UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

KIMMARA SUMRALL PLAINTIFF, **v.** JANINE ALI DEFENDANT.	**CASE NO.** 1:25-cv-02277 (TNM)

DEFENDANT'S MEMORANDUM IN SUPPORT
OF HER MOTION FOR RECONSIDERATION OF THE COURT'S MEMORANDUM
ORDER OF AUGUST 4, 2025

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases

Statute

Rules

INTRODUCTION

Pursuant to Fed. R. Civ. P. 54(b), and in the alternative 59(e), Defendant Janine Ali respectfully moves the Court to reconsider its Memorandum Order dated August 4, 2025 (ECF No. 26) ("Memorandum Order") based on clear legal error. The majority of federal courts that have addressed the issue, including in the District of Columbia, have ruled that §1981 claims involving the equal benefits prong of the statute require a nexus to state action, which is neither present nor alleged here. The Court therefore lacks federal question jurisdiction over the claim and, consequently, over the remaining D.C. law claims. Further, even if there were such jurisdiction, the court erred as a matter of law in two other aspects.

First, the Court erred in holding that Plaintiff had a likelihood of success on the merits of her § 1981 claim because the alleged battery constitutes direct evidence of racial discrimination. Mem. Ord. 13-15. The alleged pulling on an Israeli flag worn by a pro-Israeli counterdemonstrator at a lobbying demonstration opposing genocide in Gaza, where the Defendant said nothing to the Plaintiff, is not direct evidence of an antisemitic motive, anymore than burning an Israeli flag would be at such a demonstration. As discussed in Argument Section II below, such an act, absent context, plausibly can be interpreted as protesting the actions of the government and military of Israel, not an antisemitic act. Because the Court ignored the context in which the alleged incident occurred (a group, led by a Jewish activist, preparing to lobby against Israeli military activity) and interpreted the act exclusively in one way -- as unambiguously discriminatory based on the Star of David on the Israeli flag -- it committed legal error. And in doing so, it inadvertently opened the floodgates to antisemitism claims that are based upon criticizing symbols supporting the government of Israel, which is constitutionally protected expression.

The Court further erred in ruling that Plaintiff faced irreparable harm absent a preliminary injunction. Mem. Ord. 16-18. The Court's grant of a protective order based in part on the first two pages of the form anti-stalking order used by the District of Columbia Superior Court Domestic Violence division, *see* Exhibit A (form order from Domestic Violence division), is overbroad and untethered to the allegations. As the Court recognized in its Memorandum Order, there is no allegation or evidence that Defendant has ever stalked Plaintiff, gone to her residence, approached her place of employment, or tried to contact her in any way. Mem. Ord. 17. To issue such an order in the absence of any evidence whatsoever that Defendant and Plaintiff had encountered each other at any time apart from the single incident on November 13, 2024 -- the subject of this case -- after over a year of protesting in the Washington, D.C. area, is unfounded and unprecedented. The one case Plaintiff's counsel cited to the Court in support of her argument that an order in such circumstances is routine,[1] *Salvattera v. Ramirez*, 111 A.3d 1021 (D.C. 2015), was wildly different, involving a building manager who drugged and raped a tenant from the third floor when she visited him on the first floor to discuss rent payments in response to his e-mail.

On a more granular level, the Court's citation of *Banks v. C&P Telephone*, 802 F.2d 1416 (D.C. Cir. 1986) in the Memorandum Order ignored an important and in this case dispositive (in Defendant's favor) portion of that *Banks* Court's ruling, as noted below. The reasoning in *Herzfeld v. Barmada*, 2025 U.S. Dist. Lexis 150403 (D.D.C. Aug. 5, 2025), issued a day after the Memorandum Order, in which the court precluded a cause of action by a pro-Israeli protestor who inserted himself into an anti-Israeli protest, also applies to this matter and weighs against granting a preliminary injunction. The flurry of articles after the Court's ruling suggesting that the

[1] July 28, 2025 Preliminary Injunction Hearing Transcript [ECF 25] 63:21-24.

floodgates are now newly open to similar claims confirms that the Court overinterpreted §1981 to provide a remedy in the absence of any state nexus.

The legal reasoning that this Court has adopted in its opinion granting a preliminary injunction in Plaintiff's favor -- that anti-Israel activity constitutes anti-Semitism -- is extremely dangerous. It threatens to flood the courts with claims against demonstrators challenging Israel's policies, as Plaintiff's Counsel boasts,[2] and undermine Americans' fundamental First Amendment rights if not withdrawn. It already violates Defendant's First Amendment rights. Accordingly, Defendant urges this Court to reconsider its opinion. *See, e.g., Amoco Prod. Co. v. Village of Gambell*, 480 U.S. 531, 542 (1987) (instructing courts to balance competing claims of injury by both parties).

