintiffs with an updated form, which omitted the  
2 anti-boycott clause. *See id.*

3 Also on March 8, Defendants filed an opposition to Plaintiffs’ request for an  
4 expedited hearing. *See* Doc. 17. In that opposition, ABOR/ASU explained that it had  
5 sent Plaintiffs an updated form that excluded the anti-boycott clause, that “‘the statute  
6 simply does not apply in this context,’” and “‘ASU has no intentions of enforcing the  
7 statute that is the subject of your lawsuit and it will not be a bar to the April 3rd event.’”  
8 *Id.* at 3 (quoting Doc. 17-1 Ex. 1) (alteration omitted). The Attorney General similarly  
9 explained that he “agree[d] with ASU’s determination that the Act does not apply to Dr.  
10 Bazian and AMP with respect to their April 3 speaking engagements” and that he would  
11 “not take any action to enforce the Act vis-à-vis Dr. Bazian’s and AMP’s April 3  
12 speaking engagements.” *Id.* at 3-4.

13 Despite prior statements to the contrary, Plaintiffs did not sign the corrected  
14 contracts even though they do not contain the anti-boycott clause. 2d Cárdenas Decl. Ex.  
15 M. Instead, Plaintiffs raised a new objection to a clause requiring Plaintiffs to “comply  
16 with all applicable ... laws.” *Id.* So ASU removed that clause as well. *Id.* Ex. L. Even  
17 this change did not satisfy Plaintiffs. *Id.* Ex. K. Instead, Plaintiffs insisted on a  
18 stipulation that did nothing more than reiterate the commitments that Defendants had  
19 already made to Plaintiffs, as well as the Court. *Id.* Exs. H, I; Doc. 20.

20 Plaintiffs spoke on ASU’s campus on April 3. 2d Cárdenas Decl. ¶ 8. Defendants  
21 are not aware of any future on-campus speaking engagements by Plaintiffs. *Id.* ¶ 9.

## 22 LEGAL STANDARD

23 Article III requires that “[a]n actual controversy must be extant at all stages of  
24 review, not merely at the time the complaint is filed.” *Alvarez v. Smith*, 558 U.S. 87, 92,  
25 (2009) (quotation marks omitted). A case is moot “when the issues presented are no  
26 longer live.” *Already, LLC v. Nike, Inc.*, 568 U.S. 85, 91 (2013) (quotation marks  
27 omitted). To satisfy the ripeness requirements of Article III, “there must be a ‘genuine  
28



1 threat of imminent prosecution.”” *Thomas v. Anchorage Equal Rights Comm’n*, 220 F.3d  
 2 1134, 1139 (9th Cir. 2000) (en banc).

3 “[A] Rule 12(b)(1) motion can attack the substance of a complaint’s jurisdictional  
 4 allegations despite their formal sufficiency, and in doing so rely on affidavits or any other  
 5 evidence properly before the court.” *St. Clair v. City of Chico*, 880 F.2d 199, 201 (9th  
 6 Cir. 1989). In evaluating a Rule 12(b)(1) motion, a court “may look beyond the  
 7 complaint to facts properly in the record, ... need not presume the truthfulness of the  
 8 plaintiffs’ allegations[, and] ... need not accept as true allegations that contradict matters  
 9 properly subject to judicial notice or by exhibit.” *Saldana v. Occidental Petroleum Corp.*,  
 10 774 F.3d 544, 551 (9th Cir. 2014) (citations and quotations omitted).

11 “Dismissal for failure to state a claim can be based on either the lack of a  
 12 cognizable legal theory or the absence of sufficient facts alleged under a cognizable legal  
 13 theory.” *Mendez v. Freeport-McMoRan, Inc.*, No. 16- 00548, 2016 WL 6577064, at \*1  
 14 (D. Ariz. Nov. 7, 2016) (quotation marks omitted).

## 15 **ARGUMENT**

### 16 **I. PLAINTIFFS’ CLAIM IS DOUBLY MOOT**

17 “A case becomes moot—and therefore no longer a ‘Case’ or ‘Controversy’ for  
 18 purposes of Article III—‘when the issues presented are no longer ‘live’ or the parties lack  
 19 a legally cognizable interest in the outcome.’” *Nike*, 568 U.S. at 91 (citation omitted).

20 “[T]he Supreme Court and [the Ninth Circuit] have repeatedly held that a case is moot  
 21 when the challenged statute is repealed, expires, or is amended to remove the challenged  
 22 language. *Log Cabin Republicans v. United States*, 658 F.3d 1162, 1166 (9th Cir. 2011).

23 This action is moot for two independent reasons: (1) Plaintiffs have already  
 24 spoken at the April 3 event, rendering irrelevant the purported dispute as to whether  
 25 Plaintiffs would be able to do so without agreeing to an anti-boycott provision, and (2)  
 26 ABOR/ASU had already replaced the outdated speaker contract upon which Plaintiffs’  
 27  
 28

1 claim is based *months* before this suit was filed (as a simple phone call or *any* contact  
2 with ABOR/ASU would have confirmed).

3  
4 **A. Plaintiffs’ Claim Is Moot Now That Plaintiffs Spoke At The April 3  
Event That Was The Subject Of Their Suit**

5 Because Plaintiffs’ April 3 event has now occurred, any “controversy between the  
6 parties has thus clearly ceased to be definite and concrete and no longer touches the legal  
7 relations of parties having adverse legal interests.” *DeFunis v. Odegaard*, 416 U.S. 312,  
8 317 (1974) (quotation marks omitted). The expiration of the relevant action—here an  
9 invitation to speak on campus *on April 3* purportedly conditioned on agreeing to the anti-  
10 boycott provision—moots any challenge to that action. *See, e.g., C.F. ex rel. Farnan v.*  
11 *Capistrano Unified Sch. Dist.*, 654 F.3d 975, 983 (9th Cir. 2011) (declaratory judgment  
12 claim regarding content of instruction moot following objecting student’s graduation);  
13 *GTE California, Inc. v. FCC*, 39 F.3d 940, 945 (9th Cir. 1994) (claim moot because  
14 administrative waiver at issue would have expired on its own terms prior to adjudication);  
15 *Shoshone-Bannock Tribes v. Fish & Game Commission, Idaho*, 42 F.3d 1278, 1281-82  
16 (9th Cir. 1994) (temporary agency prohibition on fishing expired). “No matter how  
17 vehemently the parties continue to dispute the lawfulness of the conduct that precipitated  
18 the lawsuit, the case is moot if the dispute is no longer embedded in any actual  
19 controversy about the plaintiffs’ particular legal rights.” *Nike*, 568 U.S. at 91 (quotation  
20 marks omitted).

21 Because the dispute about the constitutionality of the speaker contract for the April  
22 3 event is now “an abstract dispute about the law,” and “a dispute solely about the  
23 meaning of a law, abstracted from any concrete actual or threatened harm, [it] falls  
24 outside the scope of the constitutional words ‘Cases’ and ‘Controversies.’” *Alvarez v.*  
25 *Smith*, 558 U.S. at 93 (2009).  
26  
27  
28

**B. ABOR’s Removal Of The Anti-Boycott Clause Also Moots This Action**

This suit is also moot because ABOR/ASU had removed the anti-boycott clause from its speaker contracts—and indeed did so *before* this action was even filed. *Supra* at 2-4. As in *Log Cabin Republicans*, ABOR/ASU’s removal of the anti-boycott provision from its speaker contracts “gave [plaintiffs] ‘everything’ [their] complaint ‘hoped to achieve.’” 658 F.3d at 1166 (citation omitted).

The Ninth Circuit has repeatedly held that a superseding government action moots a challenge to an earlier government action. *See, e.g., Forest Guardians v. U.S. Forest Serv.*, 329 F.3d 1089, 1096 (9th Cir. 2003) (“[W]hen one [action] supersedes another, a challenge to the superseded [action] is moot”); *Western Radio Serv. Co. v. Glickman*, 113 F.3d 966, 974 (9th Cir. 1997) (agency action “has been superseded” and “therefore has no current effect or continuing consequences, and [plaintiff’s] challenge to it is moot”); *American Rivers v. NMFS*, 126 F.3d 1118, 1124 (9th Cir. 1997) (challenge to 1994 biological opinion is moot because it was superseded by 1995 biological opinion); *Or. Natural Res. Council, Inc. v. Grossarth*, 979 F.2d 1377, 1378-80 (9th Cir. 1992) (cancellation of leases mooted suit over prior leases and review of agency’s issuance of new leases “should be considered in the first instance by a district court in separate litigation which can develop an independent record”).

So too here. The superseding contract form moots Plaintiffs’ challenge to the outdated contract form that Plaintiffs were given by a third-party’s mistake.

**C. No Exceptions To Constitutional Mootness Apply Here**

The State anticipates that Plaintiffs will argue that exceptions for voluntary cessation or claims capable of repetition, yet evading review apply here. Neither does.

**1. The Capable of Repetition, Yet Evading Review Exception Does Not Apply Here**

Federal courts do recognize an exception to mootness for disputes that are “‘capable of repetition’ while ‘evading review.’” *Alvarez*, 558 U.S. at 93. Plaintiffs,

1 however, cannot fall within that exception, which is both “narrow” and “applies only in  
2 ‘exceptional situations.’” *Headwaters, Inc. v. BLM*, 893 F.2d 1012, 1016 (9th Cir. 1989),  
3 (citation omitted).

4 To satisfy the exception, Plaintiffs would need to make two showings. First, they  
5 must demonstrate a “‘reasonable expectation’ or a ‘demonstrated probability’ that ‘the  
6 same controversy will recur involving the same complaining party.’” *FEC v. Wisconsin*  
7 *Right to Life, Inc. (“WRTL”)*, 551 U.S. 449, 463 (2007) (citation omitted). Second,  
8 Plaintiffs must demonstrate that “‘the challenged action is in its duration too short to be  
9 fully litigated prior to its cessation or expiration.’” *Davis v. FEC*, 554 U.S. 724, 735  
10 (2008) (quoting *WRTL*, 551 U.S. at 462). Plaintiffs bear the burden of establishing both  
11 showings. See *Los Angeles v. Lyons*, 461 U.S. 95, 109 (1983); *Sample v. Johnson*, 771  
12 F.2d 1335, 1340, 1342 (9th Cir. 1985). But Plaintiffs cannot establish either requirement  
13 here.

14 *First*, there is no reasonable likelihood that Plaintiffs will ever again be asked to  
15 sign a certification under the Act. ABOR/ASU had already removed the anti-boycott  
16 clause from its speaker contracts months before this suit was filed and has no intention of  
17 ever restoring it. 2d Cárdenas Decl. ¶¶ 2-6. Thus, even if Plaintiffs are ever again asked  
18 to speak at ASU, there is no reasonable probability that they will be required to sign a  
19 contract with an anti-boycott provision. See, e.g., *Pub. Utils. Comm’n v. FERC*, 100 F.3d  
20 1451, 1460 (9th Cir. 1996) (where “resolution of a controversy depends on facts that are  
21 unique or unlikely to be repeated, the action is not capable of repetition and hence is  
22 moot”); *Native Vill. of Noatak v. Blatchford*, 38 F.3d 1505, 1510 (9th Cir. 1994)  
23 (rejecting as too speculative the possibility that defendant would again enact similar  
24 regulations to those originally challenged: “If in the future the Commissioner does  
25 implement regulations or policies which [plaintiff] finds objectionable, [it] can challenge  
26 them at that time.”). And Plaintiffs’ filings to date do not disclose any future speaking  
27 engagements at ASU, rendering the possibility of recurrence even more remote.

1        *Second*, Plaintiffs’ First Amendment challenges to the Act will not evade review—  
 2 a virtually identical First Amendment challenge to the Act is pending before this Court in  
 3 *Jordahl v. Brnovich*, No. 17-cv-8263 (D. Ariz. filed Dec. 6, 2017). That case involves a  
 4 multi-year contract,<sup>1</sup> and will not evade review. *See, e.g., Idaho Dep’t of Fish & Game v.*  
 5 *NMFS*, 56 F.3d 1071, 1075 (9th Cir. 1995) (holding that biological opinion lasting four  
 6 years is “more than enough time for litigants to obtain judicial review”).

## 7                    **2.        The Voluntary Cessation Exception Also Does Not Apply**

8        The “voluntary cessation” exception to mootness is likewise inapplicable here for  
 9 four reasons.

10        *First*, one aspect of the mootness here is simply that time has passed and Plaintiffs  
 11 have given their speech. That passage of time is not “voluntary cessation,” but rather  
 12 ordinary mootness. *See, e.g., DeFunis v. Odegaard*, 416 U.S. 312, 318 (1974).

13        *Second*, the voluntary cessation exception does not apply where, as here,  
 14 Defendants had already ceased the relevant conduct before this action was filed. *See,*  
 15 *e.g., Pub. Utils. Comm’n*, 100 F.3d at 1460 (“[I]n order for this exception to apply, the  
 16 defendant’s voluntary cessation must have arisen *because of* the litigation.”). Here,  
 17 ABOR had already removed the anti-boycott provision from its speaker agreement *before*  
 18 this suit was filed. *See* Doc. 17-1; 2d Cárdenas Decl. ¶¶ 4-5.

19        *Third*, and relatedly, because ABOR/ASU had already stopped using a speaker  
 20 contract with the anti-boycott clause *before* this suit was filed, Plaintiffs also cannot  
 21 satisfy the requirements of Article III standing—which has no exception for voluntary  
 22 cessation. *See, e.g., Los Angeles v. Lyons*, 461 U.S. 95, 109 (1983); *Scott v. Pasadena*  
 23 *Unified School Dist.*, 306 F.3d 646, 655 (9th Cir. 2002) (Standing is determined based on  
 24 “the facts as they existed at the time that the complaint was filed.”).

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25  
 26  
 27 <sup>1</sup> While the contracts are for one year at a time, the contract is only bid out every four  
 28 years and annual renewals are presumptive between biddings. Ensign Decl. Ex. C at  
 83:16-84:1; 92:16-21.

1 *Fourth*, Defendants have consistently explained why the Act does not apply to  
 2 guest speakers, and that they have absolutely no intent of enforcing the Act against such  
 3 speakers. *See* Doc. 17. Indeed, Defendants have disavowed the applicability of the Act  
 4 in this context at every turn, and incorporated that position into the standard speaker  
 5 contract. *Id.*; 2d Cárdenas Decl. Exs. E, J, L, N, O. And “unlike in the case of a private  
 6 party, [courts] presume the government is acting in good faith” with any change in its  
 7 conduct. *American Cargo Transp., Inc. v. United States*, 625 F.3d 1176, 1180 (9th Cir.  
 8 2010). The voluntary mootness exception thus does not apply. *See, e.g., White v. Lee*,  
 9 227 F.3d 1214, 1242-44 (9th Cir. 2000) (exception did not apply where new policy was  
 10 set forth in a memorandum that was “broad in scope and unequivocal in tone” and  
 11 announced by press release).

12 **D. Alternatively, This Case Is Moot As A Prudential Matter**

13 Even if this case were not moot for purposes of Article III, prudential  
 14 considerations here require dismissal of Plaintiffs’ suit since the dispute about the April 3  
 15 event no longer has any practical significance. And Plaintiffs’ litigation conduct has  
 16 demonstrated that they are disinterested in obtaining a practical solution to the issue that  
 17 the Complaint was purportedly about—being able to speak at the April 3 event without  
 18 agreeing not to boycott Israel—and instead are intent on obtaining an advisory opinion  
 19 about the constitutionality of the Act at all costs, regardless of whether it has a concrete  
 20 effect on them.

21 The scarce judicial resources of this Court need not be wasted on litigants who  
 22 interminably refuse to take “yes” for an answer. Instead, “The doctrine of prudential  
 23 mootness permits a court to ‘dismiss an appeal not technically moot if circumstances  
 24 have changed since the beginning of litigation that forestall any occasion for meaningful  
 25 relief[.]’” *Deutsche Bank Nat. Tr. Co. v. FDIC*, 744 F.3d 1124, 1135 (9th Cir. 2014).  
 26 Prudential mootness reflects the common-sense recognition that, “if events so overtake a  
 27 lawsuit that the anticipated benefits of a remedial decree no longer justify the trouble of  
 28

1 deciding the case on the merits, equity may demand not decision but dismissal.” *Winzler*  
 2 *v. Toyota Motor Sales U.S.A., Inc.*, 681 F.3d 1208, 1210 (10th Cir. 2012).

3 Here, Plaintiffs have spoken at their April 3 event without hindrance and have no  
 4 apparent prospect of ever encountering the Act again. *Supra* at 4. Thus even if this case  
 5 were not constitutionally moot, it has long since been robbed of any practical significance  
 6 and should be dismissed as prudentially moot. Indeed, even if Plaintiffs could somehow  
 7 squeeze into one of the exceptions to mootness, the constitutional justiciability of their  
 8 claim would at best exist by the thinnest of margins and the case should be readily  
 9 dismissed on prudential grounds.

10 Such a dismissal is particularly appropriate given Plaintiffs’ litigation conduct—  
 11 which demonstrates that the April 3 event is but a pretense to challenge the  
 12 constitutionality of the Act notwithstanding its inapplicability. At every turn, Plaintiffs  
 13 refused to accept satisfaction of their purported objectives. Instead, they continually  
 14 invented new, *ad hoc* concerns in an attempt to keep this case alive until even Plaintiffs’  
 15 capacity to concoct new objections ran out. This Court need not indulge such transparent  
 16 litigation-seeking behavior.

17 In particular, Plaintiffs’ representations to this Court have proven to have little  
 18 value. Plaintiffs’ Complaint expressly stated that “Dr. Hatem Bazian and American  
 19 Muslims for Palestine would accept the Muslim Students Association’s invitation if the  
 20 ‘No Boycott of Israel’ clause were stricken. They agree to all other contractual terms.”  
 21 Complaint ¶ 37. Plaintiffs made a similar representation the next day in their motion for  
 22 a preliminary injunction.<sup>2</sup> And both of Plaintiffs’ declarants swore under oath that the  
 23 anti-boycott clause was their *only* objection to the speaker form sent to them.<sup>3</sup>

24  
 25 <sup>2</sup> See Doc. 9-1 at 5 (“The ‘No Boycott of Israel’ clause in ASU’s standard speaker  
 26 agreement is, to Plaintiffs’ knowledge, the only institutional and legal roadblock to their  
 participation in the scheduled April 3, 2018 event.”).

27 <sup>3</sup> See Doc. 9-3 at 3 ¶ 16 (“I have no objection to Arizona State University’s “Speaker /  
 28 Artist Performer Agreement” other than Paragraph 20, the ‘No Boycott of Israel’ clause.  
 ... If the ‘No Boycott of Israel’ clause is stricken or declared unenforceable, I will sign



1 Plaintiffs’ commitments, however, rapidly proved worthless. After discovering  
 2 about the case from press inquiries (not from Plaintiffs), ASU immediately called  
 3 Plaintiffs’ counsel. 2d Cárdenas Decl. ¶ 11. When ABOR was unable to connect with  
 4 any of Plaintiffs’ counsel prior to Plaintiffs’ March 2 press conference announcing this  
 5 suit, ABOR issued a press release on March 2, the same day of the press conference, to  
 6 explain that it did “not believe that this law [the Act] applies to this kind of engagement  
 7 because the contract was to be with a student group.... The certification was not  
 8 needed.” *Id.* ¶ 12; Ex. E. Counsel for ABOR/ASU further told Plaintiffs on March 6 and  
 9 March 8 that “your lawsuit is based on an outdated version of our speaker engagement  
 10 form contract. The form was revised in December of 2017 and the no boycott of Israel  
 11 provision to which you object was removed.” Doc. 17-1 Ex. 1.

12 But even though the *sole* clause to which Plaintiffs had objected was removed  
 13 from the speaker agreement before this suit was even filed, Plaintiffs did not follow  
 14 through with their representations that they would sign the contracts if that clause  
 15 removal occurred. Complaint ¶ 37; *supra* at 3-4. Instead, Plaintiffs suddenly discovered  
 16 an objection to paragraph 6, which required Plaintiffs to comply with “applicable ...  
 17 laws,” 2d Cárdenas Decl. Ex. M, O—even though Plaintiffs previously had full  
 18 knowledge of that clause,<sup>4</sup> and stated they agreed to “all other contractual terms.”  
 19 Complaint ¶ 37. In short, Plaintiffs reneged on their commitments to this Court barely a  
 20 week after making them.

21 In an effort to resolve this dispute without full-blown litigation, ABOR agreed to  
 22 remove even the “applicable ... laws” clause. 2d Cárdenas Decl. Ex. L. In addition, both  
 23  
 24

25 the Agreement, enabling me to speak at the April 3, 2018 event.”); Doc. 9-2 at 3 ¶ 8 (“I  
 26 cannot in good faith sign ...because of one, and only one, objection. Paragraph 20 of the  
 27 Agreement.... If the ‘No Boycott of Israel’ clause is stricken or declared unenforceable, I  
 will sign the Agreement, enabling AMP to participate in the April 3, 2018 event.”

28 <sup>4</sup> See Doc. 9-3 Ex. B (attaching contract with paragraph 6); Doc. 9-2 Ex. A (same).



1 ABOR and the Attorney General made *unequivocal* commitments to this Court that they  
2 would not take action to interfere with the April 3 event under the Act. *See* Doc. 17.

3 But even these actions did not satisfy Plaintiffs. Instead, Plaintiffs now would  
4 “only withdraw our motion pursuant to an all-party stipulation.” 2d Cárdenas Decl. Ex.  
5 K. Although Defendants believed that such a stipulation was thoroughly unnecessary  
6 given the removal of *every single* clause to which Defendants had *ever* objected and  
7 Defendants’ binding commitments made to this Court, Defendants ultimately agreed to a  
8 joint stipulation. *Id.* Ex. H.

9 Plaintiffs’ conduct thus demonstrates that the April 3 event was but an artifice to  
10 obtain their true objective—an opinion from this Court regarding constitutionality of the  
11 Act notwithstanding that the Act does not affect Plaintiffs’ concrete interests. But this  
12 Court has does not have jurisdiction to enter such an advisory opinion. *See, e.g., Steel*  
13 *Co. v. Citizens for a Better Env’t.*, 523 U.S. 83, 101 (1998). And even if Plaintiffs  
14 satisfied the requirements of Article III, the doctrine of prudential mootness requires  
15 dismissal here where there is no meaningful relief to be had.

16 Alternatively, this Court should decline to exercise its jurisdiction to hear a request  
17 for a declaratory judgment. Such jurisdiction is entirely *discretionary*. *See, e.g., Wilton*  
18 *v. Seven Falls Co.*, 515 U.S. 277, 288 (1995). And for all of these reasons, this Court  
19 should exercise its discretion not to hear this dispute.

## 20 II. PLAINTIFFS’ CLAIM IS UNRIPE

21 As the Ninth Circuit, sitting *en banc*, has explained: Neither “the mere existence  
22 of a proscriptive statute nor a generalized threat of prosecution satisfies the ‘case or  
23 controversy’ requirement.” *Thomas v. Anchorage Equal Rights Comm’n*, 220 F.3d 1134,  
24 1139 (9th Cir. 2000) (en banc). To satisfy the ripeness requirements of Article III, “there  
25 must be a ‘genuine threat of imminent prosecution.’” *Id.* Plaintiffs cannot remotely  
26 make such a showing.  
27  
28

1 The Ninth Circuit has provided three factors to “evaluat[e] the genuineness of a  
 2 claimed threat of prosecution”: “[ (1) ] whether the plaintiffs have articulated a ‘concrete  
 3 plan’ to violate the law in question, [ (2) ] whether the prosecuting authorities have  
 4 communicated a specific warning or threat to initiate proceedings, and [ (3) ] the history of  
 5 past prosecution or enforcement under the challenged statute.” *Id.*

7 Because the anti-boycott clause no longer exists in speaker contracts, it is doubtful  
 8 that Plaintiffs could have a “‘concrete plan’ to violate the” Act in the future.<sup>5</sup> But even if  
 9 they did, the second and third factors mandate a conclusion that this suit is unripe. Not  
 10 only have Defendants *never* “communicated a specific warning or threat to initiate  
 11 [enforcement] proceedings” against Plaintiffs, they have *unequivocally* disavowed any  
 12 intent to enforce the Act in the context of guest speakers. Doc. 17 at 3-4. Thus, as in  
 13 *Thomas*, “when plaintiffs ‘do not claim that they have ever been threatened with  
 14 prosecution, that a prosecution is likely, or even that a prosecution is remotely possible,’  
 15 they do not allege a dispute susceptible to resolution by a federal court.” 220 F.3d at  
 16 1140 (citation omitted); *see also Younger v. Harris*, 401 U.S. 37, 42 (1971) (same).  
 17 Similarly, as to the third factor, no Defendant has ever filed an enforcement action  
 18 relating to the Act in this context. Ensign Decl. ¶¶ 2-3. Indeed, the Attorney General has  
 19 never initiated any suit to enforce the Act against anyone to date (although he has  
 20 defended its constitutionality in this Court). Ensign Decl. ¶¶ 2-3. The second and third  
 21 factors thus compel a conclusion that Plaintiffs have not established a “genuine threat of  
 22 imminent prosecution,” requiring dismissal of this case as unripe.

27 <sup>5</sup> Indeed, even at the time that this suit was filed, the speaker form actually used by  
 28 ASU/ABOR did not include the anti-boycott clause. 2d Cárdenas Decl. ¶¶ 4-5.

### III. THE INDIVIDUAL DEFENDANTS MUST BE DISMISSED

#### A. The Attorney General Enjoys Sovereign Immunity

As a general matter, all state officials enjoy sovereign immunity. *See, e.g., Alden v. Maine*, 527 U.S. 706, 747 (1999) (“[S]overeign immunity bars relief against States *and their officers*[.]” (emphasis added)). *Ex Parte Young* recognizes a “narrow exception” to that immunity. *Seminole Tribe of Fla. v. Florida*, 517 U.S. 44, 76 (1996); *accord Pennhurst State Sch. & Hosp. v. Halderman*, 465 U.S. 89, 114-15 & n.25 (1984) (explaining that “*Young* is a fiction that has been narrowly construed”). Plaintiffs’ Complaint does not fall within that narrow exception, however.

Under *Ex Parte Young*, sovereign immunity is not a bar to suit against “an official who *acts unconstitutionally* [because the official] is [thereby] ‘stripped of his official or representative character[.]’” *Pennhurst*, 465 U.S. at 104 (emphasis added). Indeed, the Supreme Court has repeatedly stressed that the *Ex Parte Young* exception only applies where either the state officers *actually act* in an unconstitutional manner,<sup>6</sup> or “threaten and are about to commence proceedings, either of a civil or criminal nature, to enforce against parties affected an unconstitutional act.” *Morales v. Trans World Airlines, Inc.*, 504 U.S. 374, 381 (1992).<sup>7</sup>

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<sup>6</sup> *See Frew v. Hawkins*, 540 U.S. 431, 437 (2004) (*Young* “permits suits for prospective injunctive relief against state officials *acting in violation of federal law*” (emphasis added)); *P.R. Aqueduct & Sewer Auth. v. Metcalf & Eddy, Inc.*, 506 U.S. 139, 145 (1993) (*Young* permits some suits “against state officials in federal court challenging the constitutionality of official conduct enforcing state law.” (emphasis added)); *see also In re Ellett*, 254 F.3d 1135, 1138 (9th Cir. 2001) (“To be entitled to relief under *Ex Parte Young*, then, [plaintiff] must allege that [defendant] ... *is engaging in a course of activity in violation of federal law*.” (emphasis added)).

<sup>7</sup> *Accord Armstrong v. Exceptional Child Ctr., Inc.*, 135 S. Ct. 1378, 1384 (2015) (“[F]ederal courts may in some circumstances grant injunctive relief against state officers *who are violating, or planning to violate, federal law*.” (emphasis added)); *Steffel v. Thompson*, 415 U.S. 452, 464–65 (1974) (*Young* “hold[s] that state officials *who threaten to enforce an unconstitutional state statute* may be enjoined by a federal court” (emphasis added)).

In stark contrast here, the Attorney General is not alleged to have done *anything*, or to have threatened to initiate *any* enforcement action. The entirety of Plaintiffs’ allegations regarding the Attorney General is found in paragraph 10, which alleges that he “is responsible for enforcing and defending the constitutionality of Arizona law.” Complaint ¶ 10. There is thus no allegation that the Attorney General has actually undertaken a relevant act *whatsoever*, let alone an action that violated the U.S. Constitution. Nor is there any allegation that the Attorney General has “threaten[ed] and [is] about to commence proceedings.” *Morales*, 504 U.S. at 381. Indeed, he has affirmatively *disavowed* any intent to enforce the Act in this context because it does not apply. Doc. 17 at 3-4. Ultimately, the Attorney General here has simply been sued as a stand-in for the State itself, which does not satisfy *Young*.

**B. Plaintiffs’ Claim Against The Attorney General Fails For Lack of Standing And Ripeness**

For similar reasons, Plaintiffs lack standing to assert a claim against the Attorney General, which would also be unripe. Absent any conduct by the Attorney General, there is no subject matter jurisdiction for a claim asserted against him. *See Arizona Attorneys for Criminal Justice v. Ducey*, No. 17-cv-1422, 2018 WL 1570244, at \*5 (D. Ariz. Mar. 30, 2018) (“Because Plaintiffs set forth no facts which show that they have suffered an injury as a result of some conduct of the Attorney General, it follows that it is not likely, much less plausible, that an injunction against him would redress their injury.”).

**C. Plaintiffs Have Not Stated A Valid Section 1983 Claim**

Plaintiffs’ claim must be dismissed for failure to state a valid claim under 42 U.S.C. § 1983.<sup>8</sup> Plaintiffs do not allege that the Attorney General has taken *any* action with respect to the Act at all, let alone that “deprived [Plaintiffs] of a right secured by the

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<sup>8</sup> By asserting a violation of the First and Fourteenth Amendments and seeking attorneys fees under 42 U.S.C. § 1988, *see* Doc. 1 at 9, 12, Plaintiffs claim for relief necessarily must be asserted under Section 1983 even though it does not invoke that section (or any other) expressly.

1 Constitution or laws of the United States, and that the alleged deprivation was committed  
2 under color of state law.” *American Mfrs. Mut. Ins. Co. v. Sullivan*, 526 U.S. 40, 49-50  
3 (1999) (stating elements of a Section 1983 claim). Plaintiffs’ failure to allege any action  
4 at all by the Attorney General necessarily means that Plaintiffs have not alleged a valid  
5 Section 1983 claim against him.

6 Plaintiffs also have not alleged that ABOR/ASU took any action under color of  
7 law that violated Plaintiffs’ rights. Notably, the Complaint does not allege that  
8 ABOR/ASU provided to Plaintiffs the speaker form to which Plaintiffs objected, and  
9 Plaintiffs’ own documents establish it was the student group that did so. *See* Doc. 9-3  
10 ¶ 12; Doc. 9-2 ¶¶ 6-7 & Ex. A. And when ABOR/ASU first became aware of Plaintiffs’  
11 objections, it quickly provided Plaintiff with an updated speaker form that did not include  
12 an anti-boycott clause. 2d Cárdenas Decl. Ex. E, O. Thus, the Complaint simply does  
13 not (and could not) allege that ABOR/ASU insisted that Plaintiffs sign a contract with an  
14 anti-boycott provision as a condition of speaking at the April 3 event, and therefore does  
15 not allege a viable Section 1983 claim.

## 16 CONCLUSION

17 For the foregoing reasons, Plaintiffs’ Complaint should be dismissed for lack of  
18 subject matter jurisdiction or as prudentially moot. Alternatively, the Complaint should  
19 be dismissed for failure to state a valid section 1983 claim.

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1 Respectfully submitted this 10th day of April, 2018.

2 MARK BRNOVICH  
3 ATTORNEY GENERAL

4 By: s/ Drew C. Ensign  
5 Drew C. Ensign (No. 25462)  
6 Oramel H. (O.H.) Skinner (No. 32891)  
7 Brunn (Beau) W. Roysden III (No. 28698)  
8 Robert J. Makar (No. 033579)

9 *Attorneys for Defendant Mark Brnovich in his*  
10 *official capacity as Attorney General*

11 By: s/ Nancy Tribbensee  
12 Nancy Tribbensee (No. 011128)  
13 Senior Vice President and General Counsel  
14 José A. Cárdenas (No. 005632)  
15 Senior Vice President and General Counsel,  
16 ASU

17 *Attorneys for Defendant Arizona Board of*  
18 *Regents*  
19  
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**LOCAL RULE 12.1 CERTIFICATION**

Pursuant to Local Rule 12.1, I certify that before filing the instant motion attorneys for the State conferred with Plaintiffs' counsel by email on April 9 and informed them of the State's intention to file this motion and the bases for it. Plaintiffs' counsel indicated that Plaintiffs would not be amending their Complaint prior to Defendants filing their instant motion to dismiss.

s/ Drew C. Ensign  
Attorney for Intervenor-Defendant State of Arizona

**CERTIFICATE OF SERVICE**

I hereby certify that on this 10th day of April, 2018, I caused the foregoing document to be electronically transmitted to the Clerk's Office using the CM/ECF System for Filing and transmittal of a Notice of Electronic Filing to the following CM/ECF registrants:

Lena F. Masri  
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s/ Drew C. Ensign

*Attorney for Defendant Mark Brnovich in his official capacity as Attorney General of Arizona*



**UNITED STATES DISTRICT COURT  
DISTRICT OF ARIZONA**

American Muslims for Palestine and Dr.  
Hatem Bazian,

Plaintiffs,

vs.

Arizona Board of Regents for and on behalf  
of Arizona State University; and Mark  
Brnovich, in his official capacity as  
Attorney General Of Arizona,  
Defendants.

Case No: 2:18-cv-00670-PHX-JJT

**DECLARATION OF JOSÉ A. CÁRDENAS**

I, José A. Cárdenas, declare as follows:

1. I am an attorney licensed to practice law in Arizona. I am Senior Vice President and General Counsel for Arizona State University (“ASU”). I have personal knowledge of the matters referred to herein and if called upon to testify could and would testify truthfully thereto.

2. ASU has a template speaker form that is used for speakers invited by the university itself, or for student organizations, when ASU resources, other than nominal or incidental (*e.g.*, mere classroom use) are required.

3. Shortly after A.R.S. § 35-393.01 *et seq.* (the “Act”) was passed by the Arizona Legislature and signed into law by the Governor, ASU incorporated an anti-boycott provision into various contract templates, including its form speaker agreement in

September 2016. That anti-boycott provision provides as follows: “No Boycott of Israel. As required by Arizona Revised Statutes § 35-393.01, Entity certifies it is not currently engaged in a boycott of Israel and will not engage in a boycott of Israel during the term of this Contract.” Attached hereto as Exhibit A is a copy of the speaker form adopted in September 2016.

4. In December 2017, ASU determined that the Act did not apply to speakers invited to speak on campus. It therefore revised the speaker form agreement to remove the anti-boycott provision. A copy of the December 2017 version of the form speaker agreement is attached as Exhibit B. Because ASU does not believe the Act applies to guest speakers, it has no intention of amending its speaker form agreement to reinstate any anti-boycott provision.

5. The speaker form agreement has been revised since December 2017, but none of the revised versions included any certification with respect to boycotts of Israel. A copy of the current version of the form speaker agreement is attached as Exhibit C.

6. In February 2018, a student member of the Muslim Students Association invited speakers for an event and emailed the outdated September 2016 version of the speaker agreement to the invited speakers, without consultation with ASU officials.

7. Following the email exchanges detailed below, Plaintiffs executed the version of the speaker agreement that, correctly, did not include the anti-boycott provision. The speaker agreements executed by Plaintiffs relating to the April 3 speaking engagement are attached as Exhibit D.

8. Plaintiffs spoke at the scheduled April 3 speaking engagement without any hindrance by Defendants.

9. Defendants are not aware of any future speaking engagements by Plaintiffs at ASU.

10. ASU's first knowledge of Plaintiffs' concerns with the anti-boycott provision came after March 2, 2018 media inquiries to ASU about Plaintiffs' complaint and press conference scheduled that day.

11. The ASU Office of General Counsel telephoned Plaintiffs' counsel, both in Washington, D.C. and in Scottsdale, Arizona, prior to Plaintiffs' press conference on Friday, March 2, 2018, but was unable to speak with any of Plaintiffs' counsel. Lisa Loo, ASU's Vice President of Legal Affairs and Deputy General Counsel, explained to the person answering the telephone at counsel's Scottsdale office the need to speak with Plaintiffs' counsel prior to the press conference but was told counsel was in a meeting and unable to speak with her. The purpose of her calls was to explain to Plaintiffs' counsel that the correct version of the contract does not contain the anti-boycott provision.

12. Attached hereto as Exhibit E is the March 2, 2018 press release of ASU issued after ASU was unable to speak with any of Plaintiffs' counsel.

13. Ms. Loo also called Plaintiffs' local counsel on Monday, March 5, 2018 and was told that local counsel would be unavailable for the entire week. Ms. Loo then emailed local counsel later that evening. A copy of that email is attached hereto as Exhibit F. Plaintiffs' counsel, Carolyn Homer, responded to Ms. Loo's various

communications on Tuesday, March 6, 2018. A copy of that email is attached hereto as Exhibit G.

14. Attached hereto as Exhibit H is an email chain between counsel for Plaintiffs and Defendants relating to the Joint Motion To Enter A Stipulation (Doc. 20).

15. Attached hereto as Exhibit I is a March 14, 2018 email from Drew C. Ensign, counsel for Defendant Mark Brnovich, to Plaintiffs' counsel, on which I was copied.

16. Attached hereto as Exhibit J is a March 14, 2018 email that I sent to Plaintiffs' counsel.

17. Attached hereto as Exhibit K is a March 14, 2018 email from Gadeir Abbas, counsel for Plaintiffs, to Defendants' counsel.

18. Attached hereto as Exhibit L is a March 13, 2018 email that I sent to Plaintiffs' counsel.

19. Attached hereto as Exhibit M is a March 13, 2018 email from Gadeir Abbas, counsel for Plaintiffs, to Defendants' counsel.

20. Attached hereto as Exhibit N is a March 13, 2018 email from Drew C. Ensign, counsel for Defendant Mark Brnovich, to Plaintiffs' counsel, on which I was copied.

