[ORAL ARGUMENT NOT SCHEDULED]

IN THE UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 13-1161

ERIC FLORES,

Petitioner

v.

UNITED STATES DEPARTMENT OF EDUCATION, *et al.*,

Respondents

ON PETITION FOR REVIEW FROM THE UNITED STATES DEPARTMENT OF EDUCATION, OFFICE FOR CIVIL RIGHTS, DALLAS OFFICE

THE UNITED STATES DEPARTMENT OF EDUCATION'S MOTION TO DISMISS THE PETITION FOR REVIEW FOR LACK OF SUBJECT MATTER JURISDICTION, AND MOTION TO DEFER FILING OF THE ADMINISTRATIVE RECORD

Petitioner Eric Flores petitions for review of a decision of the United States Department of Education's (Department) Office of Civil Rights (OCR). OCR's April 22, 2013, letter to Flores (Attachment B) denied his appeal challenging OCR's November 28, 2012, letter (Attachment C), which dismissed his complaint of discrimination based on race or national origin in violation of Title VI of the Civil Rights Act of 1964, 42 U.S.C. 2000d *et seq.* (Title VI).

Pursuant to Federal Rule of Appellate Procedure 27 and Circuit Rule 27(g), the Department respectfully moves this Court to dismiss Flores's petition for review for lack of jurisdiction, because he does not have the right to seek review of OCR's decision in this Court. We also respectfully request the Court to defer the filing of the administrative record pending its resolution of our motion to dismiss the petition. See pp. 9-10, *infra*.

BACKGROUND

1. On September 19, 2012, OCR's Dallas Office received petitioner Eric Flores's administrative complaint (Case No. 06122188) against the University of Texas at El Paso (UTEP). Attachment C at 1. Flores alleged that UTEP discriminated against him and other Mexican-American students in violation of Title VI and its implementing regulation, 34 C.F.R. Part 100, which prohibit discrimination by recipients of federal financial assistance on the basis of race, color, or national origin. Attachment C at 1. In his complaint, Flores alleged that "white professors at UTEP reprinted the textbook *Unfinished Nation* * * * and changed the text of the book to confuse Mexican American students to give white students the upper hand." Attachment C at 1.

On November 28, 2012, OCR completed its evaluation of Flores's complaint and dismissed it, determining that the complaint "lack[ed] sufficient detail for OCR to infer that discrimination may have occurred or is occurring." Attachment

C at 2. On January 11, 2013, Flores appealed the dismissal of his complaint (Attachment D). In his appeal, Flores challenged OCR's determination that he had failed to present sufficient information to warrant an investigation into his allegation that "a professor of white American national origin of [UTEP] has discriminated against Mexican American students in general." Attachment D at 2.

On April 22, 2013, the Regional Director of OCR's Dallas Office issued a letter notifying Flores of the denial of his appeal challenging OCR's dismissal of his complaint. The letter stated that OCR's decision to dismiss his complaint "was consistent with the laws and regulations enforced by OCR." Attachment B.

On May 6, 2013, Flores petitioned this Court for review of OCR's decision dismissing his complaint. Among other things, the petition asks this Court to compel the Department of Education to issue sanctions against UTEP for noncompliance with Title VI and its implementing regulations, and to instruct the Department to admonish one of its attorneys for allegedly attempting to protect UTEP employees from lawful sanctions for noncompliance with Title VI. Pet. for Rev. 188-189.

2. On May 17, 2012, Flores filed a similar complaint with OCR, alleging that UTEP had discriminated and retaliated against him based on his Mexican-American national origin in violation of Title VI and its implementing regulations (Case No. 06122112). On November 13, 2012, OCR issued a Findings Letter,

which advised Flores that there was insufficient evidence to support his allegations of noncompliance with Title VI. Flores then petitioned this Court to review OCR's Findings Letter (Appeal No. 13-1062). The Department moved to dismiss the petition for review for lack of jurisdiction, and that motion is pending.

DISCUSSION

This Court should dismiss the petition for review for lack of jurisdiction. As was the case with his previous petition for review in Appeal No. 13-1062, Flores has cited no authority that authorizes direct appellate review of a funding agency's finding of insufficient evidence that a recipient of its financial assistance discriminated against an individual in violation of Title VI. As we demonstrate below, no such authority exists.