ARGUMENT

I. There Is No Federal Question Jurisdiction Under 42 U.S.C. § 1981, and There is No Likelihood of Success on the Merits

"In order to establish a likelihood of success on the merits, a party moving for a preliminary injunction must also establish subject-matter jurisdiction. And, failure to establish likelihood of success on the merits is a bar to relief for a party seeking a preliminary injunction." *Klayman v. D.C. Ct. of Appeals*, 2025 U.S. Dist. LEXIS 101168 at *13 (D.D.C. 2025) ("Because likelihood of success appears to be a freestanding requirement for a preliminary injunction, the Court need not engage in the remaining factors"). "A preliminary injunction is an extraordinary remedy never awarded as of right." *Winter v. Nat. Res. Def. Council*, 555 U.S. 7, 20 (2008). Thus, in each case the Court "must balance the competing claims of injury and must consider the effect on each party of the granting or withholding of the requested relief." *Amoco Prod. Co.*, 480 U.S. at 542.

[2] *See* Exhibit B, National Jewish Advocacy Center, Press Release (Aug. 4, 2025).

At the preliminary injunction hearing, Plaintiff showed neither that her freedom to contract had been violated nor that there was any nexus to state action required for a claim under § 1981. As the Supreme Court and this Court have emphasized, § 1981 protects against specific forms of racial discrimination related to contracts and/or state action, not generalized racial grievances or interpersonal conflicts. *Domino's Pizza, Inc. v. McDonald*, 546 U.S. 470, 479 (2006); *Humphries v. Newman*, 2021 U.S. Dist. LEXIS 254494 (D.D.C. Mar. 2, 2022). The governing case law confirms that § 1981 claims are limited to those circumstances, and thus not applicable here. *Id*.

Because Plaintiff failed, as a matter of law, to show that this Court has jurisdiction under §1981, the Court lacks subject matter jurisdiction over *all* claims in the Complaint.

A. Plaintiff's Allegations of Harassment and Assault Are Not Tethered to Any Contractual Relationship

Section 1981 prohibits racial discrimination in the making and enforcement of contracts. This Court noted in footnote 11 of the Memorandum Order that § 1981 has been used almost exclusively in this context.

Plaintiff neither alleged nor showed that she attempted to enter into any contract with Ms. Ali, nor that any existing contractual relationship was denied, obstructed, or impaired due to her race. The conduct she describes, an alleged personal assault,[3] has no contractual context and is entirely disconnected from any commercial, employment, or service transaction.

[3] To be clear, Defendant denies any alleged assault or battery, and was acquitted of criminal charges in a full trial by Judge Campbell, who found that the testimony of Plaintiff and Officer Bonney "conflicts in some respects with other evidence in the case" and found the testimony of Defendant and her witness credible. *See* May 20, 2025 Tr. [ECF 8-2] 22:11-13, 24:12, 25:12. As video shown to the Court on July 28, 2025 confirms, Code Pink protestors were ahead of Plaintiff, who a police officer initially blocked from following the Code Pink protestors. Defendant then had to walk past Plaintiff to reach the Code Pink protestors. Moreover, the Court stated in its Memorandum Order that "Defendant has shown no remorse or taken accountability for her battery," Mem. Ord. 16, but Defendant denies such assault, so naturally she is not remorseful about conduct that did not occur. Also, though the Court cited Officer Bonney's testimony, Officer Bonney did not testify that he

The Supreme Court has instructed point blank that § 1981 is not a vehicle to litigate all forms of racial animus. In *Domino's Pizza, Inc. v. McDonald*, 546 U.S. 470, 479 (2006), the Court explained:

> Nothing in the text of §1981 suggests that it was meant to provide an omnibus remedy for all racial injustice. If so, it would not have been limited to situations involving contracts. Trying to make it a cure all not only goes beyond any expression of congressional intent but would produce satellite § 1981 litigation of immense scope.

This Court correctly applied the Supreme Court's analysis in *Humphries v. Newman*, 2021 U.S. Dist. LEXIS 254494 (D.D.C. Mar. 2, 2022), where it dismissed a § 1981 claim brought by a grandmother who alleged racially discriminatory treatment by hospital personnel following a dispute over her grandchild's medical care. The Court held:

> Humphries does not identify any contractual relationship with Defendants. *See Domino's Pizza, Inc. v. McDonald*, 546 U.S. 470, 476 (2006) ("Any claim brought under § 1981, therefore, must initially identify an impaired 'contractual relationship' under which the plaintiff has rights." (quoting § 1981(b)). Nor does she identify any other conduct by Defendants that would be covered by this statute. So Humphries has failed to state a claim under § 1981.