21. Attached hereto as Exhibit O is a March 8, 2018 email that I sent to Plaintiffs' counsel.

I declare under penalty of perjury that the foregoing is true and correct, to the best of my knowledge, and that this declaration was issued on April 10, 2018 in Tempe, Arizona.

s/ Jose A. Cardenas

Jose A. Cardenas

# Exhibit A



## SPEAKER/ARTIST/PERFORMER AGREEMENT

This Agreement is entered into as of \_\_\_\_\_, 20\_\_, between the Arizona Board of Regents acting for and on behalf of Arizona State University ("ASU") and \_\_\_\_\_<sup>1</sup>("Speaker"), or \_\_\_\_\_, a \_\_\_\_\_, <sup>2</sup> as the authorized agent for Speaker. If Speaker is represented by an authorized agent, then references to Speaker herein will also refer to the authorized agent, where appropriate.

1. **Engagement; Event.** ASU hereby engages Speaker to personally provide the following services, and Speaker agrees to personally provide to ASU the following services (the "*Presentation*") at the following Event (the "*Event*"):
 

Event/Location: \_\_\_\_\_

Dates and times of Event: \_\_\_\_\_

Speaker's Presentation schedule: \_\_\_\_\_

Title of Speaker's Presentation: \_\_\_\_\_

Speaker's hospitality requirements: \_\_\_\_\_

Speaker's technical requirements: \_\_\_\_\_

2. **Notice.** Any communication or notice required under this Agreement shall be in writing and may either be given by personal delivery or sent, in all cases, against receipt, addressed to the following:

If to ASU:

\_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_  
 Attn: \_\_\_\_\_  
 Email: \_\_\_\_\_

If to Speaker:

\_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_  
 Attn: \_\_\_\_\_  
 Email: \_\_\_\_\_

Notice shall be deemed to be received upon receipt by the receiving party.

3. **Speaker Warranty.** Speaker warrants that at all times during the Event, Speaker will personally provide Speaker's best professional efforts. Speakers' professional credentials are such that Speaker can provide the Presentation in a knowledgeable and professional manner.

4. **Payment.** ASU shall pay Speaker the all-inclusive fee of \$\_\_\_\_\_ upon completion of the Presentation. Speaker shall complete a Substitute W-9 Form, which must be signed by the person or entity to whom payment is to be issued. ASU will issue all payment in accordance with the information on the completed and signed Substitute W-9 Form.

<sup>1</sup> – If an authorized agent is signing, please be sure to fill in the speaker name as well.

<sup>2</sup> – Include full legal name of authorized agent, state of formation, and type of entity (for example: ABC, Inc., an Arizona Corporation.)

5. Acceptance of Agreement. Speaker will accept and return this Agreement to ASU no later than \_\_\_\_\_, 20\_\_\_\_. In all events, this Agreement must be fully signed and received at ASU at least one week prior to the Event to allow on-time payment. This Agreement must be fully signed before payment can be processed. Please return a signed copy of this Agreement to ASU at the address set forth in Section 16.

6. Compliance with Law. Speaker will comply with all applicable published ASU, City, County, State and Federal laws, acts, codes, regulations and policies, including all applicable federal immigration laws and regulations that relate to employment.

7. Press Materials. Speaker shall timely supply all press/promotion material requested by ASU.

8. Educational Component. ASU is required to include some type of educational component with every program presented by ASU. Speaker shall work with ASU to develop a satisfactory educational component.

9. Indemnity. Speaker shall indemnify, defend, and hold ASU harmless for, from, and against, any all claims, demands, suits, costs and damages (including reasonable attorneys' fees) that ASU may incur by reason of any: (a) actual or alleged infringement or violation of any copyright, or other proprietary right by Speaker; (b) claim for damages arising from Speaker's Presentation; or (c) any of Speaker's costs and liabilities arising out of the Presentation or Event, including without limitation: travel and meal expenses; union dues; taxes; agents' commissions or other expenses or obligations; damages to Speaker's equipment or materials; compensation to third parties engaged by Speaker; compensation for lost or stolen equipment or materials; workers compensation or other insurance; and any expenses not preapproved by ASU in writing.

10. Indemnification Limitation. ASU is a public institution and, as such, any indemnification, liability limitation, or hold harmless provision will be limited as required by Arizona law, including without limitation [Article 9, Sections 5 and 7](#) of the Arizona Constitution and [A.R.S. §§ 35-154 and 41-621](#). Therefore, notwithstanding any other provision of this Agreement to the contrary, ASU's liability under any claim for indemnification is limited to claims for property damage, personal injury, or death to the extent caused by acts or omissions of ASU.

11. Default, Remedies, Force Majeure, Cancellation.

11.1 Default. Failure by either party to perform as specifically described herein shall be deemed to be an "*Event of Default*" hereunder.

11.2 Remedies. Upon the occurrence of an Event of Default, the non-defaulting party (1) shall have all the remedies afforded by law and in equity; and (2) shall have the right to terminate this Agreement.

11.3 Force Majeure. Neither Speaker nor ASU shall be liable for failure to perform hereunder if failure is caused by civil tumult, strike, epidemic, or any cause beyond the control of the parties. Labor difficulties due to the ingestion of alcohol or illegal substances will not be deemed labor difficulties and will not be deemed an event of Force Majeure.

11.4 Cancellation. If the Event is cancelled by ASU, reasonable efforts will be made to reschedule.

12. Liability; Insurance. Speaker, at its expense, will procure and maintain, for the duration of the Event, a policy of commercial general liability insurance in an amount of not less than \$1,000,000, single limit, against claims for bodily injury, death and property damage occurring in connection with the Event and the Presentation. This insurance must name the Arizona Board of Regents, Arizona State University, and the



State of Arizona as additional insureds. Speaker must provide ASU with a certificate evidencing this insurance coverage no later than 10 days prior to the Presentation.

13. No Assignment. Neither party shall have the right to assign any rights or obligations under this Agreement without the prior written consent of the other party.

14. Entire Agreement. This Agreement constitutes the entire agreement and understanding of the parties with respect to its subject matter. No prior or contemporaneous agreement or understanding will be effective.

15. Governing Law and Venue. This Agreement will be governed by the laws of the State of Arizona without regard to any conflicts of laws principles. ASU's obligations hereunder are subject to the regulations/policies of the Arizona Board of Regents. Any proceeding arising out of or relating to this Agreement will be conducted in Maricopa County, Arizona. Each party waives any objection it may now or hereafter have to venue or to convenience of forum.

16. Independent Contractor. Speaker is an independent contractor and is not an employee of ASU. Neither Speaker nor any personnel of Speaker will for any purpose be considered employees or agents of ASU. Speaker assumes full responsibility for the actions of Speaker's personnel, and is solely responsible for their supervision, direction and control, payment of salary and expenses (including withholding income taxes and social security), worker's compensation, and disability benefits.

17. Recordings; Use of Name and Likeness. Both parties may record the Presentation for internal records. No recording of the Presentation, either visual or audio, will be made by or on behalf of Speaker for the purposes of profit or significant distribution without prior written approval from ASU. ASU may require an additional payment for the privilege, and may require Speaker to sign a filming/recording agreement. ASU may record the Presentation on video tape, audio tape, film, photograph or any other medium, use Speaker's name, likeness, voice and biographical material in connection with these recordings for purposes within the ASU mission, including education and research, and exhibit or distribute the recording in whole or in part without restrictions or limitation for any educational or promotional purpose that ASU deems appropriate.

18. No Revenue Sharing. Speaker shall not participate in any revenues associated with the Presentation or Event. This includes: sponsorship, ticketing, ticketing fees, ASU concessions revenues, and any other revenue streams that may be associated with the Event.

19. Non-discrimination. The parties will comply with all applicable state and federal laws, rules, regulations, and executive orders governing equal employment opportunity, immigration, and nondiscrimination, including the Americans with Disabilities Act. **If applicable, the parties will abide by the requirements of 41 CFR §§ 60-1.4(a), 60-300.5(a) and 60-741.5(a). These regulations prohibit discrimination against qualified individuals based on their status as protected veterans or individuals with disabilities, and prohibit discrimination against all individuals based on their race, color, religion, sex, or national origin. Moreover, these regulations require that covered prime contractors and subcontractors take affirmative action to employ and advance in employment individuals without regard to race, color, religion, sex, national origin, protected veteran status or disability.**

20. No Boycott of Israel. As required by Arizona Revised Statutes § 35-393.01, Entity certifies it is not currently engaged in a boycott of Israel and will not engage in a boycott of Israel during the term of this Contract.

21. Conflicts of Interest. In accordance with Arizona Revised Statutes ("A.R.S.") [§ 38-511](#), ASU may cancel this Agreement within three years after the execution of this Agreement, without penalty or further obligation, if any person significantly involved in initiating, negotiating, securing, drafting, or creating this

Agreement on behalf of ASU, at any time while this Agreement or any extension thereof is in effect, is an employee or agent of any other party to this Agreement in any capacity or a consultant to any other party with respect to the subject matter of this Agreement. Notice is provided of [A.R.S. § 41-753D](#).

22. Arbitration in Superior Court. In the event of litigation, as required by [A.R.S. § 12-1518](#), the parties agree to make use of arbitration in all contracts that are subject to mandatory arbitration pursuant to rules adopted under [A.R.S. § 12-133](#).

23. Records. To the extent required by [A.R.S. § 35-214](#), the non-ASU parties to this Agreement (jointly and severally, “Entity”) will retain all records relating to this Agreement. Entity will make those records available at all reasonable times for inspection and audit by ASU or the Auditor General of the State of Arizona during the term of this Agreement and for a period of five years after the completion of this Agreement. The records will be provided at Arizona State University, Tempe, Arizona, or another location designated by ASU on reasonable notice to Entity.

24. Failure of Legislature to appropriate. In accordance with [A.R.S. § 35-154](#), if ASU’s performance under this Agreement depends on the appropriation of funds by the Arizona Legislature, and if the Legislature fails to appropriate the funds necessary for performance, then ASU may provide written notice of this to Entity and cancel this Agreement without further obligation of ASU. Appropriation is a legislative act and is beyond the control of ASU.

25. Weapons, Explosive Devices, and Fireworks. ASU prohibits the use, possession, display or storage of any weapon, explosive device or fireworks on all land and buildings owned, leased, or under the control of ASU or its affiliated or related entities, in all ASU residential facilities (whether managed by ASU or another entity), in all ASU vehicles, and at all ASU or ASU affiliate sponsored events and activities, except as provided in [A.R.S. § 12-781](#) or unless written permission is given by the Chief of the ASU Police Department or a designated representative. Notification by Entity to all persons or entities who are employees, officers, subcontractors, consultants, agents, guests, invitees or licensees of Entity (“*Entity Notification Parties*”) of this policy is a condition and requirement of this Agreement. Entity further agrees to enforce this contractual requirement against all Entity Notification Parties. ASU’s policy may be accessed through the following web page: <http://www.asu.edu/aad/manuals/pdp/pdp201-05.html>.

26. Student Educational Records. Student educational records are protected by the federal Family Educational Rights and Privacy Act, [20 U.S.C. § 1232g](#) (“*FERPA*”). Entity will comply with FERPA and will not access or make any disclosures of student educational records to third parties without prior notice to and consent from ASU or as otherwise provided by law. If this Agreement contains a scope of work or any provision that requires or permits Entity to access or release any student records, then, for purposes of this Agreement only, ASU hereby designates Entity as a “school official” for ASU under FERPA, as that term is used in FERPA and its implementing regulations. As such, Entity will comply with FERPA and will not make any disclosures of ASU students’ educational records to third parties without prior notice to, and consent from, ASU or as otherwise permitted by law. In addition, any access or disclosures of student educational records made by Entity or its employees and agents must comply with ASU’s definition of legitimate educational purpose, which definition can be found at: SSM 107-01: Release of Student Information (<http://www.asu.edu/aad/manuals/ssm/ssm107-01.html>). If Entity violates the terms of this section, Entity will immediately provide notice of the violation to ASU.

27. Authorized Presence Requirements. As required by [A.R.S. § 41-4401](#), ASU is prohibited from awarding a contract to any contractor or subcontractor that fails to comply with [A.R.S. § 23-214\(A\)](#) (verification of employee eligibility through the e-verify program). Entity warrants that it and its subcontractors comply fully with all applicable federal immigration laws and regulations that relate to their employees and their

compliance with [A.R.S. § 23-214\(A\)](#). A breach of the foregoing warranty will be deemed a material breach of this Agreement that is subject to penalties up to and including termination of the Agreement. ASU retains the legal right to inspect the papers of any contractor or subcontractor employee who works hereunder to ensure that the contractor or subcontractor is complying with the warranty stated above.

28. Tobacco-Free University. ASU is tobacco-free. For details visit <http://www.asu.edu/tobaccofree>.

29. Authority. If an individual or entity signs below on behalf of Speaker, such signatory represents and warrants that he/she/it has full and current authority to act and contract on behalf of Speaker and obligate Speaker, and that this Agreement is binding upon and enforceable against Speaker and the undersigned (if not Speaker) in accordance with its terms.

AGREED:

PRINT NAME OF SPEAKER, OR  
AUTHORIZED AGENT ON BEHALF OF  
SPEAKER

ARIZONA BOARD OF REGENTS  
FOR AND ON BEHALF OF  
ARIZONA STATE UNIVERSITY

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Signatory Please Print Name

\_\_\_\_\_  
Signatory Please Print Name

\_\_\_\_\_  
Signatory Please Print Title

\_\_\_\_\_  
Signatory Please Print Title

\_\_\_\_\_  
Date Signed

\_\_\_\_\_  
Date Signed

# Exhibit B



## SPEAKER/ARTIST/PERFORMER AGREEMENT

This Agreement is entered into as of \_\_\_\_\_, 20\_\_\_\_, between the Arizona Board of Regents acting for and on behalf of Arizona State University (ASU) and \_\_\_\_\_<sup>1</sup> (Speaker), or \_\_\_\_\_, a \_\_\_\_\_, <sup>2</sup> as the authorized agent for Speaker. If Speaker is represented by an authorized agent, then references to Speaker herein will also refer to the authorized agent, where appropriate.

1. Engagement; Event. ASU hereby engages Speaker to personally provide the following services, and Speaker agrees to personally provide to ASU the following services (the Presentation) at the following Event (the Event):

Event/Location: \_\_\_\_\_

Dates and times of Event: \_\_\_\_\_

Speaker's Presentation schedule: \_\_\_\_\_

Title of Speaker's Presentation: \_\_\_\_\_

Speaker's hospitality requirements: \_\_\_\_\_

Speaker's technical requirements: \_\_\_\_\_

2. Notice. Any communication or notice required under this Agreement will be in writing and may either be given by personal delivery or sent, in all cases, against receipt, addressed to the following:

If to ASU:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Attn: \_\_\_\_\_

Email: \_\_\_\_\_

If to Speaker:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Attn: \_\_\_\_\_

Email: \_\_\_\_\_

Notice will be deemed to be received upon actual receipt (or refusal of receipt) by the receiving party.

3. Speaker Warranty. Speaker warrants that at all times during the Event, Speaker will personally provide Speaker's best professional efforts. Speakers' professional credentials are such that Speaker can provide the Presentation in a knowledgeable and professional manner.

4. Payment. ASU will pay Speaker the all-inclusive fee of \$\_\_\_\_\_ upon completion of the Presentation. Speaker will complete a Substitute W-9 Form, which must be signed by the person or entity to whom payment is to be issued. ASU will issue all payment in accordance with the information on the completed and signed Substitute W-9 Form.

5. Acceptance of Agreement. Speaker will accept and return this Agreement to ASU no later than \_\_\_\_\_, 20\_\_\_\_. In all events, this Agreement must be fully signed and received at ASU at least one week prior to the Event to allow on-time payment. This Agreement must be fully signed before payment can be processed. Please return a signed copy of this Agreement to ASU at the address set forth in Section 2.

<sup>1</sup> If an authorized agent is signing, please be sure to fill in the speaker name as well.

<sup>2</sup> Include full legal name of authorized agent, state of formation, and type of entity (i.e.; ABC, Inc., an Arizona Corporation.)

6. Compliance with Law. Speaker will comply with all applicable ASU, City, County, State, and Federal laws, acts, codes, regulations and policies, including all applicable federal immigration laws and regulations that relate to employment.
7. Press Materials. Speaker will timely supply all press/promotion material requested by ASU.
8. Indemnity. Speaker will indemnify, defend, save and hold ASU harmless for, from, and against, any all claims, demands, suits, costs and damages (including reasonable attorneys' fees) that ASU may incur by reason of any: (a) actual or alleged infringement or violation of any copyright, or other proprietary right by Speaker; (b) claim for damages arising from Speaker's Presentation; or (c) any of Speaker's costs and liabilities arising out of the Presentation or Event, including without limitation: travel and meal expenses; union dues; taxes; agents' commissions or other expenses or obligations; damages to Speaker's equipment or materials; compensation to third parties engaged by Speaker; compensation for lost or stolen equipment or materials; workers compensation or other insurance; and any expenses not preapproved by ASU in writing.
9. Indemnification and Liability Limitation. Because ASU is a public institution, any indemnification, liability limitation, releases, or hold harmless provisions are limited as required by Arizona law, including Article 9, Sections 5 and 7 of the Arizona Constitution and Arizona Revised Statutes (ARS) §§ 35-154 and 41-621. ASU's liability under any claim for indemnification is limited to claims for property damage, personal injury, or death to the extent caused by acts or omissions of ASU.
10. Force Majeure. Neither Speaker nor ASU shall be liable to each other for failure to perform hereunder if failure is caused by civil tumult, strike, epidemic, or any other cause beyond the reasonable control of the parties (Force Majeure). The ingestion of alcohol, opioids, illegal substances, or the like, will not be deemed an event of Force Majeure. If the Event or Presentation is cancelled due to an event of Force Majeure, the parties will make reasonable efforts to reschedule, if feasible.
11. Cancellation. If either party cancels this Agreement or the Presentation, other than due to an event of Force Majeure the other party will have all remedies afforded by law and in equity. In addition, if ASU cancels the Event or the Presentation, ASU will reimburse Speaker for reasonable expenses incurred in preparation for the Presentation up to the date ASU provides notice of cancellation.
12. Liability; Insurance. Speaker, at its expense, will procure and maintain, for the duration of the Event, a policy of commercial general liability insurance in an amount of not less than \$1,000,000, single limit, against claims for bodily injury, death and property damage occurring in connection with the Event and the Presentation. This insurance must name the Arizona Board of Regents, Arizona State University, and the State of Arizona as additional insureds. Speaker must provide ASU with a certificate evidencing this insurance coverage no later than 10 days prior to the Presentation.
13. No Assignment. Neither party may assign any rights or obligations under this Agreement without the prior written consent of the other party.
14. Entire Agreement. This Agreement constitutes the entire agreement and understanding of the parties with respect to its subject matter. No prior or contemporaneous agreement or understanding will be effective.
15. Governing Law and Venue. This Agreement will be governed by the laws of the State of Arizona. ASU's obligations are subject to the regulations/policies of the Arizona Board of Regents. Any proceeding arising out of or relating to this Agreement will be conducted in Maricopa County, Arizona. Speaker consents to such jurisdiction, and waives objection to venue or convenience of forum.

16. Independent Contractor. Speaker is an independent contractor and is not an employee of ASU. Neither Speaker nor any personnel of Speaker will for any purpose be considered employees or agents of ASU. Speaker assumes full responsibility for the actions of Speaker's personnel, and is solely responsible for their supervision, direction and control, payment of salary and expenses (including withholding income taxes and social security), worker's compensation, and disability benefits.

17. Recordings; Use of Name and Likeness. Both parties may record the Presentation for internal records. No recording of the Presentation, either visual or audio, will be made by or on behalf of Speaker for the purposes of profit or significant distribution without prior written approval from ASU. ASU may require an additional payment for the privilege, and may require Speaker to sign a filming/recording agreement. ASU may record the Presentation on video tape, audio tape, film, photograph or any other medium, use Speaker's name, likeness, voice and biographical material in connection with these recordings for purposes within the ASU mission, including education and research, and exhibit or distribute the recording in whole or in part without restrictions or limitation for any educational or promotional purpose that ASU deems appropriate.

18. No Revenue Sharing. Speaker will not participate in any revenues associated with the Presentation or Event. This includes: sponsorship, ticketing, ticketing fees, ASU concessions revenues, and any other revenue streams that may be associated with the Event.

19. Non-discrimination. The parties will comply with all applicable laws, rules, regulations, and executive orders governing equal employment opportunity, immigration, and nondiscrimination, including the Americans with Disabilities Act. **If applicable, the parties will abide by the requirements of 41 CFR §§ 60-1.4(a), 60-300.5(a) and 60-741.5(a). These regulations prohibit discrimination against qualified individuals based on their status as protected veterans or individuals with disabilities, and prohibit discrimination against all individuals based on their race, color, religion, sex, or national origin. Moreover, these regulations require that covered prime contractors and subcontractors take affirmative action to employ and advance in employment individuals without regard to race, color, religion, sex, national origin, protected veteran status or disability.**

20. Conflicts of Interest. If within 3 years after the execution of this Agreement, Speaker hires as an employee or agent any ASU representative who was significantly involved in negotiating, securing, drafting, or creating this Agreement, then ASU may cancel this Agreement as provided in ARS § 38-511. Notice is also given of ARS §§ 41-2517 and 41-753.

21. Arbitration in Superior Court. The parties agree to arbitrate disputes filed in Arizona Superior Court that are subject to mandatory arbitration pursuant to ARS § 12-133. ARS § 12-1518 requires this provision in all ASU agreements.

22. Records. To the extent required by ARS § 35-214, the non-ASU parties to this Agreement will retain all records relating to this Agreement. Speaker will make those records available at all reasonable times for inspection and audit by ASU or the Auditor General of Arizona during the term of this Agreement and for 5 years after the completion of this Agreement. The records will be provided at ASU in Tempe, Arizona, or another location designated by ASU on reasonable notice to Speaker.

23. Failure of Legislature to appropriate. In accordance with ARS § 35-154, if ASU's performance under this Agreement depends on the appropriation of funds by the Arizona Legislature, and if the Legislature fails to appropriate the funds necessary for performance, ASU may provide written notice of this to Speaker and cancel this Agreement without further obligation of ASU. Appropriation is a legislative act and is beyond ASU's control.



24. Weapons, Explosives, and Fireworks. ASU prohibits the use, possession, display or storage of any weapon, explosive device or fireworks on all land and buildings owned, leased, or under the control of ASU or its affiliated entities, in all ASU residential facilities (whether managed by ASU or another entity), in all ASU vehicles, and at all ASU or ASU affiliate sponsored events and activities, except as provided in ARS § 12-781, or unless written permission is given by ASU's Police Chief or a designated representative. Speaker will notify all persons or entities who are employees, officers, subcontractors, consultants, agents, guests, invitees or licensees of Speaker of this policy, and Speaker will enforce this policy against all such persons and entities. ASU's policy is at [asu.edu/aad/manuals/pdp/pdp201-05.html](http://asu.edu/aad/manuals/pdp/pdp201-05.html).

25. Privacy; Educational Records. Student educational records are protected by the U.S. Family Educational Rights and Privacy Act, 20 U.S.C. § 1232g (FERPA). Speaker will not require any ASU students or employees to waive any privacy rights (including under FERPA or the European Union's General Data Protection Regulation (GDPR)) as a condition for receipt of any educational services, and any attempt to do so will be void. Speaker will comply with FERPA and will not access or make any disclosures of student educational records to third parties without prior notice to and consent from ASU or as otherwise provided by law. If this Agreement requires or permits Speaker to access or release any student records, then, for purposes of this Agreement only, ASU-designates Speaker as a "school official" for ASU under FERPA, as defined in FERPA and its implementing regulations. In addition, any access or disclosures of student educational records by Speaker or any Speaker Parties must comply with ASU's definition of legitimate educational purpose. If Speaker violates this section, Speaker will immediately notify ASU.

26. Authorized Presence Requirements. As required by ARS § 41-4401, ASU is prohibited from awarding a contract to any contractor or subcontractor that fails to comply with ARS § 23-214(A) (verification of employee eligibility through the e-verify program). Speaker warrants that it and its subcontractors comply fully with all applicable immigration laws, rules, and regulations that relate to their employees and their compliance with ARS § 23-214(A). A breach of this warranty will be a material breach of this Agreement that is subject to penalties up to and including termination. ASU retains the right to inspect the papers of any contractor or subcontractor employee hereunder to ensure compliance with this warranty.

27. Tobacco-Free University. ASU is tobacco-free. For details visit [asu.edu/tobaccofree](http://asu.edu/tobaccofree).

28. Authority. If an individual or entity signs below on behalf of Speaker, such signatory represents and warrants that he/she/it has full and current authority to act and contract on behalf of Speaker and obligate Speaker, and that this Agreement is binding upon and enforceable against Speaker and the undersigned (if not Speaker) in accordance with its terms.

PRINT NAME OF SPEAKER OR  
AGENT OF SPEAKER

ARIZONA BOARD OF REGENTS FOR AND ON  
BEHALF OF ARIZONA STATE UNIVERSITY

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Signatory Name

\_\_\_\_\_  
Signatory Name

\_\_\_\_\_  
Signatory Title

\_\_\_\_\_  
Signatory Title

\_\_\_\_\_  
Date Signed

\_\_\_\_\_  
Date Signed



# Exhibit C



## SPEAKER/ARTIST/PERFORMER AGREEMENT

This Agreement is entered into as of \_\_\_\_\_, 20\_\_\_\_, between the Arizona Board of Regents acting for and on behalf of Arizona State University (ASU) and \_\_\_\_\_<sup>1</sup> (Speaker), or \_\_\_\_\_, a \_\_\_\_\_, <sup>2</sup> as the authorized agent for Speaker. If Speaker is represented by an authorized agent, then references to Speaker herein will also refer to the authorized agent, where appropriate.

1. Engagement; Event. ASU hereby engages Speaker to personally provide the following services, and Speaker agrees to personally provide to ASU the following services (the Presentation) at the following Event (the Event):

Event/Location: \_\_\_\_\_

Dates and times of Event: \_\_\_\_\_

Speaker's Presentation schedule: \_\_\_\_\_

Title of Speaker's Presentation: \_\_\_\_\_

Speaker's hospitality requirements: \_\_\_\_\_

Speaker's technical requirements: \_\_\_\_\_

2. Notice. Any communication or notice required under this Agreement will be in writing and may either be given by personal delivery or sent, in all cases, against receipt, addressed to the following:

If to ASU:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Attn: \_\_\_\_\_

Email: \_\_\_\_\_

If to Speaker:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Attn: \_\_\_\_\_

Email: \_\_\_\_\_

Notice will be deemed to be received upon actual receipt (or refusal of receipt) by the receiving party.

3. Speaker Warranty. Speaker warrants that at all times during the Event, Speaker will personally provide Speaker's best professional efforts. Speakers' professional credentials are such that Speaker can provide the Presentation in a knowledgeable and professional manner.

4. Payment. ASU will pay Speaker the all-inclusive fee of \$\_\_\_\_\_ upon completion of the Presentation. Speaker will complete a Substitute W-9 Form, which must be signed by the person or entity to whom payment is to be issued. ASU will issue all payment in accordance with the information on the completed and signed Substitute W-9 Form.

5. Acceptance of Agreement. Speaker will accept and return this Agreement to ASU no later than \_\_\_\_\_, 20\_\_\_\_. In all events, this Agreement must be fully signed and received at ASU at least one week prior to the Event to allow on-time payment. This Agreement must be fully signed before payment can be processed. Please return a signed copy of this Agreement to ASU at the address set forth in Section 2.

<sup>1</sup> If an authorized agent is signing, please be sure to fill in the speaker name as well.

<sup>2</sup> Include full legal name of authorized agent, state of formation, and type of entity (i.e.; ABC, Inc., an Arizona Corporation.)

6. Press Materials. Speaker will timely supply all press/promotion material requested by ASU.
7. Indemnity. Speaker will indemnify, defend, save and hold ASU harmless for, from, and against, any all claims, demands, suits, costs and damages (including reasonable attorneys' fees) that ASU may incur by reason of any: (a) actual or alleged infringement or violation of any copyright, or other proprietary right by Speaker; (b) claim for damages arising from Speaker's Presentation; or (c) any of Speaker's costs and liabilities arising out of the Presentation or Event, including without limitation: travel and meal expenses; union dues; taxes; agents' commissions or other expenses or obligations; damages to Speaker's equipment or materials; compensation to third parties engaged by Speaker; compensation for lost or stolen equipment or materials; workers compensation or other insurance; and any expenses not preapproved by ASU in writing.
8. Indemnification and Liability Limitation. Because ASU is a public institution, any indemnification, liability limitation, releases, or hold harmless provisions are limited as required by Arizona law, including Article 9, Sections 5 and 7 of the Arizona Constitution and Arizona Revised Statutes (ARS) §§ 35-154 and 41-621. ASU's liability under any claim for indemnification is limited to claims for property damage, personal injury, or death to the extent caused by acts or omissions of ASU.
9. Force Majeure. Neither Speaker nor ASU shall be liable to each other for failure to perform hereunder if failure is caused by civil tumult, strike, epidemic, or any other cause beyond the reasonable control of the parties (Force Majeure). The ingestion of alcohol, opioids, illegal substances, or the like, will not be deemed an event of Force Majeure. If the Event or Presentation is cancelled due to an event of Force Majeure, the parties will make reasonable efforts to reschedule, if feasible.
10. Cancellation. If either party cancels this Agreement or the Presentation, other than due to an event of Force Majeure the other party will have all remedies afforded by law and in equity. In addition, if ASU cancels the Event or the Presentation, ASU will reimburse Speaker for reasonable expenses incurred in preparation for the Presentation up to the date ASU provides notice of cancellation.
11. Liability; Insurance. Speaker, at its expense, will procure and maintain, for the duration of the Event, a policy of commercial general liability insurance in an amount of not less than \$1,000,000, single limit, against claims for bodily injury, death and property damage occurring in connection with the Event and the Presentation. This insurance must name the Arizona Board of Regents, Arizona State University, and the State of Arizona as additional insureds. Speaker must provide ASU with a certificate evidencing this insurance coverage no later than 10 days prior to the Presentation.
12. No Assignment. Neither party may assign any rights or obligations under this Agreement without the prior written consent of the other party.
13. Entire Agreement. This Agreement constitutes the entire agreement and understanding of the parties with respect to its subject matter. No prior or contemporaneous agreement or understanding will be effective.
14. Governing Law and Venue. This Agreement will be governed by the laws of the State of Arizona. ASU's obligations are subject to the regulations/policies of the Arizona Board of Regents. Any proceeding arising out of or relating to this Agreement will be conducted in Maricopa County, Arizona. Speaker consents to such jurisdiction, and waives objection to venue or convenience of forum.
15. Independent Contractor. Speaker is an independent contractor and is not an employee of ASU. Neither Speaker nor any personnel of Speaker will for any purpose be considered employees or agents of ASU. Speaker assumes full responsibility for the actions of Speaker's personnel, and is solely responsible for their supervision, direction and control, payment of salary and expenses (including withholding income taxes and social security), worker's compensation, and disability benefits.

16. Recordings; Use of Name and Likeness. Both parties may record the Presentation for internal records. No recording of the Presentation, either visual or audio, will be made by or on behalf of Speaker for the purposes of profit or significant distribution without prior written approval from ASU. ASU may require an additional payment for the privilege, and may require Speaker to sign a filming/recording agreement. ASU may record the Presentation on video tape, audio tape, film, photograph or any other medium, use Speaker's name, likeness, voice and biographical material in connection with these recordings for purposes within the ASU mission, including education and research, and exhibit or distribute the recording in whole or in part without restrictions or limitation for any educational or promotional purpose that ASU deems appropriate.

17. No Revenue Sharing. Speaker will not participate in any revenues associated with the Presentation or Event. This includes: sponsorship, ticketing, ticketing fees, ASU concessions revenues, and any other revenue streams that may be associated with the Event.

18. Non-discrimination. The parties will comply with all applicable laws, rules, regulations, and executive orders governing equal employment opportunity, immigration, and nondiscrimination, including the Americans with Disabilities Act. **If applicable, the parties will abide by the requirements of 41 CFR §§ 60-1.4(a), 60-300.5(a) and 60-741.5(a). These regulations prohibit discrimination against qualified individuals based on their status as protected veterans or individuals with disabilities, and prohibit discrimination against all individuals based on their race, color, religion, sex, or national origin. Moreover, these regulations require that covered prime contractors and subcontractors take affirmative action to employ and advance in employment individuals without regard to race, color, religion, sex, national origin, protected veteran status or disability.**

19. Conflicts of Interest. If within 3 years after the execution of this Agreement, Speaker hires as an employee or agent any ASU representative who was significantly involved in negotiating, securing, drafting, or creating this Agreement, then ASU may cancel this Agreement as provided in ARS § 38-511. Notice is also given of ARS §§ 41-2517 and 41-753.

20. Arbitration in Superior Court. The parties agree to arbitrate disputes filed in Arizona Superior Court that are subject to mandatory arbitration pursuant to ARS § 12-133. ARS § 12-1518 requires this provision in all ASU agreements.

21. Records. To the extent required by ARS § 35-214, the non-ASU parties to this Agreement will retain all records relating to this Agreement. Speaker will make those records available at all reasonable times for inspection and audit by ASU or the Auditor General of Arizona during the term of this Agreement and for 5 years after the completion of this Agreement. The records will be provided at ASU in Tempe, Arizona, or another location designated by ASU on reasonable notice to Speaker.

22. Failure of Legislature to appropriate. In accordance with ARS § 35-154, if ASU's performance under this Agreement depends on the appropriation of funds by the Arizona Legislature, and if the Legislature fails to appropriate the funds necessary for performance, ASU may provide written notice of this to Speaker and cancel this Agreement without further obligation of ASU. Appropriation is a legislative act and is beyond ASU's control.

23. Weapons, Explosives, and Fireworks. ASU prohibits the use, possession, display or storage of any weapon, explosive device or fireworks on all land and buildings owned, leased, or under the control of ASU or its affiliated entities, in all ASU residential facilities (whether managed by ASU or another entity), in all ASU vehicles, and at all ASU or ASU affiliate sponsored events and activities, except as provided in ARS § 12-781, or unless written permission is given by ASU's Police Chief or a designated representative. Speaker will notify all persons or entities who are employees, officers, subcontractors, consultants, agents, guests, invitees or licensees of Speaker of this policy, and Speaker will enforce this policy against all such persons and entities. ASU's policy is at [asu.edu/aad/manuals/pdp/pdp201-05.html](http://asu.edu/aad/manuals/pdp/pdp201-05.html).

24. Privacy; Educational Records. Student educational records are protected by the U.S. Family Educational Rights and Privacy Act, 20 U.S.C. § 1232g (FERPA). Speaker will not require any ASU students or employees to waive any privacy rights (including under FERPA or the European Union’s General Data Protection Regulation (GDPR)) as a condition for receipt of any educational services, and any attempt to do so will be void. Speaker will comply with FERPA and will not access or make any disclosures of student educational records to third parties without prior notice to and consent from ASU or as otherwise provided by law. If this Agreement requires or permits Speaker to access or release any student records, then, for purposes of this Agreement only, ASU designates Speaker as a “school official” for ASU under FERPA, as defined in FERPA and its implementing regulations. In addition, any access or disclosures of student educational records by Speaker or any Speaker Parties must comply with ASU’s definition of legitimate educational purpose. If Speaker violates this section, Speaker will immediately notify ASU.

25. Authorized Presence Requirements. As required by ARS § 41-4401, ASU is prohibited from awarding a contract to any contractor or subcontractor that fails to comply with ARS § 23-214(A) (verification of employee eligibility through the e-verify program). Speaker warrants that it and its subcontractors comply fully with all applicable immigration laws, rules, and regulations that relate to their employees and their compliance with ARS § 23-214(A). A breach of this warranty will be a material breach of this Agreement that is subject to penalties up to and including termination. ASU retains the right to inspect the papers of any contractor or subcontractor employee hereunder to ensure compliance with this warranty.

26. Tobacco-Free University. ASU is tobacco-free. For details visit [asu.edu/tobaccofree](http://asu.edu/tobaccofree).

27. Authority. If an individual or entity signs below on behalf of Speaker, such signatory represents and warrants that he/she/it has full and current authority to act and contract on behalf of Speaker and obligate Speaker, and that this Agreement is binding upon and enforceable against Speaker and the undersigned (if not Speaker) in accordance with its terms.

PRINT NAME OF SPEAKER OR  
AGENT OF SPEAKER

ARIZONA BOARD OF REGENTS FOR AND ON  
BEHALF OF ARIZONA STATE UNIVERSITY

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Signatory Name

\_\_\_\_\_  
Signatory Name

\_\_\_\_\_  
Signatory Title

\_\_\_\_\_  
Signatory Title

\_\_\_\_\_  
Date Signed

\_\_\_\_\_  
Date Signed

# Exhibit D





## SPEAKER/ARTIST/PERFORMER AGREEMENT

This Agreement is entered into as of March 23<sup>rd</sup>, 2018, between the Arizona Board of Regents acting for and on behalf of Arizona State University (ASU) and American Muslims for Palestine (AMP), or Taher Herzallah, a employee of AMP,<sup>2</sup> as the authorized agent for Speaker. If Speaker is represented by an authorized agent, then references to Speaker herein will also refer to the authorized agent, where appropriate.

1. **Engagement; Event.** ASU hereby engages Speaker to personally provide the following services, and Speaker agrees to personally provide to ASU the following services (the Presentation) at the following Event (the Event):

Event/Location: Pima Auditorium

Dates and times of ~~Event~~: April 3<sup>rd</sup> 2018

Speaker's Presentation schedule: 6-7:30

Title of Speaker's Presentation: BDS and the pursuit of Justice in Palestine

Speaker's hospitality requirements: Hotel, flight

Speaker's technical requirements: projector to display presentation

2. **Notice.** Any communication or notice required under this Agreement will be in writing and may either be given by personal delivery or sent, in all cases, against receipt, addressed to the following:

If to ASU:

ATTN Zain Siddiqi

2934 E Mahogany Pl

Chandler, AZ 85249

Attn: Zain Siddiqi

Email: zainsiddiqi@ah@gmail.com

If to Speaker:

ATTN Taher Herzallah

6404 Seven Corners Pl #N

Falls Church, VA 22044

Attn: Taher Herzallah

Email: taher@ampalestine.org

Notice will be deemed to be received upon actual receipt (or refusal of receipt) by the receiving party.

3. **Speaker Warranty.** Speaker warrants that at all times during the Event, Speaker will personally provide Speaker's best professional efforts. Speakers' professional credentials are such that Speaker can provide the Presentation in a knowledgeable and professional manner.

4. **Payment.** ASU will pay Speaker the all-inclusive fee of \$ 0 upon completion of the Presentation. Speaker will complete a Substitute W-9 Form, which must be signed by the person or entity to whom payment is to be issued. ASU will issue all payment in accordance with the information on the completed and signed Substitute W-9 Form.