1. "Federal courts are courts of limited subject-matter jurisdiction. A federal court created by Congress pursuant to Article III of the Constitution has the power to decide only those cases over which Congress grants jurisdiction." *Al-Zahrani* v. *Rodriguez*, 669 F.3d 315, 317 (D.C. Cir. 2012) (citing *Micei Int'l* v. *Department of Commerce*, 613 F.3d 1147, 1151 (D.C. Cir. 2010)). The party claiming federal subject matter jurisdiction has the burden of proving it exists. *Khadr* v. *United States*, 529 F.3d 1112, 1115 (D.C. Cir. 2008). "'[O]nly when a direct-review statute specifically gives the court of appeals subject-matter jurisdiction to directly review agency action' may a party seek initial review in an

appellate court." *Micei Int'l*, 613 F.3d at 1151 (quoting *Watts* v. *SEC*, 482 F.3d 501, 505 (D.C. Cir. 2007)).

2. Flores asserts that Rule 15 of the Federal Rules of Appellate Procedure provides this Court with subject matter jurisdiction over his petition for review. Pet. for Rev. 8. It is well-settled, however, that Rule 15 does not confer jurisdiction upon the courts of appeals, but rather prescribes the procedures to be followed by courts of appeals in cases in which they are authorized by statute to review final agency decisions. See *Office of Governor, Territory of Guam* v. *Department of Health & Human Servs., Admin. on Dev. Disability*, 997 F.2d 1290, 1292 (9th Cir. 1993); *Dillard* v. *United States Dep't of Hous. & Urban Dev.*, 548 F.2d 1142, 1143 (4th Cir. 1977) (per curiam); *Noland* v. *United States Civil Serv. Comm'n*, 544 F.2d 333, 334 (8th Cir. 1976) (per curiam). Flores's reliance on Rule 15 is therefore misplaced.

3. Flores is also incorrect in asserting that the Administrative Procedure Act (APA) affords this Court jurisdiction to adjudicate his petition for review. Pet. for Rev. 12-13. The APA provides for judicial review of "[a]gency action made reviewable by statute and final agency action for which there is no other adequate remedy in a court." 5 U.S.C. 704. The APA, however, makes unreviewable "agency action [that] is committed to agency discretion by law." 5 U.S.C. 701(a)(2).

a. At the outset, we note that OCR's denial of Flores's appeal is "agency action * * * committed to agency discretion by law," and thus unreviewable under the APA. 5 U.S.C. 701(a)(2). In *Heckler* v. *Chaney*, 470 U.S. 821 (1985), the Supreme Court explained that "an agency's decision not to take enforcement action should be presumed immune from judicial review under § 701(a)(2)," unless the "substantive statute has provided guidelines for the agency to follow in exercising its enforcement powers." *Id.* at 832-833. In other words, judicial "review is not to be had if the statute is drawn so that a court would have no meaningful standard against which to judge the agency's exercise of discretion." *Id.* at 830.

Nowhere in Title VI or its implementing regulations are there any substantive guidelines for the Department to follow in investigating and resolving individual discrimination complaints, or for a court to judge such actions. See 34 C.F.R. Pt. 100. Accordingly, OCR's denial of Flores's appeal challenging its decision to dismiss his complaint is a discretionary agency action for which the APA does not allow judicial review. See *Marlow* v. *United States Dep't of Educ.*, 820 F.2d 581, 582-583 (2d Cir. 1987) (per curiam) (no APA jurisdiction where anti-discrimination statute "provides no express guidelines for [determining liability and] neither the statute nor the regulations impose significant substantive limitations on the Department's investigation and resolution of individual complaints of discrimination"), cert. denied, 484 U.S. 1044 (1988); cf. *Madison-*

Hughes v. *Shalala*, 80 F.3d 1121, 1124-1125 (6th Cir. 1996) (no jurisdiction under the APA for suit claiming that HHS failed to collect specified racial data, where Title VI regulations indicated collection of such data was discretionary, not mandatory).

b. Even if OCR's dismissal of Flores's complaint was not considered a discretionary agency action, this Court would nonetheless lack jurisdiction to consider this petition for review. As indicated, the APA provides for judicial review of "[a]gency action made reviewable by statute and final agency action for which there is no other adequate remedy in a court." 5 U.S.C. 704.

Neither Title VI – nor any other statute of which we are aware – affords this Court jurisdiction to review OCR's dismissal of Flores's complaint. Direct appellate review under Title VI is limited to those final agency orders "terminating or refusing to grant or to continue financial assistance upon a finding of failure to comply with any requirement imposed pursuant to section 2000d-1 of this title." 42 U.S.C. 2000d-2. By limiting direct appellate review in this fashion, Congress demonstrated an intent not to allow direct appellate review in circumstances such as this, in which individuals have filed administrative complaints with OCR alleging prohibited discrimination and are disappointed with the disposition of their complaints. Accordingly, appellate review of OCR's action is not "made reviewable by statute."