Humphries, 2021 U.S. Dist. LEXIS 254494 at *7. Accordingly, there is no subject matter jurisdiction in the instant case under Section 1981's contractual provisions.

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saw any choking or the snapping back of Plaintiff's head, and there was no basis except for Plaintiff's testimony to support that choking took place. *See* July 28, 2025 PI Hr'g Tr. 6:4-26:19. For reasons that will be discussed in more detail below, Plaintiff, as a member of a hate group that has intimated at violence to challenge pro-Palestinian activism, is not a credible witness. Finally, video evidence confirms that immediately after the alleged incident, Plaintiff was excitedly yelling at multiple police officers to arrest Ms. Ali, hardly the behavior of someone who might be injured. *See* Exhibit C, Post- Incident Video, Available at: https://www.dropbox.com/scl/fi/cv2hnkvlihguoi0r9fq49/Post-Incident-Video.mov?rlkey=q6b3ijw9e2fnk82482t5tsvx9&st=skt62lw1&dl=0

B. Courts Have Required State Action, Not Present Here, For a Claim under § 1981's Equal Benefits Clause

The equal benefit clause of Section 1981 guarantees all persons "the full and equal benefit of all laws and proceedings for the security of persons and property as is enjoyed by white citizens." 42 U.S.C. § 1981(a). Plaintiff's claim under the "equal benefits" clause of 42 U.S.C. § 1981(a) fails because she does not allege any nexus to state action, either by denial of the benefit of state laws or state proceedings. The alleged battery does not amount to a denial of the equal benefit of the D.C. battery and assault laws (or any other laws) because Plaintiff was not denied the benefit of those laws. She was able to enforce those laws by having Defendant prosecuted in D.C. Superior Court. Having lost there and been found inconsistent in her testimony by the judge (in contrast to Defendant, whom the judge found credible), Plaintiff seeks another bite at the apple.

The District of Columbia and the majority of federal courts, including circuit courts, have determined that a plaintiff must allege some nexus to state action to state a claim under the equal benefits clause. Purely private conduct, even if allegedly racially motivated, is insufficient.

For example, in *Provisional Gov't of the Republic of New Afrika v. Am. Broad. Cos.*, 609 F. Supp. 104 (D.D.C. 1985), this Court dismissed a § 1981 equal benefit clause claim brought by a separatist Black nationalist organization against a private television network. The plaintiffs alleged that news coverage broadcast by the network associated them with criminal activity and violated their civil rights. *Id.* at 110. The Court rejected the equal benefit clause claim because the plaintiffs failed to allege that the broadcaster acted under color of state law. *Id.* at 109. The Court held:

> The two major clauses -- the contracts clause and the equal benefits clause -- are intended to enforce two distinct sets of rights. The specific assertions in plaintiffs' complaint show that their claims arise under the equal benefits clause. Because this clause does not reach purely private discrimination, the element of state action must be alleged and proved. Here, the plaintiffs' vague allegations of state action rest on the

> fact that the federal government regulates the broadcasting industry. The fact that the government has granted NBC a broadcast license is not sufficient to constitute state action and the plaintiffs' claim under § 1981 must be dismissed. *Id.* at 109 (internal citations omitted).

The Court emphasized that without state action, plaintiffs did not have a claim under § 1981. *Id.* Likewise, the D.C. Circuit in *Banks v. C&P Telephone*, 802 F.2d 1416 (D.C. Cir. 1986) confirmed that although §1981 provided remedies for a broad range of actions, the statute was "not designed to provide a remedy for intentional torts such as assaults and batteries." *Id.* at 1427. The Court in its Memorandum Order ignored this important qualification of §1981 rights set forth by the D.C. Circuit.

Circuit courts have followed a similar rationale in limiting the equal benefits clause to situations involving state action. The Third Circuit in *Mahone v. Waddle*, 564 F.2d 1018 (3d Cir. 1977), emphasized that such claims necessarily require state involvement. The court explained:

> The words 'full and equal benefit of all laws and proceedings for the security of persons and property,' on the other hand, suggest a concern with relations between the individual and the state, not between two individuals. The state, not the individual, is the sole source of law, and it is only the state acting through its agents, not the private individual, which is capable of denying to blacks the full and equal benefit of the law. Thus, while private discrimination may be implicated by the contract clause of section 1981, the concept of state action is implicit in the equal benefit clause. *Id.* at 1029.