5. **Acceptance of Agreement.** Speaker will accept and return this Agreement to ASU no later than 03/26, 2018. In all events, this Agreement must be fully signed and received at ASU at least one week prior to the Event to allow on-time payment. This Agreement must be fully signed before payment can be processed. Please return a signed copy of this Agreement to ASU at the address set forth in Section 2.

<sup>1</sup> If an authorized agent is signing, please be sure to fill in the speaker name as well.

<sup>2</sup> Include full legal name of authorized agent, state of formation, and type of entity (i.e.; ABC, Inc., an Arizona Corporation.)

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vehicles, and at all ASU or ASU affiliate sponsored events and activities, except as provided in ARS § 12-781, or unless written permission is given by ASU's Police Chief or a designated representative. Speaker will notify all persons or entities who are employees, officers, subcontractors, consultants, agents, guests, invitees or licensees of Speaker of this policy, and Speaker will enforce this policy against all such persons and entities. ASU's policy is at [asu.edu/aad/manuals/pdp/pdp201-05.html](http://asu.edu/aad/manuals/pdp/pdp201-05.html).

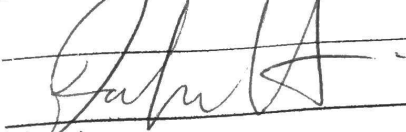
24. Privacy, Educational Records. Student educational records are protected by the U.S. Family Educational Rights and Privacy Act, 20 U.S.C. § 1232g (FERPA). Speaker will not require any ASU students or employees to waive any privacy rights (including under FERPA or the European Union's General Data Protection Regulation (GDPR)) as a condition for receipt of any educational services, and any attempt to do so will be void. Speaker will comply with FERPA and will not access or make any disclosures of student educational records to third parties without prior notice to and consent from ASU or as otherwise provided by law. If this Agreement requires or permits Speaker to access or release any student records, then, for purposes of this Agreement only, ASU designates Speaker as a "school official" for ASU under FERPA, as defined in FERPA and its implementing regulations. In addition, any access or disclosures of student educational records by Speaker or any Speaker Parties must comply with ASU's definition of legitimate educational purpose. If Speaker violates this section, Speaker will immediately notify ASU.

25. Authorized Presence Requirements. As required by ARS § 41-4401, ASU is prohibited from awarding a contract to any contractor or subcontractor that fails to comply with ARS § 23-214(A) (verification of employee eligibility through the e-verify program). Speaker warrants that it and its subcontractors comply fully with all applicable immigration laws, rules, and regulations that relate to their employees and their compliance with ARS § 23-214(A). A breach of this warranty will be a material breach of this Agreement that is subject to penalties up to and including termination. ASU retains the right to inspect the papers of any contractor or subcontractor employee hereunder to ensure compliance with this warranty.

26. Tobacco-Free University. ASU is tobacco-free. For details visit [asu.edu/tobaccofree](http://asu.edu/tobaccofree).

27. Authority. If an individual or entity signs below on behalf of Speaker, such signatory represents and warrants that he/she/it has full and current authority to act and contract on behalf of Speaker and obligate Speaker, and that this Agreement is binding upon and enforceable against Speaker and the undersigned (if not Speaker) in accordance with its terms.

PRINT NAME OF SPEAKER OR  
AGENT OF SPEAKER

  
Signature

Taher Herzallah  
Signatory Name

Assoc. Director of Outreach  
Signatory Title

3/23/18  
Date Signed

ARIZONA BOARD OF REGENTS FOR AND ON  
BEHALF OF ARIZONA STATE UNIVERSITY

  
Signature

Zain Siddiqi  
Signatory Name

Vice President of Muslim Students Association  
Signatory Title

3/26/2018  
Date Signed





## SPEAKER/ARTIST/PERFORMER AGREEMENT

This Agreement is entered into as of March 23, 2018, between the Arizona Board of Regents acting for and on behalf of Arizona State University (ASU) and HATEM BAZIAN (Speaker), or \_\_\_\_\_, a \_\_\_\_\_, <sup>2</sup> as the authorized agent for Speaker. If Speaker is represented by an authorized agent, then references to Speaker herein will also refer to the authorized agent, where appropriate.

1. **Engagement; Event.** ASU hereby engages Speaker to personally provide the following services, and Speaker agrees to personally provide to ASU the following services (the Presentation) at the following Event (the Event):

Event/Location: Pima Auditorium, Memorial Union

Dates and times of Event: April 3rd

Speaker's Presentation schedule: 6-7:30

Title of Speaker's Presentation: BDS & the Pursuit of Justice in Palestine

Speaker's hospitality requirements: Hotel, Flight

Speaker's technical requirements: Projector / Screen

2. **Notice.** Any communication or notice required under this Agreement will be in writing and may either be given by personal delivery or sent, in all cases, against receipt, addressed to the following:

If to ASU:

2934 E Mahogany Pl, Chandler, AZ 85249

If to Speaker:

6404 Seven Corners Pl #N  
FALLS CHURCH, VA 22044

Attn: Zain Siddiqi

Email: zainsiddiqiahi@gmail.com

Attn: HATEM BAZIAN

Email: hbazian@zaytuna.edu

Notice will be deemed to be received upon actual receipt (or refusal of receipt) by the receiving party.

3. **Speaker Warranty.** Speaker warrants that at all times during the Event, Speaker will personally provide Speaker's best professional efforts. Speakers' professional credentials are such that Speaker can provide the Presentation in a knowledgeable and professional manner.

4. **Payment.** ASU will pay Speaker the all-inclusive fee of \$ 0 upon completion of the Presentation. Speaker will complete a Substitute W-9 Form, which must be signed by the person or entity to whom payment is to be issued. ASU will issue all payment in accordance with the information on the completed and signed Substitute W-9 Form.

5. **Acceptance of Agreement.** Speaker will accept and return this Agreement to ASU no later than 03/26, 2018. In all events, this Agreement must be fully signed and received at ASU at least one week prior to the Event to allow on-time payment. This Agreement must be fully signed before payment can be processed. Please return a signed copy of this Agreement to ASU at the address set forth in Section 2.

<sup>1</sup> If an authorized agent is signing, please be sure to fill in the speaker name as well.  
<sup>2</sup> Include full legal name of authorized agent, state of formation, and type of entity (i.e.: ABC, Inc., an Arizona Corporation.)

vehicles, and at all ASU or ASU affiliate sponsored events and activities, except as provided in ARS § 12-781, or unless written permission is given by ASU's Police Chief or a designated representative. Speaker will notify all persons or entities who are employees, officers, subcontractors, consultants, agents, guests, invitees or licensees of Speaker of this policy, and Speaker will enforce this policy against all such persons and entities. ASU's policy is at [asu.edu/aad/manuals/pdp/pdp201-05.html](http://asu.edu/aad/manuals/pdp/pdp201-05.html).

24. Privacy; Educational Records. Student educational records are protected by the U.S. Family Educational Rights and Privacy Act, 20 U.S.C. § 1232g (FERPA). Speaker will not require any ASU students or employees to waive any privacy rights (including under FERPA or the European Union's General Data Protection Regulation (GDPR)) as a condition for receipt of any educational services, and any attempt to do so will be void. Speaker will comply with FERPA and will not access or make any disclosures of student educational records to third parties without prior notice to and consent from ASU or as otherwise provided by law. If this Agreement requires or permits Speaker to access or release any student records, then, for purposes of this Agreement only, ASU designates Speaker as a "school official" for ASU under FERPA, as defined in FERPA and its implementing regulations. In addition, any access or disclosures of student educational records by Speaker or any Speaker Parties must comply with ASU's definition of legitimate educational purpose. If Speaker violates this section, Speaker will immediately notify ASU.

25. Authorized Presence Requirements. As required by ARS § 41-4401, ASU is prohibited from awarding a contract to any contractor or subcontractor that fails to comply with ARS § 23-214(A) (verification of employee eligibility through the e-verify program). Speaker warrants that it and its subcontractors comply fully with all applicable immigration laws, rules, and regulations that relate to their employees and their compliance with ARS § 23-214(A). A breach of this warranty will be a material breach of this Agreement that is subject to penalties up to and including termination. ASU retains the right to inspect the papers of any contractor or subcontractor employee hereunder to ensure compliance with this warranty.

26. Tobacco-Free University. ASU is tobacco-free. For details visit [asu.edu/tobaccofree](http://asu.edu/tobaccofree).

27. Authority. If an individual or entity signs below on behalf of Speaker, such signatory represents and warrants that he/she/it has full and current authority to act and contract on behalf of Speaker and obligate Speaker, and that this Agreement is binding upon and enforceable against Speaker and the undersigned (if not Speaker) in accordance with its terms.

PRINT NAME OF SPEAKER OR  
AGENT OF SPEAKER

Hatem Bazian

Signature

HATEM BAZIAN

Signatory Name

Professor and Chairman of AMP

Signatory Title

03/23/18

Date Signed

ARIZONA BOARD OF REGENTS FOR AND ON  
BEHALF OF ARIZONA STATE UNIVERSITY

Zain Siddiqi

Signature

Zain Siddiqi

Signatory Name

Vice President of the Muslim Students Association

Signatory Title

3/26/2018

Date Signed

# Exhibit E



**FOR MORE INFORMATION, CONTACT:**

Bret Hovell  
480-965-3502

**FOR IMMEDIATE RELEASE**

**ASU Statement on CAIR-AZ Lawsuit**

**Tempe, Ariz., March 2, 2018** — This morning, The Arizona Board of Regents and Arizona State University were alerted via a media inquiry to a lawsuit being filed by the Arizona chapter of the Council on American-Islamic Relations.

ASU would have been happy to clear up this simple misunderstanding before a lawsuit was filed.

State law requires:

“A public entity may not enter into a contract with a company to acquire or dispose of services, supplies, information technology or construction unless the contract includes a written certification that the company is not currently engaged in, and agrees for the duration of the contract to not engage in, a boycott of Israel.”

This is reflected in ASU's standard provision on this topic, as required for public entities under state law.

However, ASU does not believe that this law applies to this kind of engagement because the contract was to be with a student group. Student groups are not public entities. It was a simple mistake that the ASU form containing the certification was used. The certification was not needed.

###

# Exhibit F

**Ensign, Drew**

---

**From:** Lisa Loo <lisaloo@asu.edu>  
**Sent:** Monday, March 05, 2018 6:45 PM  
**To:** raees@kellywarnerlaw.com  
**Subject:** American Muslims for Palestine and Dr. Hatem Bazian v. ABOR

Mr. Mohamed:

My name is Lisa Loo and I am with the ASU Office of General Counsel. I understand you are local counsel for the plaintiffs in the above-referenced litigation matter. I called your office on Friday and today and was advised today that you are out of the office at a conference and will not be available until you return to the office on the 12<sup>th</sup> of March. Is it possible for you to call me before your return to the office, perhaps during a break in your conference?

My direct office line is 480-965-4552 and the general office line is 480-965-4550. The general office line is the best way to reach me during business hours and my direct line can be used after business hours.

Thank you and I look forward to speaking with you.

Regards,  
Lisa



# Exhibit G

**Ensign, Drew**

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**From:** Lisa Loo <lisaloo@asu.edu>  
**Sent:** Tuesday, March 06, 2018 9:46 AM  
**To:** Carolyn Homer  
**Cc:** Gadeir Abbas; Lena F. Masri, Esq.; raees@kellywarnerlaw.com; Anne Griffith; Jose Cardenas (General Counsel)  
**Subject:** Re: American Muslims for Palestine v. Arizona State University et. al, 2:18-cv-00670

I think that's a good idea. If you have a number you can circulate that would be great. Thanks

Sent from my iPhone

On Mar 6, 2018, at 9:23 AM, Carolyn Homer <[cHomer@cair.com](mailto:cHomer@cair.com)> wrote:

Hello Ms. Loo,

It may be better to set up a conference line everyone can dial into this afternoon. Do you want to circulate an invite, or shall I?

Also, I apologize, I failed to attached the issued summons on ASU in my prior email. I added it here.

Carolyn

---

**From:** Lisa Loo <[lisaloo@asu.edu](mailto:lisaloo@asu.edu)>  
**Sent:** Tuesday, March 6, 2018 11:03 AM  
**To:** Carolyn Homer <[cHomer@cair.com](mailto:cHomer@cair.com)>  
**Cc:** Gadeir Abbas <[gAbbas@cair.com](mailto:gAbbas@cair.com)>; Lena F. Masri, Esq. <[lmMasri@cair.com](mailto:lmMasri@cair.com)>; raees@kellywarnerlaw.com; Anne Griffith <[anne@kellywarnerlaw.com](mailto:anne@kellywarnerlaw.com)>; Jose Cardenas (General Counsel) <[jcardenas@asu.edu](mailto:jcardenas@asu.edu)>  
**Subject:** Re: American Muslims for Palestine v. Arizona State University et. al, 2:18-cv-00670

Ms. Homer, thank you. This afternoon, 2 pm AZ time or anytime thereafter works. I've asked our General Counsel, Jose Cardenas to join us. We can call you. What is a good number to call?

Sent from my iPhone

On Mar 6, 2018, at 8:19 AM, Carolyn Homer <[cHomer@cair.com](mailto:cHomer@cair.com)> wrote:

Dear Ms. Loo,

We represent Plaintiffs American Muslims for Palestine and Dr. Hatem Bazian in this action. We understand that you've been trying to get ahold of Mr. Raees Mohammed, who is unavailable. We are available today for an initial discussion of the case – we'll plan to call you this afternoon.

You should be receiving service copies of the case documents today, but in advance of that, please find attached courtesy electronic documents of the initial case filings. These include:



- Complaint
- Civil Cover Sheet
- AMP's Corporate Disclosure Statement
- Issued Summons on Mr. Brnovich
- Application for Preliminary Injunction and supporting papers, including:
  - Memorandum in Support
  - Declaration of Mr. Herzallah
  - Declaration of Dr. Bazian
  - Declaration of Mr. Abbas
  - Proposed Order
- Request for Hearing on PI motion
- General Court Notices:
  - Availability of US Magistrate Judge
  - Initial Discovery Pilot Program
  - General Order on Rule 12 Motions
  - General Order on Rule 4 Service

Sincerely,

Carolyn M. Homer

*Trial Attorney*

<image001.png>

453 New Jersey Ave, SE

Washington, DC 20003

Main: 202.742.6420

Dir: 202.516.4724

Fax: 202.379.3317

[www.cair.com](http://www.cair.com)

<001 2018.03.01 Complaint.pdf>

<001-1 2018.03.01 Civil Cover Sheet.pdf>

<002 2018.03.01 Corporate Disclosure Statement.pdf>

<004 2018.03.01 Notice of Availability of a US Magistrate Judge.pdf>

<005 2018.03.01 Notice to Parties - Mandatory Initial Discovery Pilot Project.pdf>

<006 2018.03.01 Summons in a Civil Action - Brnovich - Issued.pdf>

<007 2018.03.02 General Order Rule 12 Motions.pdf>

<008 2018.03.02 General Order Rule 4 Service.pdf>

<009 2018.03.02 Notice of Motion and Application for Preliminary Injunction - all supporting docs.pdf>

<010 2018.03.02 Request for Hearing on App for Preliminary Injunction.pdf>

<006-2 2018.03.01 Summons in a Civil Action - ASU - Issued.pdf>

# Exhibit H

## Ensign, Drew

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**From:** Carolyn Homer <cHomer@cair.com>  
**Sent:** Thursday, March 15, 2018 5:41 PM  
**To:** Ensign, Drew; Lena F. Masri, Esq.; Gadeir Abbas; 'Cassiemarkie Sporrer'; 'Lisa Loo'  
**Cc:** 'Jose Cardenas (General Counsel)'; raees@kellywarnerlaw.com; Roysden, Beau; Skinner, OH; 'Nancy Tribbensee'  
**Subject:** Re: American Muslims for Palestine v. Arizona State University et. al, 2:18-cv-00670

That was already corrected. Thanks! We will file shortly.

---

**From:** Ensign, Drew <Drew.Ensign@azag.gov>  
**Sent:** Thursday, March 15, 2018 8:39:53 PM  
**To:** Lena F. Masri, Esq.; Gadeir Abbas; 'Cassiemarkie Sporrer'; 'Lisa Loo'  
**Cc:** 'Jose Cardenas (General Counsel)'; Carolyn Homer; raees@kellywarnerlaw.com; Roysden, Beau; Skinner, OH; 'Nancy Tribbensee'  
**Subject:** RE: American Muslims for Palestine v. Arizona State University et. al, 2:18-cv-00670

Thanks, Lena. You have permission on behalf of the AG and I just confirmed that ABOR/ASU also signs off on this.

One quick note – Lisa had previously sent a suggestion to correct <Defendants> to <Plaintiffs> before “Application for a Preliminary Injunction” in the proposed order. Can you get that change incorporated in the proposed order if it has not been already?

Thanks,  
Drew

---

**From:** Lena F. Masri, Esq. [mailto:lmasri@cair.com]  
**Sent:** Thursday, March 15, 2018 5:30 PM  
**To:** Ensign, Drew; Gadeir Abbas; 'Cassiemarkie Sporrer'; 'Lisa Loo'  
**Cc:** 'Jose Cardenas (General Counsel)'; Carolyn Homer; raees@kellywarnerlaw.com; Roysden, Beau; Skinner, OH; 'Nancy Tribbensee'  
**Subject:** RE: American Muslims for Palestine v. Arizona State University et. al, 2:18-cv-00670

Hi Drew,

We're ok with this change. Just confirming that we have the go ahead to file this? Thanks.

Lena F. Masri, Esq.  
**National Litigation Director**  
**Acting Civil Rights Director**



453 New Jersey Ave, SE  
Washington, DC 20003  
Tel: 202.742.6420 Fax: 202.379-3317

Cell: 248.390.9784

[www.cair.com](http://www.cair.com)

[www.lenamasri.com](http://www.lenamasri.com)

Licensed to practice in MI, NY and DC.

*[This email may contain confidential and privileged material for the sole use of the intended recipient(s). Any review, use, distribution or disclosure by others is strictly prohibited. If you are not the intended recipient (or authorized to receive for the recipient), please contact the sender by reply email and delete all copies of this message.]*

[WEB](#) | [FACEBOOK](#) | [TWITTER](#)

---

**From:** Ensign, Drew [<mailto:Drew.Ensign@azag.gov>]

**Sent:** Thursday, March 15, 2018 8:23 PM

**To:** Gadeir Abbas <[gAbbas@cair.com](mailto:gAbbas@cair.com)>; 'Cassiemarkie Sporrer' <[Cassiemarkie.Sporrer@asu.edu](mailto:Cassiemarkie.Sporrer@asu.edu)>; 'Lisa Loo' <[lisaloo@asu.edu](mailto:lisaloo@asu.edu)>

**Cc:** 'Jose Cardenas (General Counsel)' <[jcardenas@asu.edu](mailto:jcardenas@asu.edu)>; Carolyn Homer <[cHomer@cair.com](mailto:cHomer@cair.com)>; Lena F. Masri, Esq. <[lmMasri@cair.com](mailto:lmMasri@cair.com)>; [raees@kellywarnerlaw.com](mailto:raees@kellywarnerlaw.com); Roysden, Beau <[Beau.Roysden@azag.gov](mailto:Beau.Roysden@azag.gov)>; Skinner, OH <[O.H.Skinner@azag.gov](mailto:O.H.Skinner@azag.gov)>; 'Nancy Tribbensee' <[Nancy.Tribbensee@azregents.edu](mailto:Nancy.Tribbensee@azregents.edu)>

**Subject:** RE: American Muslims for Palestine v. Arizona State University et. al, 2:18-cv-00670

On further review, we suggest a non-substantive change to the text of the proposed order for clarity (attached, change tracked). Please let us know if you have any questions about this or anything else.

Sincerely,  
Drew

---

**From:** Ensign, Drew

**Sent:** Thursday, March 15, 2018 2:39 PM

**To:** 'Gadeir Abbas'; Cassiemarkie Sporrer; Lisa Loo

**Cc:** Jose Cardenas (General Counsel); Carolyn Homer; Lena F. Masri, Esq.; [raees@kellywarnerlaw.com](mailto:raees@kellywarnerlaw.com); Roysden, Beau; Skinner, OH; Nancy Tribbensee

**Subject:** RE: American Muslims for Palestine v. Arizona State University et. al, 2:18-cv-00670

Thanks, Gadeir. The stipulation looks good to the AG's office with a slight tweak: removing "Proposed" before "Joint Stipulation" where it appears on page 1.

For the joint motion, I think we probably need a separate Proposed Order that implements the terms of the stipulation in the form of a judicial order. I took a quick stab at one (attached), along with a tweak to the joint motion to reference the proposed order (attached, edits tracked).

I think this structure may be easiest for the Court by separating clearly what the parties have agreed to (the stipulation) and the actions the Court is taking, which are reflected in the Proposed Order. This hopefully makes it easier for the Court by providing a quick order it can sign, while still having the full stipulation entered into the record and blessed by the Court.

We am not wedded to this approach so let us know if you prefer a different one. If this works, please also let us know if you have any edits or questions about the proposed order.

Drew

---

**From:** Gadeir Abbas [<mailto:gAbbas@cair.com>]

**Sent:** Thursday, March 15, 2018 12:53 PM

**To:** Cassiemarie Sporrer; Lisa Loo

**Cc:** Ensign, Drew; Jose Cardenas (General Counsel); Carolyn Homer; Lena F. Masri, Esq.; [raees@kellywarnerlaw.com](mailto:raees@kellywarnerlaw.com); Roysden, Beau; Skinner, OH; Nancy Tribbensee

**Subject:** Re: American Muslims for Palestine v. Arizona State University et. al, 2:18-cv-00670

All,

My apologies for the delay. I'm attaching the joint motion I propose filing. If you'd like something added or subtracted, we're flexible. The motion will have two exhibits.

Exhibit A - Proposed stipulations

Exhibit B - the revised contract without the BDS and "all applicable laws" provision

Let me know if this works for you. If you have thoughts about form/content, we're happy to discuss.

Regards,

Gadeir Abbas, Esq.

**Senior Litigation Attorney**



453 New Jersey Ave, SE

Washington, DC 20003

Tel: 202.742.6420 Fax: 202.488.0833

Dir: 202.640.4935 Cell: 720.251.0425

[www.cair.com](http://www.cair.com)

---

**From:** Cassiemarie Sporrer <[Cassiemarie.Sporrer@asu.edu](mailto:Cassiemarie.Sporrer@asu.edu)>

**Sent:** Thursday, March 15, 2018 10:35:29 AM

**To:** Gadeir Abbas; Lisa Loo

**Cc:** Ensign, Drew; Jose Cardenas (General Counsel); Carolyn Homer; Lena F. Masri, Esq.; [raees@kellywarnerlaw.com](mailto:raees@kellywarnerlaw.com); Roysden, Beau; Skinner, OH; Nancy Tribbensee

**Subject:** RE: American Muslims for Palestine v. Arizona State University et. al, 2:18-cv-00670

All,

Here's the conference line for today's 11am PT / 2pm ET call:

1-877-820-7831

Passcode: 165970 #

I'll send an Outlook invite as well.

Thank you,

**Cassiemarkie Sporrer**

Administrative Associate, Office of General Counsel

**Arizona State University**

p: [480-965-4550](tel:480-965-4550) f: [480-965-0984](tel:480-965-0984) d: [480-965-9764](tel:480-965-9764)

[csporrer@asu.edu](mailto:csporrer@asu.edu)

Mailing: P.O. Box 877405, Tempe, AZ 85287-7405

Physical: Fulton Center, 300 E. University Dr., Ste. 335, Tempe, AZ 85281

---

**From:** Gadeir Abbas [<mailto:gAbbas@cair.com>]

**Sent:** Thursday, March 15, 2018 4:50 AM

**To:** Lisa Loo <[lisaloo@asu.edu](mailto:lisaloo@asu.edu)>

**Cc:** Ensign, Drew <[Drew.Ensign@azag.gov](mailto:Drew.Ensign@azag.gov)>; Jose Cardenas (General Counsel) <[jcardenas@asu.edu](mailto:jcardenas@asu.edu)>; Carolyn Homer <[cHomer@cair.com](mailto:cHomer@cair.com)>; Lena F. Masri, Esq. <[lmagri@cair.com](mailto:lmagri@cair.com)>; [raees@kellywarnerlaw.com](mailto:raees@kellywarnerlaw.com); Roysden, Beau <[Beau.Roysden@azag.gov](mailto:Beau.Roysden@azag.gov)>; Skinner, OH <[O.H.Skinner@azag.gov](mailto:O.H.Skinner@azag.gov)>; Nancy Tribbensee <[Nancy.Tribbensee@azregents.edu](mailto:Nancy.Tribbensee@azregents.edu)>; Cassiemarkie Sporrer <[Cassiemarkie.Sporrer@asu.edu](mailto:Cassiemarkie.Sporrer@asu.edu)>

**Subject:** Re: American Muslims for Palestine v. Arizona State University et. al, 2:18-cv-00670

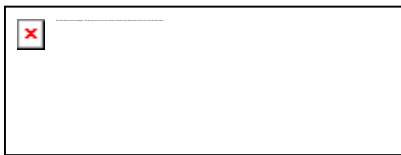
Lisa,

Perfect. Can you circulate call-in information for today's 2 PM EST call? We look forward to speaking with everyone later today.

Regards,

Gadeir Abbas, Esq.

**Senior Litigation Attorney**



453 New Jersey Ave, SE

Washington, DC 20003

Tel: 202.742.6420 Fax: 202.488.0833

Dir: 202.640.4935 Cell: 720.251.0425

[www.cair.com](http://www.cair.com)

---

**From:** Lisa Loo <[lisaloo@asu.edu](mailto:lisaloo@asu.edu)>

**Sent:** Thursday, March 15, 2018 12:12:16 AM

**To:** Gadeir Abbas

**Cc:** Ensign, Drew; Jose Cardenas (General Counsel); Carolyn Homer; Lena F. Masri, Esq.; [raees@kellywarnerlaw.com](mailto:raees@kellywarnerlaw.com); Roysden, Beau; Skinner, OH; Nancy Tribbensee; Cassiemarkie Sporrer

**Subject:** Re: American Muslims for Palestine v. Arizona State University et. al, 2:18-cv-00670

Gadeir, I believe the folks from ABOR, ASU and the AG's office are available at the proposed time.

Carolyn had circulated a conference line for us to use last week. If that line is available tomorrow can you kindly resend? If not, my assistant can circulate a number when she gets into the office tomorrow.

Thanks,  
Lisa

Sent from my iPhone

On Mar 14, 2018, at 7:15 PM, Gadeir Abbas <[gAbbas@cair.com](mailto:gAbbas@cair.com)> wrote:

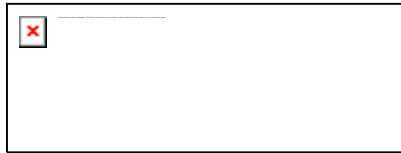
Drew,

I think we're really close and can get this across the finish line. Because we believe that we're just a few reasonable tweaks away from agreement, we'll hold our response until tomorrow.

Can you chat at 2 pm est tomorrow? We should be out of court before then.

Regards,

Gadeir Abbas, Esq.  
**Senior Litigation Attorney**



453 New Jersey Ave, SE  
Washington, DC 20003  
Tel: 202.742.6420 Fax: 202.488.0833  
Dir: 202.640.4935 Cell: 720.251.0425  
[www.cair.com](http://www.cair.com)

---

**From:** Ensign, Drew <[Drew.Ensign@azag.gov](mailto:Drew.Ensign@azag.gov)>

**Sent:** Wednesday, March 14, 2018 2:51:15 PM

**To:** Gadeir Abbas; 'Jose Cardenas (General Counsel)'; Carolyn Homer; Lena F. Masri, Esq.;  
[raees@kellywarnerlaw.com](mailto:raees@kellywarnerlaw.com)

**Cc:** Roysden, Beau; Skinner, OH; Nancy Tribbensee; Lisa Loo

**Subject:** RE: American Muslims for Palestine v. Arizona State University et. al, 2:18-cv-00670

Thanks, Gadeir. Given your commitments, we are certainly willing to hold our offer open until after we have a chance to talk tomorrow. What times tomorrow would work for you?

On a related note, in light of the fact that we may have an agreement tomorrow and your reply to our filing is not due until tomorrow evening, is there any reason why you need to file today when whatever you say may easily be mooted by tomorrow's discussion?

Drew

---

**From:** Gadeir Abbas [<mailto:gAbbas@cair.com>]

**Sent:** Wednesday, March 14, 2018 12:26 PM

**To:** Ensign, Drew; 'Jose Cardenas (General Counsel)'; Carolyn Homer; Lena F. Masri, Esq.; [raees@kellywarnerlaw.com](mailto:raees@kellywarnerlaw.com)

**Cc:** Roysden, Beau; Skinner, OH; Nancy Tribbensee; Lisa Loo

**Subject:** Re: American Muslims for Palestine v. Arizona State University et. al, 2:18-cv-00670

Drew - I'm tied up and not going to be able to review this and discuss with our team within your timeframe. We are also preparing for court tomorrow morning in another matter so won't be able to get back to you until tomorrow afternoon. And remember, we're replying/responding to your filing from last week as well today.

If, because of these things, you're withdrawing your offer, we'll note in our filing later today that you gave us 3 hours to respond to your "final offer." I don't think that's productive but it's up to you. But if your edits are in our vicinity, it seems wasteful that we've come this far only to be thwarted by our packed Wednesday afternoon/evening.

If you'd like, we can schedule a call tomorrow afternoon to discuss and go over your proposed edits. I can commit to being ready to discuss by tomorrow afternoon.

Gadeir Abbas, Esq.

**Senior Litigation Attorney**



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---

**From:** Ensign, Drew <[Drew.Ensign@azag.gov](mailto:Drew.Ensign@azag.gov)>

**Sent:** Wednesday, March 14, 2018 2:06:45 PM

**To:** 'Jose Cardenas (General Counsel)'; Gadeir Abbas; Carolyn Homer; Lena F. Masri, Esq.; [raees@kellywarnerlaw.com](mailto:raees@kellywarnerlaw.com)

**Cc:** Roysden, Beau; Skinner, OH; Nancy Tribbensee; Lisa Loo

**Subject:** RE: American Muslims for Palestine v. Arizona State University et. al, 2:18-cv-00670

Gadeir,

Thank you for your quick response. At this point, we do not understand how you believe that Plaintiffs are likely to suffer irreparable harm absent injunctive relief. You objected to the "No Boycott of Israel" clause and said "to Plaintiffs' knowledge, [it is] the only institutional and legal roadblock to their participation in the scheduled April 3, 2018 event." Doc. 9-1 at 5. After ASU removed that provision, however, you refused to sign the contracts. Instead, you objected to the "applicable law" clause (¶16). So ASU removed that clause as well. We are thus unaware of *any* remaining provision that Plaintiffs object to, which by itself should settle this matter. In addition, both ABOR and the Attorney General have made commitments *in public filings with the Court* that they will not take any action against the April 3 event under the Act. See Doc. 17



at 3-4. The suggestion that either ABOR or the Attorney General would violate the explicit and unequivocal commitments they have made to the Court in their March 8 filing is simply fanciful.

Nonetheless, in the interest of resolving this matter we are willing to enter into a joint stipulation to try to resolve whether Plaintiffs can speak at the April 3 event. Attached is our proposed stipulation, which has tracked changes against your version. Because there has already been too much back-and-forth on this and given the exigency created by your emergency request, this proposal reflects our final offer absent extraordinary circumstances or simple items like typos. We believe this gives you everything you have asked for. We therefore request that you let us know whether you will agree to this proposed stipulation by 6pm Eastern. If you cannot accept the combination of (1) removing both the “No Boycott of Israel” and “applicable law” clauses (*i.e.*, all clauses you have objected to), (2) Defendants’ March 8 unequivocal commitments to the Court, and (3) this proposed stipulation, we will be at an impasse. In that event, we will seek relief as appropriate from the Court.

Please also note that we are not (and have not) accused you of “lying” to the Court when your March 2 filings were originally made. We believe, however, that the language we quoted in the PI motion is no longer an accurate statement in light of your changed legal position. In the PI, you stated that the “No Boycott of Israel” clause was “to Plaintiffs’ knowledge, *the only institutional and legal roadblock* to their participation in the scheduled April 3, 2018 event.” Doc. 9-1 at 5 (emphasis added). You now appear to be taking the position that the “applicable law” clause is an additional “institutional and legal roadblock.” If that is now your position, your original statement to the Court is no longer accurate and needs to be corrected, since you now obviously have knowledge of your own legal position that there are additional “institutional and legal roadblock[s].”

You are of course entitled to change your legal positions (subject to some doctrines that do not appear applicable here). But when you do so, it triggers an obligation to correct any statements that thereby become inaccurate to the Court. *See, e.g., Azuike v. BNY Mellon*, 962 F. Supp. 2d 591, 597 (S.D.N.Y. 2013) (“Rule 11 is ... implicated ‘where an attorney or party declines to withdraw a claim upon an express request by his or her adversary after learning that the claim was groundless.’” (alteration and citation omitted)).

We don’t want to belabor this point, so hopefully we can make this simple. As to your March 2 statement, “The ‘No Boycott of Israel’ clause in ASU’s standard speaker agreement is, to Plaintiffs’ knowledge, the only institutional and legal roadblock to their participation in the scheduled April 3, 2018 event,” Doc. 9-1 at 5, is that *currently* a correct statement of fact? If so, please explain why you believe that is the case. If not, please either let us know (1) that you will either correct the statement or withdraw the motion for a PI making it or (2) that you believe that you have no obligation to correct a statement to the Court that events have rendered incorrect.

We similarly request that you let us know your position whether the cited statements in Dr. Bazian’s and Taher Herzallah’s declarations are accurate statements of fact *today* (rather than when made), and if not, what actions (if any) you plan to take to correct them. *See* Doc. 9-2 at 3 ¶18; Doc. 9-2 at 3 ¶16. We ask that you let us know your positions on these matters by 6pm Eastern as well.

Sincerely,  
Drew

---

**From:** Jose Cardenas (General Counsel) [<mailto:jcardenas@asu.edu>]  
**Sent:** Wednesday, March 14, 2018 10:06 AM  
**To:** Gadeir Abbas; Ensign, Drew; Carolyn Homer; Lena F. Masri, Esq.; [raees@kellywarnerlaw.com](mailto:raees@kellywarnerlaw.com)  
**Cc:** Roysden, Beau; Skinner, OH; Nancy Tribbensee; Lisa Loo  
**Subject:** RE: American Muslims for Palestine v. Arizona State University et. al, 2:18-cv-00670

Gadeir, thanks for the prompt response. I'm still puzzled by your insistence that we have a dispute given that the contract has none of the provisions that you said were of concern to your clients.

As for your statement regarding fears of action by the AG or by ABOR, we have already committed on behalf of our clients that neither the Attorney General nor ABOR will take any such action. Moreover, the ABOR policy provision you reference in your proposed stipulation does not apply.

In spite of these facts, I assume you will simply come up with some other rationale for proceeding absent some sort of stipulation. I'll leave it to the folks at the AG's office to take a cut at a stipulation that might be acceptable to them and to ABOR.

We'll be in touch.

Sincerely,

José

---

**From:** Gadeir Abbas [<mailto:gAbbas@cair.com>]  
**Sent:** Wednesday, March 14, 2018 6:15 AM  
**To:** Ensign, Drew <[drew.ensign@azag.gov](mailto:drew.ensign@azag.gov)>; Carolyn Homer <[cHomer@cair.com](mailto:cHomer@cair.com)>; Lena F. Masri, Esq. <[lmagri@cair.com](mailto:lmagri@cair.com)>; [raees@kellywarnerlaw.com](mailto:raees@kellywarnerlaw.com); Jose Cardenas (General Counsel) <[jcardenas@asu.edu](mailto:jcardenas@asu.edu)>  
**Cc:** Roysden, Beau <[beau.roysden@azag.gov](mailto:beau.roysden@azag.gov)>; Skinner, OH <[o.h.skinner@azag.gov](mailto:o.h.skinner@azag.gov)>; Nancy Tribbensee <[Nancy.Tribbensee@azregents.edu](mailto:Nancy.Tribbensee@azregents.edu)>; Lisa Loo <[lisaloo@asu.edu](mailto:lisaloo@asu.edu)>  
**Subject:** RE: American Muslims for Palestine v. Arizona State University et. al, 2:18-cv-00670

Jose,

Thanks for your email and for engaging with us in good faith to figure this thing out.

While the removal of the catch all provision takes us closer to an agreement, given the pending motion, we won't withdraw without a stipulation from all the defendants.

First, as you know, the Board of Regents possesses the authority to veto ASU student group activity that is inconsistent with state law. Given the clarity of the BDS law, we remain concerned that either the AG or the Board of Regents will block the event at a later date.

Second, because these contract revisions constitute new facts, we do not view the unilateral withdrawal of our motion as an appropriate mechanism to guarantee that the April 3rd event will happen.

If you all do not plan to interfere with the event and will allow it to happen, then stipulate to it. As I'm sure you can appreciate, we would be doing our clients a disservice if we were to rely on an understanding between the attorneys to protect their rights. To resolve this without a hearing, we need an on-the-docket stipulation as to what all the parties have agreed to do.

An unwillingness to stipulate, in our view, gives rise to the inference that one of the defendants may intend to interfere or even block the event when the time for a hearing has passed. The same political pressures that led to the passage of the law, without a stipulation, may lead one of the defendants to intervene despite the nonbinding assurances the defendants have provided to date.

In short, we will only withdraw our motion pursuant to an all-party stipulation. We respectfully suggest that the parties work together to fashion a stipulation that ensures the event will happen and that the parties can live with.

Regards,  
Gadeir

---

**From:** Jose Cardenas (General Counsel) <[jcardenas@asu.edu](mailto:jcardenas@asu.edu)>

**Sent:** Tuesday, March 13, 2018 8:27:22 PM

**To:** Gadeir Abbas; Ensign, Drew; Carolyn Homer; Lena F. Masri, Esq.; [raees@kellywarnerlaw.com](mailto:raees@kellywarnerlaw.com)

**Cc:** Roysden, Beau; Skinner, OH; Nancy Tribbensee; Lisa Loo

**Subject:** RE: American Muslims for Palestine v. Arizona State University et. al, 2:18-cv-00670

Gadeir, I've reviewed your e-mail exchange with Drew.

For the reasons set forth in the e-mail I sent you on March 8, I completely disagree with your position that the "compliance with all applicable laws" provision in the contract means the no boycott clause, which is not in the contract, nevertheless applies to the April 3<sup>rd</sup> speaking engagement. I also made clear that ASU had no intentions of applying that clause to this agreement. Given the Attorney General's concurrence, I thought we were done.

