

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

NATIONAL URBAN LEAGUE, et al.,

Plaintiffs,

v.

DONALD J. TRUMP, et al.,

Defendants.

Civil Action No. 25-471 (TJK)

**PLAINTIFFS' RESPONSE TO DEFENDANTS' NOTICE OF SUPPLEMENTAL
AUTHORITY**

Plaintiffs respectfully submit this response to Defendants' notice of supplemental authority, filed on February 10, 2026. Contrary to Defendants' assertions, the Fourth Circuit decision in *National Association of Diversity Officers in Higher Education v. Trump (NADOHE)*, ECF 74-1 (Feb. 6, 2026), does not support Defendants' motion to dismiss in this case.

Importantly, the *NADOHE* plaintiffs raised only a facial challenge to provisions of the Anti-Diversity Executive Orders. *See id.* at 11–12, 18–25. Leaving aside whether the Fourth Circuit correctly decided the facial challenge in *NADOHE*, which Plaintiffs maintain it did not, that ruling has no bearing on Plaintiffs' *as-applied* claims in the instant case. Indeed, the Chief Judge's concurring opinion in *NADOHE* expressly notes that the panel reached its conclusion to vacate the preliminary injunction because the facial claims at issue did not include allegations of the government adopting an overly broad view of "DEI" when cutting federal funding—

allegations that would have been part of an as-applied challenge to the government's implementation and enforcement of the executive orders. *Id.* at 26–27.

Plaintiffs here, by contrast, have raised both as-applied and facial challenges to three executive orders and repeatedly and consistently allege that those orders were designed and enforced in a manner that impermissibly suppresses disfavored but plainly protected speech. *See, e.g.*, First Amended Complaint, ECF 68 at 28 (Plaintiffs allege that the Acting Director of OMB issued a memorandum purporting to implement the Anti-Diversity¹ Order and the Anti-Gender Order, among others, directing agencies to freeze all activities related to obligations or disbursement of federal financial assistance, including DEI and “woke gender ideology”); *id.* at 29 (Plaintiffs allege that they received stop-work orders or termination notices as a result of the Acting Director of OPM directing agencies to implement the Anti-Gender Order by terminating all programs, contracts, and grants that promote gender ideology); *id.* at 29–30 (Plaintiffs allege that DOL sent Plaintiff NUL a memo implementing the Anti-Diversity Orders and stating that recipients of federal financial assistance, including NUL, must cease all activities related to DEI); *id.* at 30 (Plaintiffs allege that CDC and HHS sent a letter to the City of Chicago, which subcontracts to Plaintiff AFC, directing Plaintiff AFC to immediately terminate all programs, personnel, activities, or contractors promoting DEI); *id.* at 34 (Plaintiffs allege that President Trump delivered a joint address to Congress claiming that he “ended” DEI across the federal government and private sector). The record in *NADOHE* did not include information about concrete enforcement actions and agency implementation as alleged here.

Finally, unlike the *NADOHE* plaintiffs, Plaintiffs here also challenged the Anti-Gender Order. The Fourth Circuit's decision in *NADOHE* is irrelevant to Plaintiffs' facial and as-applied challenges to the Anti-Gender Order.

Dated: February 20, 2026

Respectfully submitted,

/s/ Jin Hee Lee

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** *Pro hac vice* application forthcoming