The Fourth Circuit also unequivocally confirmed, in *Shaare Tefila Congregation v. Cobb,* 785 F.2d 523 (4th Cir. 1986), *rev'd on other grounds*, 481 U.S. 615 (1987), where a synagogue alleged § 1981 violations after being vandalized with anti-Semitic graffiti by private individuals, that "state action is required" to support such an equal benefits claim. *Id.* at 525.

The Eighth Circuit has consistently reaffirmed the same rule. In *Youngblood v. Hy-Vee Food Stores, Inc.*, 266 F.3d 851 (8th Cir. 2001), the plaintiff, a Black customer, alleged he was falsely accused of shoplifting and detained by the store. The Eighth Circuit affirmed dismissal of

the § 1981 equal benefit clause claim because the store was a private actor, and the plaintiff failed to show that its conduct was attributable to the state. *Id.* at 855. Likewise, in *Bilello v. Kum & Go, LLC*, 374 F.3d 656 (8th Cir. 2004), the plaintiff alleged racially discriminatory denial of access to restroom facilities. The court affirmed dismissal of the equal benefit clause claim because the plaintiff did not allege "state action caused him to be denied the full and equal benefit of laws." *Id.* at 661. Further, in *Adams ex rel. Harris v. Boy Scouts of Am.–Chickasaw Council*, 271 F.3d 769 (8th Cir. 2001), the court again affirmed dismissal where the plaintiffs, Black campers and their guardians, alleged racially motivated mistreatment at a private camp. The court emphasized that no state actor had participated in the conduct and no actionable conspiracy with state officials had been shown. *Id*. at 777-778.

Taken together, these decisions reflect the majority view, which the U.S. District Court in the District of Columbia has followed, that § 1981's equal benefit clause does not reach purely private action. The Court in its Memorandum Order cited the minority view from the Second Circuit case,[4] finding that an equal benefits case did not require state action—but that is a view rejected by the majority of courts, and should likewise be rejected by this Court. That decision, moreover, published in the Federal Appendix, which generally does not constitute binding precedent, is at odds with the Second Circuit's more nuanced opinion in *Phillip v. Univ. of Rochester*, 316 F.3d 291 (2d Cir. 2003). As noted in Defendant's opposition to the TRO, in *Phillip*, the Second Circuit assumed that "Section 1981 requires a nexus to state proceedings or laws," *Id.* at 298. In that case, the nexus was to criminal proceedings the defendant security officers attempted to pursue against the Black plaintiff students.

[4] *Wong v. Mangone*, 450 Fed App'x 27, 30 (2d Cir 2011), Mem. Ord. 11.

This lawsuit presents exactly the sort of overbroad theory the Supreme Court warned against in *Domino's*. Indeed, Plaintiff's counsel effectively boasted in a press release that the Court's decision sets new precedent and will open "floodgates" to new claims against pro-Palestinian activists. *See* Exhibit B National Jewish Advocacy Center, Press Release (Aug. 4, 2025). Here, Plaintiff sues a private individual, Janine Ali, and does not allege that any governmental official, police officer, or court was involved in the alleged incident, or that Plaintiff was denied the ability to enforce any D.C. laws against Defendant. According to the Complaint, Ms. Ali yanked on Plaintiff's Israeli flag and walked away during a protest. *See* Verified Complaint ¶¶ 12-13 [ECF 1].

In a preliminary injunction context, where there is any factual dispute, the plaintiff is "obliged to establish a *clear and compelling* legal right thereto based upon *undisputed* facts." *E.M. v. Shady Grove Reproductive Sci. Center, P.C.*, 2020 U.S. Dist. Lexis 232743 (D.D.C. 2020), *quoting In re Navy Chaplaincy*, 928 F. Supp. 2d 26, 36 (D.D.C. 2013), *aff'd*, 738 F.3d 425 (D.C. Cir. 2013) (emphasis added). Even taking this allegation as true, which Defendant denies, and weighing all evidence at the preliminary injunction hearing in Plaintiff's favor, Plaintiff did not meet her burden, especially given that the D.C. Superior Court found inconsistencies in the testimony of Plaintiff and Officer Bonney, which was part of the record considered by the Court. Plaintiff neither alleged nor demonstrated anything more than a private interaction between the parties. There is no allegation nor showing that Plaintiff was denied protection of the laws or discriminated against by state officials in any capacity. Under the prevailing authority across multiple circuits, such allegations cannot support a claim under the equal benefit clause.