I was surprised that we did not get a prompt response from you and even more surprised to see that you continue to insist that the "all applicable laws" provision means we still have a dispute.

But rather than continue that debate, I have a simple solution that avoids the need for a stipulation and that resolves your clients' concerns. I've deleted what was paragraph 6 of the December 2017 contract to eliminate the clause regarding compliance with all applicable laws.

I trust that this will resolve all issues and that we can now focus on the April 3<sup>rd</sup> event.

Please confirm by noon EST that your clients will sign the attached revised agreement and then please get it back to us as soon as possible.

Thanks.

José A. Cárdenas

---

**From:** Gadeir Abbas [<mailto:gAbbas@cair.com>]

**Sent:** Tuesday, March 13, 2018 2:58 PM

**To:** Ensign, Drew <[Drew.Ensign@azag.gov](mailto:Drew.Ensign@azag.gov)>; Carolyn Homer <[CHomer@cair.com](mailto:CHomer@cair.com)>; Lena F. Masri, Esq. <[lmMasri@cair.com](mailto:lmMasri@cair.com)>; [raees@kellywarnerlaw.com](mailto:raees@kellywarnerlaw.com)

**Cc:** Roysden, Beau <[Beau.Roysden@azag.gov](mailto:Beau.Roysden@azag.gov)>; Skinner, OH <[O.H.Skinner@azag.gov](mailto:O.H.Skinner@azag.gov)>; Jose Cardenas

(General Counsel) <[jcardenas@asu.edu](mailto:jcardenas@asu.edu)>; Nancy Tribbensee <[Nancy.Tribbensee@azregents.edu](mailto:Nancy.Tribbensee@azregents.edu)>; Lisa Loo <[lisaloo@asu.edu](mailto:lisaloo@asu.edu)>

**Subject:** RE: American Muslims for Palestine v. Arizona State University et. al, 2:18-cv-00670

Hi Drew,

I apologize if you feel that we've not been communicative. That hasn't been intentional, and I emphasize that I'm always happy to hop on the phone with any of you. My cell is listed below.

As I communicated to Jose, we've been very surprised by the defendants' position that the law does not apply. We're not the only ones: <https://www.thefire.org/arizonas-anti-bds-statute-lands-arizona-state-university-in-federal-court/>

Certainly, if we thought the law allowed for any room for the defendants to negotiate, we would have discussed it. Given your representations, we remain open to resolving the preliminary injunction piece of this case.

I will note that accusations that either I or our plaintiffs have lied or misled the court do not facilitate conversations among us. And with this email, we've now been accused—wrongly, and it is demonstrable—of lying by counsel for most of the defendants. It's offensive, and not helpful to resolving this matter or maintaining professional courtesy among the attorneys, for you to claim that the statements that I made somehow render our plaintiffs' declarations false. But if your strategy is to pursue such ad hominem attacks, it will just highlight the anti-free speech nature of Arizona's BDS law and the state's hail-mary attempts to defend it.

Putting your personal attacks to the side, to resolve this short of a court hearing, we're not willing to simply rely upon attorney-representations. With respect to the April 3<sup>rd</sup> event, we remain concerned that, having removed the explicit BDS provision from the contract, the defendants intend for the general catch-all provision to envelope the BDS law. Indeed, that is how we read it. And we believe that is a fair reading of it, given the clarity of the BDS law's language.

We've attached a draft stipulation that we believe would allow our plaintiffs to come to ASU on April 3<sup>rd</sup> without violating their rights. All current parties would be bound.

We await your thoughts on it. If you'd like to discuss it by phone, please advise.

Regards,

Gadeir Abbas, Esq.

**Senior Litigation Attorney**

<image001.png>

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Practice limited to federal matters.

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**From:** Ensign, Drew [<mailto:Drew.Ensign@azag.gov>]  
**Sent:** Tuesday, March 13, 2018 3:28 PM  
**To:** Carolyn Homer <[cHomer@cair.com](mailto:cHomer@cair.com)>; Gadeir Abbas <[gAbbas@cair.com](mailto:gAbbas@cair.com)>; Lena F. Masri, Esq. <[lmagri@cair.com](mailto:lmagri@cair.com)>; [raees@kellywarnerlaw.com](mailto:raees@kellywarnerlaw.com)  
**Cc:** Roysden, Beau <[Beau.Roysden@azag.gov](mailto:Beau.Roysden@azag.gov)>; Skinner, OH <[O.H.Skinner@azag.gov](mailto:O.H.Skinner@azag.gov)>; 'Jose Cardenas (General Counsel)' <[jcardenas@asu.edu](mailto:jcardenas@asu.edu)>; Nancy Tribbensee <[Nancy.Tribbensee@azregents.edu](mailto:Nancy.Tribbensee@azregents.edu)>; Lisa Loo <[lisaloo@asu.edu](mailto:lisaloo@asu.edu)>  
**Subject:** RE: American Muslims for Palestine v. Arizona State University et. al, 2:18-cv-00670

Gadeir, Lena, and Carolyn,

On behalf of the Attorney General, we request that you withdraw your request for an expedited hearing (Doc. 10). In light of the factual developments outlined in Jose's March 8 email (copied below) and our March 8 filing with the Court (Doc. 17)—both 5 days ago—there can be no uncertainty as to whether Dr. Bazian and American Muslims for Palestine ("AMP") will be able to speak at the April 3 event. They will be. We therefore do not believe there is any basis for Plaintiffs to continue seeking an expedited hearing. We ask that you let us know by noon EDT tomorrow whether you will be withdrawing your request so that we can seek relief from the Court as may be necessary. We also request that you let us know by the same time whether you will be amending/refiling your motion for a preliminary injunction and supporting declarations to correct statements therein that, as discussed below, now appear false in light of statements you have made to the press.

Although you have not responded to Jose's email or our court filing last Thursday, Gadeir has been quoted in the press as stating *inter alia*: "The lawsuit's about the law, not the April 3 event." (attached) Given that admission, we do not understand how there could be any need for an expedited hearing, which explicitly was based on Dr. Bazian's and AMP's ability to speak at the April 3 event. Doc. 10 at 2. Indeed, whatever the merits of that request when filed, it has become clear that the request is now thoroughly unwarranted.

On a related note, we will also confess our frustration that you have failed to communicate with us directly and instead have done so almost exclusively through the press. For example, your complaint was filed late on March 1 and CAIR released a press release and held a press conference the next day. (<https://www.cair.com/press-center/press-releases/15009-cair-defends-free-speech-in-lawsuit-challenging-arizona-bds-law.html>). But you did not serve us until late on March 5, and only then because we affirmatively reached out to you to request service after we received notice of your complaint through press inquiries. Similarly, you have ducked responding to Jose's email for 5 days now, but have apparently been willing to respond to the substance of his email to reporters.

We therefore request that, as a matter of professional courtesy, you speak directly to us about your positions on pending matters in this case and avoid having us receive notice of your positions belatedly and indirectly through the press.

We are also writing to provide you notice that we believe Gadeir's statement to the press is—at a bare minimum—in sharp tension with the duty of candor owed to the Court. You represented to the Court that "The 'No Boycott of Israel' clause in ASU's standard speaker agreement is, to Plaintiffs' knowledge, the only institutional and legal roadblock to their participation in the scheduled April 3, 2018 event." Doc. 9-1 at 5. However, your recent press statement indicates that you now apparently object to the "applicable law" clause, although that same clause appeared in the contracts that you were sent previously—and attached in court filings. See Doc. 9-2 Ex. A at 2 ¶6; Doc. 9-3 Ex. A at 2 ¶6. You thus had full knowledge of the "applicable law" clause of paragraph 6, but nonetheless represented to the

Court that the only obstacle to Plaintiffs speaking at the April 3 event was the "No Boycott of Israel" clause.

In light of your press statements, this representation to the Court now appears to be false. If that press statement reflects your current legal position, we ask that you confirm that you will be withdrawing and/or correcting your motion for a preliminary injunction to correct what now appears to be a false statement to the Court. We similarly note that the declarations of both Dr. Bazian and Taher Herzallah may now contain false statements under oath as well. *See* Doc. 9-2 at 3 ¶18; Doc. 9-2 at 3 ¶16. Relatedly, we note that this apparent deviation between the positions in the declarations and current facts underscores the need for depositions in this case. The State should be permitted to examine these deviations as well as why the declarants did not originally object to the "applicable law" clauses.

In light of the exigency created by your request for an expedited hearing, we request that you let us know your positions on these matters by noon EDT tomorrow. If you do not do so, we will assume that (1) Gadeir's statements to the press accurately reflect Plaintiffs' current legal positions, (2) Plaintiffs will not be withdrawing your request for an expedited hearing, and (3) Plaintiffs will not be correcting what appears to be false statements to the Court. On that assumption, we will seek relief as appropriate from the Court.

Sincerely,  
Drew

Drew C. Ensign  
Senior Litigation Counsel

<image002.jpg>

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**From:** Jose Cardenas (General Counsel)

**Sent:** March 8, 2018 8:51 AM

**To:** 'Carolyn Homer' <[cHomer@cair.com](mailto:cHomer@cair.com)>; Gadeir Abbas <[gAbbas@cair.com](mailto:gAbbas@cair.com)>; Lena F. Masri, Esq. <[lmMasri@cair.com](mailto:lmMasri@cair.com)>

**Cc:** [raees@kellywarnerlaw.com](mailto:raees@kellywarnerlaw.com); Anne Griffith <[anne@kellywarnerlaw.com](mailto:anne@kellywarnerlaw.com)>; Lisa Loo <[lisaloo@asu.edu](mailto:lisaloo@asu.edu)>

**Subject:** RE: American Muslims for Palestine v. Arizona State University et. al, 2:18-cv-00670

Carolyn, Gadeir and Lena, this is a follow up to our discussion on Tuesday afternoon. I have also copied your local counsel.

We appreciate your courtesy in discussing your lawsuit with us and in listening to the reasons we gave as to why it should be withdrawn. While you did not agree with us on Tuesday, I am hopeful that upon further consideration of what we said and what is set forth here you will now agree that there is no dispute between ASU and your clients.

To be clear, for all of the reasons we discussed on Tuesday and as set forth below, ASU has no intentions of enforcing the statute that is the subject of your lawsuit and it will not be a bar to the April 3<sup>rd</sup> event. The statute simply does not apply in this context and that is why we removed it from our speaker engagement form contract.

As we told you, and as you know from press reports, your lawsuit is based on an outdated version of our speaker engagement form contract. The form was revised in December of 2017 and the no boycott of Israel provision to which you object was removed. That version of the contract is attached.

Lisa Loo, ASU's Vice President for Legal Affairs and Deputy General Counsel, tried to contact you and your local counsel last Friday before your scheduled press conference to tell you that the no boycott provision does not apply to the April 3<sup>rd</sup> event, but was not able to reach anyone. ASU, however, did make its position publicly known that same day and we will continue to do so.

That fact that our speaker engagement form does not have the boycott provision should in and of itself dispose of this lawsuit.

First, the relief you seek is an injunction "striking the 'No Boycott of Israel' clause from Defendants' standard speaker contract."

There is nothing to strike because the clause is not there.

Second, Dr. Bazian, in paragraph 16 of the affidavit attached to your complaint, said he would sign the contract if it did not have the provision to which he objects:

"I have no objection to Arizona State University's 'Speaker/Artist/Performer Agreement' other than Paragraph 20, the 'No Boycott of Israel' clause. I have already blocked off April 3, 2018 on my calendar for attendance at the Muslim Students Association's BDS event at Arizona State University. If the 'No Boycott of Israel' clause is stricken or declared unenforceable, I will sign the Agreement, enabling me to speak at the April 3, 2018 event."

If Dr. Bazian meant what he said, he should be willing to sign the contract because it does not have the clause he said prevents him from signing.

When we spoke, Gadeir came up with a new theory as to why the lawsuit should nevertheless proceed. You said that Dr. Bazian will not sign the contract because it also includes a provision about compliance with all Arizona laws. You contend that incorporates the no boycott provision of state law and therefore we still have something to argue about.

Again, there are several flaws in this logic:

- 1) That argument is contrary to your client's position.
- 2) The provision you reference actually refers to "all **applicable**" laws.
  - a. The no boycott provision does not apply to having Dr. Bazian speak at ASU, so there should be no further issues.
  - b. As I told you I would, I spoke to the lawyers in the Attorney-General's office who are handling this matter. I am authorized to tell you that they agree that the no boycott clause would not apply to Dr. Bazian or any other speaker at the April 3<sup>rd</sup> event.



- c. The argument puts CAIR in the rather odd position of telling ABOR and ASU that they have to follow a state law to which you object and that we independently concluded does not apply. And now you know that the only other defendant agrees with our position.
- 3) A further flaw is that the obligation the “no boycott” statute imposes in the first instance is upon the public entity and not upon the other party to the contract. It requires the public entity to include that provision if applicable. If the clause is not there, we never get to the issue of whether your client has to agree to the certification.
- 4) Thus, to the extent you’re saying the reference to all laws means the boycott provision applies, what you’re really saying is it has to be in the contract. That leaves you in the rather strange position of demanding the inclusion of the provision or inserting it yourself so that you can then say your client won’t comply because it’s now in the contract.

Gadeir, you were quoted on a local news posting as saying that your clients “hope ASU will come to its senses and allow the April 3<sup>rd</sup> event to go forward.”

At the moment, the only thing that is preventing the April 3<sup>rd</sup> event from going forward is your tortured legal analysis and your insistence on creating a dispute where none exists. If you insist on proceeding, I can well imagine the Judge asking, “why are we here?”

With all due respect, it is you and your colleagues who need to come to your senses and not waste the time and resources of the parties and the court and, more importantly, deprive ASU students and others of the opportunity to hear from Dr. Bazian.

As I told you when we spoke, ASU’s commitment to free speech is long standing and deep. That is why FIRE (Foundation for Individual Rights in Education) has lauded ASU as one of only 38 institutions in the entire country to earn its highest, “green light” rating for campus free speech.

Paragraph 30 of your complaint similarly notes that ASU is “committed to academic freedom, and to providing an open venue for student organizations to invite outside speakers and host educational events on a wide variety of subjects, and from a wide variety of viewpoints.”

You were right. That is why we look forward to finalizing the speaker engagement contract with Dr. Bazian’s signature.

And we look forward to Dr. Bazian’s appearance at ASU on April 3<sup>rd</sup>.

Sincerely,

José A. Cárdenas  
Sr. Vice President and General Counsel  
Arizona State University



# Exhibit I

**Ensign, Drew**

---

**From:** Ensign, Drew  
**Sent:** Wednesday, March 14, 2018 12:07 PM  
**To:** 'Jose Cardenas (General Counsel)'; 'Gadeir Abbas'; 'Carolyn Homer'; 'Lena F. Masri, Esq.'; 'raees@kellywarnerlaw.com'  
**Cc:** Roysden, Beau; Skinner, OH; 'Nancy Tribbensee'; 'Lisa Loo'  
**Subject:** RE: American Muslims for Palestine v. Arizona State University et. al, 2:18-cv-00670  
**Attachments:** Hatem v. AZ Draft Stipulation Defs Counter Proposal.docx

Gadeir,

Thank you for your quick response. At this point, we do not understand how you believe that Plaintiffs are likely to suffer irreparable harm absent injunctive relief. You objected to the “No Boycott of Israel” clause and said “to Plaintiffs’ knowledge, [it is] the only institutional and legal roadblock to their participation in the scheduled April 3, 2018 event.” Doc. 9-1 at 5. After ASU removed that provision, however, you refused to sign the contracts. Instead, you objected to the “applicable law” clause (¶16). So ASU removed that clause as well. We are thus unaware of *any* remaining provision that Plaintiffs object to, which by itself should settle this matter. In addition, both ABOR and the Attorney General have made commitments *in public filings with the Court* that they will not take any action against the April 3 event under the Act. *See* Doc. 17 at 3-4. The suggestion that either ABOR or the Attorney General would violate the explicit and unequivocal commitments they have made to the Court in their March 8 filing is simply fanciful.

Nonetheless, in the interest of resolving this matter we are willing to enter into a joint stipulation to try to resolve whether Plaintiffs can speak at the April 3 event. Attached is our proposed stipulation, which has tracked changes against your version. Because there has already been too much back-and-forth on this and given the exigency created by your emergency request, this proposal reflects our final offer absent extraordinary circumstances or simple items like typos. We believe this gives you everything you have asked for. We therefore request that you let us know whether you will agree to this proposed stipulation by 6pm Eastern. If you cannot accept the combination of (1) removing both the “No Boycott of Israel” and “applicable law” clauses (*i.e.*, all clauses you have objected to), (2) Defendants’ March 8 unequivocal commitments to the Court, and (3) this proposed stipulation, we will be at an impasse. In that event, we will seek relief as appropriate from the Court.

Please also note that we are not (and have not) accused you of “lying” to the Court when your March 2 filings were originally made. We believe, however, that the language we quoted in the PI motion is no longer an accurate statement in light of your changed legal position. In the PI, you stated that the “No Boycott of Israel” clause was “to Plaintiffs’ knowledge, *the only institutional and legal roadblock* to their participation in the scheduled April 3, 2018 event.” Doc. 9-1 at 5 (emphasis added). You now appear to be taking the position that the “applicable law” clause is an additional “institutional and legal roadblock.” If that is now your position, your original statement to the Court is no longer accurate and needs to be corrected, since you now obviously have knowledge of your own legal position that there are additional “institutional and legal roadblock[s].”

You are of course entitled to change your legal positions (subject to some doctrines that do not appear applicable here). But when you do so, it triggers an obligation to correct any statements that thereby become inaccurate to the Court. *See, e.g., Azuike v. BNY Mellon*, 962 F. Supp. 2d 591, 597 (S.D.N.Y. 2013) (“Rule 11 is

... implicated 'where an attorney or party declines to withdraw a claim upon an express request by his or her adversary after learning that the claim was groundless.'" (alteration and citation omitted).

We don't want to belabor this point, so hopefully we can make this simple. As to your March 2 statement, "The 'No Boycott of Israel' clause in ASU's standard speaker agreement is, to Plaintiffs' knowledge, the only institutional and legal roadblock to their participation in the scheduled April 3, 2018 event," Doc. 9-1 at 5, is that *currently* a correct statement of fact? If so, please explain why you believe that is the case. If not, please either let us know (1) that you will either correct the statement or withdraw the motion for a PI making it or (2) that you believe that you have no obligation to correct a statement to the Court that events have rendered incorrect.

We similarly request that you let us know your position whether the cited statements in Dr. Bazian's and Taher Herzallah's declarations are accurate statements of fact *today* (rather than when made), and if not, what actions (if any) you plan to take to correct them. See Doc. 9-2 at 3 ¶8; Doc. 9-2 at 3 ¶16. We ask that you let us know your positions on these matters by 6pm Eastern as well.

Sincerely,  
Drew

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**From:** Jose Cardenas (General Counsel) [mailto:jcardenas@asu.edu]  
**Sent:** Wednesday, March 14, 2018 10:06 AM  
**To:** Gadeir Abbas; Ensign, Drew; Carolyn Homer; Lena F. Masri, Esq.; raees@kellywarnerlaw.com  
**Cc:** Roysden, Beau; Skinner, OH; Nancy Tribbensee; Lisa Loo  
**Subject:** RE: American Muslims for Palestine v. Arizona State University et. al, 2:18-cv-00670

Gadeir, thanks for the prompt response. I'm still puzzled by your insistence that we have a dispute given that the contract has none of the provisions that you said were of concern to your clients.

As for your statement regarding fears of action by the AG or by ABOR, we have already committed on behalf of our clients that neither the Attorney General nor ABOR will take any such action. Moreover, the ABOR policy provision you reference in your proposed stipulation does not apply.

In spite of these facts, I assume you will simply come up with some other rationale for proceeding absent some sort of stipulation. I'll leave it to the folks at the AG's office to take a cut at a stipulation that might be acceptable to them and to ABOR.

We'll be in touch.

Sincerely,

José

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**From:** Gadeir Abbas [mailto:gAbbas@cair.com]  
**Sent:** Wednesday, March 14, 2018 6:15 AM  
**To:** Ensign, Drew <drew.ensign@azag.gov>; Carolyn Homer <CHomer@cair.com>; Lena F. Masri, Esq. <lmagri@cair.com>; raees@kellywarnerlaw.com; Jose Cardenas (General Counsel) <jcardenas@asu.edu>  
**Cc:** Roysden, Beau <beau.roysden@azag.gov>; Skinner, OH <o.h.skinner@azag.gov>; Nancy Tribbensee

<Nancy.Tribbensee@azregents.edu>; Lisa Loo <lisaloo@asu.edu>

**Subject:** RE: American Muslims for Palestine v. Arizona State University et. al, 2:18-cv-00670

Jose,

Thanks for your email and for engaging with us in good faith to figure this thing out.

While the removal of the catch all provision takes us closer to an agreement, given the pending motion, we won't withdraw without a stipulation from all the defendants.

First, as you know, the Board of Regents possesses the authority to veto ASU student group activity that is inconsistent with state law. Given the clarity of the BDS law, we remain concerned that either the AG or the Board of Regents will block the event at a later date.

Second, because these contract revisions constitute new facts, we do not view the unilateral withdrawal of our motion as an appropriate mechanism to guarantee that the April 3rd event will happen.

If you all do not plan to interfere with the event and will allow it to happen, then stipulate to it. As I'm sure you can appreciate, we would be doing our clients a disservice if we were to rely on an understanding between the attorneys to protect their rights. To resolve this without a hearing, we need an on-the-docket stipulation as to what all the parties have agreed to do.

An unwillingness to stipulate, in our view, gives rise to the inference that one of the defendants may intend to interfere or even block the event when the time for a hearing has passed. The same political pressures that led to the passage of the law, without a stipulation, may lead one of the defendants to intervene despite the nonbinding assurances the defendants have provided to date.

In short, we will only withdraw our motion pursuant to an all-party stipulation. We respectfully suggest that the parties work together to fashion a stipulation that ensures the event will happen and that the parties can live with.

Regards,  
Gadeir

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**From:** Jose Cardenas (General Counsel) <[jcardenas@asu.edu](mailto:jcardenas@asu.edu)>

**Sent:** Tuesday, March 13, 2018 8:27:22 PM

**To:** Gadeir Abbas; Ensign, Drew; Carolyn Homer; Lena F. Masri, Esq.; [raees@kellywarnerlaw.com](mailto:raees@kellywarnerlaw.com)

**Cc:** Roysden, Beau; Skinner, OH; Nancy Tribbensee; Lisa Loo

**Subject:** RE: American Muslims for Palestine v. Arizona State University et. al, 2:18-cv-00670

Gadeir, I've reviewed your e-mail exchange with Drew.

For the reasons set forth in the e-mail I sent you on March 8, I completely disagree with your position that the "compliance with all applicable laws" provision in the contract means the no boycott clause, which is not in the contract, nevertheless applies to the April 3<sup>rd</sup> speaking engagement. I also made clear that ASU had no intentions of applying that clause to this agreement. Given the Attorney General's concurrence, I thought we were done.

I was surprised that we did not get a prompt response from you and even more surprised to see that you continue to insist that the "all applicable laws" provision means we still have a dispute.

But rather than continue that debate, I have a simple solution that avoids the need for a stipulation and that resolves your clients' concerns. I've deleted what was paragraph 6 of the December 2017 contract to eliminate the clause regarding compliance with all applicable laws.

I trust that this will resolve all issues and that we can now focus on the April 3<sup>rd</sup> event.

Please confirm by noon EST that your clients will sign the attached revised agreement and then please get it back to us as soon as possible.

Thanks.

José A. Cárdenas

---

**From:** Gadeir Abbas [<mailto:gAbbas@cair.com>]

**Sent:** Tuesday, March 13, 2018 2:58 PM

**To:** Ensign, Drew <[Drew.Ensign@azag.gov](mailto:Drew.Ensign@azag.gov)>; Carolyn Homer <[cHomer@cair.com](mailto:cHomer@cair.com)>; Lena F. Masri, Esq. <[lmMasri@cair.com](mailto:lmMasri@cair.com)>; [raees@kellywarnerlaw.com](mailto:raees@kellywarnerlaw.com)

**Cc:** Roysden, Beau <[Beau.Roysden@azag.gov](mailto:Beau.Roysden@azag.gov)>; Skinner, OH <[O.H.Skinner@azag.gov](mailto:O.H.Skinner@azag.gov)>; Jose Cardenas (General Counsel) <[jcardenas@asu.edu](mailto:jcardenas@asu.edu)>; Nancy Tribbensee <[Nancy.Tribbensee@azregents.edu](mailto:Nancy.Tribbensee@azregents.edu)>; Lisa Loo <[lisaloo@asu.edu](mailto:lisaloo@asu.edu)>

**Subject:** RE: American Muslims for Palestine v. Arizona State University et. al, 2:18-cv-00670

Hi Drew,

I apologize if you feel that we've not been communicative. That hasn't been intentional, and I emphasize that I'm always happy to hop on the phone with any of you. My cell is listed below.

As I communicated to Jose, we've been very surprised by the defendants' position that the law does not apply. We're not the only ones: <https://www.thefire.org/arizonas-anti-bds-statute-lands-arizona-state-university-in-federal-court/>

Certainly, if we thought the law allowed for any room for the defendants to negotiate, we would have discussed it. Given your representations, we remain open to resolving the preliminary injunction piece of this case.

I will note that accusations that either I or our plaintiffs have lied or misled the court do not facilitate conversations among us. And with this email, we've now been accused—wrongly, and it is demonstrable—of lying by counsel for most of the defendants. It's offensive, and not helpful to resolving this matter or maintaining professional courtesy among the attorneys, for you to claim that the statements that I made somehow render our plaintiffs' declarations false. But if your strategy is to pursue such ad hominem attacks, it will just highlight the anti-free speech nature of Arizona's BDS law and the state's hail-mary attempts to defend it.

Putting your personal attacks to the side, to resolve this short of a court hearing, we're not willing to simply rely upon attorney-representations. With respect to the April 3<sup>rd</sup> event, we remain concerned that, having removed the explicit BDS provision from the contract, the defendants intend for the general catch-all provision to envelope the BDS law. Indeed, that is how we read it. And we believe that is a fair reading of it, given the clarity of the BDS law's language.

We've attached a draft stipulation that we believe would allow our plaintiffs to come to ASU on April 3<sup>rd</sup> without violating their rights. All current parties would be bound.

We await your thoughts on it. If you'd like to discuss it by phone, please advise.

Regards,

Gadeir Abbas, Esq.  
**Senior Litigation Attorney**



Council on American-Islamic Relations

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**From:** Ensign, Drew [<mailto:Drew.Ensign@azag.gov>]

**Sent:** Tuesday, March 13, 2018 3:28 PM

**To:** Carolyn Homer <[cHomer@cair.com](mailto:cHomer@cair.com)>; Gadeir Abbas <[gAbbas@cair.com](mailto:gAbbas@cair.com)>; Lena F. Masri, Esq. <[lmMasri@cair.com](mailto:lmMasri@cair.com)>; [raees@kellywarnerlaw.com](mailto:raees@kellywarnerlaw.com)

**Cc:** Roysden, Beau <[Beau.Roysden@azag.gov](mailto:Beau.Roysden@azag.gov)>; Skinner, OH <[O.H.Skinner@azag.gov](mailto:O.H.Skinner@azag.gov)>; 'Jose Cardenas (General Counsel)' <[jcardenas@asu.edu](mailto:jcardenas@asu.edu)>; Nancy Tribbensee <[Nancy.Tribbensee@azregents.edu](mailto:Nancy.Tribbensee@azregents.edu)>; Lisa Loo <[lisaloo@asu.edu](mailto:lisaloo@asu.edu)>

**Subject:** RE: American Muslims for Palestine v. Arizona State University et. al, 2:18-cv-00670

Gadeir, Lena, and Carolyn,

On behalf of the Attorney General, we request that you withdraw your request for an expedited hearing (Doc. 10). In light of the factual developments outlined in Jose's March 8 email (copied below) and our March 8 filing with the Court (Doc. 17)—both 5 days ago—there can be no uncertainty as to whether Dr. Bazian and American Muslims for Palestine ("AMP") will be able to speak at the April 3 event. They will be. We therefore do not believe there is any basis for Plaintiffs to continue seeking an expedited hearing. We ask that you let us know by noon EDT tomorrow whether you will be withdrawing your request so that we can seek relief from the Court as may be necessary. We also request that you let us know by the same time whether you will be amending/refiling your motion for a preliminary injunction and supporting declarations to correct statements therein that, as discussed below, now appear false in light of statements you have made to the press.

Although you have not responded to Jose's email or our court filing last Thursday, Gadeir has been quoted in the press as stating *inter alia*: "The lawsuit's about the law, not the April 3 event." (attached) Given that admission, we do not understand how there could be any need for an expedited hearing, which explicitly was based on Dr. Bazian's and AMP's ability to speak at the April 3 event. Doc. 10 at 2. Indeed, whatever the merits of that request when filed, it has become clear that the request is now thoroughly unwarranted.

On a related note, we will also confess our frustration that you have failed to communicate with us directly and instead have done so almost exclusively through the press. For example, your complaint was filed late on March 1 and CAIR released a press release and held a press conference the next day. (<https://www.cair.com/press-center/press-releases/15009-cair-defends-free-speech-in-lawsuit-challenging-arizona-bds-law.html>). But you did not serve us until late on March 5, and only then because we affirmatively reached out to you to request service after we received notice of your complaint through press inquiries. Similarly, you have ducked responding to Jose's email for 5 days now, but have apparently been willing to respond to the substance of his email to reporters.

We therefore request that, as a matter of professional courtesy, you speak directly to us about your positions on pending matters in this case and avoid having us receive notice of your positions belatedly and indirectly through the press.

We are also writing to provide you notice that we believe Gadeir's statement to the press is—at a bare minimum—in sharp tension with the duty of candor owed to the Court. You represented to the Court that "The 'No Boycott of Israel' clause in ASU's standard speaker agreement is, to Plaintiffs' knowledge, the only institutional and legal roadblock to their participation in the scheduled April 3, 2018 event." Doc. 9-1 at 5. However, your recent press statement indicates that you now apparently object to the "applicable law" clause, although that same clause appeared in the contracts that you were sent previously—and attached in court filings. *See* Doc. 9-2 Ex. A at 2 ¶6; Doc. 9-3 Ex. A at 2 ¶6. You thus had full knowledge of the "applicable law" clause of paragraph 6, but nonetheless represented to the Court that the only obstacle to Plaintiffs speaking at the April 3 event was the "No Boycott of Israel" clause.

In light of your press statements, this representation to the Court now appears to be false. If that press statement reflects your current legal position, we ask that you confirm that you will be withdrawing and/or correcting your motion for a preliminary injunction to correct what now appears to be a false statement to the Court. We similarly note that the declarations of both Dr. Bazian and Taher Herzallah may now contain false statements under oath as well. *See* Doc. 9-2 at 3 ¶8; Doc. 9-2 at 3 ¶16. Relatedly, we note that this apparent deviation between the positions in the declarations and current facts underscores the need for depositions in this case. The State should be permitted to examine these deviations as well as why the declarants did not originally object to the "applicable law" clauses.

In light of the exigency created by your request for an expedited hearing, we request that you let us know your positions on these matters by noon EDT tomorrow. If you do not do so, we will assume that (1) Gadeir's statements to the press accurately reflect Plaintiffs' current legal positions, (2) Plaintiffs will not be withdrawing your request for an expedited hearing, and (3) Plaintiffs will not be correcting what appears to be false statements to the Court. On that assumption, we will seek relief as appropriate from the Court.

Sincerely,  
Drew

Drew C. Ensign  
Senior Litigation Counsel



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**From:** Jose Cardenas (General Counsel)

**Sent:** March 8, 2018 8:51 AM

**To:** 'Carolyn Homer' <[cHomer@cair.com](mailto:cHomer@cair.com)>; Gadeir Abbas <[gAbbas@cair.com](mailto:gAbbas@cair.com)>; Lena F. Masri, Esq. <[lmMasri@cair.com](mailto:lmMasri@cair.com)>

**Cc:** [raees@kellywarnerlaw.com](mailto:raees@kellywarnerlaw.com); Anne Griffith <[anne@kellywarnerlaw.com](mailto:anne@kellywarnerlaw.com)>; Lisa Loo <[lisaloo@asu.edu](mailto:lisaloo@asu.edu)>

**Subject:** RE: American Muslims for Palestine v. Arizona State University et. al, 2:18-cv-00670

Carolyn, Gadeir and Lena, this is a follow up to our discussion on Tuesday afternoon. I have also copied your local counsel.

We appreciate your courtesy in discussing your lawsuit with us and in listening to the reasons we gave as to why it should be withdrawn. While you did not agree with us on Tuesday, I am hopeful that upon further consideration of what we said and what is set forth here you will now agree that there is no dispute between ASU and your clients.



To be clear, for all of the reasons we discussed on Tuesday and as set forth below, ASU has no intentions of enforcing the statute that is the subject of your lawsuit and it will not be a bar to the April 3<sup>rd</sup> event. The statute simply does not apply in this context and that is why we removed it from our speaker engagement form contract.

As we told you, and as you know from press reports, your lawsuit is based on an outdated version of our speaker engagement form contract. The form was revised in December of 2017 and the no boycott of Israel provision to which you object was removed. That version of the contract is attached.

Lisa Loo, ASU's Vice President for Legal Affairs and Deputy General Counsel, tried to contact you and your local counsel last Friday before your scheduled press conference to tell you that the no boycott provision does not apply to the April 3<sup>rd</sup> event, but was not able to reach anyone. ASU, however, did make its position publicly known that same day and we will continue to do so.

That fact that our speaker engagement form does not have the boycott provision should in and of itself dispose of this lawsuit.

First, the relief you seek is an injunction "striking the 'No Boycott of Israel' clause from Defendants' standard speaker contract."

There is nothing to strike because the clause is not there.

Second, Dr. Bazian, in paragraph 16 of the affidavit attached to your complaint, said he would sign the contract if it did not have the provision to which he objects:

"I have no objection to Arizona State University's 'Speaker/Artist/Performer Agreement' other than Paragraph 20, the 'No Boycott of Israel' clause. I have already blocked off April 3, 2018 on my calendar for attendance at the Muslim Students Association's BDS event at Arizona State University. If the 'No Boycott of Israel' clause is stricken or declared unenforceable, I will sign the Agreement, enabling me to speak at the April 3, 2018 event."

If Dr. Bazian meant what he said, he should be willing to sign the contract because it does not have the clause he said prevents him from signing.

When we spoke, Gadeir came up with a new theory as to why the lawsuit should nevertheless proceed. You said that Dr. Bazian will not sign the contract because it also includes a provision about compliance with all Arizona laws. You contend that incorporates the no boycott provision of state law and therefore we still have something to argue about.

Again, there are several flaws in this logic:

- 1) That argument is contrary to your client's position.
- 2) The provision you reference actually refers to "all **applicable**" laws.
  - a. The no boycott provision does not apply to having Dr. Bazian speak at ASU, so there should be no further issues.
  - b. As I told you I would, I spoke to the lawyers in the Attorney-General's office who are handling this matter. I am authorized to tell you that they agree that the no boycott clause would not apply to Dr. Bazian or any other speaker at the April 3<sup>rd</sup> event.

- c. The argument puts CAIR in the rather odd position of telling ABOR and ASU that they have to follow a state law to which you object and that we independently concluded does not apply. And now you know that the only other defendant agrees with our position.
- 3) A further flaw is that the obligation the “no boycott” statute imposes in the first instance is upon the public entity and not upon the other party to the contract. It requires the public entity to include that provision if applicable. If the clause is not there, we never get to the issue of whether your client has to agree to the certification.
- 4) Thus, to the extent you’re saying the reference to all laws means the boycott provision applies, what you’re really saying is it has to be in the contract. That leaves you in the rather strange position of demanding the inclusion of the provision or inserting it yourself so that you can then say your client won’t comply because it’s now in the contract.

Gadeir, you were quoted on a local news posting as saying that your clients “hope ASU will come to its senses and allow the April 3<sup>rd</sup> event to go forward.”

At the moment, the only thing that is preventing the April 3<sup>rd</sup> event from going forward is your tortured legal analysis and your insistence on creating a dispute where none exists. If you insist on proceeding, I can well imagine the Judge asking, “why are we here?”

With all due respect, it is you and your colleagues who need to come to your senses and not waste the time and resources of the parties and the court and, more importantly, deprive ASU students and others of the opportunity to hear from Dr. Bazian.

As I told you when we spoke, ASU’s commitment to free speech is long standing and deep. That is why FIRE (Foundation for Individual Rights in Education) has lauded ASU as one of only 38 institutions in the entire country to earn its highest, “green light” rating for campus free speech.

Paragraph 30 of your complaint similarly notes that ASU is “committed to academic freedom, and to providing an open venue for student organizations to invite outside speakers and host educational events on a wide variety of subjects, and from a wide variety of viewpoints.”

You were right. That is why we look forward to finalizing the speaker engagement contract with Dr. Bazian’s signature.

And we look forward to Dr. Bazian’s appearance at ASU on April 3<sup>rd</sup>.

Sincerely,

José A. Cárdenas  
Sr. Vice President and General Counsel  
Arizona State University

**CAIR LEGAL DEFENSE FUND**

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Gadeir I. Abbas\* (VA Bar # 81161) (*seeking pro hac vice admission*)

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*Practice limited to federal matters*

**UNITED STATES DISTRICT COURT  
DISTRICT OF ARIZONA  
PHOENIX DIVISION**

**AMERICAN MUSLIMS FOR PALESTINE  
and DR. HATEM BAZIAN**

Plaintiffs,

vs.

**ARIZONA STATE UNIVERSITY; ARIZONA  
BOARD OF REGENTS; and MARK  
BRNOVICH**, in his official capacity as  
Attorney General of Arizona

Defendants.

Case No. CV-18-670-PHX-JJT

**JOINT STIPULATION CONSENTING TO  
APRIL 3, 2018 EVENT, WITHDRAWING  
PRELIMINARY INJUNCTION MOTION,  
AND AMENDING CAPTION**

## JOINT STIPULATION

Plaintiffs and Defendants jointly stipulate to the following:

1. The caption of the case shall be amended to remove Arizona State University (“ASU”) as a defendant, given that Arizona Board of Regents has the capacity to be sued on ASU’s behalf. The two Defendants are now “Arizona Board of Regents for and on behalf of Arizona State University” and “Mark Brnovich, in his official capacity as Attorney General of Arizona.”

