

**UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OHIO
EASTERN DIVISION**

MA'LIK RICHMOND,

CASE NO.: 4:17-cv-1927

Plaintiff,

JUDGE BENITA PEARSON

-vs-

YOUNGSTOWN STATE UNIVERSITY,

**PLAINTIFF'S REPLY BRIEF
IN SUPPORT OF MOTION FOR
TEMPORARY RESTRAINING
ORDER AND PRELIMINARY
INJUNCTION**

Defendant.

Due to time constraints inherent in the TRO process, Plaintiff only has time to make a few obvious points in response to Defendant's opposition brief.

1. YSU begins by defensively casting itself as the victim, declaring that no good deed goes unpunished. In fact, YSU did no favors to Ma'lik Richmond. The university encouraged him to emerge from relative anonymity in order to play football for the school, promised to stand behind him in the event of controversy, and assured him that if he remained in good standing and earned his place on the team, he would be permitted to play if his coaches felt he was good enough to do so. YSU instead responded to public protest by breaking its promises, subjecting him to some sort of secret trial in absentia, publically humiliating him through publication without notice of a campus-wide sentence of sanction that referred to campus safety and Title IX sexual misconduct (as if those things had anything to do with Ma'lik's conduct as a YSU student), and severely penalized him with cause. YSU was not the victim.

2. Defendant makes much of the fact that Plaintiff has not pointed to any statements by members of the administration showing gender bias. There is only one statement that matters

here, and that is the public statement issued by YSU. The reason that is the only statement that matters now, in this pre-discovery stage, is that this case is not like any of the other cases on which YSU hopes to hang its defense. In this case, unlike the others, YSU punished a student by treating him as if he had engaged in sexual conduct when, in fact, he had not. And in this case, unlike the others, YSU decided to sanction the student in secret and without any hearing in which members of the administration could have made statements that would serve as evidence. If covered Title IX covered universities could avoid any risk of injunction or liability by entirely denying due process and then using the resulting “radio silence” as evidence of a lack of gender bias, they all would be strongly incentivized to follow the horrendously unjust model used here.

3. YSU ignores this statement in *Doe v. The Ohio State University*, 2017 WL 951464 (SD Ohio March 10, 2017):

There is a strong possibility, as alleged by Plaintiff, that these lawsuits could have impacted John Doe’s disciplinary process. Therefore, based on all of the above referenced allegations, at this stage in the proceeding, plaintiff has made sufficient general allegations of gender bias in cases similar to his to suggest there is discrimination in the investigation and hearing process of sexual misconduct cases.

4. It is ludicrous for YSU to claim that what it did to Ma’lik Richmond was not a sanction when its Student-Athlete Handbook directly contradicts that claim. The Handbook contains a section titled, “*Student-Athlete’s Rights and Responsibilities.*” Section III, *Infraction of Rules*, states in part: “**Failure to comply with any of the athletic responsibilities may subject the student-athlete to disciplinary action imposed by the coach or athletic department. These sanctions may include, but are not limited to, being denied the privilege of participation in varsity competition....**” Thus, being demoted from the active squad and denied the ability to play in varsity competition is explicitly deemed a sanction, and such

sanction is understood to constitute discipline meted out to a student-athlete who commits a rules infraction.

5. It is disingenuous of Defendant to argue that Ma'lik failed to take advantage of the grievance procedure in the Student-Athlete Handbook. The Student-Athlete Grievance and/or Harassment Procedure describes its purpose as follows:

All student-athletes have the right to secure, equitable and expedient resolutions to complaints about their sport environment. Such complaints may be related, but not limited to, abusive behavior, harassment (including sexual), or hazing by a coach, athletic department staff member, or other student-athlete. Sexual harassment represents unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature.

Obviously, the above procedure is designed to provide a student-athlete with relief from harassment by another athlete or a coach. It is not a procedure by which Ma'lik would have sought or obtained relief from a ban handed down by the YSU administration itself, based on events having nothing to do with such harassment. Moreover, the punishment had already been exacted and Ma'lik was incurring immediate harmful consequences that could not have been avoided by his seeking review from the Administrative Sport Supervisor, Senior Woman Administrator, or the Faculty Athletics Representative.

6. The assertion that Ma'lik is not incurring irrevocable harm is simply nonsense. Even if Defendant is correct about the damage that continued exile from games will cause to Ma'lik's professional prospects (and they are not correct), the loss of games and of eligibility are serious harms in themselves. YSU simply skates past that reality.

7. Finally, as evidenced by the attached affidavit of Jen Agresta, YSU is inventing the threats against Ma'lik Richmond. (Please see Affidavit of Jennifer Agresta attached hereto as Exhibit A).

CONCLUSION

Plaintiff has met his burden such that he is entitled to the remedy he seeks. As such, he respectfully requests that this Honorable Court grant his Motion for Temporary Restraining Order.

Respectfully submitted,

/s/ Susan C. Stone

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CERTIFICATE OF SERVICE

I hereby certify that on September 14, 2017, a copy of the foregoing was filed electronically. Notice of this filing will be sent to all parties by operation of the Court's electronic filing system. Parties may access this filing through the Court's system.

/s/ Susan C. Stone

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

MA'LIK RICHMOND,) CASE NO.: 4:17-cv-1927
Plaintiff,)
) JUDGE BENITA Y. PEARSON
v.)
) AFFIDAVIT OF JENNIFER
) AGRESTA
YOUNGSTOWN STATE UNIVERSITY,)
)
Defendant.)
)

I, Jennifer Agresta, being first duly sworn according to law, depose and state as follows:

1. I am the legal guardian of Ma'lik Richmond.
2. I have a close relationship with Ma'lik and speak with him four to five times a day.
3. I monitor Ma'lik's email account daily.
4. At least one time per week, I travel to Youngstown to visit Ma'lik.
5. I am unaware of Ma'lik receiving serious threats of harm if he played football at Youngstown State University this season.
6. I spoke with Ma'lik at 11:00 AM on September 14, 2017 and confirmed that he too was unaware of any serious threats of harm against him if he played football.

AFFIANT FURTHER SAYETH NAUGHT.


Jennifer Agresta

EXHIBIT A

NOTARY PUBLIC

Sworn to and subscribed before me, a notary public for the State of Ohio, County
of Jefferson, this 14th day of September, 2017.

Emanjela Agresta
Notary Public



EMANUELA AGRESTA, Attorney At Law
Notary Public, State of Ohio
Non-Expiring Commission, Section 147.03 R.C.