Nor is OCR's denial of Flores's appeal "final agency action for which there is no other adequate remedy in a court." First, OCR's dismissal of the complaint is not a "final agency action" within the meaning of the APA. Title VI's implementing regulations define this term for purposes of the APA to require a decision by a hearing examiner. See 34 C.F.R. 101.104, 101.106. The Title VI regulations further limit the opportunity for a hearing to review decisions terminating or refusing to grant or to continue federal financial assistance. See 34 C.F.R. 100.8(c), 100.9. Thus, under these Title VI regulations, only those decisions concerning the termination of, or refusal to grant or continue, federal financial assistance may constitute "final agency action" that would be subject to direct review by this Court under the APA.[1]

Moreover, OCR's dismissal of Flores's complaint is not an agency action "for which there is no other adequate remedy in a court." To the contrary, it is settled that individuals have an implied private right of action under Title VI against recipients of federal financial assistance who engage in prohibited discrimination. *Alexander* v. *Sandoval*, 532 U.S. 275, 279 (2001) ("Private

[1] Because the Department is charged with enforcing Title VI, its interpretation of the statute is entitled to *Chevron* deference. *Monteiro* v. *Tempe Union High Sch. Dist.*, 158 F.3d 1022, 1033 (9th Cir. 1998); *Peters* v. *Jenney*, 327 F.3d 307, 315-316 (4th Cir. 2003).

individuals may sue to enforce [Title VI] and obtain both injunctive relief and damages."); *Cannon* v. *University of Chi.*, 441 U.S. 677, 703 (1979) (same). Indeed, in a decision authored by then-Circuit Judge Ruth Bader Ginsburg, this Court concluded that "*Cannon* suggests that Congress considered private suits to end discrimination not merely adequate but *in fact the proper means* for individuals to enforce Title VI." *Women's Equity Action League* v. *Cavazos*, 906 F.2d 742, 751 (D.C. Cir. 1990) (emphasis added). Accordingly, Flores was entitled to file a Title VI suit in district court against UTEP, but may not seek review under the APA in this Court of OCR's dismissal of his complaint.[2]

4. In the event that the Department's motion to dismiss is granted by the Court, this proceeding will be dismissed and there will be no need for the agency to prepare and file an administrative record. To avoid the expenditure of time and resources on a task that may prove to be unnecessary, the Department respectfully requests the Court to defer the filing of the administrative record until after it rules upon the Department's motion to dismiss. Should the Department's motion to

[2] The OCR letter denying Flores's administrative appeal informed him that he "may have the right to file a private suit in Federal court whether or not OCR finds a violation." Attachment B.

dismiss be denied, we respectfully request that the administrative record be due 40 days from the date of the denial of the motion.

5. Undersigned counsel contacted the *pro se* petitioner via e-mail on June 6, 2013, to ask whether he intends to oppose the motion to dismiss. Petitioner has informed us that he intends to file a response to this motion.

CONCLUSION

For the foregoing reasons, this Court should dismiss the petition for review for lack of jurisdiction.[3] The Court should also defer the filing of the administrative record until after it rules upon the motion to dismiss.

Respectfully submitted,

THOMAS E. PEREZ
Assistant Attorney General

s/ Christopher C. Wang
DENNIS J. DIMSEY
CHRISTOPHER C. WANG
Attorneys
Department of Justice
Civil Rights Division
Appellate Section
Ben Franklin Station
P.O. Box 14403
Washington, DC 20044-4403
(202) 514-9115

[3] This Court should also dismiss as moot Flores's pending motion to proceed in forma pauperis.

Attachment A: Certificate of Parties, Rulings, and Related Cases

CERTIFICATE AS TO PARTIES, RULINGS, AND RELATED CASES

The United States Department of Education, as respondent, certifies that:

1. Parties

This is a petition for review of a decision of the United States Department of Education, Office for Civil Rights. The *pro se* petitioner is Eric Flores. The respondents are the United States Department of Education and the United States Department of Justice, and officials of these agencies. There are no intervenors or *amici*.

2. Rulings Under Review

Petitioner seeks review of the April 22, 2013, decision of the United States Department of Education, Office for Civil Rights, denying his appeal of its dismissal of his complaint in Administrative Case No. 06122188. There were no prior proceedings in district court.

3. Related Cases

To the best of our knowledge, this case was not previously before this Court or any other court. As indicated in our motion, see pp. 3-4, *supra*, petitioner has filed a similar petition for review in this Court (Appeal No. 13-1062), which seeks review of OCR's decision in Administrative Case No. 06122112. The Department has moved to dismiss the petition for review, and that motion is pending.