2. Defendants have repeatedly advised Plaintiffs that they will not enforce Ariz. Rev. Stat. § 35-393 *et seq.* (the “Act”) against Plaintiffs in connection with their planned April 3, 2018 speaking engagement at Arizona State University, because Defendants do not interpret the Act to apply to that engagement.

3. Plaintiffs have raised additional concerns about the “Speaker / Artist / Performer Agreement,” (see Dkt. 17-1), concerning the “Compliance with Law” paragraph (paragraph 6). Defendants do not agree with those concerns but counsel for ASU has circulated a revised agreement that removes that paragraph (attached hereto as Exhibit A). Defendants will accept Plaintiffs’ signatures on this revised “Speaker / Artist / Performer Agreement.”

4. Defendant the Arizona Board of Regents will not cancel or veto the April 3, 2018 event pursuant to Policy Number 5-202(C), or otherwise interfere with ASU’s hosting of or Plaintiffs’ participation at the April 3, 2018 speaking engagement, on the basis that the event does not adhere to Ariz. Rev. Stat. § 35-393 *et seq.*

5. Plaintiffs will provide their signatures to the revised agreement (Exhibit A) by March 26, 2018. So long as they do so, Defendants will permit Plaintiffs to

1 participate in the April 3, 2018 event at Arizona State University regarding the  
2 Boycott, Divestment, and Sanctions movement.

3 6. The Parties reserve all rights to make any arguments about the  
4 lawfulness of Defendants' conduct and the constitutionality of Ariz. Rev. Stat. § 35-  
5 393 *et seq.*, including Defendants' arguments that the constitutionality of Ariz. Rev.  
6 Stat. § 35-393 *et seq.* is not at issue in this case and that there is no case or  
7 controversy properly before the Court.

8 7. In light of the foregoing, Plaintiffs hereby withdraw their Application  
9 for a Preliminary Injunction (Dkt. 9) and Request for Preliminary Injunction  
10 Hearing (Dkt. 10), without prejudice, and each party agrees to bear its own costs and  
11 fees with respect to the same.

12  
13 Dated: April 10, 2018

**CAIR LEGAL DEFENSE FUND**

14 By /s/ Draft

Lena F. Masri (D.C. Bar No. 100019)  
(*pro hac vice*)

Gadeir I. Abbas (VA Bar No. 81161)\*  
(seeking *pro hac vice* admission)

16 Carolyn M. Homer (D.C. Bar No. 1049145)  
(*pro hac vice*)

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21 **KELLY / WARNER, PLLC**

22 By /s/ Draft

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*Attorneys for Plaintiffs*

4 Dated: April 10, 2018

**MARK BRNOVICH**  
**ATTORNEY GENERAL**

5 By /s/ Draft  
6 Drew C. Ensign (No. 25462)  
7 Oramel H. (O.H.) Skinner (No. 32891)  
8 Brunn (Beau) W. Roysden III (No. 28698)  
9 Robert J. Makar (No. 033579)

*Attorneys for Defendant Mark Brnovich  
in his official capacity as Attorney General*

10 By /s/ Draft  
11 Nancy Tribbensee (No. 011128)  
12 Senior Vice President and General Counsel  
13 José A. Cárdenas (No. 005632)  
14 Senior Vice President and General Counsel,  
ASU

*Attorneys for Defendant Arizona Board of  
Regents*

# Exhibit J



**Ensign, Drew**

---

**From:** Jose Cardenas (General Counsel) <jcardenas@asu.edu>  
**Sent:** Wednesday, March 14, 2018 10:06 AM  
**To:** Gadeir Abbas; Ensign, Drew; Carolyn Homer; Lena F. Masri, Esq.;  
raees@kellywarnerlaw.com  
**Cc:** Roysden, Beau; Skinner, OH; Nancy Tribbensee; Lisa Loo  
**Subject:** RE: American Muslims for Palestine v. Arizona State University et. al, 2:18-cv-00670

Gadeir, thanks for the prompt response. I'm still puzzled by your insistence that we have a dispute given that the contract has none of the provisions that you said were of concern to your clients.

As for your statement regarding fears of action by the AG or by ABOR, we have already committed on behalf of our clients that neither the Attorney General nor ABOR will take any such action. Moreover, the ABOR policy provision you reference in your proposed stipulation does not apply.

In spite of these facts, I assume you will simply come up with some other rationale for proceeding absent some sort of stipulation. I'll leave it to the folks at the AG's office to take a cut at a stipulation that might be acceptable to them and to ABOR.

We'll be in touch.

Sincerely,

José

---

**From:** Gadeir Abbas [mailto:gAbbas@cair.com]  
**Sent:** Wednesday, March 14, 2018 6:15 AM  
**To:** Ensign, Drew <drew.ensign@azag.gov>; Carolyn Homer <CHomer@cair.com>; Lena F. Masri, Esq. <lmasri@cair.com>; raees@kellywarnerlaw.com; Jose Cardenas (General Counsel) <jcardenas@asu.edu>  
**Cc:** Roysden, Beau <beau.roysden@azag.gov>; Skinner, OH <o.h.skinner@azag.gov>; Nancy Tribbensee <Nancy.Tribbensee@azregents.edu>; Lisa Loo <lisaloo@asu.edu>  
**Subject:** RE: American Muslims for Palestine v. Arizona State University et. al, 2:18-cv-00670

Jose,

Thanks for your email and for engaging with us in good faith to figure this thing out.

While the removal of the catch all provision takes us closer to an agreement, given the pending motion, we won't withdraw without a stipulation from all the defendants.

First, as you know, the Board of Regents possesses the authority to veto ASU student group activity that is inconsistent with state law. Given the clarity of the BDS law, we remain concerned that either the AG or the Board of Regents will block the event at a later date.

Second, because these contract revisions constitute new facts, we do not view the unilateral withdrawal of our motion as an appropriate mechanism to guarantee that the April 3rd event will happen.

If you all do not plan to interfere with the event and will allow it to happen, then stipulate to it. As I'm sure you can appreciate, we would be doing our clients a disservice if we were to rely on an understanding between the

attorneys to protect their rights. To resolve this without a hearing, we need an on-the-docket stipulation as to what all the parties have agreed to do.

An unwillingness to stipulate, in our view, gives rise to the inference that one of the defendants may intend to interfere or even block the event when the time for a hearing has passed. The same political pressures that led to the passage of the law, without a stipulation, may lead one of the defendants to intervene despite the nonbinding assurances the defendants have provided to date.

In short, we will only withdraw our motion pursuant to an all-party stipulation. We respectfully suggest that the parties work together to fashion a stipulation that ensures the event will happen and that the parties can live with.

Regards,  
Gadeir

---

**From:** Jose Cardenas (General Counsel) <[jcardenas@asu.edu](mailto:jcardenas@asu.edu)>

**Sent:** Tuesday, March 13, 2018 8:27:22 PM

**To:** Gadeir Abbas; Ensign, Drew; Carolyn Homer; Lena F. Masri, Esq.; [raees@kellywarnerlaw.com](mailto:raees@kellywarnerlaw.com)

**Cc:** Roysden, Beau; Skinner, OH; Nancy Tribbensee; Lisa Loo

**Subject:** RE: American Muslims for Palestine v. Arizona State University et. al, 2:18-cv-00670

Gadeir, I've reviewed your e-mail exchange with Drew.

For the reasons set forth in the e-mail I sent you on March 8, I completely disagree with your position that the "compliance with all applicable laws" provision in the contract means the no boycott clause, which is not in the contract, nevertheless applies to the April 3<sup>rd</sup> speaking engagement. I also made clear that ASU had no intentions of applying that clause to this agreement. Given the Attorney General's concurrence, I thought we were done.

I was surprised that we did not get a prompt response from you and even more surprised to see that you continue to insist that the "all applicable laws" provision means we still have a dispute.

But rather than continue that debate, I have a simple solution that avoids the need for a stipulation and that resolves your clients' concerns. I've deleted what was paragraph 6 of the December 2017 contract to eliminate the clause regarding compliance with all applicable laws.

I trust that this will resolve all issues and that we can now focus on the April 3<sup>rd</sup> event.

Please confirm by noon EST that your clients will sign the attached revised agreement and then please get it back to us as soon as possible.

Thanks.

José A. Cárdenas

---

**From:** Gadeir Abbas [<mailto:gAbbas@cair.com>]

**Sent:** Tuesday, March 13, 2018 2:58 PM

**To:** Ensign, Drew <[Drew.Ensign@azag.gov](mailto:Drew.Ensign@azag.gov)>; Carolyn Homer <[CHomer@cair.com](mailto:CHomer@cair.com)>; Lena F. Masri, Esq. <[lmMasri@cair.com](mailto:lmMasri@cair.com)>; [raees@kellywarnerlaw.com](mailto:raees@kellywarnerlaw.com)

**Cc:** Roysden, Beau <[Beau.Roysden@azag.gov](mailto:Beau.Roysden@azag.gov)>; Skinner, OH <[O.H.Skinner@azag.gov](mailto:O.H.Skinner@azag.gov)>; Jose Cardenas (General Counsel) <[jcardenas@asu.edu](mailto:jcardenas@asu.edu)>; Nancy Tribbensee <[Nancy.Tribbensee@azregents.edu](mailto:Nancy.Tribbensee@azregents.edu)>; Lisa Loo <[lisaloo@asu.edu](mailto:lisaloo@asu.edu)>

**Subject:** RE: American Muslims for Palestine v. Arizona State University et. al, 2:18-cv-00670

Hi Drew,

I apologize if you feel that we've not been communicative. That hasn't been intentional, and I emphasize that I'm always happy to hop on the phone with any of you. My cell is listed below.

As I communicated to Jose, we've been very surprised by the defendants' position that the law does not apply. We're not the only ones: <https://www.thefire.org/arizonas-anti-bds-statute-lands-arizona-state-university-in-federal-court/>

Certainly, if we thought the law allowed for any room for the defendants to negotiate, we would have discussed it. Given your representations, we remain open to resolving the preliminary injunction piece of this case.

I will note that accusations that either I or our plaintiffs have lied or misled the court do not facilitate conversations among us. And with this email, we've now been accused—wrongly, and it is demonstrable—of lying by counsel for most of the defendants. It's offensive, and not helpful to resolving this matter or maintaining professional courtesy among the attorneys, for you to claim that the statements that I made somehow render our plaintiffs' declarations false. But if your strategy is to pursue such ad hominem attacks, it will just highlight the anti-free speech nature of Arizona's BDS law and the state's hail-mary attempts to defend it.

Putting your personal attacks to the side, to resolve this short of a court hearing, we're not willing to simply rely upon attorney-representations. With respect to the April 3<sup>rd</sup> event, we remain concerned that, having removed the explicit BDS provision from the contract, the defendants intend for the general catch-all provision to envelope the BDS law. Indeed, that is how we read it. And we believe that is a fair reading of it, given the clarity of the BDS law's language.

We've attached a draft stipulation that we believe would allow our plaintiffs to come to ASU on April 3<sup>rd</sup> without violating their rights. All current parties would be bound.

We await your thoughts on it. If you'd like to discuss it by phone, please advise.

Regards,

Gadeir Abbas, Esq.  
**Senior Litigation Attorney**



Council on American-Islamic Relations

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Practice limited to federal matters.

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**From:** Ensign, Drew [<mailto:Drew.Ensign@azag.gov>]

**Sent:** Tuesday, March 13, 2018 3:28 PM

**To:** Carolyn Homer <[cHomer@cair.com](mailto:cHomer@cair.com)>; Gadeir Abbas <[gAbbas@cair.com](mailto:gAbbas@cair.com)>; Lena F. Masri, Esq. <[lmagri@cair.com](mailto:lmagri@cair.com)>; [raees@kellywarnerlaw.com](mailto:raees@kellywarnerlaw.com)

**Cc:** Roysden, Beau <[Beau.Roysden@azag.gov](mailto:Beau.Roysden@azag.gov)>; Skinner, OH <[O.H.Skinner@azag.gov](mailto:O.H.Skinner@azag.gov)>; 'Jose Cardenas (General Counsel)' <[jcardenas@asu.edu](mailto:jcardenas@asu.edu)>; Nancy Tribbensee <[Nancy.Tribbensee@azregents.edu](mailto:Nancy.Tribbensee@azregents.edu)>; Lisa Loo <[lisaloo@asu.edu](mailto:lisaloo@asu.edu)>

**Subject:** RE: American Muslims for Palestine v. Arizona State University et. al, 2:18-cv-00670

Gadeir, Lena, and Carolyn,

On behalf of the Attorney General, we request that you withdraw your request for an expedited hearing (Doc. 10). In light of the factual developments outlined in Jose's March 8 email (copied below) and our March 8 filing with the Court (Doc. 17)—both 5 days ago—there can be no uncertainty as to whether Dr. Bazian and American Muslims for Palestine ("AMP") will be able to speak at the April 3 event. They will be. We therefore do not believe there is any basis for Plaintiffs to continue seeking an expedited hearing. We ask that you let us know by noon EDT tomorrow whether you will be withdrawing your request so that we can seek relief from the Court as may be necessary. We also request that you let us know by the same time whether you will be amending/refiling your motion for a preliminary injunction and supporting declarations to correct statements therein that, as discussed below, now appear false in light of statements you have made to the press.

Although you have not responded to Jose's email or our court filing last Thursday, Gadeir has been quoted in the press as stating *inter alia*: "The lawsuit's about the law, not the April 3 event." (attached) Given that admission, we do not understand how there could be any need for an expedited hearing, which explicitly was based on Dr. Bazian's and AMP's ability to speak at the April 3 event. Doc. 10 at 2. Indeed, whatever the merits of that request when filed, it has become clear that the request is now thoroughly unwarranted.

On a related note, we will also confess our frustration that you have failed to communicate with us directly and instead have done so almost exclusively through the press. For example, your complaint was filed late on March 1 and CAIR released a press release and held a press conference the next day. (<https://www.cair.com/press-center/press-releases/15009-cair-defends-free-speech-in-lawsuit-challenging-arizona-bds-law.html>). But you did not serve us until late on March 5, and only then because we affirmatively reached out to you to request service after we received notice of your complaint through press inquiries. Similarly, you have ducked responding to Jose's email for 5 days now, but have apparently been willing to respond to the substance of his email to reporters.

We therefore request that, as a matter of professional courtesy, you speak directly to us about your positions on pending matters in this case and avoid having us receive notice of your positions belatedly and indirectly through the press.

We are also writing to provide you notice that we believe Gadeir's statement to the press is—at a bare minimum—in sharp tension with the duty of candor owed to the Court. You represented to the Court that "The 'No Boycott of Israel' clause in ASU's standard speaker agreement is, to Plaintiffs' knowledge, the only institutional and legal roadblock to their participation in the scheduled April 3, 2018 event." Doc. 9-1 at 5. However, your recent press statement indicates that you now apparently object to the "applicable law" clause, although that same clause appeared in the contracts that you were sent previously—and attached in court filings. See Doc. 9-2 Ex. A at 2 ¶6; Doc. 9-3 Ex. A at 2 ¶6. You thus had full knowledge of the "applicable law" clause of paragraph 6, but nonetheless represented to the Court that the only obstacle to Plaintiffs speaking at the April 3 event was the "No Boycott of Israel" clause.

In light of your press statements, this representation to the Court now appears to be false. If that press statement reflects your current legal position, we ask that you confirm that you will be withdrawing and/or correcting your motion for a preliminary injunction to correct what now appears to be a false statement to the Court. We similarly note that the declarations of both Dr. Bazian and Taher Herzallah may now contain false statements under oath as well. See Doc. 9-2 at 3 ¶8; Doc. 9-2 at 3 ¶16. Relatedly, we note that this apparent deviation between the positions in the declarations and current facts underscores the need for depositions in this case. The State should be permitted to examine these deviations as well as why the declarants did not originally object to the "applicable law" clauses.

In light of the exigency created by your request for an expedited hearing, we request that you let us know your positions on these matters by noon EDT tomorrow. If you do not do so, we will assume that (1) Gadeir's statements to the press accurately reflect Plaintiffs' current legal positions, (2) Plaintiffs will not be withdrawing your request for an expedited

hearing, and (3) Plaintiffs will not be correcting what appears to be false statements to the Court. On that assumption, we will seek relief as appropriate from the Court.

Sincerely,  
Drew

Drew C. Ensign  
Senior Litigation Counsel



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---

**From:** Jose Cardenas (General Counsel)

**Sent:** March 8, 2018 8:51 AM

**To:** 'Carolyn Homer' <[cHomer@cair.com](mailto:cHomer@cair.com)>; Gadeir Abbas <[gAbbas@cair.com](mailto:gAbbas@cair.com)>; Lena F. Masri, Esq. <[lmagri@cair.com](mailto:lmagri@cair.com)>

**Cc:** [raees@kellywarnerlaw.com](mailto:raees@kellywarnerlaw.com); Anne Griffith <[anne@kellywarnerlaw.com](mailto:anne@kellywarnerlaw.com)>; Lisa Loo <[lisaloo@asu.edu](mailto:lisaloo@asu.edu)>

**Subject:** RE: American Muslims for Palestine v. Arizona State University et. al, 2:18-cv-00670

Carolyn, Gadeir and Lena, this is a follow up to our discussion on Tuesday afternoon. I have also copied your local counsel.

We appreciate your courtesy in discussing your lawsuit with us and in listening to the reasons we gave as to why it should be withdrawn. While you did not agree with us on Tuesday, I am hopeful that upon further consideration of what we said and what is set forth here you will now agree that there is no dispute between ASU and your clients.

To be clear, for all of the reasons we discussed on Tuesday and as set forth below, ASU has no intentions of enforcing the statute that is the subject of your lawsuit and it will not be a bar to the April 3<sup>rd</sup> event. The statute simply does not apply in this context and that is why we removed it from our speaker engagement form contract.

As we told you, and as you know from press reports, your lawsuit is based on an outdated version of our speaker engagement form contract. The form was revised in December of 2017 and the no boycott of Israel provision to which you object was removed. That version of the contract is attached.

Lisa Loo, ASU's Vice President for Legal Affairs and Deputy General Counsel, tried to contact you and your local counsel last Friday before your scheduled press conference to tell you that the no boycott provision does not apply to the April 3<sup>rd</sup> event, but was not able to reach anyone. ASU, however, did make its position publicly known that same day and we will continue to do so.

That fact that our speaker engagement form does not have the boycott provision should in and of itself dispose of this lawsuit.

First, the relief you seek is an injunction "striking the 'No Boycott of Israel' clause from Defendants' standard speaker contract."

There is nothing to strike because the clause is not there.

Second, Dr. Bazian, in paragraph 16 of the affidavit attached to your complaint, said he would sign the contract if it did not have the provision to which he objects:

"I have no objection to Arizona State University's 'Speaker/Artist/Performer Agreement' other than Paragraph 20, the 'No Boycott of Israel' clause. I have already blocked off April 3, 2018 on my calendar for attendance at the Muslim Students Association's BDS event at Arizona State University. If the 'No Boycott of Israel' clause is stricken or declared unenforceable, I will sign the Agreement, enabling me to speak at the April 3, 2018 event."

If Dr. Bazian meant what he said, he should be willing to sign the contract because it does not have the clause he said prevents him from signing.

When we spoke, Gadeir came up with a new theory as to why the lawsuit should nevertheless proceed. You said that Dr. Bazian will not sign the contract because it also includes a provision about compliance with all Arizona laws. You contend that incorporates the no boycott provision of state law and therefore we still have something to argue about.

Again, there are several flaws in this logic:

- 1) That argument is contrary to your client's position.
- 2) The provision you reference actually refers to "all **applicable**" laws.
  - a. The no boycott provision does not apply to having Dr. Bazian speak at ASU, so there should be no further issues.
  - b. As I told you I would, I spoke to the lawyers in the Attorney-General's office who are handling this matter. I am authorized to tell you that they agree that the no boycott clause would not apply to Dr. Bazian or any other speaker at the April 3<sup>rd</sup> event.
  - c. The argument puts CAIR in the rather odd position of telling ABOR and ASU that they have to follow a state law to which you object and that we independently concluded does not apply. And now you know that the only other defendant agrees with our position.
- 3) A further flaw is that the obligation the "no boycott" statute imposes in the first instance is upon the public entity and not upon the other party to the contract. It requires the public entity to include that provision if applicable. If the clause is not there, we never get to the issue of whether your client has to agree to the certification.
- 4) Thus, to the extent you're saying the reference to all laws means the boycott provision applies, what you're really saying is it has to be in the contract. That leaves you in the rather strange position of demanding the inclusion of the provision or inserting it yourself so that you can then say your client won't comply because it's now in the contract.

Gadeir, you were quoted on a local news posting as saying that your clients "hope ASU will come to its senses and allow the April 3<sup>rd</sup> event to go forward."

At the moment, the only thing that is preventing the April 3<sup>rd</sup> event from going forward is your tortured legal analysis and your insistence on creating a dispute where none exists. If you insist on proceeding, I can well imagine the Judge asking, "why are we here?"

With all due respect, it is you and your colleagues who need to come to your senses and not waste the time and resources of the parties and the court and, more importantly, deprive ASU students and others of the opportunity to hear from Dr. Bazian.

As I told you when we spoke, ASU's commitment to free speech is long standing and deep. That is why FIRE (Foundation for Individual Rights in Education) has lauded ASU as one of only 38 institutions in the entire country to earn its highest, "green light" rating for campus free speech.

Paragraph 30 of your complaint similarly notes that ASU is "committed to academic freedom, and to providing an open venue for student organizations to invite outside speakers and host educational events on a wide variety of subjects, and from a wide variety of viewpoints."

You were right. That is why we look forward to finalizing the speaker engagement contract with Dr. Bazian's signature.

And we look forward to Dr. Bazian's appearance at ASU on April 3<sup>rd</sup>.

Sincerely,

José A. Cárdenas  
Sr. Vice President and General Counsel  
Arizona State University



# Exhibit K

## Ensign, Drew

---

**From:** Gadeir Abbas <gAbbas@cair.com>  
**Sent:** Wednesday, March 14, 2018 6:15 AM  
**To:** Ensign, Drew; Carolyn Homer; Lena F. Masri, Esq.; raees@kellywarnerlaw.com; Jose Cardenas (General Counsel)  
**Cc:** Roysden, Beau; Skinner, OH; Nancy Tribbensee; Lisa Loo  
**Subject:** RE: American Muslims for Palestine v. Arizona State University et. al, 2:18-cv-00670

Jose,

Thanks for your email and for engaging with us in good faith to figure this thing out.

While the removal of the catch all provision takes us closer to an agreement, given the pending motion, we won't withdraw without a stipulation from all the defendants.

First, as you know, the Board of Regents possesses the authority to veto ASU student group activity that is inconsistent with state law. Given the clarity of the BDS law, we remain concerned that either the AG or the Board of Regents will block the event at a later date.

Second, because these contract revisions constitute new facts, we do not view the unilateral withdrawal of our motion as an appropriate mechanism to guarantee that the April 3rd event will happen.

If you all do not plan to interfere with the event and will allow it to happen, then stipulate to it. As I'm sure you can appreciate, we would be doing our clients a disservice if we were to rely on an understanding between the attorneys to protect their rights. To resolve this without a hearing, we need an on-the-docket stipulation as to what all the parties have agreed to do.

An unwillingness to stipulate, in our view, gives rise to the inference that one of the defendants may intend to interfere or even block the event when the time for a hearing has passed. The same political pressures that led to the passage of the law, without a stipulation, may lead one of the defendants to intervene despite the nonbinding assurances the defendants have provided to date.

In short, we will only withdraw our motion pursuant to an all-party stipulation. We respectfully suggest that the parties work together to fashion a stipulation that ensures the event will happen and that the parties can live with.

Regards,  
Gadeir

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Gadeir, I've reviewed your e-mail exchange with Drew.

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I was surprised that we did not get a prompt response from you and even more surprised to see that you continue to insist that the “all applicable laws” provision means we still have a dispute.

But rather than continue that debate, I have a simple solution that avoids the need for a stipulation and that resolves your clients’ concerns. I’ve deleted what was paragraph 6 of the December 2017 contract to eliminate the clause regarding compliance with all applicable laws.

I trust that this will resolve all issues and that we can now focus on the April 3<sup>rd</sup> event.

Please confirm by noon EST that your clients will sign the attached revised agreement and then please get it back to us as soon as possible.

Thanks.

José A. Cárdenas

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**From:** Gadeir Abbas [mailto:gAbbas@cair.com]

**Sent:** Tuesday, March 13, 2018 2:58 PM

**To:** Ensign, Drew <Drew.Ensign@azag.gov>; Carolyn Homer <CHomer@cair.com>; Lena F. Masri, Esq. <lmMasri@cair.com>; raees@kellywarnerlaw.com

**Cc:** Roysden, Beau <Beau.Roysden@azag.gov>; Skinner, OH <O.H.Skinner@azag.gov>; Jose Cardenas (General Counsel) <jcardenas@asu.edu>; Nancy Tribbensee <Nancy.Tribbensee@azregents.edu>; Lisa Loo <llisaloo@asu.edu>

**Subject:** RE: American Muslims for Palestine v. Arizona State University et. al, 2:18-cv-00670

Hi Drew,

I apologize if you feel that we’ve not been communicative. That hasn’t been intentional, and I emphasize that I’m always happy to hop on the phone with any of you. My cell is listed below.

As I communicated to Jose, we’ve been very surprised by the defendants’ position that the law does not apply. We’re not the only ones: <https://www.thefire.org/arizonas-anti-bds-statute-lands-arizona-state-university-in-federal-court/>

Certainly, if we thought the law allowed for any room for the defendants to negotiate, we would have discussed it. Given your representations, we remain open to resolving the preliminary injunction piece of this case.

I will note that accusations that either I or our plaintiffs have lied or misled the court do not facilitate conversations among us. And with this email, we’ve now been accused—wrongly, and it is demonstrable—of lying by counsel for most of the defendants. It’s offensive, and not helpful to resolving this matter or maintaining professional courtesy among the attorneys, for you to claim that the statements that I made somehow render our plaintiffs’ declarations false. But if your strategy is to pursue such ad hominem attacks, it will just highlight the anti-free speech nature of Arizona’s BDS law and the state’s hail-mary attempts to defend it.

Putting your personal attacks to the side, to resolve this short of a court hearing, we’re not willing to simply rely upon attorney-representations. With respect to the April 3<sup>rd</sup> event, we remain concerned that, having removed the explicit BDS provision from the contract, the defendants intend for the general catch-all provision to envelope the BDS law. Indeed, that is how we read it. And we believe that is a fair reading of it, given the clarity of the BDS law’s language.

We’ve attached a draft stipulation that we believe would allow our plaintiffs to come to ASU on April 3<sup>rd</sup> without violating their rights. All current parties would be bound.

We await your thoughts on it. If you'd like to discuss it by phone, please advise.

Regards,

Gadeir Abbas, Esq.  
Senior Litigation Attorney



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Licensed to practice in VA, not in DC.  
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**Sent:** Tuesday, March 13, 2018 3:28 PM  
**To:** Carolyn Homer <[cHomer@cair.com](mailto:cHomer@cair.com)>; Gadeir Abbas <[gAbbas@cair.com](mailto:gAbbas@cair.com)>; Lena F. Masri, Esq. <[lmasri@cair.com](mailto:lmasri@cair.com)>; [raees@kellywarnerlaw.com](mailto:raees@kellywarnerlaw.com)  
**Cc:** Roysden, Beau <[Beau.Roysden@azag.gov](mailto:Beau.Roysden@azag.gov)>; Skinner, OH <[O.H.Skinner@azag.gov](mailto:O.H.Skinner@azag.gov)>; 'Jose Cardenas (General Counsel)' <[jcardenas@asu.edu](mailto:jcardenas@asu.edu)>; Nancy Tribbensee <[Nancy.Tribbensee@azregents.edu](mailto:Nancy.Tribbensee@azregents.edu)>; Lisa Loo <[lisaloo@asu.edu](mailto:lisaloo@asu.edu)>  
**Subject:** RE: American Muslims for Palestine v. Arizona State University et. al, 2:18-cv-00670

Gadeir, Lena, and Carolyn,

On behalf of the Attorney General, we request that you withdraw your request for an expedited hearing (Doc. 10). In light of the factual developments outlined in Jose's March 8 email (copied below) and our March 8 filing with the Court (Doc. 17)—both 5 days ago—there can be no uncertainty as to whether Dr. Bazian and American Muslims for Palestine ("AMP") will be able to speak at the April 3 event. They will be. We therefore do not believe there is any basis for Plaintiffs to continue seeking an expedited hearing. We ask that you let us know by noon EDT tomorrow whether you will be withdrawing your request so that we can seek relief from the Court as may be necessary. We also request that you let us know by the same time whether you will be amending/refiling your motion for a preliminary injunction and supporting declarations to correct statements therein that, as discussed below, now appear false in light of statements you have made to the press.

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On a related note, we will also confess our frustration that you have failed to communicate with us directly and instead have done so almost exclusively through the press. For example, your complaint was filed late on March 1 and CAIR released a press release and held a press conference the next day. (<https://www.cair.com/press-center/press-releases/15009-cair-defends-free-speech-in-lawsuit-challenging-arizona-bds-law.html>). But you did not serve us until late on March 5, and only then because we affirmatively reached out to you to request service after we received notice of your complaint through press inquiries. Similarly, you have ducked responding to Jose's email for 5 days now, but have apparently been willing to respond to the substance of his email to reporters.

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Sincerely,  
Drew

Drew C. Ensign  
Senior Litigation Counsel



Office of the Attorney General  
Government Accountability & Special Litigation  
2005 N. Central Ave., Phoenix, AZ 85004  
Direct: 602-542-5200 | Fax: 602-542-4377  
[Drew.Ensign@azag.gov](mailto:Drew.Ensign@azag.gov)

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**From:** Jose Cardenas (General Counsel)

**Sent:** March 8, 2018 8:51 AM

**To:** 'Carolyn Homer' <[cHomer@cair.com](mailto:cHomer@cair.com)>; Gadeir Abbas <[gAbbas@cair.com](mailto:gAbbas@cair.com)>; Lena F. Masri, Esq. <[lmMasri@cair.com](mailto:lmMasri@cair.com)>

Cc: [raees@kellywarnerlaw.com](mailto:raees@kellywarnerlaw.com); Anne Griffith <[anne@kellywarnerlaw.com](mailto:anne@kellywarnerlaw.com)>; Lisa Loo <[lisaloo@asu.edu](mailto:lisaloo@asu.edu)>

Subject: RE: American Muslims for Palestine v. Arizona State University et. al, 2:18-cv-00670

Carolyn, Gadeir and Lena, this is a follow up to our discussion on Tuesday afternoon. I have also copied your local counsel.

We appreciate your courtesy in discussing your lawsuit with us and in listening to the reasons we gave as to why it should be withdrawn. While you did not agree with us on Tuesday, I am hopeful that upon further consideration of what we said and what is set forth here you will now agree that there is no dispute between ASU and your clients.

To be clear, for all of the reasons we discussed on Tuesday and as set forth below, ASU has no intentions of enforcing the statute that is the subject of your lawsuit and it will not be a bar to the April 3<sup>rd</sup> event. The statute simply does not apply in this context and that is why we removed it from our speaker engagement form contract.

As we told you, and as you know from press reports, your lawsuit is based on an outdated version of our speaker engagement form contract. The form was revised in December of 2017 and the no boycott of Israel provision to which you object was removed. That version of the contract is attached.

Lisa Loo, ASU's Vice President for Legal Affairs and Deputy General Counsel, tried to contact you and your local counsel last Friday before your scheduled press conference to tell you that the no boycott provision does not apply to the April 3<sup>rd</sup> event, but was not able to reach anyone. ASU, however, did make its position publicly known that same day and we will continue to do so.

That fact that our speaker engagement form does not have the boycott provision should in and of itself dispose of this lawsuit.

First, the relief you seek is an injunction "striking the 'No Boycott of Israel' clause from Defendants' standard speaker contract."

There is nothing to strike because the clause is not there.

Second, Dr. Bazian, in paragraph 16 of the affidavit attached to your complaint, said he would sign the contract if it did not have the provision to which he objects:

"I have no objection to Arizona State University's 'Speaker/Artist/Performer Agreement' other than Paragraph 20, the 'No Boycott of Israel' clause. I have already blocked off April 3, 2018 on my calendar for attendance at the Muslim Students Association's BDS event at Arizona State University. If the 'No Boycott of Israel' clause is stricken or declared unenforceable, I will sign the Agreement, enabling me to speak at the April 3, 2018 event."

If Dr. Bazian meant what he said, he should be willing to sign the contract because it does not have the clause he said prevents him from signing.

When we spoke, Gadeir came up with a new theory as to why the lawsuit should nevertheless proceed. You said that Dr. Bazian will not sign the contract because it also includes a provision about compliance with all Arizona laws. You contend that incorporates the no boycott provision of state law and therefore we still have something to argue about.

Again, there are several flaws in this logic:

- 1) That argument is contrary to your client's position.
- 2) The provision you reference actually refers to "all **applicable**" laws.

- a. The no boycott provision does not apply to having Dr. Bazian speak at ASU, so there should be no further issues.
  - b. As I told you I would, I spoke to the lawyers in the Attorney-General's office who are handling this matter. I am authorized to tell you that they agree that the no boycott clause would not apply to Dr. Bazian or any other speaker at the April 3<sup>rd</sup> event.
  - c. The argument puts CAIR in the rather odd position of telling ABOR and ASU that they have to follow a state law to which you object and that we independently concluded does not apply. And now you know that the only other defendant agrees with our position.
- 3) A further flaw is that the obligation the "no boycott" statute imposes in the first instance is upon the public entity and not upon the other party to the contract. It requires the public entity to include that provision if applicable. If the clause is not there, we never get to the issue of whether your client has to agree to the certification.
- 4) Thus, to the extent you're saying the reference to all laws means the boycott provision applies, what you're really saying is it has to be in the contract. That leaves you in the rather strange position of demanding the inclusion of the provision or inserting it yourself so that you can then say your client won't comply because it's now in the contract.

Gadeir, you were quoted on a local news posting as saying that your clients "hope ASU will come to its senses and allow the April 3<sup>rd</sup> event to go forward."

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With all due respect, it is you and your colleagues who need to come to your senses and not waste the time and resources of the parties and the court and, more importantly, deprive ASU students and others of the opportunity to hear from Dr. Bazian.

As I told you when we spoke, ASU's commitment to free speech is long standing and deep. That is why FIRE (Foundation for Individual Rights in Education) has lauded ASU as one of only 38 institutions in the entire country to earn its highest, "green light" rating for campus free speech.

Paragraph 30 of your complaint similarly notes that ASU is "committed to academic freedom, and to providing an open venue for student organizations to invite outside speakers and host educational events on a wide variety of subjects, and from a wide variety of viewpoints."

You were right. That is why we look forward to finalizing the speaker engagement contract with Dr. Bazian's signature.

And we look forward to Dr. Bazian's appearance at ASU on April 3<sup>rd</sup>.

Sincerely,

José A. Cárdenas  
Sr. Vice President and General Counsel  
Arizona State University



# Exhibit L

## Ensign, Drew

---

**From:** Jose Cardenas (General Counsel) <jcardenas@asu.edu>  
**Sent:** Tuesday, March 13, 2018 5:27 PM  
**To:** Gadeir Abbas; Ensign, Drew; Carolyn Homer; Lena F. Masri, Esq.;  
raees@kellywarnerlaw.com  
**Cc:** Roysden, Beau; Skinner, OH; Nancy Tribbensee; Lisa Loo  
**Subject:** RE: American Muslims for Palestine v. Arizona State University et. al, 2:18-cv-00670  
**Attachments:** SpeakerAgreement 12.13.17 revised.pdf

Gadeir, I've reviewed your e-mail exchange with Drew.

For the reasons set forth in the e-mail I sent you on March 8, I completely disagree with your position that the "compliance with all applicable laws" provision in the contract means the no boycott clause, which is not in the contract, nevertheless applies to the April 3<sup>rd</sup> speaking engagement. I also made clear that ASU had no intentions of applying that clause to this agreement. Given the Attorney General's concurrence, I thought we were done.

I was surprised that we did not get a prompt response from you and even more surprised to see that you continue to insist that the "all applicable laws" provision means we still have a dispute.

But rather than continue that debate, I have a simple solution that avoids the need for a stipulation and that resolves your clients' concerns. I've deleted what was paragraph 6 of the December 2017 contract to eliminate the clause regarding compliance with all applicable laws.

I trust that this will resolve all issues and that we can now focus on the April 3<sup>rd</sup> event.

Please confirm by noon EST that your clients will sign the attached revised agreement and then please get it back to us as soon as possible.

Thanks.

José A. Cárdenas

---

**From:** Gadeir Abbas [mailto:gAbbas@cair.com]  
**Sent:** Tuesday, March 13, 2018 2:58 PM  
**To:** Ensign, Drew <Drew.Ensign@azag.gov>; Carolyn Homer <CHomer@cair.com>; Lena F. Masri, Esq. <lmasri@cair.com>; raees@kellywarnerlaw.com  
**Cc:** Roysden, Beau <Beau.Roysden@azag.gov>; Skinner, OH <O.H.Skinner@azag.gov>; Jose Cardenas (General Counsel) <jcardenas@asu.edu>; Nancy Tribbensee <Nancy.Tribbensee@azregents.edu>; Lisa Loo <lisaloo@asu.edu>  
**Subject:** RE: American Muslims for Palestine v. Arizona State University et. al, 2:18-cv-00670

Hi Drew,

I apologize if you feel that we've not been communicative. That hasn't been intentional, and I emphasize that I'm always happy to hop on the phone with any of you. My cell is listed below.

As I communicated to Jose, we've been very surprised by the defendants' position that the law does not apply. We're not the only ones: <https://www.thefire.org/arizonas-anti-bds-statute-lands-arizona-state-university-in-federal-court/>

Certainly, if we thought the law allowed for any room for the defendants to negotiate, we would have discussed it. Given your representations, we remain open to resolving the preliminary injunction piece of this case.

I will note that accusations that either I or our plaintiffs have lied or misled the court do not facilitate conversations among us. And with this email, we've now been accused—wrongly, and it is demonstrable—of lying by counsel for most of the defendants. It's offensive, and not helpful to resolving this matter or maintaining professional courtesy among the attorneys, for you to claim that the statements that I made somehow render our plaintiffs' declarations false. But if your strategy is to pursue such ad hominem attacks, it will just highlight the anti-free speech nature of Arizona's BDS law and the state's hail-mary attempts to defend it.