Because Plaintiff has not alleged a nexus to state action, her claim under 42 U.S.C. § 1981 fails as a matter of law. Absent a viable § 1981 claim, the Court lacks subject-matter jurisdiction

over the remainder of the case. A likelihood of success on the merits, including a showing of subject-matter jurisdiction, is an indispensable prerequisite for a preliminary injunction, and Plaintiff has failed to make such a showing at the preliminary injunction hearing. *Klayman*, 2025 U.S. Dist. LEXIS 101168 at *13. The injunction should be reversed.

II. The Court Erred as a Matter of Law in Ruling The Alleged Battery Was Discriminatory

To succeed in demonstrating a violation of Section 1981, a claimant must prove (1) that the plaintiff is a member of a racial group; (2) that the defendant intended to discriminate against the plaintiff on the basis of race; and (3) that the discrimination concerned an activity enumerated in § 1981. *Moini v. Wrighton*, 602 F. Supp.3d 162, 172 (D.D.C. 2022). Because Plaintiff's § 1981 claim fails to meet the second and third prongs of this test, the statutory requirements of discrimination, the Court lacks subject matter of the claim and, consequently, over the remaining D.C. law claims.

The Court erred as a matter of law in holding that the second prong of the test had been met: namely, that the alleged battery is direct evidence of a racial discrimination and, therefore, Plaintiff had a likelihood of success on the merits of her § 1981 claim. Mem. Ord. 13-15. As noted in the Introduction, the alleged yanking on an Israeli flag worn by pro-Israeli counterdemonstrator at a lobbying demonstration opposing the genocide in Gaza, where the Defendant said nothing to the Plaintiff, is not direct evidence of an antisemitic motive, anymore than burning an Israeli flag would be at such a demonstration. Such an act plausibly can be interpreted as protesting the State of Israel's policies. The Jerusalem Statement on Antisemitism explains:

> So, for example, hostility to Israel could be an expression of an antisemitic animus, or it could be a reaction to a human rights violation, or it could be the emotion that a Palestinian person feels on account of their experience at

> the hands of the State. In short, judgement and sensitivity are needed in applying these guidelines to concrete situations.[5]

The International Holocaust Remembrance Alliance (IHRA) definition of antisemitism that Plaintiff relies on makes the same point:

> Manifestations might include the targeting of the state of Israel, conceived as a Jewish collectivity. However, criticism of Israel similar to that leveled against any other country cannot be regarded as antisemitic.[6]

In analyzing similar circumstances, the court in *Landau v. Corp. of Haverford Coll.*, No. 2:23-cv-02431, 2024 WL 3001873, at *5 (E.D. Pa. June 17, 2024) also rejected "Plaintiffs' embedded proposition that any anti-Israel speech is intrinsically antisemitic, because reasonable people acting in good faith can challenge decisions of the Israeli government without harboring antisemitic views."

There was no evidence before the Court that the alleged battery targeted Israel as a Jewish collectivity or Plaintiff as a Jewish person. The Court's reasoning that "[t]he Star of David—emblazoned upon the Israeli flag—symbolizes the Jewish race," provides such direct evidence is faulty because it categorically equates anti-Israel with antisemitic without any further context indicating antisemitic racism. The examples the Court provides to support its ruling underscores Defendant's point. Plaintiff was not wearing "[t]he yellow badge that Jews were forced to wear in Nazi-occupied Europe." Mem. Ord. 13. Thus, that the badge "invested the Star of David with a symbolism indicating martyrdom and heroism" is of no consequence absent some other context of Plaintiff's Jewishness or Defendant's antisemitic animus, of which there is none. The hundreds of thousands of Israeli protestors against the war in Gaza march with the Israeli flag not to show their Jewishness but that they are patriotic and against the Israeli government's policy, *i.e.*, they carry

[5] https://jerusalemdeclaration.org/
[6] https://holocaustremembrance.com/resources/working-definition-antisemitism

the flag as a political symbol.[7] Plaintiff's counsel's glib (and inaccurate) statement that "if yanking on a flag emblazoned with the Star of David tied around a Jewish person's neck at a pro-Israel protest is not discrimination, 'I don't know what is'," is equally faulty for the same reason: it is categorical and leaves no room for context and judgment. Mem. Ord. 15 (adopting counsel's statement). Likewise, the Court's reliance on *Kinnon v. Arcoub, Gopman & Assocs., Inc.*, 490 F.3d 886 (11th Cir. 2007) and similar cases holding that racial slurs are direct evidence of discrimination is inapposite because Defendant did not make any racial slur or otherwise speak to Plaintiff. Mem. Ord. 14.