We are aware of two related petitions for review that Flores has filed in the Fifth Circuit. Flores similarly petitioned the Fifth Circuit for review of OCR's decision in Administrative Case No. 06122112. The Department's motion to dismiss for lack of jurisdiction was recently granted by the Fifth Circuit. See Order, *Flores* v. *United States Department of Education*, No. 13-60078 (5th Cir.) (filed May 3, 2013). Flores also petitioned the Fifth Circuit to review OCR's decision in Administrative Case No. 06122188. The Department's motion to dismiss that case is pending. See *Flores* v. *United States Department of Education*, No. 13-60303 (5th Cir.).

Petitioner also filed a petition for writ of mandamus in the Fourth Circuit seeking, *inter alia*, an order requiring the Department to impose sanctions against UTEP for alleged violations of Title VI. The Fourth Circuit recently denied the mandamus petition. See Opinion, *In re: Eric Flores*, No. 13-1331, 2013 WL 1735285 (4th Cir. Apr. 23, 2013) (per curiam).

s/ Christopher C. Wang
CHRISTOPHER C. WANG
Attorney

Attachment B: Denial Letter

UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS

1999 BRYAN STREET, SUITE 1620
DALLAS, TEXAS 75201-6831

REGION VI
ARKANSAS
LOUISIANA
MISSISSIPPI
TEXAS

APR 2 2 2013

Mr. Eric Flores
8401 Boeing Dr.
El Paso, TX 79910

Re: Case No. 06-12-2188
University of Texas at El Paso

Dear Mr. Flores:

This is in response to your January 23, 2013, letter of appeal challenging the U.S. Department of Education, Office for Civil Rights (OCR), Dallas Office's November 28, 2012, closure of the above-referenced complaint against the University of Texas at El Paso (UTEP).

After careful consideration of your appeal, I find that OCR Dallas's determination to close your case was consistent with the laws and regulations enforced by OCR. Accordingly, your appeal is denied.

This concludes OCR's consideration of your appeal and is the final agency determination. Final agency determinations are not formal statements of OCR policy and should not be relied upon, cited, or construed as such. OCR's formal policy statements are approved by a duly authorized OCR official and are made available to the public.

You have now exhausted all avenues of review within the U.S. Department of Education with regard to your September 19, 2012, complaint and OCR's November 28, 2012, determination. You may have the right to file a private suit in Federal court whether or not OCR finds a violation.

Under the Freedom of Information Act, it may be necessary to release this document and related correspondence and records upon request. In the event that OCR receives such a request, we will seek to protect, to the extent provided by law, personally identifiable information, which, if released could reasonably be expected to constitute an unwarranted invasion of personal privacy.

Sincerely,

/s/ Taylor D. August
Regional Director
Office for Civil Rights
Dallas Office

Attachment C: Dismissal Letter

UNITED STATES DEPARTMENT OF EDUCATION

OFFICE FOR CIVIL RIGHTS – REGION VI

November 28, 2012

Re: 06122188

Mr. Eric Flores
11669 Gwen Evans Lane
El Paso, Texas 79936

Dear Mr. Flores:

The U.S. Department of Education (Department), Office for Civil Rights (OCR), Dallas Office has completed its evaluation of your complaint allegation in the above-referenced complaint, received by OCR on September 19, 2012, filed against the University of Texas at El Paso (UTEP), El Paso, Texas. After a thorough review of your complaint and additional information you provided during a telephone call with OCR on November 20, 2012, OCR has determined that you are alleging that UTEP discriminated against you and other Mexican American students on the basis of your race/national origin. Specifically, you alleged that white professors at UTEP reprinted the textbook *Unfinished Nation*, violating copyright laws and changed the text of the book to confuse Mexican American students to give the white students the upper hand.

This agency is responsible for determining whether entities that receive or benefit from Federal financial assistance from the Department or an agency that has delegated investigative authority to this Department are in compliance with Title VI of the Civil Rights Act of 1964, 42 U. S. C. § 2000d, and its implementing regulation, at 34 C. F. R. Part 100 (2012), which prohibit discrimination on the bases of race, color or national origin. UTEP is a recipient of Federal financial assistance from the Department and is a public entity. Therefore, OCR has jurisdictional authority to process this complaint for resolution under Title VI.