Putting your personal attacks to the side, to resolve this short of a court hearing, we're not willing to simply rely upon attorney-representations. With respect to the April 3<sup>rd</sup> event, we remain concerned that, having removed the explicit BDS provision from the contract, the defendants intend for the general catch-all provision to envelope the BDS law. Indeed, that is how we read it. And we believe that is a fair reading of it, given the clarity of the BDS law's language.

We've attached a draft stipulation that we believe would allow our plaintiffs to come to ASU on April 3<sup>rd</sup> without violating their rights. All current parties would be bound.

We await your thoughts on it. If you'd like to discuss it by phone, please advise.

Regards,

Gadeir Abbas, Esq.  
**Senior Litigation Attorney**



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Washington, DC 20003  
Tel: 202.742.6420 Fax: 202.488.0833  
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Licensed to practice in VA, not in DC.  
Practice limited to federal matters.

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---

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**Sent:** Tuesday, March 13, 2018 3:28 PM

**To:** Carolyn Homer <[cHomer@cair.com](mailto:cHomer@cair.com)>; Gadeir Abbas <[gAbbas@cair.com](mailto:gAbbas@cair.com)>; Lena F. Masri, Esq. <[lmagri@cair.com](mailto:lmagri@cair.com)>; [raees@kellywarnerlaw.com](mailto:raees@kellywarnerlaw.com)

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Senior Litigation Counsel



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**Cc:** [raees@kellywarnerlaw.com](mailto:raees@kellywarnerlaw.com); Anne Griffith <[anne@kellywarnerlaw.com](mailto:anne@kellywarnerlaw.com)>; Lisa Loo <[lisaloo@asu.edu](mailto:lisaloo@asu.edu)>

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Again, there are several flaws in this logic:

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You were right. That is why we look forward to finalizing the speaker engagement contract with Dr. Bazian's signature.

And we look forward to Dr. Bazian's appearance at ASU on April 3<sup>rd</sup>.

Sincerely,

José A. Cárdenas  
Sr. Vice President and General Counsel  
Arizona State University



## SPEAKER/ARTIST/PERFORMER AGREEMENT

This Agreement is entered into as of \_\_\_\_\_, 20\_\_\_\_, between the Arizona Board of Regents acting for and on behalf of Arizona State University (ASU) and \_\_\_\_\_<sup>1</sup> (Speaker), or \_\_\_\_\_, a \_\_\_\_\_, <sup>2</sup> as the authorized agent for Speaker. If Speaker is represented by an authorized agent, then references to Speaker herein will also refer to the authorized agent, where appropriate.

1. Engagement; Event. ASU hereby engages Speaker to personally provide the following services, and Speaker agrees to personally provide to ASU the following services (the Presentation) at the following Event (the Event):

Event/Location: \_\_\_\_\_

Dates and times of Event: \_\_\_\_\_

Speaker's Presentation schedule: \_\_\_\_\_

Title of Speaker's Presentation: \_\_\_\_\_

Speaker's hospitality requirements: \_\_\_\_\_

Speaker's technical requirements: \_\_\_\_\_

2. Notice. Any communication or notice required under this Agreement will be in writing and may either be given by personal delivery or sent, in all cases, against receipt, addressed to the following:

If to ASU:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Attn: \_\_\_\_\_

Email: \_\_\_\_\_

If to Speaker:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Attn: \_\_\_\_\_

Email: \_\_\_\_\_

Notice will be deemed to be received upon actual receipt (or refusal of receipt) by the receiving party.

3. Speaker Warranty. Speaker warrants that at all times during the Event, Speaker will personally provide Speaker's best professional efforts. Speakers' professional credentials are such that Speaker can provide the Presentation in a knowledgeable and professional manner.

4. Payment. ASU will pay Speaker the all-inclusive fee of \$\_\_\_\_\_ upon completion of the Presentation. Speaker will complete a Substitute W-9 Form, which must be signed by the person or entity to whom payment is to be issued. ASU will issue all payment in accordance with the information on the completed and signed Substitute W-9 Form.

5. Acceptance of Agreement. Speaker will accept and return this Agreement to ASU no later than \_\_\_\_\_, 20\_\_\_\_. In all events, this Agreement must be fully signed and received at ASU at least one week prior to the Event to allow on-time payment. This Agreement must be fully signed before payment can be processed. Please return a signed copy of this Agreement to ASU at the address set forth in Section 2.

<sup>1</sup> If an authorized agent is signing, please be sure to fill in the speaker name as well.

<sup>2</sup> Include full legal name of authorized agent, state of formation, and type of entity (i.e.; ABC, Inc., an Arizona Corporation.)



6. Press Materials. Speaker will timely supply all press/promotion material requested by ASU.
7. Indemnity. Speaker will indemnify, defend, save and hold ASU harmless for, from, and against, any all claims, demands, suits, costs and damages (including reasonable attorneys' fees) that ASU may incur by reason of any: (a) actual or alleged infringement or violation of any copyright, or other proprietary right by Speaker; (b) claim for damages arising from Speaker's Presentation; or (c) any of Speaker's costs and liabilities arising out of the Presentation or Event, including without limitation: travel and meal expenses; union dues; taxes; agents' commissions or other expenses or obligations; damages to Speaker's equipment or materials; compensation to third parties engaged by Speaker; compensation for lost or stolen equipment or materials; workers compensation or other insurance; and any expenses not preapproved by ASU in writing.
8. Indemnification and Liability Limitation. Because ASU is a public institution, any indemnification, liability limitation, releases, or hold harmless provisions are limited as required by Arizona law, including Article 9, Sections 5 and 7 of the Arizona Constitution and Arizona Revised Statutes (ARS) §§ 35-154 and 41-621. ASU's liability under any claim for indemnification is limited to claims for property damage, personal injury, or death to the extent caused by acts or omissions of ASU.
9. Force Majeure. Neither Speaker nor ASU shall be liable to each other for failure to perform hereunder if failure is caused by civil tumult, strike, epidemic, or any other cause beyond the reasonable control of the parties (Force Majeure). The ingestion of alcohol, opioids, illegal substances, or the like, will not be deemed an event of Force Majeure. If the Event or Presentation is cancelled due to an event of Force Majeure, the parties will make reasonable efforts to reschedule, if feasible.
10. Cancellation. If either party cancels this Agreement or the Presentation, other than due to an event of Force Majeure the other party will have all remedies afforded by law and in equity. In addition, if ASU cancels the Event or the Presentation, ASU will reimburse Speaker for reasonable expenses incurred in preparation for the Presentation up to the date ASU provides notice of cancellation.
11. Liability; Insurance. Speaker, at its expense, will procure and maintain, for the duration of the Event, a policy of commercial general liability insurance in an amount of not less than \$1,000,000, single limit, against claims for bodily injury, death and property damage occurring in connection with the Event and the Presentation. This insurance must name the Arizona Board of Regents, Arizona State University, and the State of Arizona as additional insureds. Speaker must provide ASU with a certificate evidencing this insurance coverage no later than 10 days prior to the Presentation.
12. No Assignment. Neither party may assign any rights or obligations under this Agreement without the prior written consent of the other party.
13. Entire Agreement. This Agreement constitutes the entire agreement and understanding of the parties with respect to its subject matter. No prior or contemporaneous agreement or understanding will be effective.
14. Governing Law and Venue. This Agreement will be governed by the laws of the State of Arizona. ASU's obligations are subject to the regulations/policies of the Arizona Board of Regents. Any proceeding arising out of or relating to this Agreement will be conducted in Maricopa County, Arizona. Speaker consents to such jurisdiction, and waives objection to venue or convenience of forum.
15. Independent Contractor. Speaker is an independent contractor and is not an employee of ASU. Neither Speaker nor any personnel of Speaker will for any purpose be considered employees or agents of ASU. Speaker assumes full responsibility for the actions of Speaker's personnel, and is solely responsible for their

supervision, direction and control, payment of salary and expenses (including withholding income taxes and social security), worker's compensation, and disability benefits.

16. Recordings; Use of Name and Likeness. Both parties may record the Presentation for internal records. No recording of the Presentation, either visual or audio, will be made by or on behalf of Speaker for the purposes of profit or significant distribution without prior written approval from ASU. ASU may require an additional payment for the privilege, and may require Speaker to sign a filming/recording agreement. ASU may record the Presentation on video tape, audio tape, film, photograph or any other medium, use Speaker's name, likeness, voice and biographical material in connection with these recordings for purposes within the ASU mission, including education and research, and exhibit or distribute the recording in whole or in part without restrictions or limitation for any educational or promotional purpose that ASU deems appropriate.

17. No Revenue Sharing. Speaker will not participate in any revenues associated with the Presentation or Event. This includes: sponsorship, ticketing, ticketing fees, ASU concessions revenues, and any other revenue streams that may be associated with the Event.

18. Non-discrimination. The parties will comply with all applicable laws, rules, regulations, and executive orders governing equal employment opportunity, immigration, and nondiscrimination, including the Americans with Disabilities Act. **If applicable, the parties will abide by the requirements of 41 CFR §§ 60-1.4(a), 60-300.5(a) and 60-741.5(a). These regulations prohibit discrimination against qualified individuals based on their status as protected veterans or individuals with disabilities, and prohibit discrimination against all individuals based on their race, color, religion, sex, or national origin. Moreover, these regulations require that covered prime contractors and subcontractors take affirmative action to employ and advance in employment individuals without regard to race, color, religion, sex, national origin, protected veteran status or disability.**

19. Conflicts of Interest. If within 3 years after the execution of this Agreement, Speaker hires as an employee or agent any ASU representative who was significantly involved in negotiating, securing, drafting, or creating this Agreement, then ASU may cancel this Agreement as provided in ARS § 38-511. Notice is also given of ARS §§ 41-2517 and 41-753.

20. Arbitration in Superior Court. The parties agree to arbitrate disputes filed in Arizona Superior Court that are subject to mandatory arbitration pursuant to ARS § 12-133. ARS § 12-1518 requires this provision in all ASU agreements.

21. Records. To the extent required by ARS § 35-214, the non-ASU parties to this Agreement will retain all records relating to this Agreement. Speaker will make those records available at all reasonable times for inspection and audit by ASU or the Auditor General of Arizona during the term of this Agreement and for 5 years after the completion of this Agreement. The records will be provided at ASU in Tempe, Arizona, or another location designated by ASU on reasonable notice to Speaker.

22. Failure of Legislature to appropriate. In accordance with ARS § 35-154, if ASU's performance under this Agreement depends on the appropriation of funds by the Arizona Legislature, and if the Legislature fails to appropriate the funds necessary for performance, ASU may provide written notice of this to Speaker and cancel this Agreement without further obligation of ASU. Appropriation is a legislative act and is beyond ASU's control.

23. Weapons, Explosives, and Fireworks. ASU prohibits the use, possession, display or storage of any weapon, explosive device or fireworks on all land and buildings owned, leased, or under the control of ASU or its affiliated entities, in all ASU residential facilities (whether managed by ASU or another entity), in all ASU

vehicles, and at all ASU or ASU affiliate sponsored events and activities, except as provided in ARS § 12-781, or unless written permission is given by ASU's Police Chief or a designated representative. Speaker will notify all persons or entities who are employees, officers, subcontractors, consultants, agents, guests, invitees or licensees of Speaker of this policy, and Speaker will enforce this policy against all such persons and entities. ASU's policy is at [asu.edu/aad/manuals/pdp/pdp201-05.html](http://asu.edu/aad/manuals/pdp/pdp201-05.html).

24. Privacy; Educational Records. Student educational records are protected by the U.S. Family Educational Rights and Privacy Act, 20 U.S.C. § 1232g (FERPA). Speaker will not require any ASU students or employees to waive any privacy rights (including under FERPA or the European Union's General Data Protection Regulation (GDPR)) as a condition for receipt of any educational services, and any attempt to do so will be void. Speaker will comply with FERPA and will not access or make any disclosures of student educational records to third parties without prior notice to and consent from ASU or as otherwise provided by law. If this Agreement requires or permits Speaker to access or release any student records, then, for purposes of this Agreement only, ASU designates Speaker as a "school official" for ASU under FERPA, as defined in FERPA and its implementing regulations. In addition, any access or disclosures of student educational records by Speaker or any Speaker Parties must comply with ASU's definition of legitimate educational purpose. If Speaker violates this section, Speaker will immediately notify ASU.

25. Authorized Presence Requirements. As required by ARS § 41-4401, ASU is prohibited from awarding a contract to any contractor or subcontractor that fails to comply with ARS § 23-214(A) (verification of employee eligibility through the e-verify program). Speaker warrants that it and its subcontractors comply fully with all applicable immigration laws, rules, and regulations that relate to their employees and their compliance with ARS § 23-214(A). A breach of this warranty will be a material breach of this Agreement that is subject to penalties up to and including termination. ASU retains the right to inspect the papers of any contractor or subcontractor employee hereunder to ensure compliance with this warranty.

26. Tobacco-Free University. ASU is tobacco-free. For details visit [asu.edu/tobaccofree](http://asu.edu/tobaccofree).

27. Authority. If an individual or entity signs below on behalf of Speaker, such signatory represents and warrants that he/she/it has full and current authority to act and contract on behalf of Speaker and obligate Speaker, and that this Agreement is binding upon and enforceable against Speaker and the undersigned (if not Speaker) in accordance with its terms.

PRINT NAME OF SPEAKER OR  
AGENT OF SPEAKER

ARIZONA BOARD OF REGENTS FOR AND ON  
BEHALF OF ARIZONA STATE UNIVERSITY

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Signatory Name

\_\_\_\_\_  
Signatory Name

\_\_\_\_\_  
Signatory Title

\_\_\_\_\_  
Signatory Title

\_\_\_\_\_  
Date Signed

\_\_\_\_\_  
Date Signed

# Exhibit M

## Ensign, Drew

---

**From:** Gadeir Abbas <gAbbas@cair.com>  
**Sent:** Tuesday, March 13, 2018 2:58 PM  
**To:** Ensign, Drew; Carolyn Homer; Lena F. Masri, Esq.; raees@kellywarnerlaw.com  
**Cc:** Roysden, Beau; Skinner, OH; 'Jose Cardenas (General Counsel)'; Nancy Tribbensee; Lisa Loo  
**Subject:** RE: American Muslims for Palestine v. Arizona State University et. al, 2:18-cv-00670  
**Attachments:** Hatem v. AZ Draft Stipulation draft [for circulation].docx

Hi Drew,

I apologize if you feel that we've not been communicative. That hasn't been intentional, and I emphasize that I'm always happy to hop on the phone with any of you. My cell is listed below.

As I communicated to Jose, we've been very surprised by the defendants' position that the law does not apply. We're not the only ones: <https://www.thefire.org/arizonas-anti-bds-statute-lands-arizona-state-university-in-federal-court/>

Certainly, if we thought the law allowed for any room for the defendants to negotiate, we would have discussed it. Given your representations, we remain open to resolving the preliminary injunction piece of this case.

I will note that accusations that either I or our plaintiffs have lied or misled the court do not facilitate conversations among us. And with this email, we've now been accused—wrongly, and it is demonstrable—of lying by counsel for most of the defendants. It's offensive, and not helpful to resolving this matter or maintaining professional courtesy among the attorneys, for you to claim that the statements that I made somehow render our plaintiffs' declarations false. But if your strategy is to pursue such ad hominem attacks, it will just highlight the anti-free speech nature of Arizona's BDS law and the state's hail-mary attempts to defend it.

Putting your personal attacks to the side, to resolve this short of a court hearing, we're not willing to simply rely upon attorney-representations. With respect to the April 3<sup>rd</sup> event, we remain concerned that, having removed the explicit BDS provision from the contract, the defendants intend for the general catch-all provision to envelope the BDS law. Indeed, that is how we read it. And we believe that is a fair reading of it, given the clarity of the BDS law's language.

We've attached a draft stipulation that we believe would allow our plaintiffs to come to ASU on April 3<sup>rd</sup> without violating their rights. All current parties would be bound.

We await your thoughts on it. If you'd like to discuss it by phone, please advise.

Regards,

Gadeir Abbas, Esq.  
**Senior Litigation Attorney**



Washington, DC 20003

Tel: 202.742.6420 Fax: 202.488.0833

Dir: 202.640.4935 Cell: 720.251.0425

[www.cair.com](http://www.cair.com)

Licensed to practice in VA, not in DC.

Practice limited to federal matters.

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[WEB](#) | [FACEBOOK](#) | [TWITTER](#)

---

**From:** Ensign, Drew [mailto:Drew.Ensign@azag.gov]

**Sent:** Tuesday, March 13, 2018 3:28 PM

**To:** Carolyn Homer <cHomer@cair.com>; Gadeir Abbas <gAbbas@cair.com>; Lena F. Masri, Esq. <lmasri@cair.com>; raees@kellywarnerlaw.com

**Cc:** Roysden, Beau <Beau.Roysden@azag.gov>; Skinner, OH <O.H.Skinner@azag.gov>; 'Jose Cardenas (General Counsel)' <jcardenas@asu.edu>; Nancy Tribbensee <Nancy.Tribbensee@azregents.edu>; Lisa Loo <lisaloo@asu.edu>

**Subject:** RE: American Muslims for Palestine v. Arizona State University et. al, 2:18-cv-00670

Gadeir, Lena, and Carolyn,

On behalf of the Attorney General, we request that you withdraw your request for an expedited hearing (Doc. 10). In light of the factual developments outlined in Jose's March 8 email (copied below) and our March 8 filing with the Court (Doc. 17)—both 5 days ago—there can be no uncertainty as to whether Dr. Bazian and American Muslims for Palestine ("AMP") will be able to speak at the April 3 event. They will be. We therefore do not believe there is any basis for Plaintiffs to continue seeking an expedited hearing. We ask that you let us know by noon EDT tomorrow whether you will be withdrawing your request so that we can seek relief from the Court as may be necessary. We also request that you let us know by the same time whether you will be amending/refiling your motion for a preliminary injunction and supporting declarations to correct statements therein that, as discussed below, now appear false in light of statements you have made to the press.

Although you have not responded to Jose's email or our court filing last Thursday, Gadeir has been quoted in the press as stating *inter alia*: "The lawsuit's about the law, not the April 3 event." (attached) Given that admission, we do not understand how there could be any need for an expedited hearing, which explicitly was based on Dr. Bazian's and AMP's ability to speak at the April 3 event. Doc. 10 at 2. Indeed, whatever the merits of that request when filed, it has become clear that the request is now thoroughly unwarranted.

On a related note, we will also confess our frustration that you have failed to communicate with us directly and instead have done so almost exclusively through the press. For example, your complaint was filed late on March 1 and CAIR released a press release and held a press conference the next day. (<https://www.cair.com/press-center/press-releases/15009-cair-defends-free-speech-in-lawsuit-challenging-arizona-bds-law.html>). But you did not serve us until late on March 5, and only then because we affirmatively reached out to you to request service after we received notice of your complaint through press inquiries. Similarly, you have ducked responding to Jose's email for 5 days now, but have apparently been willing to respond to the substance of his email to reporters.

We therefore request that, as a matter of professional courtesy, you speak directly to us about your positions on pending matters in this case and avoid having us receive notice of your positions belatedly and indirectly through the press.

We are also writing to provide you notice that we believe Gadeir's statement to the press is—at a bare minimum—in sharp tension with the duty of candor owed to the Court. You represented to the Court that "The 'No Boycott of Israel' clause in ASU's standard speaker agreement is, to Plaintiffs' knowledge, the only institutional and legal roadblock to their participation in the scheduled April 3, 2018 event." Doc. 9-1 at 5. However, your recent press statement indicates that you now apparently object to the "applicable law" clause, although that same clause appeared in the contracts that you

were sent previously—and attached in court filings. *See* Doc. 9-2 Ex. A at 2 ¶6; Doc. 9-3 Ex. A at 2 ¶6. You thus had full knowledge of the “applicable law” clause of paragraph 6, but nonetheless represented to the Court that the only obstacle to Plaintiffs speaking at the April 3 event was the “No Boycott of Israel” clause.

In light of your press statements, this representation to the Court now appears to be false. If that press statement reflects your current legal position, we ask that you confirm that you will be withdrawing and/or correcting your motion for a preliminary injunction to correct what now appears to be a false statement to the Court. We similarly note that the declarations of both Dr. Bazian and Taher Herzallah may now contain false statements under oath as well. *See* Doc. 9-2 at 3 ¶8; Doc. 9-2 at 3 ¶16. Relatedly, we note that this apparent deviation between the positions in the declarations and current facts underscores the need for depositions in this case. The State should be permitted to examine these deviations as well as why the declarants did not originally object to the “applicable law” clauses.

In light of the exigency created by your request for an expedited hearing, we request that you let us know your positions on these matters by noon EDT tomorrow. If you do not do so, we will assume that (1) Gadeir’s statements to the press accurately reflect Plaintiffs’ current legal positions, (2) Plaintiffs will not be withdrawing your request for an expedited hearing, and (3) Plaintiffs will not be correcting what appears to be false statements to the Court. On that assumption, we will seek relief as appropriate from the Court.

Sincerely,  
Drew

Drew C. Ensign  
Senior Litigation Counsel



Office of the Attorney General  
Government Accountability & Special Litigation  
2005 N. Central Ave., Phoenix, AZ 85004  
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**From:** Jose Cardenas (General Counsel)

**Sent:** March 8, 2018 8:51 AM

**To:** 'Carolyn Homer' <[cHomer@cair.com](mailto:cHomer@cair.com)>; Gadeir Abbas <[gAbbas@cair.com](mailto:gAbbas@cair.com)>; Lena F. Masri, Esq. <[lmagri@cair.com](mailto:lmagri@cair.com)>

**Cc:** [raees@kellywarnerlaw.com](mailto:raees@kellywarnerlaw.com); Anne Griffith <[anne@kellywarnerlaw.com](mailto:anne@kellywarnerlaw.com)>; Lisa Loo <[lisaloo@asu.edu](mailto:lisaloo@asu.edu)>

**Subject:** RE: American Muslims for Palestine v. Arizona State University et. al, 2:18-cv-00670

Carolyn, Gadeir and Lena, this is a follow up to our discussion on Tuesday afternoon. I have also copied your local counsel.

We appreciate your courtesy in discussing your lawsuit with us and in listening to the reasons we gave as to why it should be withdrawn. While you did not agree with us on Tuesday, I am hopeful that upon further consideration of what we said and what is set forth here you will now agree that there is no dispute between ASU and your clients.

To be clear, for all of the reasons we discussed on Tuesday and as set forth below, ASU has no intentions of enforcing the statute that is the subject of your lawsuit and it will not be a bar to the April 3<sup>rd</sup> event. The statute simply does not apply in this context and that is why we removed it from our speaker engagement form contract.



As we told you, and as you know from press reports, your lawsuit is based on an outdated version of our speaker engagement form contract. The form was revised in December of 2017 and the no boycott of Israel provision to which you object was removed. That version of the contract is attached.

Lisa Loo, ASU's Vice President for Legal Affairs and Deputy General Counsel, tried to contact you and your local counsel last Friday before your scheduled press conference to tell you that the no boycott provision does not apply to the April 3<sup>rd</sup> event, but was not able to reach anyone. ASU, however, did make its position publicly known that same day and we will continue to do so.

That fact that our speaker engagement form does not have the boycott provision should in and of itself dispose of this lawsuit.

First, the relief you seek is an injunction "striking the 'No Boycott of Israel' clause from Defendants' standard speaker contract."

There is nothing to strike because the clause is not there.

Second, Dr. Bazian, in paragraph 16 of the affidavit attached to your complaint, said he would sign the contract if it did not have the provision to which he objects:

"I have no objection to Arizona State University's 'Speaker/Artist/Performer Agreement' other than Paragraph 20, the 'No Boycott of Israel' clause. I have already blocked off April 3, 2018 on my calendar for attendance at the Muslim Students Association's BDS event at Arizona State University. If the 'No Boycott of Israel' clause is stricken or declared unenforceable, I will sign the Agreement, enabling me to speak at the April 3, 2018 event."

If Dr. Bazian meant what he said, he should be willing to sign the contract because it does not have the clause he said prevents him from signing.

When we spoke, Gadeir came up with a new theory as to why the lawsuit should nevertheless proceed. You said that Dr. Bazian will not sign the contract because it also includes a provision about compliance with all Arizona laws. You contend that incorporates the no boycott provision of state law and therefore we still have something to argue about.

Again, there are several flaws in this logic:

- 1) That argument is contrary to your client's position.
- 2) The provision you reference actually refers to "all **applicable**" laws.
  - a. The no boycott provision does not apply to having Dr. Bazian speak at ASU, so there should be no further issues.
  - b. As I told you I would, I spoke to the lawyers in the Attorney-General's office who are handling this matter. I am authorized to tell you that they agree that the no boycott clause would not apply to Dr. Bazian or any other speaker at the April 3<sup>rd</sup> event.
  - c. The argument puts CAIR in the rather odd position of telling ABOR and ASU that they have to follow a state law to which you object and that we independently concluded does not apply. And now you know that the only other defendant agrees with our position.
- 3) A further flaw is that the obligation the "no boycott" statute imposes in the first instance is upon the public entity and not upon the other party to the contract. It requires the public entity to include that provision if



applicable. If the clause is not there, we never get to the issue of whether your client has to agree to the certification.

- 4) Thus, to the extent you're saying the reference to all laws means the boycott provision applies, what you're really saying is it has to be in the contract. That leaves you in the rather strange position of demanding the inclusion of the provision or inserting it yourself so that you can then say your client won't comply because it's now in the contract.

Gadeir, you were quoted on a local news posting as saying that your clients "hope ASU will come to its senses and allow the April 3<sup>rd</sup> event to go forward."

At the moment, the only thing that is preventing the April 3<sup>rd</sup> event from going forward is your tortured legal analysis and your insistence on creating a dispute where none exists. If you insist on proceeding, I can well imagine the Judge asking, "why are we here?"

With all due respect, it is you and your colleagues who need to come to your senses and not waste the time and resources of the parties and the court and, more importantly, deprive ASU students and others of the opportunity to hear from Dr. Bazian.

As I told you when we spoke, ASU's commitment to free speech is long standing and deep. That is why FIRE (Foundation for Individual Rights in Education) has lauded ASU as one of only 38 institutions in the entire country to earn its highest, "green light" rating for campus free speech.

Paragraph 30 of your complaint similarly notes that ASU is "committed to academic freedom, and to providing an open venue for student organizations to invite outside speakers and host educational events on a wide variety of subjects, and from a wide variety of viewpoints."

You were right. That is why we look forward to finalizing the speaker engagement contract with Dr. Bazian's signature.

And we look forward to Dr. Bazian's appearance at ASU on April 3<sup>rd</sup>.

Sincerely,

José A. Cárdenas  
Sr. Vice President and General Counsel  
Arizona State University

**CAIR LEGAL DEFENSE FUND**

Lena F. Masri (D.C. Bar # 100019) (*pro hac vice*)

Email: [lmagri@cair.com](mailto:lmagri@cair.com)

Gadeir I. Abbas\* (VA Bar # 81161) (*seeking pro hac vice admission*)

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*Attorneys for Plaintiffs*

*\* Licensed in VA, not in D.C.*

*Practice limited to federal matters*

**UNITED STATES DISTRICT COURT  
DISTRICT OF ARIZONA  
PHOENIX DIVISION**

**AMERICAN MUSLIMS FOR PALESTINE  
and DR. HATEM BAZIAN**

Plaintiffs,

vs.

**ARIZONA STATE UNIVERSITY; ARIZONA  
BOARD OF REGENTS; and MARK  
BRNOVICH**, in his official capacity as  
Attorney General of Arizona

Defendants.

Case No. CV-18-670-PHX-JJT

**JOINT STIPULATION CONSENTING TO  
APRIL 3, 2018 EVENT, WITHDRAWING  
PRELIMINARY INJUNCTION MOTION,  
AND AMENDING CAPTION**

**JOINT STIPULATION**

Plaintiffs and Defendants jointly stipulate to the following:

1. The caption of the case shall be amended to remove Arizona State University (“ASU”) as a defendant, given that Arizona Board of Regents has the capacity to be sued on ASU’s behalf. The two Defendants are now “Arizona Board of Regents” and “Mark Brnovich, in his official capacity as Attorney General of Arizona.”

2. Defendants will not enforce Ariz. Rev. Stat. § 35-393 *et seq.* against Plaintiffs in connection with their planned April 3, 2018 speaking engagement at Arizona State University.

3. Defendants will accept Plaintiffs’ signatures on the revised “Speaker / Artist / Performer Agreement,” (*see* Dkt. 17-1) subject to the annotation on ¶ 6 that the Plaintiffs will comply with “all applicable...State...laws” except for Ariz. Rev. Stat. § 35-393 *et seq.*

4. Defendant, Arizona Board of Regents, agrees that the “Speaker / Artist / Performer Agreement” is being entered into between Plaintiffs and Defendant, Arizona Board of Regents, and not any student association.

5. The Arizona Board of Regents will not cancel or veto the April 3, 2018 event pursuant to Policy Number 5-202(C), or otherwise interfere with ASU’s hosting of or Plaintiffs’ participation at the April 3, 2018 speaking engagement, on the basis that the event does not adhere to Ariz. Rev. Stat. § 35-393 *et seq.*

6. Plaintiffs will provide their signatures to the revised agreement by March 26, 2018. So long as they do so, Defendants will permit Plaintiffs to

1 participate in the April 3, 2018 event at Arizona State University regarding the  
2 Boycott, Divestment, and Sanctions movement.

3 7. The Parties agree the correct legal interpretation of Ariz. Rev. Stat. §  
4 35-393 *et seq.* is a question of law for resolution by the Court and reserve all rights  
5 to make any arguments about the lawfulness of Defendants' conduct and the  
6 constitutionality of Ariz. Rev. Stat. § 35-393 *et seq.*

7 8. In light of the foregoing, Plaintiffs hereby withdraw their Application  
8 for a Preliminary Injunction (Dkt. 9) and Request for Preliminary Injunction  
9 Hearing (Dkt. 10), without prejudice.

10  
11 Dated: April 10, 2018, ----- **CAIR LEGAL DEFENSE FUND**

12 By /s/ **Draft**  
13 Lena F. Masri (D.C. Bar No. 100019)  
14 (*pro hac vice*)  
15 Gadeir I. Abbas (VA Bar No. 81161)\*  
16 (seeking *pro hac vice* admission)  
17 Carolyn M. Homer (D.C. Bar No. 1049145)  
18 (*pro hac vice*)  
19 453 New Jersey Ave., SE  
20 Washington, DC 20003  
21 Phone: (202) 742-6420  
22 Fax: (202) 379-3317

18 \* *Licensed in VA, not in D.C.*  
19 *Practice limited to federal matters*

20 **KELLY / WARNER, PLLC**

21 By /s/ **Draft**  
22 Raees Mohamed, Esq. (AZ Bar # 027418)  
23 8283 N. Hayden Road, Suite 229  
24 Scottsdale, Arizona 85258  
Phone: (480) 331-9397  
Fax: (866) 961-4984

*Attorneys for Plaintiffs*

Dated: April 10, 2018

**MARK BRNOVICH**  
**ATTORNEY GENERAL**

By /s/ Draft

Drew C. Ensign (No. 25462)  
Oramel H. (O.H.) Skinner (No. 32891)  
Brunn (Beau) W. Roysden III (No. 28698)  
Robert J. Makar (No. 033579)

*Attorneys for Defendant Mark Brnovich  
in his official capacity as Attorney General*

By /s/ Draft

Nancy Tribbensee (No. 011128)  
Senior Vice President and General Counsel  
José A. Cárdenas (No. 005632)  
Senior Vice President and General Counsel,  
ASU

*Attorneys for Defendant Arizona Board of  
Regents*

# Exhibit N

**Ensign, Drew**

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**From:** Ensign, Drew  
**Sent:** Tuesday, March 13, 2018 1:28 PM  
**To:** 'Carolyn Homer'; 'Gadeir Abbas'; 'Lena F. Masri, Esq.'; 'raees@kellywarnerlaw.com'  
**Cc:** Roysden, Beau; Skinner, OH; 'Jose Cardenas (General Counsel)'; 'Nancy Tribbensee'; 'Lisa Loo'  
**Subject:** RE: American Muslims for Palestine v. Arizona State University et. al, 2:18-cv-00670

Gadeir, Lena, and Carolyn,

On behalf of the Attorney General, we request that you withdraw your request for an expedited hearing (Doc. 10). In light of the factual developments outlined in Jose's March 8 email (copied below) and our March 8 filing with the Court (Doc. 17)—both 5 days ago—there can be no uncertainty as to whether Dr. Bazian and American Muslims for Palestine ("AMP") will be able to speak at the April 3 event. They will be. We therefore do not believe there is any basis for Plaintiffs to continue seeking an expedited hearing. We ask that you let us know by noon EDT tomorrow whether you will be withdrawing your request so that we can seek relief from the Court as may be necessary. We also request that you let us know by the same time whether you will be amending/refiling your motion for a preliminary injunction and supporting declarations to correct statements therein that, as discussed below, now appear false in light of statements you have made to the press.

Although you have not responded to Jose's email or our court filing last Thursday, Gadeir has been quoted in the press as stating *inter alia*: "The lawsuit's about the law, not the April 3 event." (attached) Given that admission, we do not understand how there could be any need for an expedited hearing, which explicitly was based on Dr. Bazian's and AMP's ability to speak at the April 3 event. Doc. 10 at 2. Indeed, whatever the merits of that request when filed, it has become clear that the request is now thoroughly unwarranted.

On a related note, we will also confess our frustration that you have failed to communicate with us directly and instead have done so almost exclusively through the press. For example, your complaint was filed late on March 1 and CAIR released a press release and held a press conference the next day. (<https://www.cair.com/press-center/press-releases/15009-cair-defends-free-speech-in-lawsuit-challenging-arizona-bds-law.html>). But you did not serve us until late on March 5, and only then because we affirmatively reached out to you to request service after we received notice of your complaint through press inquiries. Similarly, you have ducked responding to Jose's email for 5 days now, but have apparently been willing to respond to the substance of his email to reporters.

We therefore request that, as a matter of professional courtesy, you speak directly to us about your positions on pending matters in this case and avoid having us receive notice of your positions belatedly and indirectly through the press.

We are also writing to provide you notice that we believe Gadeir's statement to the press is—at a bare minimum—in sharp tension with the duty of candor owed to the Court. You represented to the Court that "The 'No Boycott of Israel' clause in ASU's standard speaker agreement is, to Plaintiffs' knowledge, the only institutional and legal roadblock to their participation in the scheduled April 3, 2018 event." Doc. 9-1 at 5. However, your recent press statement indicates that you now apparently object to the "applicable law" clause, although that same clause appeared in the contracts that you were sent previously—and attached in court filings. See Doc. 9-2 Ex. A at 2 ¶16; Doc. 9-3 Ex. A at 2 ¶16. You thus had full knowledge of the "applicable law" clause of paragraph 6, but nonetheless represented to the Court that the only obstacle to Plaintiffs speaking at the April 3 event was the "No Boycott of Israel" clause.

In light of your press statements, this representation to the Court now appears to be false. If that press statement reflects your current legal position, we ask that you confirm that you will be withdrawing and/or correcting your motion for a preliminary injunction to correct what now appears to be a false statement to the Court. We similarly note that the declarations of both Dr. Bazian and Taher Herzallah may now contain false statements under oath as well. See Doc. 9-2 at 3 ¶18; Doc. 9-2 at 3 ¶16. Relatedly, we note that this apparent deviation between the positions in the declarations and current facts underscores the need for depositions in this case. The State should be permitted to examine these deviations as well as why the declarants did not originally object to the "applicable law" clauses.

In light of the exigency created by your request for an expedited hearing, we request that you let us know your positions on these matters by noon EDT tomorrow. If you do not do so, we will assume that (1) Gadeir's statements to the press accurately reflect Plaintiffs' current legal positions, (2) Plaintiffs will not be withdrawing your request for an expedited hearing, and (3) Plaintiffs will not be correcting what appears to be false statements to the Court. On that assumption, we will seek relief as appropriate from the Court.

Sincerely,  
Drew

Drew C. Ensign  
Senior Litigation Counsel



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Government Accountability & Special Litigation  
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**From:** Jose Cardenas (General Counsel)

**Sent:** March 8, 2018 8:51 AM

**To:** 'Carolyn Homer' <[cHomer@cair.com](mailto:cHomer@cair.com)>; Gadeir Abbas <[gAbbas@cair.com](mailto:gAbbas@cair.com)>; Lena F. Masri, Esq. <[lmagri@cair.com](mailto:lmagri@cair.com)>

**Cc:** [raees@kellywarnerlaw.com](mailto:raees@kellywarnerlaw.com); Anne Griffith <[anne@kellywarnerlaw.com](mailto:anne@kellywarnerlaw.com)>; Lisa Loo <[lisaloo@asu.edu](mailto:lisaloo@asu.edu)>

**Subject:** RE: American Muslims for Palestine v. Arizona State University et. al, 2:18-cv-00670

Carolyn, Gadeir and Lena, this is a follow up to our discussion on Tuesday afternoon. I have also copied your local counsel.

We appreciate your courtesy in discussing your lawsuit with us and in listening to the reasons we gave as to why it should be withdrawn. While you did not agree with us on Tuesday, I am hopeful that upon further consideration of what we said and what is set forth here you will now agree that there is no dispute between ASU and your clients.

To be clear, for all of the reasons we discussed on Tuesday and as set forth below, ASU has no intentions of enforcing the statute that is the subject of your lawsuit and it will not be a bar to the April 3<sup>rd</sup> event. The statute simply does not apply in this context and that is why we removed it from our speaker engagement form contract.

As we told you, and as you know from press reports, your lawsuit is based on an outdated version of our speaker engagement form contract. The form was revised in December of 2017 and the no boycott of Israel provision to which you object was removed. That version of the contract is attached.

Lisa Loo, ASU's Vice President for Legal Affairs and Deputy General Counsel, tried to contact you and your local counsel last Friday before your scheduled press conference to tell you that the no boycott provision does not apply to the April 3<sup>rd</sup> event, but was not able to reach anyone. ASU, however, did make its position publicly known that same day and we will continue to do so.

That fact that our speaker engagement form does not have the boycott provision should in and of itself dispose of this lawsuit.



First, the relief you seek is an injunction “striking the ‘No Boycott of Israel’ clause from Defendants’ standard speaker contract.”

There is nothing to strike because the clause is not there.

Second, Dr. Bazian, in paragraph 16 of the affidavit attached to your complaint, said he would sign the contract if it did not have the provision to which he objects:

“I have no objection to Arizona State University’s ‘Speaker/Artist/Performer Agreement’ other than Paragraph 20, the ‘No Boycott of Israel’ clause. I have already blocked off April 3, 2018 on my calendar for attendance at the Muslim Students Association’s BDS event at Arizona State University. If the ‘No Boycott of Israel’ clause is stricken or declared unenforceable, I will sign the Agreement, enabling me to speak at the April 3, 2018 event.”