Instead of recognizing the context of the alleged battery, the Court accepted Plaintiff's theory of equating antisemitic animus with political criticism of Israel, a religious-based theory that the Plaintiff and her counsel advocate in lawfare weaponizing the Star of David against pro-Palestinian demonstrators. *See* Mem. Ord. at n. 10 ("Religious discrimination…is not covered by § 1981) (*citing Lemmons v. Georgetown Univ. Hosp.*, 431 F. Supp. 2d 76, 93 n.19 (D.D.C. 2006)). The press release Plaintiff's counsel issued the day of the Court's opinion makes this abundantly clear: "We expect the floodgates to now open for others alleging antisemitic violence, *which as clarified by today's ruling encompasses attacks on Jews for supporting Israel*." *See* Exhibit B, National Jewish Advocacy Center, Press Release (Aug. 4, 2025) (emphasis added). The *Times of Israel's* discussion of the Court's ruling makes the point even clearer:

> A Jewish legal advocacy group hailed a legal breakthrough in court battles against antisemitism after a US federal judge last week equated the Israeli flag with "the Jewish race." . . . The lawsuit, like others filed by Jewish

[7] *See e.g.*, Peter Beaumont, "Netanyahu criticizes protests in Israel against his handling of Gaza war," *The Guardian* (Aug. 18, 2025), https://www.theguardian.com/world/2025/aug/18/netanyahu-criticises-protests-israel-handling-gaza-war-hostages.

> Israel supporters around the US, argued that Zionism is a facet of the faith and not a political position.[8]

As the Court noted in its Memorandum Order, "an action that can plausibly be interpreted in two-different ways one discriminatory and the other benign does not constitute direct evidence of discrimination." Mem. Ord. 13, *citing Braxton v. Walmart, Inc.*, 2023 WL 2028698 (10th Cir. Feb. 16, 2023); *see also Landau* 2024, WL 3001873 at *5. Defendant's alleged yanking on the Israeli flag worn by Plaintiff, in the context of a lobbying demonstration protesting the genocide in Gaza where the Defendant did not say anything to the Plaintiff cannot plausibly be interpreted as an act of antisemitic discrimination. Indeed, the founder of Code Pink—the group Defendant was protesting with—was founded by a Jewish woman, Medea Benjamin, and many of its members are Jewish. If Ms. Ali was antisemitic, it is hard to believe she would participate in a protest organized in part by Jewish individuals who simply have a different view on the Israel-Palestine conflict than the Plaintiff does. In contrast, Plaintiff's accusing Defendant of the alleged battery on the basis that she saw her "walking away from her" immediately after the incident, Compl. ¶13, plausibly can be interpreted as a discriminatory accusation given that Plaintiff did not see who allegedly yanked on the flag, that Plaintiff belongs to a hate group that according to the Anti-Defamation League "openly embraces Islamophobia and harasses Muslims online and in person" (Exhibit D, Excerpt of ADL Website first paragraph), and Defendant is a Muslim who presents herself as such by, for example, wearing a hijab and keffiyeh.

Because the Court interpreted the alleged battery exclusively in one way—as unambiguously discriminatory, ignoring the critically important context in which the alleged act occurred—it committed legal error.

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[8] Luke Tress, "Legal group hails breakthrough as US judge equates Israeli flag with Jewish identity," *The Times of Israel* (Aug. 14, 2025), https://www.timesofisrael.com/legal-group-hails-breakthrough-as-us-judge-equates-israeli-flag-with-jewish-identity/.

III. Plaintiff Fails to Meet the Three Other Requirements for a Preliminary Injunction

A. Plaintiff and the Organization She Represents Are Loud, Violent, Aggressive, and In No Way Chilled in Expressing Their Views, and Thus Have No Basis for Any Irreparable Harm

Having failed to establish that Defendant violated any of Plaintiff's rights in the first place, Plaintiff cannot show any irreparable harm she will suffer if the Court's grant of a preliminary injunction is lifted.

Plaintiff is the Director of the District of Columbia Office of Betar USA, an organization that is openly and proudly loud and aggressive, promoting the moniker "Jews Fight Back." *See* Exhibit E, Excerpts from Betar USA Website. On February 21, 2025, the leading U.S. Jewish civil rights organization, the Anti-Defamation League[9] added Betar USA to its list of extremist organizations, stating that the organization has adopted a slogan for Jewish armament ("every Jew, a 22"), and highlighting Betar USA's regularly "confronting Muslim and Arab protestors at rallies," as Plaintiff does. *See* Exhibit D, Excerpt of ADL Website. Betar regularly threatens physical violence upon individuals who advocate for Palestinian human rights. Mr. Shallal testified during the preliminary injunction hearing that prior to the Norman Finkelstein event at Busboys & Poets on March 16, 2025, Betar posted messages on its social media for people to bring beepers to the event. July 28, 2025 PI Hr'g Tr. 31:1-11, 35:21-36:14, 39:13-40:20, and Def. PI Ex. 3 (ECF 24-3).