In your complaint and information obtained from you during a clarifying telephone call on November 20, 2012, you alleged that you and other Mexican American students were being subjected to discrimination because white professors were reprinting the textbooks and rearranging the paragraphs to confuse and mislead Mexican American students for the purpose of giving the white students the upper hand. You stated that they changed the textbook *Unfinished Nation*, and violated copyright laws, "for the purpose of extracting certain education information so that Mexican American students will not learn the educational curriculum correctly for the purpose of giving the white students the upper hand in our society." When asked for specific information to support your allegation, you explained that several professors, all with similar facial characteristics (i.e., skin color, facial expression, tone of voice) discussed the textbook and told the students what to review.

In accordance with OCR's policies and procedures, OCR will dismiss an allegation that lacks sufficient detail for OCR to infer that discrimination may have occurred or is occurring. Based on the above cited information, you have not provided sufficient information for OCR to infer that discrimination may have occurred or is occurring, therefore you complaint is being dismissed and OCR will take no further action regarding this allegation.

This letter sets forth OCR's determination in an individual OCR case. This letter is not a formal statement of OCR policy and should not be relied upon, cited, or construed as such. OCR's formal policy statements are approved by a duly authorized OCR official and made available to the public. The complainant may have the right to file a private suit in federal court whether or not OCR finds a violation.

Under the Freedom of Information Act, 5 U.S.C. § 552, it may be necessary to release this document and related correspondence and records upon request. In the event that OCR receives such a request, it will seek to protect, to the extent provided by law, personally identifiable information, which, if released, could reasonably be expected to constitute an unwarranted invasion of personal privacy.

If you have any questions concerning this letter, you may contact me at 214-661-9600 or Patricia Ellis, Senior Equal Opportunity Specialist, at 214-661-9610.

Sincerely,

for Adriane P. Martin
Supervisory General Attorney/Team Leader
Office for Civil Rights
Dallas Office

Attachment D: Appeal Letter

Kuykendall, Cindy

From: Eric Flores <www.porkingenterprise696355@yahoo.com>
Sent: Friday, January 11, 2013 4:05 PM
To: OCR Appeals
Subject: appeal

Office of the Deputy Assistant Secretary for Enforcement
Office of Civil Rights
United States Department of Education
400 Maryland Avenue, S.W.,
Washington D.C., 20202-1100

Eric Flores , complainant
11669 Gwen Evans Lane
El Paso Texas 79936

Vs.

Dr. Charles Ambler , faculty member , , respondant
500 W. University Avenue El Paso Texas 79968

United States Department of Education , Team Leader Adriane P. Martin , respondant
1999 Bryan Street , Suite 1620 , Dallas Texas 75201-6831

Discrimination Compliant No.06122188

APPEAL TO THE DEPUTY ASSISTANT SECRETARY FOR ENFORCEMENT

(1) Table of Contents

(2) Opinion Below

(3) Parties of Interest

(4) Question Presented

(5) Constitutional Statutes

(6) Jurisdictional Statement

(7) Statement of the Case

(8) Statement of Facts

(9) Summary of Argument

(10)Argument

(11)Conclussion and Prayer

Pleaded By:
Eric Flores , pro se
11669 Gwen Evans Lane
El Paso Texas 79936

(2) Opinions Below

(a) On November 28 , 2012 the Supervisor y General Attorney named Adriane Martin issued a letter to dismiss a discrimination compliant styled case number06122188.

(3) Parties of Interest

(a) University of Texas at El Paso is a party of interest whoms place of business is located at 500 W. University Avenue El Paso Texas 79968.

(b) Dr.Charles Ambler , Faculty Member , is a party of interest whoms place of business is located at 500 W. University Avenue El Paso Texas 79968.

(4) Questions Presented

(a) Whether the complainant has provided sufficient information for the Office of Civil Rights for the United States Department of Education in Dallas Texas to open an investigation for the purpose of determineing if a professor of white American national origin of an educational institution named University of Texas at El Paso has discriminated against Mexican American students in general.

(b) Whether the Office of Civil Rights for the United States Department of education in Dallas Texas has deviated from the guideing rules and principles of Title VI of the Civil Rights Act of 1964 , 42 U.S.C. & 2000d , and its implementing regulations at 34 C.F.R. Part 100(2012) by falsely allegeing that adequate information to support a claim of discrimination was insufficient to open an investigation for the purpose of determineing if a professor of white American national origin of an educational institution named University of Texas at El Paso has discriminated against Mexican American students in general.

(5) Constitutional Statutes

Code of Federal Regulation & 80.3 prohibits educational institutions that are recieptance of federal financial assistance from discriminateing against an individual by utilizeing criteria or methods of administration which subject an individual to discrimination.