If Dr. Bazian meant what he said, he should be willing to sign the contract because it does not have the clause he said prevents him from signing.

When we spoke, Gadeir came up with a new theory as to why the lawsuit should nevertheless proceed. You said that Dr. Bazian will not sign the contract because it also includes a provision about compliance with all Arizona laws. You contend that incorporates the no boycott provision of state law and therefore we still have something to argue about.

Again, there are several flaws in this logic:

- 1) That argument is contrary to your client’s position.
- 2) The provision you reference actually refers to “all **applicable**” laws.
  - a. The no boycott provision does not apply to having Dr. Bazian speak at ASU, so there should be no further issues.
  - b. As I told you I would, I spoke to the lawyers in the Attorney-General’s office who are handling this matter. I am authorized to tell you that they agree that the no boycott clause would not apply to Dr. Bazian or any other speaker at the April 3<sup>rd</sup> event.
  - c. The argument puts CAIR in the rather odd position of telling ABOR and ASU that they have to follow a state law to which you object and that we independently concluded does not apply. And now you know that the only other defendant agrees with our position.
- 3) A further flaw is that the obligation the “no boycott” statute imposes in the first instance is upon the public entity and not upon the other party to the contract. It requires the public entity to include that provision if applicable. If the clause is not there, we never get to the issue of whether your client has to agree to the certification.
- 4) Thus, to the extent you’re saying the reference to all laws means the boycott provision applies, what you’re really saying is it has to be in the contract. That leaves you in the rather strange position of demanding the inclusion of the provision or inserting it yourself so that you can then say your client won’t comply because it’s now in the contract.

Gadeir, you were quoted on a local news posting as saying that your clients “hope ASU will come to its senses and allow the April 3<sup>rd</sup> event to go forward.”

At the moment, the only thing that is preventing the April 3<sup>rd</sup> event from going forward is your tortured legal analysis and your insistence on creating a dispute where none exists. If you insist on proceeding, I can well imagine the Judge asking, “why are we here?”

With all due respect, it is you and your colleagues who need to come to your senses and not waste the time and resources of the parties and the court and, more importantly, deprive ASU students and others of the opportunity to hear from Dr. Bazian.

As I told you when we spoke, ASU’s commitment to free speech is long standing and deep. That is why FIRE (Foundation for Individual Rights in Education) has lauded ASU as one of only 38 institutions in the entire country to earn its highest, “green light” rating for campus free speech.

Paragraph 30 of your complaint similarly notes that ASU is “committed to academic freedom, and to providing an open venue for student organizations to invite outside speakers and host educational events on a wide variety of subjects, and from a wide variety of viewpoints.”

You were right. That is why we look forward to finalizing the speaker engagement contract with Dr. Bazian’s signature.

And we look forward to Dr. Bazian’s appearance at ASU on April 3<sup>rd</sup>.

Sincerely,

José A. Cárdenas  
Sr. Vice President and General Counsel  
Arizona State University

# YELLOW SHEET REPORT

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Monday, March 12, 2018

## ·NEWS NOTES AND GOSSIP·

### **ASU PUTS OUT THE WELCOME MAT**

The Bd of Regents and the AG's office said the plaintiffs in a lawsuit alleging that a 2016 law barring the state from contracting with people who boycott Israel are free to speak at a pro-Palestine event on April 3. The plaintiffs had claimed that the law prohibits them from speaking at the ASU event. In a filing last week in US District Court, Drew Ensign, senior litigation counsel for the AG's office, wrote that ASU's Muslim Students Assn provided the wrong form to Dr. Hatem Bazian and American Muslims for Palestine when it invited them to speak at the event, and that the correct, updated version of the form does



not include language requiring them to assert that they aren't engaged in a boycott of Israel. Ensign, who represents the AG's office and ABOR – ASU is not a party to the motion because it is a non-jural entity that cannot be sued – wrote that because Bazian and AMP's sole objection to signing the agreement was the anti-boycott language that was mistakenly included, both are, therefore, free to attend and speak at the event. Furthermore, Ensign wrote that the 2016 law barring the state and other public entities from contracting with people and organizations that participate in the boycott, divestment and sanctions (BDS) movement against Israel does not apply to speakers like Bazian and AMP because such guest speech does not qualify as a provision of services under the law. "Because plaintiffs will be able to speak at that event no matter what actions this court takes, no expedited hearing is either needed or warranted. The scarce resources of this court need not be consumed by a hearing that is now, by all available evidence, pointless," Ensign wrote. Ensign's motion included an email from ASU general counsel José Cárdenas to plaintiffs' attorney Gadeir Abbas, in which Cárdenas argued that the anti-BDS law would not bar Bazian and AMP from speaking at the April 3 event. "ASU has no intentions of enforcing the statute that is the subject of your lawsuit and it will not be a bar to April 3rd event. The statute simply does not apply in this context and that is why we removed it from our speaker engagement form contract," Cárdenas wrote. The attorney went on to note that Bazian said in an affidavit that, if the "no boycott of Israel clause" were removed from the contract, he would sign that agreement so he could speak at the event. "If Dr. Bazian meant what he said, he should be willing to sign the contract because it does not have the clause he said prevents him from signing," Cárdenas said. Ensign's legal arguments were laid out in a motion opposing the plaintiffs' request for an expedited hearing in the lawsuit, which Bazian and AMP's lawyer said was necessary because they wanted to speak at the April 3 event. Ensign wrote that Brnovich will use the same argument when he asks Judge John Tuchi to dismiss the case. A copy of Ensign's [motion](#) can be viewed in the "documents" section.

### **BUT CAIR SAYS IT DOESN'T FEEL VERY WELCOME**

Council on American-Islamic Relations attorney Gadeir Abbas isn't taking ASU, ABOR and the AG's office at their word, and argued that they're intentionally violating the anti-BDS law in order to avert a

lawsuit against it. Abbas told our reporter that he still believes the law applies, even if the explicit anti-boycott language was removed from the speaker agreement that the Muslim Students Assn sent to Bazian and AMP. “Defendants don’t get to pick and choose their plaintiff,” Abbas said. “They’re hoping that by embedding an explicit requirement to abandon BDS activity into a general provision that requires adherence to state law they can avoid adjudication of this issue. That’s not enough.” The current version of the contract still requires signers to assert that they will abide by all applicable laws, and Abbas said that includes the anti-BDS law, even though ARS 35-393.01 places the onus of compliance on the public entities that contract for outside services, not the people who provide those services. “We are glad that ASU took a step in the right direction by removing the offending provision. But it’s not far enough and it does not fully resolve the situation,” Abbas said. The lawyer also said the lawsuit is about more than whether Bazian and AMP can speak at ASU. “The lawsuit’s about the law, not the April 3 event. The law remains the problem,” he said.

### **HE DOESN’T SOUND CONVINCED**

In his email to Abbas, Cárdenas took aim at his argument that the speaker agreement still includes the anti-BDS language by inference, which he called “a new theory as to why the lawsuit should nevertheless proceed” after Bazian and AMP were asked to sign the updated form without the anti-boycott language. Cárdenas noted that the agreement asks signers to abide by “all applicable laws,” and the BDS law simply isn’t applicable. He also noted that the anti-boycott language imposes an obligation on public entities, not other parties. “Gadeir, you were quoted on a local news posting that your clients ‘hope ASU will come to its sense and allow the April 3rd event to go forward,’” Cárdenas wrote. “At the moment, the only thing that is preventing the April 3rd event from going forward is your tortured legal analysis and your insistence on creating a dispute where none exists. If you insist on proceeding, I can well imagine the Judge asking ‘why are we here?’”

### **DUCEY SAYS DETAILS ARE PENDING ON SCHOOL SAFETY PLAN**

Ducey said there will be a school safety plan this legislative session. The governor told reporters today that he’s still meeting with people on all sides of the issue and figuring out what the plan will contain and what form it will take. He said he’s working with legislative leadership in both parties and expects a bipartisan plan, but wouldn’t say definitively what form the plan will take, whether it be a bill, part of the budget or some other mechanism. “What we want to do is find the best way to move this through the Legislature and have it become the law of the land,” he said. He again mentioned the idea of addressing background check loopholes, specifically looking at how city and county convictions end up in the national background check system, and finding a way to flag people who have shown themselves to be dangerous, as was the case for the shooter in Parkland, Florida, who had repeated reports to social services and law enforcement. “I’d like to remove all the guns away from the people that should not have the guns,” he said. But he said any plan to do so will need to take due process into account. Ducey said school superintendents have told him they can sometimes identify a person who may be at risk of shooting up a school before it happens. And in those instances, he questioned, “Is there a tool with law enforcement or in legal statutes where we can act on that? That’s what we’re researching.”

### **IT’S EASIER TO GET REPUBLICAN VOTES IF IT’S NOT A ‘GUN PLAN’**

Ducey wouldn’t say if his school safety plan, which he insisted was a “school safety” plan, not a “gun plan,” will include any money. He said there will definitely be a plan this session, and there will definitely be a budget this session, which is, of course, required by law. “Much of what we’re talking about is things we can partner with law enforcement on and work with the schools on. Other things do come with a cost. So we want to crunch the numbers before we raise expectations,” he said.

**GUNS ARE FOR RESOURCE OFFICERS, NOT TEACHERS**

There are a few ideas on guns Ducey likely won't include in whatever plan he comes up with. He has said multiple times that he doesn't like the idea of arming teachers, saying teachers should be spending their time teaching kids. Instead, he has pointed to the idea of school resource officers as those who should be in charge of student safety. He also said today he doesn't want to raise the age for gun purchases for assault rifles, an idea Trump floated in the days following the shooting in Parkland, Florida. He also didn't voice support for kids walking out of schools nationally and in Arizona this week and next week to protest inaction on gun safety. "I want to see kids inside schools. I want to see kids inside classrooms," he said, adding that Arizona is going to take a proactive approach on school safety.

**HOW DO YOU LIKE THEM APPLES?**

Arizona Educators United, the group that encouraged people to wear red for K-12 education last week, has now attracted more than 30,000 members on Facebook. And even if they're not all ready to go on strike, the group has plans to keep the momentum from dissipating. Its first order of business this week was to pay the governor a visit at KTAR today, where he had an interview scheduled for the late afternoon. In a video posted to the Facebook page yesterday, the group's leadership announced it would attempt to present Ducey with a basket of apples after an interview with the station. "We'll just see if he accepts our offering," said organizer Rebecca Fligelman Garelli in the video. She asked teachers to show up at KTAR wearing red and carrying "Why I'm red for ed" signs. "What we're looking for [Monday] is for everyone to come together, be peaceful, be professional," she said. The bulk of the group will stay back on the sidewalk, she added, while a "small cohort" makes the offer to Ducey.

**HE LIKES THEM JUST FINE, APPARENTLY**

Speaking to reporters earlier this afternoon, Ducey signaled he'd accept the gift from Arizona Educators United. "I'm going to be on the radio this afternoon. I'm going to be out in public," he said. "If people are there to give me apples, then I'll happily accept them and have a conversation."

**·PRESS RELEASES AND NEWS CLIPS·****Education Reformers Rally Behind Shawna Bolick for the Arizona Legislature**

Phoenix, AZ- March 12, 2018- Today, a group of like-minded education reformers endorsed Shawna Bolick for an open seat in the Arizona House of Representatives in Legislative District 20. Here is what they had to say about candidate Bolick:

"We need elected officials who will put parents first over bureaucrats. Shawna Bolick has been a passionate voice for parental school choice for over two decades. Her dedication to ensuring parents maintain control of their school children's curriculum is paramount. I know Ms. Bolick will represent parents well once she's elected to the Arizona Legislature."

~ Jared Taylor

Member, State Board of Education

Gilbert Town Councilman

"In order for Arizona to prosper we need to return to the founding principles of our country - individual liberty, fiscal responsibility and free enterprise. Shawna Bolick is dedicated to these principles and she has common sense. If we are going to win this battle over fiscal responsibility, we need more citizens like Shawna serving in the Arizona Legislature."

~ Jean McGrath

current Member of Maricopa Community College District's Governing Board, District 4



former Central Arizona Project Board of Directors

former Arizona legislator

"I heartily endorse Shawna Bolick for the Legislative District 20 State House of Representatives because of her conservative philosophy and experience in all areas of education. Her contributions to the legislative decision-making would resolve long-standing problems we now face. She knows her stuff!"

~ Johanna Haver

current Member of Maricopa County Community College Governing Board, District 3

Bolick stated, "I am thankful for our continued support for our legislative run. I have gotten to know these fine individuals through my community involvement. I got to know Mr. Taylor while serving on the Arizona State Board of Education's Standards Committee and value his insights." She added, "from Kindergarten to the community college level I believe we can give the power back to the consumer and away from the bureaucrats trying to control each and every decision meant for parents, teachers and students."

###

## Rep. McSally Leads Effort to Secure Resources to Combat Opioid Epidemic

*Urges Appropriators to Set Aside Billions in Budget to Stop Deadly Drug Crisis in High-Mortality Populations*

WASHINGTON, DC – U.S. Representative Martha McSally last week led other members of Congress in urging House appropriators to allocate billions of the budget to address the opioid crisis that has hit Arizona communities especially hard. Pima County in the Congresswoman's district had 356 overdoses in 2016, a rate almost twice as high as any other county in Arizona. According to the Arizona Department of Health Services, 790 Arizonans died from opioid overdoses in 2016. In the letter, the legislators requested the funds be targeted towards those areas most in need of assistance.

"It is clear that we must redouble our efforts to stop this disastrous and heartbreaking problem that is wreaking havoc on our communities and kills an average of 115 Americans every single day," the lawmakers write. "We are encouraged to hear that H.R. 1892 provides room for the appropriation of an additional few billion dollars for Fiscal Years 2018 and 2019 to continue the fight against the opioid crisis and improve mental health care. We ask that you target the funds towards those populations most in need including states with the highest per-capita overdose mortality rates, as well as tribal and rural areas."

Overdose deaths in Arizona increased by an alarming 74 percent over the past four years. The number of Americans killed by drug overdoses nearly doubled in the last decade.

Congresswoman McSally has consistently been a leader in the fight against opioid addictions, [applauding the administration](#) for declaring the opioid crisis a nationwide public health emergency last fall, spearheading legislation signed by the President, and voting for an increase of \$781 million for fighting the opioid epidemic. Last Congress, Congresswoman McSally worked to [include provisions in the 21<sup>st</sup> Century Cures Act](#) that provide resources and training to law enforcement on the frontlines of dealing with this crisis. Additionally, Congress passed the Comprehensive Addiction and Recovery Act [with Congresswoman McSally's support](#), to offer grants, treatment and prevention, and support for law enforcement in communities around the nation to combat this crisis.

[Click HERE](#) to see below for the full text of the letter.

The Honorable Tom Cole

Chairman

Subcommittee on Labor, Health and Human

Services, Education, and Related Agencies

2358-B Rayburn House Office Building

Washington, DC 20515

The Honorable Rosa DeLauro

Ranking Member

Subcommittee on Labor, Health and Human  
Services, Education, and Related Agencies  
1016 Longworth House Office Building  
Washington, DC 20515

Dear Chairman Cole and Ranking Member De Lauro,

In light of the recent passage of H.R. 1892, the *Bipartisan Budget Act of 2018*, we write to express our strong support for the inclusion of potentially billions of dollars in additional resources to combat the opioid crisis. With the number of Americans killed by drug overdoses nearly doubling in the last decade, it is clear that we must redouble our efforts to stop this disastrous and heartbreaking problem that is wreaking havoc on our communities and kills an average of 115 Americans every single day.<sup>[1]</sup> That means this crisis claims nearly as many American lives in one year as the entire Korean War.

As you are aware, the *21<sup>st</sup> Century Cures Act* contained almost \$1 billion in funding for the State Targeted Response to the Opioid Crisis Grants to help fight the opioid crisis. While these grants have begun to make a difference in our communities, we want to build on this effort. We are encouraged to hear in discussions that H.R. 1892 provides room for the appropriation of an additional few billion dollars for Fiscal Years 2018 and 2019 to continue the fight against the opioid crisis and improve mental health care. We want to ensure that these funds are appropriated and specifically targeted towards the areas and populations in the most need of assistance.

Despite recent efforts to target resources to those most in need, Native Americans and native Alaskans who had 500% increase in overdose deaths—have been left out of the conversation.<sup>[2]</sup> As you begin to appropriate the much needed additional funds to fight the opioid crisis, we ask that you target the funds towards those populations most in need including states with the highest per-capita overdose mortality rates, as well as tribal and rural areas. Please make sure that your appropriations legislation clearly states that these funds must be targeted to the areas and populations who need it most.

Sincerely,

Martha McSally

Member of Congress

Mike Bishop

Member of Congress

John J. Faso

Member of Congress

Claudia Tenney

Member of Congress

Paul A. Gosar D.D.S.

Member of Congress

Sean P. Duffy

Member of Congress

John Katko

Member of Congress

Ted Budd

Member of Congress

Luke Messer

Member of Congress

Chris Collins

Member of Congress

Keith J. Rothfus

Member of Congress

Elise M. Stefanik

Member of Congress  
Kevin Cramer  
Member of Congress

## Republican Wendy Rogers Gives Speech at Wall Prototypes Ahead of President Trump Visit

**Flagstaff, AZ** - Arizona 1st District Congressional candidate, Wendy Rogers, a conservative entrepreneur and retired Air Force pilot, who supported Donald Trump in the primaries, visited the border wall prototypes near the Mexican border this weekend just days ahead of President Trump's expected visit. After inspecting the wall prototypes, Wendy Rogers gave a speech detailing her determination to build the wall, end chain migration, and fight for other key conservative immigration initiatives when elected.

President Trump is expected to visit the wall prototypes this week, where he is expected to highlight his immigration initiatives, mainly to fund and build the wall.

A video of the speech Wendy Rogers gave can be found on [Rogers' Facebook page](#).

The full text of Rogers' speech is below:

"Good afternoon, I'm Wendy Rogers, Republican candidate for Arizona's 1st Congressional District.

I'm speaking to you from the prototypes of President Trump's border wall, which he is fighting hard to get funded and built. Our nation's sovereignty, security, and the rule of law should be top priority for any elected official in Washington DC.

Unfortunately, however, they are not. We don't enforce our laws. We allow immigrants to enter our nation illegally. We allow drugs, crime, and gang activity to run rampant, especially on our southern border.

We lose billions due to fraud, waste, and abuse stemming from our immigration programs and subsidies. Wages of American workers continually decline because of suppressed wages from illegal immigration.

I served as an American Air Force officer. I know what security looks like. What we have now is a complete and utter mess. We are losing our sovereignty and our respect for the rule of law.

It's time to do something about it.

You see . . . we still have politicians who give double-talk . . . they talk about fences instead of the wall. They talk about amnesty for millions of illegal aliens in order to give us even a fraction of the wall. No! This is not what we the people voted for!

We have serious problems. Our nation will not last unless we fix this, and fix it now. No more double-talk.

Build the wall. No amnesty - immigrants must enter legally or not at all. Crackdown on sanctuary cities. Arrest elected officials who undermine our sovereignty. End chain migration, which is a corrosive policy that endangers innocent Americans. It should've have ended long ago.

End the visa lottery, so we don't have to worry about admitting terrorists. Keep the travel ban in place until countries can demonstrate they are civilized on the world stage. End foreign aid to countries who deplore us. Put E-verify in place to double-check workers who enter, so we can be sure they're legitimate. Crackdown on MS-13. Enforce our laws! We veterans understand what security looks like. We know you don't leave a section of your perimeter unprotected. We know there must be solid access control. And we know you need to remove bad actors. This is common sense!

America First. Arizona First. It is time to get this done. Col. Wendy Rogers - out."

Wendy Rogers is a retired Air Force officer who attained the rank of Lt. Col., became one of the U.S. military's first female pilots, is an entrepreneur and homeschool mom.

###



## Congressman Biggs Calls for House Passage of Right to Try Legislation

**GILBERT, ARIZONA** – Yesterday, House Majority Leader Kevin McCarthy announced that Right to Try would receive floor consideration this week. Congressman Biggs, the original sponsor of the introductory House version, released the following statement:

*“All Americans have the right and freedom to try to save their lives. The Right to Try Act is a significant bipartisan endeavor, having become law in 38 states. In 2014, Arizona voters passed this law with almost 80% of the vote. I am pleased that, after years in the making, this policy is being considered on the House floor tomorrow. Our bill will give some relief to terminally-ill patients who have no further options left to extend their lives, including Jordan McLinn, Trickett Wendler, Bertrand Might, Matt Bellina, and Diego Morris. These individuals – and countless others – deserve this hope.*

*“Right to Try legislation would not be possible without the persistent efforts of President Donald Trump, Vice President Mike Pence, Senator Ron Johnson, Congressman Brian Fitzpatrick, the Goldwater Institute, FreedomWorks, Americans For Prosperity, Laura and Jordan McLinn, former Congressman Matt Salmon, and dozens of my House colleagues.*

*“At a time when pundits are claiming that our politics are broken, that Republicans and Democrats can’t come together on anything, here’s a cause that Americans of all political persuasions believe in. I believe that the House will approve this legislation, that the Senate will swiftly pass this bill, and that President Trump will soon sign this act into law.”*

###

## ”QUOTE OF THE DAY”

“At the moment, the only thing that is preventing the April 3rd event from going forward is your tortured legal analysis and your insistence on creating a dispute where none exists. If you insist on proceeding, I can well imagine the judge asking, ‘Why are we here?’”

*- ASU general counsel José Cárdenas, to CAIR attorney Gadeir Abbas, on whether state law prevents pro-Palestine speakers from participating in an event at the university.*

# Exhibit O

## Ensign, Drew

---

**From:** Jose Cardenas (General Counsel) <jcardenas@asu.edu>  
**Sent:** Thursday, March 08, 2018 9:51 AM  
**To:** Carolyn Homer; Gadeir Abbas; Lena F. Masri, Esq.  
**Cc:** raees@kellywarnerlaw.com; Anne? Griffith; Lisa Loo  
**Subject:** RE: American Muslims for Palestine v. Arizona State University et. al, 2:18-cv-00670  
**Attachments:** SpeakerArtistPerformer 2017.pdf

Carolyn, Gadeir and Lena, this is a follow up to our discussion on Tuesday afternoon. I have also copied your local counsel.

We appreciate your courtesy in discussing your lawsuit with us and in listening to the reasons we gave as to why it should be withdrawn. While you did not agree with us on Tuesday, I am hopeful that upon further consideration of what we said and what is set forth here you will now agree that there is no dispute between ASU and your clients.

To be clear, for all of the reasons we discussed on Tuesday and as set forth below, ASU has no intentions of enforcing the statute that is the subject of your lawsuit and it will not be a bar to the April 3<sup>rd</sup> event. The statute simply does not apply in this context and that is why we removed it from our speaker engagement form contract.

As we told you, and as you know from press reports, your lawsuit is based on an outdated version of our speaker engagement form contract. The form was revised in December of 2017 and the no boycott of Israel provision to which you object was removed. That version of the contract is attached.

Lisa Loo, ASU's Vice President for Legal Affairs and Deputy General Counsel, tried to contact you and your local counsel last Friday before your scheduled press conference to tell you that the no boycott provision does not apply to the April 3<sup>rd</sup> event, but was not able to reach anyone. ASU, however, did make its position publicly known that same day and we will continue to do so.

That fact that our speaker engagement form does not have the boycott provision should in and of itself dispose of this lawsuit.

First, the relief you seek is an injunction "striking the 'No Boycott of Israel' clause from Defendants' standard speaker contract."

There is nothing to strike because the clause is not there.

Second, Dr. Bazian, in paragraph 16 of the affidavit attached to your complaint, said he would sign the contract if it did not have the provision to which he objects:

"I have no objection to Arizona State University's 'Speaker/Artist/Performer Agreement' other than Paragraph 20, the 'No Boycott of Israel' clause. I have already blocked off April 3, 2018 on my calendar for attendance at the Muslim Students Association's BDS event at Arizona State University. If the 'No Boycott of Israel' clause is stricken or declared unenforceable, I will sign the Agreement, enabling me to speak at the April 3, 2018 event."

If Dr. Bazian meant what he said, he should be willing to sign the contract because it does not have the clause he said prevents him from signing.

When we spoke, Gadeir came up with a new theory as to why the lawsuit should nevertheless proceed. You said that Dr. Bazian will not sign the contract because it also includes a provision about compliance with all Arizona laws. You contend that incorporates the no boycott provision of state law and therefore we still have something to argue about.

Again, there are several flaws in this logic:

- 1) That argument is contrary to your client's position.
- 2) The provision you reference actually refers to "all **applicable**" laws.
  - a. The no boycott provision does not apply to having Dr. Bazian speak at ASU, so there should be no further issues.
  - b. As I told you I would, I spoke to the lawyers in the Attorney-General's office who are handling this matter. I am authorized to tell you that they agree that the no boycott clause would not apply to Dr. Bazian or any other speaker at the April 3<sup>rd</sup> event.
  - c. The argument puts CAIR in the rather odd position of telling ABOR and ASU that they have to follow a state law to which you object and that we independently concluded does not apply. And now you know that the only other defendant agrees with our position.
- 3) A further flaw is that the obligation the "no boycott" statute imposes in the first instance is upon the public entity and not upon the other party to the contract. It requires the public entity to include that provision if applicable. If the clause is not there, we never get to the issue of whether your client has to agree to the certification.
- 4) Thus, to the extent you're saying the reference to all laws means the boycott provision applies, what you're really saying is it has to be in the contract. That leaves you in the rather strange position of demanding the inclusion of the provision or inserting it yourself so that you can then say your client won't comply because it's now in the contract.

Gadeir, you were quoted on a local news posting as saying that your clients "hope ASU will come to its senses and allow the April 3<sup>rd</sup> event to go forward."

At the moment, the only thing that is preventing the April 3<sup>rd</sup> event from going forward is your tortured legal analysis and your insistence on creating a dispute where none exists. If you insist on proceeding, I can well imagine the Judge asking, "why are we here?"

With all due respect, it is you and your colleagues who need to come to your senses and not waste the time and resources of the parties and the court and, more importantly, deprive ASU students and others of the opportunity to hear from Dr. Bazian.

As I told you when we spoke, ASU's commitment to free speech is long standing and deep. That is why FIRE (Foundation for Individual Rights in Education) has lauded ASU as one of only 38 institutions in the entire country to earn its highest, "green light" rating for campus free speech.

Paragraph 30 of your complaint similarly notes that ASU is "committed to academic freedom, and to providing an open venue for student organizations to invite outside speakers and host educational events on a wide variety of subjects, and from a wide variety of viewpoints."

You were right. That is why we look forward to finalizing the speaker engagement contract with Dr. Bazian's signature.

And we look forward to Dr. Bazian's appearance at ASU on April 3<sup>rd</sup>.

Sincerely,

José A. Cárdenas  
Sr. Vice President and General Counsel  
Arizona State University



## SPEAKER/ARTIST/PERFORMER AGREEMENT

This Agreement is entered into as of \_\_\_\_\_, 20\_\_\_\_, between the Arizona Board of Regents acting for and on behalf of Arizona State University (ASU) and \_\_\_\_\_<sup>1</sup> (Speaker), or \_\_\_\_\_, a \_\_\_\_\_, <sup>2</sup> as the authorized agent for Speaker. If Speaker is represented by an authorized agent, then references to Speaker herein will also refer to the authorized agent, where appropriate.

1. Engagement; Event. ASU hereby engages Speaker to personally provide the following services, and Speaker agrees to personally provide to ASU the following services (the Presentation) at the following Event (the Event):

Event/Location: \_\_\_\_\_

Dates and times of Event: \_\_\_\_\_

Speaker's Presentation schedule: \_\_\_\_\_

Title of Speaker's Presentation: \_\_\_\_\_

Speaker's hospitality requirements: \_\_\_\_\_

Speaker's technical requirements: \_\_\_\_\_

2. Notice. Any communication or notice required under this Agreement will be in writing and may either be given by personal delivery or sent, in all cases, against receipt, addressed to the following:

If to ASU:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Attn: \_\_\_\_\_

Email: \_\_\_\_\_

If to Speaker:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Attn: \_\_\_\_\_

Email: \_\_\_\_\_

Notice will be deemed to be received upon actual receipt (or refusal of receipt) by the receiving party.

3. Speaker Warranty. Speaker warrants that at all times during the Event, Speaker will personally provide Speaker's best professional efforts. Speakers' professional credentials are such that Speaker can provide the Presentation in a knowledgeable and professional manner.

4. Payment. ASU will pay Speaker the all-inclusive fee of \$\_\_\_\_\_ upon completion of the Presentation. Speaker will complete a Substitute W-9 Form, which must be signed by the person or entity to whom payment is to be issued. ASU will issue all payment in accordance with the information on the completed and signed Substitute W-9 Form.

5. Acceptance of Agreement. Speaker will accept and return this Agreement to ASU no later than \_\_\_\_\_, 20\_\_\_\_. In all events, this Agreement must be fully signed and received at ASU at least one week prior to the Event to allow on-time payment. This Agreement must be fully signed before payment can be processed. Please return a signed copy of this Agreement to ASU at the address set forth in Section 2.

<sup>1</sup> If an authorized agent is signing, please be sure to fill in the speaker name as well.

<sup>2</sup> Include full legal name of authorized agent, state of formation, and type of entity (i.e.; ABC, Inc., an Arizona Corporation.)

6. Compliance with Law. Speaker will comply with all applicable ASU, City, County, State, and Federal laws, acts, codes, regulations and policies, including all applicable federal immigration laws and regulations that relate to employment.
7. Press Materials. Speaker will timely supply all press/promotion material requested by ASU.
8. Indemnity. Speaker will indemnify, defend, save and hold ASU harmless for, from, and against, any all claims, demands, suits, costs and damages (including reasonable attorneys' fees) that ASU may incur by reason of any: (a) actual or alleged infringement or violation of any copyright, or other proprietary right by Speaker; (b) claim for damages arising from Speaker's Presentation; or (c) any of Speaker's costs and liabilities arising out of the Presentation or Event, including without limitation: travel and meal expenses; union dues; taxes; agents' commissions or other expenses or obligations; damages to Speaker's equipment or materials; compensation to third parties engaged by Speaker; compensation for lost or stolen equipment or materials; workers compensation or other insurance; and any expenses not preapproved by ASU in writing.
9. Indemnification and Liability Limitation. Because ASU is a public institution, any indemnification, liability limitation, releases, or hold harmless provisions are limited as required by Arizona law, including Article 9, Sections 5 and 7 of the Arizona Constitution and Arizona Revised Statutes (ARS) §§ 35-154 and 41-621. ASU's liability under any claim for indemnification is limited to claims for property damage, personal injury, or death to the extent caused by acts or omissions of ASU.
10. Force Majeure. Neither Speaker nor ASU shall be liable to each other for failure to perform hereunder if failure is caused by civil tumult, strike, epidemic, or any other cause beyond the reasonable control of the parties (Force Majeure). The ingestion of alcohol, opioids, illegal substances, or the like, will not be deemed an event of Force Majeure. If the Event or Presentation is cancelled due to an event of Force Majeure, the parties will make reasonable efforts to reschedule, if feasible.
11. Cancellation. If either party cancels this Agreement or the Presentation, other than due to an event of Force Majeure the other party will have all remedies afforded by law and in equity. In addition, if ASU cancels the Event or the Presentation, ASU will reimburse Speaker for reasonable expenses incurred in preparation for the Presentation up to the date ASU provides notice of cancellation.
12. Liability; Insurance. Speaker, at its expense, will procure and maintain, for the duration of the Event, a policy of commercial general liability insurance in an amount of not less than \$1,000,000, single limit, against claims for bodily injury, death and property damage occurring in connection with the Event and the Presentation. This insurance must name the Arizona Board of Regents, Arizona State University, and the State of Arizona as additional insureds. Speaker must provide ASU with a certificate evidencing this insurance coverage no later than 10 days prior to the Presentation.
13. No Assignment. Neither party may assign any rights or obligations under this Agreement without the prior written consent of the other party.
14. Entire Agreement. This Agreement constitutes the entire agreement and understanding of the parties with respect to its subject matter. No prior or contemporaneous agreement or understanding will be effective.
15. Governing Law and Venue. This Agreement will be governed by the laws of the State of Arizona. ASU's obligations are subject to the regulations/policies of the Arizona Board of Regents. Any proceeding arising out of or relating to this Agreement will be conducted in Maricopa County, Arizona. Speaker consents to such jurisdiction, and waives objection to venue or convenience of forum.



16. Independent Contractor. Speaker is an independent contractor and is not an employee of ASU. Neither Speaker nor any personnel of Speaker will for any purpose be considered employees or agents of ASU. Speaker assumes full responsibility for the actions of Speaker's personnel, and is solely responsible for their supervision, direction and control, payment of salary and expenses (including withholding income taxes and social security), worker's compensation, and disability benefits.

17. Recordings; Use of Name and Likeness. Both parties may record the Presentation for internal records. No recording of the Presentation, either visual or audio, will be made by or on behalf of Speaker for the purposes of profit or significant distribution without prior written approval from ASU. ASU may require an additional payment for the privilege, and may require Speaker to sign a filming/recording agreement. ASU may record the Presentation on video tape, audio tape, film, photograph or any other medium, use Speaker's name, likeness, voice and biographical material in connection with these recordings for purposes within the ASU mission, including education and research, and exhibit or distribute the recording in whole or in part without restrictions or limitation for any educational or promotional purpose that ASU deems appropriate.

18. No Revenue Sharing. Speaker will not participate in any revenues associated with the Presentation or Event. This includes: sponsorship, ticketing, ticketing fees, ASU concessions revenues, and any other revenue streams that may be associated with the Event.

19. Non-discrimination. The parties will comply with all applicable laws, rules, regulations, and executive orders governing equal employment opportunity, immigration, and nondiscrimination, including the Americans with Disabilities Act. **If applicable, the parties will abide by the requirements of 41 CFR §§ 60-1.4(a), 60-300.5(a) and 60-741.5(a). These regulations prohibit discrimination against qualified individuals based on their status as protected veterans or individuals with disabilities, and prohibit discrimination against all individuals based on their race, color, religion, sex, or national origin. Moreover, these regulations require that covered prime contractors and subcontractors take affirmative action to employ and advance in employment individuals without regard to race, color, religion, sex, national origin, protected veteran status or disability.**

20. Conflicts of Interest. If within 3 years after the execution of this Agreement, Speaker hires as an employee or agent any ASU representative who was significantly involved in negotiating, securing, drafting, or creating this Agreement, then ASU may cancel this Agreement as provided in ARS § 38-511. Notice is also given of ARS §§ 41-2517 and 41-753.

21. Arbitration in Superior Court. The parties agree to arbitrate disputes filed in Arizona Superior Court that are subject to mandatory arbitration pursuant to ARS § 12-133. ARS § 12-1518 requires this provision in all ASU agreements.

22. Records. To the extent required by ARS § 35-214, the non-ASU parties to this Agreement will retain all records relating to this Agreement. Speaker will make those records available at all reasonable times for inspection and audit by ASU or the Auditor General of Arizona during the term of this Agreement and for 5 years after the completion of this Agreement. The records will be provided at ASU in Tempe, Arizona, or another location designated by ASU on reasonable notice to Speaker.

23. Failure of Legislature to appropriate. In accordance with ARS § 35-154, if ASU's performance under this Agreement depends on the appropriation of funds by the Arizona Legislature, and if the Legislature fails to appropriate the funds necessary for performance, ASU may provide written notice of this to Speaker and cancel this Agreement without further obligation of ASU. Appropriation is a legislative act and is beyond ASU's control.

24. Weapons, Explosives, and Fireworks. ASU prohibits the use, possession, display or storage of any weapon, explosive device or fireworks on all land and buildings owned, leased, or under the control of ASU or its affiliated entities, in all ASU residential facilities (whether managed by ASU or another entity), in all ASU vehicles, and at all ASU or ASU affiliate sponsored events and activities, except as provided in ARS § 12-781, or unless written permission is given by ASU's Police Chief or a designated representative. Speaker will notify all persons or entities who are employees, officers, subcontractors, consultants, agents, guests, invitees or licensees of Speaker of this policy, and Speaker will enforce this policy against all such persons and entities. ASU's policy is at [asu.edu/aad/manuals/pdp/pdp201-05.html](http://asu.edu/aad/manuals/pdp/pdp201-05.html).

25. Privacy; Educational Records. Student educational records are protected by the U.S. Family Educational Rights and Privacy Act, 20 U.S.C. § 1232g (FERPA). Speaker will not require any ASU students or employees to waive any privacy rights (including under FERPA or the European Union's General Data Protection Regulation (GDPR)) as a condition for receipt of any educational services, and any attempt to do so will be void. Speaker will comply with FERPA and will not access or make any disclosures of student educational records to third parties without prior notice to and consent from ASU or as otherwise provided by law. If this Agreement requires or permits Speaker to access or release any student records, then, for purposes of this Agreement only, ASU-designates Speaker as a "school official" for ASU under FERPA, as defined in FERPA and its implementing regulations. In addition, any access or disclosures of student educational records by Speaker or any Speaker Parties must comply with ASU's definition of legitimate educational purpose. If Speaker violates this section, Speaker will immediately notify ASU.

26. Authorized Presence Requirements. As required by ARS § 41-4401, ASU is prohibited from awarding a contract to any contractor or subcontractor that fails to comply with ARS § 23-214(A) (verification of employee eligibility through the e-verify program). Speaker warrants that it and its subcontractors comply fully with all applicable immigration laws, rules, and regulations that relate to their employees and their compliance with ARS § 23-214(A). A breach of this warranty will be a material breach of this Agreement that is subject to penalties up to and including termination. ASU retains the right to inspect the papers of any contractor or subcontractor employee hereunder to ensure compliance with this warranty.

27. Tobacco-Free University. ASU is tobacco-free. For details visit [asu.edu/tobaccofree](http://asu.edu/tobaccofree).

28. Authority. If an individual or entity signs below on behalf of Speaker, such signatory represents and warrants that he/she/it has full and current authority to act and contract on behalf of Speaker and obligate Speaker, and that this Agreement is binding upon and enforceable against Speaker and the undersigned (if not Speaker) in accordance with its terms.