Consistent with her organization's approach, various Instagram postings (including from Plaintiff) have featured Plaintiff in aggressive and even violent activity, such as Plaintiff violently grabbing an apparent protestor's iPhone and cursing at the person, Plaintiff participating in a shooting range with the caption "Sunday Gun Day," under her Instagram page,

[9] *See* Exhibit F, Etan Nechin, "Embraces Islamophobia, Harasses Muslims': ADL Lists Far-right Betar USA as Hate Group," Haaretz, Feb. 21, 2025.

@kimmythezioinistjew, verbally harassing and insulting as a "traitor" and "infidel" a Jewish rabbi who was protesting Israel's actions in Gaza, loudly disagreeing with D.C. police officers while wearing an "ICE" hat (Betar USA having boasted of providing names to ICE for deportation)[10], and making rude hand gestures at protestors, among other actions. *See* Exhibit G, Social Media Postings, Available at https://tinyurl.com/smvsumrall.[11] These activities are consistent with video shown to the Court of Plaintiff acting obstreperously in a restaurant. In no way has Plaintiff been dissuaded from her First Amendment activities.

B. Even the Court's Explication of Facts Shows That Plaintiff Stalks Protestors with Whom She Disagrees, Tipping the Balance of Harms Strongly in Favor of Defendant

The Court's order implying that Janine Ali is a potential stalker who must be subject to a protective order effectively reverses the roles of Plaintiff and Defendant. In doing so, the injunction infringes Defendant's First Amendment rights. It chills Ms. Ali's rights to attend any demonstration attended by Plaintiff; furthermore, because Defendant cannot know precisely which events Plaintiff will attend, she will likely curtail protesting in the D.C. area for fear of being found in violation of the injunction.

The Court noted that both Plaintiff and Defendant attend protests about the Gaza war but are on opposite sides. Mem. Ord. 1. That description is incomplete. Defendant Janine Ali attends events generally protesting the actions of the Israeli military and government in Gaza. The problem is, Plaintiff is primarily a counter-protestor and inserts herself into the same types of pro-peace or pro-Palestinian events so as to try to exercise a heckler's veto over the views of anti-Israeli voices.

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[10] *See* Exhibit D, Excerpt of ADL Website.

[11] The expanded link to the social media videos is: https://www.dropbox.com/scl/fo/mt97nggyr69uhne9fxbrz/ADpKBvZSaW-ByhH_AlhOPRI?rlkey=9ht568a4bc2v6wm00n1i4ppyh&st=y18xqcpc&dl=0

Plaintiff attempted to do such in the video presented to the Court where she was asked to leave a discussion in a restaurant with Norman Finkelstein, and she has attempted to do so in the social media video excerpts presented herein. *See* Exhibit G, Social Media Postings. And she effectively exercised that heckler's veto in obtaining the preliminary objection, successfully deterring Ms. Ali from exercising her First Amendment right to protest Israel's conduct.

In the video of events surrounding the incident presented to the Court at the preliminary injunction hearing on July 28, 2025, a police officer initially blocks Plaintiff from following the Code Pink protestors. The issue between the parties arose because Ms. Ali was late and had fallen behind the Code Pink women. Defendant was trying to catch up with other protestors but had to walk past Plaintiff. Plaintiff is not at all afraid but can be seen screaming at police officers to arrest Ms. Ali. Exhibit C, Post-Incident Video Available at: https://tinyurl.com/pisumrall[12]. There was no evidence of any chilling effect, or potential chilling effect on Plaintiff. There was never any contact between the parties at any rallies before this incident and Plaintiff has not documented any such contact. *See* May 19, 2025 Tr. [ECF 8-1] 95:6-18 (Ms. Ali testifying).

Further, Plaintiff cannot seek injunctive relief under §1981 based on the alleged harm that the absence of a stay away order will prevent her from exercising her First-Amendment rights. The Court queried in its Memorandum Order "whether § 1981 protects plaintiffs against First Amendment chill from other private actors," noted that as glossed by the Supreme Court, § 1981 is coextensive with the Equal Protection Clause, and correctly noted that "[n]either precedent nor the statute directly suggests that § 1981 contemplates a cause of action against private actors infringing a plaintiff's freedom of speech." Mem. Ord. 19 n.11.