Code of Federal Regulation & 80.3.3(b)(vii) prohibits denieing an individual opportunity to participate in the program through the provision of services that was otherwise entitled to the individual as an opportunity which is different from that afforded to other students under the same program in a educational institution that is a resieptance of federal financial assistance

Code of Federal Regulations &80.3(b)(v) prohibits the treatment of an individual differently from other new students in determineing whether the complainant satisfies any admission , enrollment , quota , eligibility , membership or other requirement or condition which individuals must meet in order to be provided any services

, financial aid , or other benefit provided under the program

Title VII of the Civil Rights Acts prohibits retaliation against an individual for complaining against a faculty member of a educational institution that is a recieptance of federal financial assistance.

Title VI of the Civil Rights Act of 1964 prohibits discrimination based on race, color, or national origin in programs or activities receiving federal financial assistance. All federal agencies that provided grants of assistance are required to enforce the Title VI regulation.

The U.S. Department of Education gives grants of financial assistance to schools and colleges and to certain other entities, including vocational rehabilitation programs. The Title VI regulation describes the conduct that violates Title VI. Examples of discrimination covered by Title VI include racial harassment, school segregation, and denial of language services to national-origin-minority students who are limited in their English. The U.S. Department of Education Title VI regulation is enforced by the Department's Office for Civil Rights and is in the Code of Federal Regulations at 34 CFR 100.

The Title VI regulation prohibits retaliation for filing an OCR complaint or for advocacy for a right protected by Title VI.

(6) Jurisdictional Statement

The United States Department of Education, Office of the Deputy Assistant Secretary for Enforcement is responsible for determineing whether entities that receive or benefit from federal financial assistance from the Department of Education or agency that has delegated investigative authority to this Department of Education are in compliance with enforceing Title VI of the Civil Rights Act of 1964 (Title VI) , 42 U.S.C. &2000d , and its implementing regulation at 34 C.F.R. Part 100 (2012) , which prohibits discrimination on the basis of race , color , or national origin.

In this particular discrimination compliant , the complainant Eric Flores has invoke the jurisdiction of the Office of Civil Rights for the United States Department of Education in Dallas Texas to conduct an investigation into nonfrivolous legal claims of discrimination by a professor of white American national origin of an educational institution named University of Texas at El Paso that receive federal financial assistance from the U.S.Department of Education.

The University of Texas at El Paso is a recipient of federal financial assistance from the U.S. Department of Education and therefore the Office of Civil Rights for the United States Department of Education in Dallas Texas had jurisdictional authority to process the complianants nonfrivolous legal claims of discrimination for resolution under Title VI of the Civil Rights Act of 1964.

The complainant claimed that the educational institution named University of Texas at El Paso has discriminated against the complainant Eric Flores by utilizeing criteria or methods of administration which subject the complainant and other Mexican students to discrimination based on their Mexican American national origin.

Whereby the complainant claimed that a professor of white American national origin of the educational institution named University of Texas at El Paso by reprinting a text book in violation of copy right laws for the purpose of giving the book a different title such as "Unfinished Nations" and extracting educational information of the text book or rearrangeing educational information from the text book so as to confuse , mislead , or not

allow the Mexican students in general to not be able to adequately learn the educational circulm of the text book for the purpose of effecting their grade point average.

This was done so that the Mexican American student population in the County of El Paso Texas would not be able to adequately learn the educational circulm at the educational institution named University of Texas at El Paso where the majority of the student population is of Mexican American national origin for the purpose of effecting the Mexican students learning ability so as decrease the number of Mexican students from graduateing.

Whereas in other parts of the United States where the majority student population is of white American national origin , the professor of educational institution are not reprinting the text books and extracting or rearrangeing the educational information in the text books so as to confuse , mislead , or effect the white American students learning ability in which is to give the white American student the advantage of learning what the Mexican student could not learn to have the upper hand in our society.

The complainant provided sufficient detailed information for the Office of Civil Rights to have infer that discrimination did occur for the purpose of issueing lawful sanctions against a professor of white American national origin of an educational institution named University of Texas at El Paso for noncompliance under Title VI of the Civil Rights Act of 1964 (Title VI) , 42 U.S.C. &2000d , and its implementing regulation at 34 C.F.R. Part 100 (2012) , which prohibits discrimination on the basis of race , color , or national origin however the attorneys that were assigned to investigate and review the complainants claims of discrimination from the Office of Civil Rights United States Department of Education in Dallas Texas deviated from the guideing rules and principles for resolution under Title VI of the Civil Rights Acts by falsely allegeing that there was not sufficient evidence to prove that discrimination had occurred in order to prevent lawful sanctions from being invoked against the education institution named University of Texas at El Paso.