PRINT NAME OF SPEAKER OR  
AGENT OF SPEAKER

ARIZONA BOARD OF REGENTS FOR AND ON  
BEHALF OF ARIZONA STATE UNIVERSITY

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Signatory Name

\_\_\_\_\_  
Signatory Name

\_\_\_\_\_  
Signatory Title

\_\_\_\_\_  
Signatory Title

\_\_\_\_\_  
Date Signed

\_\_\_\_\_  
Date Signed

**UNITED STATES DISTRICT COURT  
DISTRICT OF ARIZONA**

American Muslims for Palestine and Dr.  
Hatem Bazian,

Plaintiffs,

vs.

Arizona Board of Regents for and on behalf  
of Arizona State University; and Mark  
Brnovich, in his official capacity as  
Attorney General Of Arizona,  
Defendants..

Case No: 2:18-cv-00670-JJT

**DECLARATION OF DREW C. ENSIGN**

I, Drew C. Ensign, declare as follows:

1. I am an attorney licensed to practice law in Arizona and the District of Columbia. I am a Senior Litigation Counsel with the Office of the Attorney General Of Arizona, and represent Defendant Mark Brnovich in his official capacity as Attorney General of Arizona in this matter.
2. The Office of the Attorney General has not filed any civil or criminal action in any court to enforce A.R.S. § 35-393.01(A) (the “Act”).
3. I am not aware of any instance in which the Office of the Attorney General has threatened to file an enforcement action related to the Act.

4. Attached hereto as Exhibit A is the roll call vote in the Arizona House of Representatives for the Act.

5. Attached hereto as Exhibit B is the roll call vote in the Arizona Senate for the Act.

6. Attached hereto as Exhibit C are excerpts of the transcript from the Rule 30(b)(6) deposition of Plaintiff Mikkell (Mik) Jordahl, P.C. in *Jordahl v. Brnovich* (No. 17-cv-08263-PCT-DJH), which was conducted on January 8, 2018.

I declare under penalty of perjury that the foregoing is true and correct, to the best of my knowledge, and that this declaration was issued on April 10, 2018, in Phoenix, Arizona.

s/ Drew C. Ensign  
Drew C. Ensign

# Exhibit A

House Final Reading - HB2617



Action Date		Action		Vote			
03/14/2016		Passed		42-16-2-0-0			
ACKERLEY	Y	COBB	Y	LAWRENCE	Y	PLUMLEE	N
ALLEN J	Y	COLEMAN	Y	LEACH	Y	PRATT	Y
ALSTON	Y	ESPINOZA	Y	LIVINGSTON	Y	RIOS	N
ANDRADE	N	FANN	Y	LOVAS	Y	RIVERO	Y
BARTON	Y	FARNSWORTH E	Y	MACH	N	ROBSON	Y
BENALLY	NV	FERNANDEZ	N	MCCUNE DAVIS	Y	SALDATE	N
BOLDING	N	FINCHEM	Y	MENDEZ	N	SHOPE	Y
BORRELLI	Y	FRIESE	N	MESNARD	Y	STEVENS	Y
BOWERS	Y	GABALDÓN	N	MEYER	Y	THORPE	Y
BOYER	Y	GONZALES	N	MITCHELL	Y	TOWNSEND	Y
BROPHY MCGEE	Y	GRAY	Y	MONTENEGRO	Y	UGENTI-RITA	Y
CAMPBELL	Y	HALE	N	NORGAARD	Y	VELASQUEZ	N
CARDENAS	Y	KERN	Y	OLSON	Y	WENINGER	Y
CARTER	NV	KOPEC	N	OTONDO	Y	WHEELER	N
CLARK	N	LARKIN	Y	PETERSEN	Y	GOWAN	Y

# Exhibit B



Senate Third Reading - HB2617



Action Date		Action	Vote				
03/10/2016		Passed	23-6-1-0-0				Amended
ALLEN S	Y	DIAL	Y	LESKO	Y	SHERWOOD	Y
BARTO	Y	DONAHUE	Y	MCGUIRE	Y	SHOOTER	Y
BEGAY	Y	DRIGGS	Y	MEZA	Y	SMITH	Y
BRADLEY	N	FARLEY	NV	MIRANDA	Y	WORSLEY	Y
BURGES	Y	FARNSWORTH D	Y	PANCRAZI	Y	YARBROUGH	Y
CAJERO BEDFORD	N	GRIFFIN	Y	PIERCE	Y	YEE	Y
CONTRERAS	N	HOBBS	N	QUEZADA	N	BIGGS	Y
DALESSANDRO	N	KAVANAGH	Y				

# Exhibit C

30(b)(6) of Mikkel (Mik) Jordahl, PC - January 8, 2018  
Mikkel Jordahl

UNITED STATES DISTRICT COURT

DISTRICT OF ARIZONA

Mikkel Jordahl; Mikkel (Mik)	)	
Jordahl, P.C.,	)	
	)	
Plaintiffs,	)	
	)	
vs.	)	Case No.:
	)	3:17-cv-08263-PCT-DJH
Mark Brnovich, Arizona	)	
Attorney General; Jim	)	
Driscoll, Coconino County	)	
Sheriff; Matt Ryan, Coconino	)	
County Board of Supervisors	)	
Chair; Lena Fowler, Coconino	)	
County Board of Supervisors	)	
Vice Chair; Elizabeth	)	
Archuleta, Coconino County	)	
Board of Supervisors Member;	)	
Art Babbott, Coconino County	)	
Board of Supervisors Member;	)	
Jim Parks, Coconino County	)	
Board of Supervisors Member;	)	
Sarah Benatar, Coconino	)	
County Treasurer, all in	)	
their official capacities,	)	
	)	
Defendants.	)	

---

30(b)(6) DEPOSITION OF MIKKEL (MIK) JORDAHL, P.C.,  
BY MIKKEL JORDAHL

Phoenix, Arizona

January 8, 2018

Prepared by:  
Gerard T. Coash, RPR, RMR  
Certified Reporter  
Certification No. 50503

Page 2		Page 4	
1	I N D E X	1	For the Defendant Mark Brnovich in his official capacity as Attorney General:
2	WITNESS PAGE	2	OFFICE OF THE ARIZONA ATTORNEY GENERAL
3	MIKKEL (MIK) JORDAHL	3	By: Drew C. Ensign, Esq.
4	Examination by Mr. Ensign 5	4	Oramel H. (O.H.) Skinner, Esq.
5	Examination by Ms. Brody 157	5	Brunn (Beau) W. Roysden III, Esq.
6	Further Examination by Mr. Ensign 176	6	2005 North Central Avenue
7		7	Phoenix, Arizona 85004
8		8	602-542-5200
9		9	drew.ensign@azag.gov
10	EXHIBITS MARKED	10	o.h.skinner@azag.gov
11	EXHIBITS DESCRIPTION PAGE	11	beau.roysden@azag.gov
12	Exhibit 1 Defendant Brnovich's Amended Notice of Deposition Pursuant to Fed. R. Civ. P. 30(b) (6) 7	12	Also present: Jacob Richards
13	Exhibit 2 Declaration of Mikkel Jordahl CV17-08263 61	13	
14	Exhibit 3 Complaint for Declaratory and Injunctive Relief 119	14	
15	Exhibit 4 Email string ending from Matthew Figueroa to Mikkel Jordahl dated 12-8-17 163	15	
16		16	
17		17	
18		18	
19		19	
20		20	
21		21	
22		22	
23		23	
24		24	
25		25	

Page 3		Page 5	
1	30(b) (6) DEPOSITION OF MIKKEL (MIK) JORDAHL, P.C.,	1	(Mr. Roysden is not yet present.)
2	BY MIKKEL JORDAHL	2	
3	was taken on January 8, 2018, commencing at 9:06 a.m., at	3	MIKKEL (MIK) JORDAHL,
4	the Offices of the Arizona Attorney General, 2005 North	4	the witness herein, having been first duly sworn by the
5	Central Avenue, Phoenix, Arizona, before Gerard T. Coash,	5	Certified Reporter, was examined and testified as follows:
6	a Certified Reporter in the State of Arizona.	6	
7		7	EXAMINATION
8		8	BY MR. ENSIGN:
9	* * *	9	Q. Could you please state and spell your full name
10	APPEARANCES:	10	for the record?
11	For the Plaintiffs:	11	A. Yeah, my full name is Mikkel Steen Jordahl,
12	ACLU FOUNDATION OF ARIZONA	12	Mikkel is spelled M-i-k-k-e-l, middle name Steen,
13	By: Kathleen E. Brody, Esq.	13	S-t-e-e-n, last name Jordahl, J-o-r-d-a-h-l. I go by Mik,
14	3707 North 7th Street	14	M-i-k.
15	Suite 235	15	Q. Have you ever been deposed in a civil case
16	Phoenix, Arizona 85014	16	before?
17	602-650-1854	17	A. I believe I was deposed on one occasion many
18	kbrody@acluaz.org	18	years ago.
19	and	19	Q. Okay. And what kind of case was that?
20	ACLU FOUNDATION, SPEECH, PRIVACY & TECHNOLOGY	20	A. It was a civil rights case in which I was a
21	PROJECT	21	witness as a law student. It was against the Tucson
22	By: Brian Hauss, Esq. (Telephonic)	22	Police Department.
23	Vera Eidelman, Esq. (Telephonic)	23	Q. Okay.
24	125 Broad Street	24	A. And it was regarding their treatment of homeless
25	18th Floor	25	people.
	New York, New York 10004		
	212-549-2500		
	bhauss@aclu.org		
	veidelman@aclu.org		

09:07:20-09:08:03	Page 6	09:09:41-09:10:39	Page 8
<p>1 Q. Okay. And you are a licensed lawyer, correct?</p> <p>2 A. Yes.</p> <p>3 Q. And you're familiar with the standard ground</p> <p>4 rules for depositions. Is that correct?</p> <p>5 A. I should be, and I think I am.</p> <p>6 Q. Excellent.</p> <p>7 One ground rule I'd like to emphasize is</p> <p>8 that if you don't understand a question, please ask me to</p> <p>9 clarify. If you answer a question, I'll assume that you</p> <p>10 understood it. Is that okay?</p> <p>11 A. Sure.</p> <p>12 Q. Okay. Also, you can take a break whenever you'd</p> <p>13 like. But if a question is pending, I'd like you to</p> <p>14 finish answering that, and then we can take a break after</p> <p>15 that, if that works.</p> <p>16 A. Okay.</p> <p>17 Q. Is there any reason that you can't give your best</p> <p>18 testimony today?</p> <p>19 A. I don't believe so.</p> <p>20 Q. Are there any medication, other substances you're</p> <p>21 under?</p> <p>22 A. Just caffeine.</p> <p>23 Q. Fair enough. And you are a plaintiff in the</p> <p>24 litigation in the United States District Court titled</p> <p>25 Jordahl, et al. v. Brnovich, et al., captioned 17-cv-8263?</p>		<p>1 Q. You are the CEO and sole director of your PC. Is</p> <p>2 that correct?</p> <p>3 A. Yes.</p> <p>4 Q. Because you're the CEO and sole officer and</p> <p>5 director, is it fair to say that the PC -- the PC</p> <p>6 possesses all knowledge that you do?</p> <p>7 A. Yes.</p> <p>8 Q. Throughout the rest of this deposition, when I</p> <p>9 refer to "you," that will mean your PC, unless I indicate</p> <p>10 otherwise or context makes clear that it's you in your</p> <p>11 personal capacity.</p> <p>12 A. Okay.</p> <p>13 Q. If you're ever unclear about that, please ask me</p> <p>14 to clarify.</p> <p>15 A. Sure.</p> <p>16 Q. What did you do to prepare for this deposition</p> <p>17 today?</p> <p>18 A. I reviewed everything that I have filed. I have</p> <p>19 met with my attorneys. And I have reviewed background</p> <p>20 information on boycott and whatnot that's readily</p> <p>21 available online.</p> <p>22 Q. Is there anything else you did to prepare today?</p> <p>23 A. I don't think so.</p> <p>24 Q. Okay. About how long did you spend preparing?</p> <p>25 A. Probably two, three hours.</p>	
09:08:24-09:09:33	Page 7	09:11:03-09:12:08	Page 9
<p>1 A. Yes, both in an individual capacity and as my law</p> <p>2 firm's.</p> <p>3 Q. Great. And so as you just said, your company,</p> <p>4 the PC, is a plaintiff in this litigation as well?</p> <p>5 A. Yes.</p> <p>6 Q. And I can refer to that as your PC going forward,</p> <p>7 if that works?</p> <p>8 A. Sure.</p> <p>9 Q. You understand that your deposition relates to</p> <p>10 this case, correct?</p> <p>11 A. Yes.</p> <p>12 Q. I'm handing you what I'd like to have marked as</p> <p>13 Exhibit 1.</p> <p>14 (Deposition Exhibit 1 was marked for</p> <p>15 identification.)</p> <p>16 BY MR. ENSIGN:</p> <p>17 Q. Do you recognize this document?</p> <p>18 A. Yes.</p> <p>19 Q. What is it?</p> <p>20 A. It's the Defendant Brnovich's Amended Notice of</p> <p>21 Deposition Pursuant to the Federal Rule of a Civil</p> <p>22 Procedure 30(b)(6).</p> <p>23 Q. And that -- this document is why you're here</p> <p>24 today, correct?</p> <p>25 A. Yes.</p>		<p>1 Q. So could you take a look at the topic 1a on the</p> <p>2 exhibit?</p> <p>3 A. Sure.</p> <p>4 Q. And how long -- what did you do to prepare to</p> <p>5 address topic 1a?</p> <p>6 A. I didn't so much focus on my organizational</p> <p>7 structure. I mean, I recall all that information.</p> <p>8 Q. Okay. And about how long did you spend preparing</p> <p>9 for that?</p> <p>10 A. I don't think I prepared at all in terms of</p> <p>11 that subsection "a."</p> <p>12 Q. In terms of topic 1b, what did you do to prepare</p> <p>13 for that one?</p> <p>14 A. I believe I reviewed the addendum that I was</p> <p>15 asked to sign again, and that took just a matter of a few</p> <p>16 minutes.</p> <p>17 Q. Okay. Is there anything else that you recall</p> <p>18 doing to prepare for that topic?</p> <p>19 A. Let me look here.</p> <p>20 I don't think so.</p> <p>21 Q. Okay. So how about topic 1c? So what did you do</p> <p>22 to prepare for that one?</p> <p>23 A. Nothing. I have no business dealing with folks</p> <p>24 under that category.</p> <p>25 Q. Okay. And in terms of topic 1d, what did you do</p>	

09:12:27-09:13:45	Page 10	09:15:39-09:17:04	Page 12
<p>1 to prepare for that topic?</p> <p>2 A. Well, I did review the companies that I'm in</p> <p>3 favor of boycotting and their activities, which would</p> <p>4 include companies like Hewlett-Packard, Caterpillar,</p> <p>5 Airbnb, companies like that that are on the boycott list</p> <p>6 and the reasons why -- why they should be boycotted in my</p> <p>7 opinion. And I probably spent an hour on that.</p> <p>8 Q. And what documents did you review to prepare for</p> <p>9 that?</p> <p>10 A. Well, I reviewed -- let's see, the EL- --</p> <p>11 Evangelical Lutheran Church of America's position on Peace</p> <p>12 Not Walls and various other literature that the Lutherans</p> <p>13 have produced. Also, I reviewed Jewish Voice for Peace,</p> <p>14 of which I'm a member, and looked at the boycott</p> <p>15 divestment sanctions issues that they're promoting. And</p> <p>16 I've also looked at other sources. I looked at -- this</p> <p>17 morning I reviewed Haaretz, an Israeli left-leaning</p> <p>18 newspaper. I have looked at other sources, one was</p> <p>19 Mondoweiss, which is an electronic website that</p> <p>20 specializes in that area. I think I have reviewed -- what</p> <p>21 is it? There's a group called Electronic Intifada, which</p> <p>22 I've looked at.</p> <p>23 Q. Are there any other groups -- documents that you</p> <p>24 reviewed?</p> <p>25 A. I have looked at -- there is an Arizona Palestine</p>		<p>1 A. I'd say probably at least two hours.</p> <p>2 Q. Okay. And does that kind of capture topic 1f as</p> <p>3 well?</p> <p>4 A. Yes.</p> <p>5 Q. Have you talked about this deposition with</p> <p>6 anyone?</p> <p>7 A. I've mentioned to my wife that -- I mean, that's</p> <p>8 why we're here. So . . .</p> <p>9 Q. Yeah.</p> <p>10 A. And I have mentioned to my attorneys --</p> <p>11 obviously, they know that. I have mentioned to folks at</p> <p>12 Jewish Voice for Peace and some of my Tucson connections</p> <p>13 in the area, yes.</p> <p>14 Q. Okay. And sorry, who -- who would that be?</p> <p>15 A. Well, it would be the Jewish Voice for Peace</p> <p>16 folks, Abby Okrent; also Mohyeddin Abdulaziz, who is part</p> <p>17 of the Arizona BDS network; also Thabet Khalidi, who is a</p> <p>18 lawyer in Tucson; and also my son, Laiken Jordahl; my</p> <p>19 wife, Sheila Nair, and that's probably about it.</p> <p>20 Q. Okay. Okay. And can you think of anyone else</p> <p>21 that you talked to?</p> <p>22 A. I think I have mentioned to a relative or two on</p> <p>23 the West Coast, my uncle and my cousin.</p> <p>24 Q. Okay. And anyone else?</p> <p>25 A. Do you need their names?</p>	
09:14:13-09:15:15	Page 11	09:17:21-09:18:14	Page 13
<p>1 solidarity network. I know the folks that are involved</p> <p>2 there in Tucson; I've reviewed their website. I've</p> <p>3 reviewed some literature on BDS. I've certainly looked at</p> <p>4 the ACLU website and their involvement in opposing the</p> <p>5 anti-Israel boycott act, which would imprison people for</p> <p>6 participating in boycotts. So . . .</p> <p>7 Q. Okay. And can you think of any other materials</p> <p>8 you think you've reviewed?</p> <p>9 A. There are many other sources. I can't think</p> <p>10 of -- you know, I couldn't list them all, but just</p> <p>11 mainstream press, New York Times. I read every day and</p> <p>12 certainly areas there.</p> <p>13 Q. Are there any particular documents that you, you</p> <p>14 know, view as particularly useful in determining what</p> <p>15 companies you boycott?</p> <p>16 A. I'm not sure I could mention any particular</p> <p>17 document.</p> <p>18 Q. Then turning to topic 1e, what did you do to</p> <p>19 prepare for -- to discuss that topic?</p> <p>20 A. Well, I reviewed the allegations in the</p> <p>21 complaint. I reviewed my statement of facts -- or</p> <p>22 whatever that was called, my affidavit, and I prepared</p> <p>23 with my attorneys.</p> <p>24 Q. Okay. And about how long did that -- did you</p> <p>25 prepare for that?</p>		<p>1 Q. Sure.</p> <p>2 A. Well, Eric Skindrud, S-k-i-n-d-r-u-d, Michael</p> <p>3 Skindrud, same last name. I think that's about it.</p> <p>4 Q. And can you think of anyone else?</p> <p>5 A. Not offhand. I mean, I may have shared that, I</p> <p>6 just don't -- I'm not sure. So . . .</p> <p>7 Q. So I'd like to turn to the -- your personal</p> <p>8 boycotts.</p> <p>9 A. Sure.</p> <p>10 Q. So many of the "yous" in this section will be you</p> <p>11 in your personal capacity. But to the extent you're ever</p> <p>12 unclear, please let me know.</p> <p>13 A. Okay.</p> <p>14 Q. Are you currently engaged in any boycotts in your</p> <p>15 personal capacity?</p> <p>16 A. Yes. I would -- as a human being, not as a</p> <p>17 corporation, you know, I would be -- I am boycotting, and</p> <p>18 I urge the boycott -- of Hewlett-Packard, certainly</p> <p>19 Caterpillar, and also Airbnb because they are businesses</p> <p>20 that are involved in perpetuating the occupation of the</p> <p>21 West Bank.</p> <p>22 Q. Are you currently engaged in -- and don't worry</p> <p>23 about the companies right now -- but are there any other</p> <p>24 boycotts that you're engaged in right now, other than</p> <p>25 the -- other than the boycott at issue in this suit?</p>	

11:15:21-11:16:07	Page 82	11:17:44-11:18:48	Page 84
<p>1 Is a copy of that contract attached as</p> <p>2 Exhibit 3 to your declaration?</p> <p>3 A. It looks like it, yes.</p> <p>4 Q. What kind of services do you perform for the jail</p> <p>5 district?</p> <p>6 A. It's an interesting and fairly unique contract.</p> <p>7 Basically, instead of the county jail being on the hook</p> <p>8 for a law library, case law -- it comes out of Arizona, in</p> <p>9 fact -- allows services to be contracted for in lieu of</p> <p>10 the law library. So I provide services -- when an inmate</p> <p>11 requests my services, they have to check a form on which</p> <p>12 three basic areas it is, whether it's -- extradition is</p> <p>13 one area --</p> <p>14 Q. Okay.</p> <p>15 A. -- habeas corpus is another, and conditions of</p> <p>16 confinement is the third.</p> <p>17 And then if someone is unrepresented, I also</p> <p>18 provide services of helping research and draft documents</p> <p>19 for them since they don't have access to a law library</p> <p>20 without representation.</p> <p>21 So basically the scope is I get that</p> <p>22 request; I will go, then, visit the inmate. I usually</p> <p>23 lump together two or three of them, inmates, and then I</p> <p>24 will address their issues. A lot of it deals with</p> <p>25 advising inmates pursuant to the -- what is it? Prison</p>		<p>1 guess. So it's not thrown out to annual bids.</p> <p>2 Q. Okay. When you submit a bid every four years</p> <p>3 then, what's involved with your submissions to the jail</p> <p>4 district?</p> <p>5 A. Well, it's a very exhaustive and -- and thank God</p> <p>6 I've got it on my computer. I can just update it. But it</p> <p>7 talks about my philosophy and how I would approach the</p> <p>8 contract. I think what the jail folks like is that my</p> <p>9 focus is on solving problems, and I view myself as sort of</p> <p>10 an ombudsperson for the inmates and dealing with their</p> <p>11 issues. And if I feel like there's something to it -- an</p> <p>12 awful lot of the requests are somewhat -- I mean, in my</p> <p>13 opinion -- somewhat frivolous, you know, it's a lack of</p> <p>14 understanding of what civil rights an inmate may or may</p> <p>15 not have. I mean, it's as you can imagine. You know,</p> <p>16 people complaining about no chunky peanuts in the peanut</p> <p>17 butter. So, you know, things -- it could be that bad.</p> <p>18 But then it could be also things like the</p> <p>19 right to religious worship, things that are legitimate</p> <p>20 issues.</p> <p>21 I know there's one fellow -- we're talking</p> <p>22 about religion a bit here. There's a Muslim inmate that</p> <p>23 just wanted to know what direction Mecca was and what time</p> <p>24 of day to pray, and we were able to work that out. You</p> <p>25 know, online I was able to find, for Flagstaff, what times</p>	
11:16:24-11:17:28	Page 83	11:19:03-11:19:54	Page 85
<p>1 Reform Litigation Act. They have to exhaust their</p> <p>2 internal remedies, and tell them they need to do that.</p> <p>3 They need to file grievances. And then a lot of it is --</p> <p>4 frankly, is running interference with the jail and</p> <p>5 resolving problems. So that's what it is.</p> <p>6 Q. When did you first bid on the contract with the</p> <p>7 jail district?</p> <p>8 A. You know, I don't recall the exact year, but I</p> <p>9 think it's been -- I know I've been through at least three</p> <p>10 contract renewals, maybe four. And they're either three-</p> <p>11 or four-year terms. So my best guess is about 12 years.</p> <p>12 So -- and before that, I actually represented the inmates</p> <p>13 in a class action lawsuit that was down here, and that's</p> <p>14 how this kind of came about, through that, the idea of</p> <p>15 this contract. And so . . .</p> <p>16 Q. Okay. Can you describe the bidding process for</p> <p>17 those contracts?</p> <p>18 A. Yeah. Every -- it's every four years. They put</p> <p>19 out a bid, and it's a call to attorneys in the</p> <p>20 communities -- I think it goes to the bar -- Coconino Bar</p> <p>21 Association, and each time I've been the guy. So --</p> <p>22 Q. Okay.</p> <p>23 A. That's been chosen. It's a competitive</p> <p>24 situation. Every four years the annual addendum is --</p> <p>25 that's not a bid situation, it's just a certification, I</p>		<p>1 of day, five times a day, it would be. The jail was able</p> <p>2 to put a clock where he could see it outside of his -- and</p> <p>3 then give him the direction for Mecca. And, you know,</p> <p>4 that was one thing.</p> <p>5 There have also been Jewish inmates about</p> <p>6 food, you know, kosher diets, things like that, where we</p> <p>7 go into it. And these are all -- I'm sure you're aware of</p> <p>8 constitutional rights that even inmates retain. So those</p> <p>9 are just a couple of issues. There are all kinds of</p> <p>10 issues.</p> <p>11 Q. So like RLUIPA?</p> <p>12 A. What's that?</p> <p>13 Q. So like RLUIPA?</p> <p>14 A. What's RLUIPA?</p> <p>15 Q. Religious liberties --</p> <p>16 A. For incarcerated people?</p> <p>17 Q. Yeah.</p> <p>18 A. Yeah, I haven't heard it termed that way.</p> <p>19 Q. Are there interviews as part of the bidding</p> <p>20 process?</p> <p>21 A. No. It has always been just written submissions.</p> <p>22 Q. Okay.</p> <p>23 A. As far as I know, yeah.</p> <p>24 Q. When do you typically get paid for the services</p> <p>25 you provide?</p>	



11:20:10-11:21:29	Page 86	11:22:58-11:23:51	Page 88
<p>1 A. I get paid on a monthly basis. I submit an</p> <p>2 invoice at the beginning of the month, and they pay me for</p> <p>3 that entire month.</p> <p>4 Q. Has your PC been involved in providing services</p> <p>5 to the jail district continuously since your first</p> <p>6 contract?</p> <p>7 A. Yes.</p> <p>8 Q. Okay. So it's never lapsed?</p> <p>9 A. Right.</p> <p>10 Q. When was the last time the contract was bid out?</p> <p>11 A. Well, it would have been this -- 2016, whenever</p> <p>12 that -- okay, I signed -- let's see here.</p> <p>13 This one says January of 2017. I probably</p> <p>14 was notified of my acceptance maybe a month or so before</p> <p>15 that.</p> <p>16 Q. Okay. Do you know if there were any other</p> <p>17 bidders the last time?</p> <p>18 A. Oh, I know there were, yes. I don't know who</p> <p>19 they were, but I was told there were several. So . . .</p> <p>20 Q. Who are the primary decision makers for awarding</p> <p>21 the contract?</p> <p>22 A. Well, I would think the primary one now would be</p> <p>23 Commander Figueroa, and then his various lieutenants.</p> <p>24 There is a jail district -- Coconino County Jail District,</p> <p>25 and they have a board there that is comprised of -- I</p>		<p>1 came from.</p> <p>2 And so Matt is -- it's Matt Figueroa -- was</p> <p>3 wondering why I wasn't returning the contract. And I said</p> <p>4 "Well, it's the addendum. And, you know, I'm having a</p> <p>5 real problem with that." And we didn't discuss it in</p> <p>6 detail then, but he had no idea the addendum was in there</p> <p>7 because it was something that was added, I think, to the</p> <p>8 contract by -- I don't know if it was the county attorney</p> <p>9 or someone that was trying to bring the county into</p> <p>10 compliance with the new law.</p> <p>11 And so then we finally discussed it, we met.</p> <p>12 And I said it's Israel anti-boycott stuff. You know, I</p> <p>13 was like, "I have a problem with that. I think it</p> <p>14 violates my rights, constitutional rights."</p> <p>15 And he was, "Oh, well" -- you know, he was</p> <p>16 thinking it was a problem with the scope of the contract</p> <p>17 and things like that.</p> <p>18 And so I don't know if you want me to</p> <p>19 expound or go get into --</p> <p>20 Q. Sure.</p> <p>21 A. -- this, but you'll probably ask anyway so let me</p> <p>22 get it out there.</p> <p>23 But basically, I said I have a real problem</p> <p>24 with this and, if I sign, it's going to be under protest,</p> <p>25 and I wanted to reserve my rights to challenge this law.</p>	
11:21:42-11:22:45	Page 87	11:24:05-11:25:01	Page 89
<p>1 believe it's a Board of Supervisors, County Board of</p> <p>2 Supervisors, and probably the Sheriff, and they make the</p> <p>3 ultimate decision, I think.</p> <p>4 Q. Okay. Do you know any of them?</p> <p>5 A. Yeah. I know some, yeah.</p> <p>6 Q. Okay. How long have you known them?</p> <p>7 MS. BRODY: Object to form.</p> <p>8 THE WITNESS: Well, we can go down the list</p> <p>9 if you want.</p> <p>10 MR. ENSIGN: Sure.</p> <p>11 THE WITNESS: Of the defendants listed here,</p> <p>12 Matt Ryan, I've known him for at least 12 years; Lena</p> <p>13 Fowler I have met, but I don't -- can't say that I really</p> <p>14 know her; Liz Archuleta, I have known for probably</p> <p>15 20 years; Art Babbott, I've known him for many years,</p> <p>16 maybe 10 years; Jim Parks I know a little bit. I don't</p> <p>17 know the county treasurer here, but that wasn't your</p> <p>18 question. I don't really know the current sheriff, Jim</p> <p>19 Driscoll; and -- okay.</p> <p>20 BY MR. ENSIGN:</p> <p>21 Q. Have you ever discussed the Act with any of them?</p> <p>22 A. I've discussed it with Matt Figueroa and a couple</p> <p>23 of his lieutenants. Because when I first saw this, I was</p> <p>24 just so surprised, saying "What the heck is this doing in</p> <p>25 my contract?" You know, I had -- I didn't know where it</p>		<p>1 Q. And when did that conversation occur?</p> <p>2 A. Well, it would have been right before I</p> <p>3 ultimately signed my letter of protest, whenever that was,</p> <p>4 but probably within, you know, three or four weeks before</p> <p>5 that time.</p> <p>6 Q. Okay.</p> <p>7 A. You know, so it would have been the end of --</p> <p>8 what is that? 2016, I think.</p> <p>9 Q. Okay. Aside from that conversation, did you have</p> <p>10 any other conversations or email exchanges regarding the</p> <p>11 Act?</p> <p>12 A. Meaning -- with -- with whom?</p> <p>13 Q. Let's start with Matt Figueroa.</p> <p>14 A. I have, yeah, since -- since filing this lawsuit,</p> <p>15 you know, because I was concerned that I could lose the --</p> <p>16 the contract. You know, I wanted to continue providing</p> <p>17 services. So there is email correspondence. I'm happy to</p> <p>18 provide that to you.</p> <p>19 And basically he was thankful for bringing</p> <p>20 up the idea. I talked with the county attorney, Bill</p> <p>21 Ring, he's an old friend of mine from Coconino County.</p> <p>22 You know, we talked on the phone just little bit. Not</p> <p>23 about the case, because I didn't want to get him in</p> <p>24 trouble because I'm actually the plaintiff. I just let</p> <p>25 him know that this is coming down the pike. And he hadn't</p>	



11:25:14-11:26:26	Page 90	11:28:06-11:29:08	Page 92
<p>1 seen it yet, so I put him in touch with my attorney,</p> <p>2 Kathy.</p> <p>3 And I think they were very relieved to know</p> <p>4 that I would continue providing the services and -- you</p> <p>5 know, I expect to get paid on those. But they are not</p> <p>6 able to pay me at this time. So I'm providing the</p> <p>7 services, I'm submitting the invoices, and I'm not getting</p> <p>8 paid. I think I will get paid. I think we'll win this</p> <p>9 lawsuit -- no disrespect -- but -- so that's the status of</p> <p>10 things.</p> <p>11 So it did -- yeah, there is communication --</p> <p>12 recent communication over my actions now. I didn't want</p> <p>13 them to freak out. I was saying it's not about the</p> <p>14 County, it's about -- you know, the County has no role in</p> <p>15 this really, other than the State, as it -- as it has want</p> <p>16 to do, preempt every area of, you know, local control</p> <p>17 practically, whether it's plastic bags or boycotting a</p> <p>18 foreign country, you know. So I don't hold them</p> <p>19 responsible for this. I hold your clients responsible.</p> <p>20 So . . .</p> <p>21 Q. So aside from the conversation with Matt Figueroa</p> <p>22 you were discussing earlier, did you have any other</p> <p>23 conversations or email exchanges with Matt Figueroa prior</p> <p>24 to the filing of this lawsuit that relates to the Act?</p> <p>25 A. I think a few days before filing I sent Figueroa</p>	<p>1 contract gets renewed?</p> <p>2 A. Gee, I've got to jump through a bunch of hoops</p> <p>3 annually too. I've got to show that I have all these</p> <p>4 different types of insurance. They need, believe it or</p> <p>5 not, car insurance, even though there's not a chance in</p> <p>6 hell that I will give an inmate that I'm providing</p> <p>7 services to in the jail a ride in my car. So they need a</p> <p>8 certain amount. They need a certain amount of malpractice</p> <p>9 insurance, that are all quite high. And you guys are</p> <p>10 government attorneys, you know about this. I mean, all</p> <p>11 these things they make you do. I think there was various</p> <p>12 unemployment insurance things. What else? I'm sure I'm</p> <p>13 leaving some things out, but there's a lot of different --</p> <p>14 different things that end up costing a fair amount of</p> <p>15 money to cover. So . . .</p> <p>16 Q. Okay. Aside from proof of insurance, can you</p> <p>17 think of any other requirements for the annual renewals?</p> <p>18 A. I think that's about it, various types of</p> <p>19 insurance. And then I don't think there's anything extra</p> <p>20 that I have to renew, other than now this anti-Israel</p> <p>21 stuff.</p> <p>22 Q. Okay.</p> <p>23 A. Yeah. And I don't know -- well, let's take a</p> <p>24 look at the addendum. Is that in here?</p> <p>25 Q. I believe it is.</p>		
11:26:50-11:27:45	Page 91	11:29:33-11:30:59	Page 93
<p>1 an email -- and also Bill Ring, the county attorney. And</p> <p>2 I said I'm -- thanks for your patience on not -- I had</p> <p>3 received an email, I think from Figueroa -- and you'll get</p> <p>4 this if you want it. Oh, I had submitted my bill for</p> <p>5 December, and he said, "Hey, we can't pay you until we get</p> <p>6 this back in, you know. Can you sign the darn thing?"</p> <p>7 And then I responded later saying, "I'm having a problem</p> <p>8 with this certification, and bear with me. I'm looking</p> <p>9 into it." And then we filed suit a few days later.</p> <p>10 Q. Okay.</p> <p>11 A. Long answer, short question.</p> <p>12 Q. Can you think of any other conversations or email</p> <p>13 exchanges?</p> <p>14 A. With those folks --</p> <p>15 Q. Yeah.</p> <p>16 A. -- about the certification?</p> <p>17 I'm sure in 2017, when I filed the thing,</p> <p>18 there was some clarification. There was -- I think I</p> <p>19 spoke about that, about my objections to this, and that I</p> <p>20 would be signing it under protest.</p> <p>21 Q. Okay.</p> <p>22 A. And that seemed to appease them. All they want</p> <p>23 is my signature. I don't think they care, you know,</p> <p>24 personally, but that's my speculation.</p> <p>25 Q. Okay. So what's involved with a -- when your</p>	<p>1 A. It should be. I think it's the last page.</p> <p>2 Insurance -- yeah, commercial general</p> <p>3 liability. Even though I have a home office, never see an</p> <p>4 inmate, let alone a client, I have to have all this stuff,</p> <p>5 auto -- auto policy, worker's comp, professional</p> <p>6 liability. Naming the County as additional insured. So</p> <p>7 it's all CYA insurance of the County. But there's also</p> <p>8 this -- the boycott thing that goes on for page and a</p> <p>9 half.</p> <p>10 Q. Okay. Is Exhibit 3 to your declaration the last</p> <p>11 contract that you signed with the jail district?</p> <p>12 A. It looks like it, yes.</p> <p>13 Q. Did that contract expire on June 30th, 2017?</p> <p>14 A. Looks like it, yeah, just under Term of</p> <p>15 Agreement.</p> <p>16 Q. And you've continued to work for the jail</p> <p>17 district after the expiration of this contract?</p> <p>18 A. Oh, let me see. Yes.</p> <p>19 Q. Are you performing the same scope of work for the</p> <p>20 jail district that you provided before the contract</p> <p>21 lapsed?</p> <p>22 A. Yeah, exactly the same.</p> <p>23 Q. What's the last month that you were paid for?</p> <p>24 A. I was paid -- I was paid in November for the</p> <p>25 month of November. And I submitted my December invoice,</p>		

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1 MS. BRODY: He testified to a whole --

2 MR. ROYSDEN: He testified about these

3 before?

4 MS. BRODY: Yeah, he did.

5 MR. ROYSDEN: You just told me that he can't

6 do it without his computer. I want the complete list

7 right now.

8 THE WITNESS: I don't have a complete list.

9 Why don't we just leave it at that is the

10 groups that I'm responding to, the ones that I mentioned,

11 and we'll leave it at that.

12 MR. ROYSDEN: And that's your testimony

13 under oath?

14 THE WITNESS: That's my testimony.

15 MS. ROYSDEN: Under oath?

16 THE WITNESS: I know I'm under oath.

17 MR. ROYSDEN: So the answer is yes?

18 THE WITNESS: Yes.

19 MR. ENSIGN: I think that concludes things.

20 (The deposition was concluded at 3:11 p.m.)

21

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23 MIKKEL (MIK) JORDAHL

24

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1 STATE OF ARIZONA )

2 COUNTY OF MARICOPA )

3 BE IT KNOWN the foregoing deposition was

4 taken by me pursuant to stipulation of counsel; that I was

5 then and there a Certified Reporter of the State of

6 Arizona, and by virtue thereof authorized to administer an

7 oath; that the witness before testifying was duly sworn by

8 me to testify to the whole truth; notice was provided that

9 the transcript was available for signature by the

10 deponent; that the questions propounded by counsel and the

11 answers of the witness thereto were taken down by me in

12 shorthand and thereafter transcribed into typewriting

13 under my direction; that the foregoing pages are a full,

14 true, and accurate transcript of all proceedings and

15 testimony had and adduced upon the taking of said

16 deposition, all to the best of my skill and ability.

17 I FURTHER CERTIFY that I am in no way related to

18 nor employed by any parties hereto nor am I in any way

19 interested in the outcome hereof.

20 DATED at Phoenix, Arizona, this 10th day of

21 January, 2018.

22

23 \_\_\_\_\_

24 Gerard T. Coash, RMR

25 Certified Reporter #50503