The complainant Eric Flores now appeals to the Office for the Assistant Deputy Secretary for Enforcement of the guideing rules and principles of Title VI of the Civil Rights Act to conduct an investigation and review all evidentiary factors that the complainant presented during the intial investigation by the Department of Education in Dallas Texas in which is to seek lawful sanction for noncompliance against a professor of white American national origin of an educational institution named University of Texas at El Paso for discrimination against the complainant Mexican american national origin.

(7) Statement of the Case

On January 18 , 2012 the complainant Eric Flores enrolled for educational course named history 1301 under professor Dr. Charles Amblers lecture at an educational institution named University of Texas at El Paso located at 500 W. University Avenue El Paso Texas 79968.

On May of 2012 the complainant Eric Flores was able to passed the 1301 History class with a "C" average.

On July of 2012 the complainant audited a political science class at the educational institution named University of Texas at El Paso located at 500 W. University Avenue El Paso Texas 79968.

(8) Statement of Facts

On January 18 , 2012 the complainant Eric Flores enrolled for educational course named history 1301 under professor Dr. Charles Amblers lecture at an educational institution named University of Texas at El Paso located at 500 W. University Avenue El Paso Texas 79968.

On the first day of class the history professor Dr. Charles Ambler passed out an syllabus of the ducational circulm for that spring semester of 2012 to all Mexican American student which was the majority of the history class.

The educational syllabus instructed for all Mexican students which was the majority of the history class to purchase the text book entitled "Unfinished Nations" from the university book store in order to be able to learn and pass the class.

After purchaseing the text book entitled "Unfinished Nations" , the complainant Eric Flores began to read the contains of the text book to keep up with the educational circulm of the history class in which at times seemed to be confuseing , misleading from the subject , or unable to understand not only to the complainant but also to the majority of the Mexican students in the history class.

The majority of the Mexican students in the history class would at times complain that the contains of the text book seemed hard to understand or misleading from the subject in which was the reason that the Mexican students were getting bad grades in the history class.

As a result the professor of white American national origin named Dr. Charles Ambler would become annoyed and admonish the Mexican students by allegeing that they were not spending enough time reading the contains of the text book in order to adequately complete the class assignment..

On May of 2012 the complainant Eric Flores was able to passed the 1301 History class with a "C" average.

Through some miracle the complainant Eric Flores passed the class with a "C" because he was able to recall some of the events of the United States history and the history class educational circulm based on what he learned from high school named Delta Academy.

On July of 2012 the complainant audited a political science class at the educational institution named University of Texas at El Paso located at 500 W. University Avenue El Paso Texas 79968.

It was not until the complainant audited another political science class that he found out that the same text book that he was auditing for that political science class partially displayed the same contains as the text book from the previous history class in which is when the complainant found out the real reason why the contains of the text book entitled "Unfinished Nation" was so hard to understand and therefore realized that the professors of an educational institution named University of Texas at El Paso were reprinting the text book and change some of the contains within the text book so as to confuse , mislead , or not allow the majority student population that was Mexican American to be able to adequately learn the educational circulm..

By compareing the contains of the text book entitled "American Politics" with the contains of the text book entitled "Unifinished Nations" one will realize that it is the some educational information provided in both text book however the one entitled "Unfinished Nation" seem more misleading , confuseing , or hard to understand because the educational information was reprinted out of chronological order or some of the educational information was extracted from the paragraphs of the text book in order to purposefully not allow another person to find out that it was the same educational information provided in both text books however the one entitled "Unfinished Nation" was purposely reprinted and created solely to confuse the learning student which seemed to be the majority of Mexican American students.

(9) Summary Argument

Statistically Analysis of National Origin Discrimination

In the County of El Paso Texas the majority of the population are colored persons.

Therefore it is common to say that many mexicans and african americans wind up enrolling for educational services at the University of Texas at El Paso.

Most of these mexican and african american citizens seek a higher educational to better their living circumstances and enviorment however the white american society tends to reject these African and Mexican citizens because of their colored national origin.

For example the majority of business owners , and small business owners are of white American national origin because they were able to obtain a higher education for a better future

These white American business owners tend to hire Mexican and African americans to manage their business where it be a car dealership or a restraunt.

These white American business owners wish to keep the Mexican and African americans as the worker and not the business owner so as that the white americans can always have the upper hand in our society.

These white American businesss owners know that in order to keep these Mexican and African americans as workers and not business owners , therefore the white American must not let the Mexican or African American to get a higher education and become a business owner.

With these facts in mind the investigator must come to realize that the professor of white American national origin only had one intention in reprinting a text book with misleading or confuseing educational information in which was so as to effect the Mexican American students learning ability to not allow them to obtain a higher educational and become a great business owner in our society.

These facts can be constituted as discrimination based on the complianants Mexican American national origin for the Office of Deputy Assistance secretary of Enforcement to issue lawful sanction against the attorneys of the United States Department of Education in Dallas Texas for attempting to protect a professor of white American national origin of an educational institution named University of Texas at El Paso whom was racial profileing Mexican American students to effect their learning abilities for the purpose of giving the white American student the upper hand in our society.

(10) Arguement

The complainant has provided sufficient detailed information which adequate infers that discrimination has occurred against the majority of Mexican American students at an educational institution named University of Texas at El Paso.

However the attorneys that were assigned to investigate and review the complainants claims of discrimination from the Office of Civil Rights United States Department of Education in Dallas Texas deviated from the guideing rules and principles for resolution under Title VI of the Civil Rights Acts by falsely allegeing that there was not sufficient evidence to prove that discrimination had occurred in order to prevent lawful sanctions from being invoked against the education institution named University of Texas at El Paso.

(11) Conclussion and Prayer

Wherefore Primises Considered in conformance with the prerequisites settforth herein the complainant prays that the Office of the Deputy Assistant Secretary for Enforcement decide to reinstate the complainants claims of discrimination by issueing law sanctions against a recipient of federal financial assistance named University of Texas at El Paso for noncompliance with Title VI of the Civil Rights Act and the Code of Federal Regulations.

The complainant also prays that the Office of the Deputy Assistant Secretary for Enforcement to admonish the attorney named Adriane P. Martin for attempting to deviate from the guideing rules and principles of Title VI and the Code of Federal Regulations in attempt to protect employees of an educational institution named University of Texas at El Paso from lawful sanction for noncompliance with Title Vi of the Civil Rights Act.

The complainant prays for general relief.

Respectfully Submitted ,
Eric Flores , student
eflores15@miners.utep.edu

Pursuant to Penalty of Perjury (28 U.S.C. 1746) I Eric Flores state , declare , and certify that the foregoing circumstances settforth in this complaint are true and correct to the best of my knowledge.

CERTIFICATE OF SERVICE

Pursuant to Penalty of Perjury (28 U.S.C. & 1746) the complainant Eric Flores hereby states , declares , and

certifies that true and correct copies of this foregoing complaint were sent to the following faculty members , in particular ;

(a) Dr.Craig Westman , Associate Vice President , is a party of interest whoms place of business is located at 500 W. University Avenue , El Paso Texas 79968 .

(b) Catie McCorry – Andalis , Associate Vice President and Dean of Student , is a party of interest whoms place of business is located at 500 W. University Avenue El Paso Texas 79968 .

(c) Dr.Corrine Peschka , Faculty Member , is a party of interest whoms place of business is located at 500 W.University Avenue , El Paso Texas 79968 .

(d) Dr. Beth Brunk – Chavez , Associate Dean of the College of Liberal Arts is a party of interest whoms place of business is located at 500 W. University Avenue , El Paso Texas 79968 .

(e) Diana Natacilio , President of the University of Texas at El Paso , is a party of interest whoms place of business is located at 500 W. University Avenue El Paso Texas 79968 .
(f) Dr.Harry Meeuswen is a party of interest whoms place of business is located at 500 W. University Avenue El Paso Texas 79968 .

(g) Dr.Charles Ambler , Faculty Member , is a party of interest whoms place of business is located at 500 W. University Avenue El Paso Texas 79968 .

(h) Team Leader Adriane P. Martin , attorney , is a party of interest , whoms place of business is located at 1999 Bryan Street , Suite 1620 , Dallas Teaxs 75201-6831.

(i) Brandon Carey , attorney , is a party of interest , whoms place of business is located at 1999 Bryan Street , Suite 1620 , Dallas Texas 75201-6831

CERTIFICATE OF SERVICE

I hereby certify that on June 20, 2013, I electronically filed the foregoing THE UNITED STATES DEPARTMENT OF EDUCATION'S MOTION TO DISMISS THE PETITION FOR REVIEW FOR LACK OF SUBJECT MATTER JURISDICTION, AND MOTION TO DEFER FILING OF THE ADMINISTRATIVE RECORD with the Clerk of the Court using the appellate CM/ECF system.

I further certify that, within two business days of June 20, 2013, I will cause to be hand-delivered four paper copies of the foregoing motion to the United States Court of Appeals for the District of Columbia Circuit.

I further certify that petitioner listed below will be served via e-mail and U.S. Mail postage prepaid at the following address:

Eric Flores
8401 Boeing Drive
El Paso, TX 79910

s/ Christopher C. Wang
CHRISTOPHER C. WANG
Attorney