[12] The expanded link to the post-incident video is: https://www.dropbox.com/scl/fi/cv2hnkvlihguoi0r9fq49/Post-Incident-Video.mov?rlkey=q6b3ijw9e2fnk82482t5tsvx9&st=skt62lw1&dl=0

Plaintiff cannot repeatedly insert herself into anti-Israeli protests, act belligerently, and claim that she will suffer irreparable harm from anti-Israeli protestors. In a related context, the day after this Court issued its preliminary injunction order, another judge of this Court granted a motion to dismiss under Rule 12(b)(6) in a claim brought against pro-Palestinian protestors, finding that a plaintiff who purposely inserts himself into a pro-Palestinian protest to protest the protestors, effectively consents to be among the loud opposing protestors. *See Herzfeld v. Barmada*, 2025 U.S. Dist. Lexis 150403 (D.D.C. Aug. 5, 2025). The reasoning in *Herzfeld* militates strongly against Ms. Sumrall's claims that she suffers irreparable harm or that the balance of harms favors here, as her *modus operandi* is to attend pro-Palestinian events, disrupt them, and seek conflict.

C. Code Pink Publicly Advocates for Peace, Justice and Nonviolence; Betar USA Advocates for Fighting Back and Support of Greater Israel

Relevant to the balance of harms, the organization that sponsored the protest attended by Ms. Ali at the Dirksen Building on November 13, 2024, Code Pink, whose moniker is "Women for Peace," advocates for peace and social justice, and as discussed earlier was founded by a Jewish woman and includes women of all faiths among their leaders. Ms. Sumrall's organization, Betar USA, promotes a vision of "Jews Fight Back," and advocates for "Eretz" or Greater Israel, an envisioned nation state that would encompass parts of modern-day Syria, Jordan and Lebanon as well as Palestine. *See* Exhibit E, Excerpts from Betar Website. The organization has a documented record of using threats of violence against pro-Palestinian activity to silence those who dare to protest or even speak and write against Israel's actions. The balance of harms here favors Defendant Janine Ali, a 73-year old grandmother who attended protests against the genocide in Gaza beginning in November 2023, but had not seen Plaintiff before November 13, 2024, had no idea who Plaintiff was on the date of the incident, and who the judge in D.C. Superior court found

credible—in contrast to the inconsistent testimony of Plaintiff and her supporting witness. Ali testimony May 19, 2025 Tr. 95:6-18.

D. The Public Interest Does Not Favor a Preliminary Injunction in This Case

1. Opening the Floodgates to Protestor Suits Is Not in the Interests of Justice

Washington, D.C. is a center of protests and counter-protests. If the floodgates are opened to claims for anti-stalking orders in federal court arising out of protests in the nation's capital, or protests on college campuses in this and other jurisdictions, many protestors will seek the Court's assistance in obtaining injunctions against each other. As Plaintiff's counsel's press release portends, the "floodgates" will be open. The chilling effect on the public will be severe: Americans will be fearful of attending pro-Palestine protests out of concern they might end up in Ms. Ali's shoes.

2. Finding that An Attack On a National Flag with a Religious Symbol Is a Basis for Unlawful Discrimination Opens the Courts to a Wide Range of Potential Racial and National Origin Claims

The Court held that attacking an Israeli flag evidenced anti-Jewish prejudice against Plaintiff and that the only non-discriminatory explanation could be that Ms. Ali believed Plaintiff was affiliated with the Israeli government, instead of the plausible explanation that Ms. Ali merely opposed Israel's political actions in Gaza. Mem. Ord. 14-15. There was no basis for this leap of logic. Antisemitism is a serious issue in the United States, but dissent against the political actions and waging of war by Israel in Palestine is not antisemitism. The Court itself noted both parties attend protests about the war in Gaza, which is a hotly disputed international issue on which there are strongly held convictions on both sides. Protestors routinely display Israeli and Palestinian flags at events. There is no evidence that Ms. Ali had any idea that Plaintiff was Jewish or had any idea of who Plaintiff was. Some evangelical Christians, and many Americans generally, use the

Israeli flag to show support of Israel—just as many Americans displayed Ukrainian flags after the 2022 invasion by Russia.

The Star of David is traditionally a religious symbol of the Jewish people, but over the last 70 years has also come to symbolize the State of Israel. That is especially so when it appears on a flag, rather than, for example, a necklace. Numerous national flags include distinctive, sacred religious symbols but are not representations of entire religions. The Iranian flag includes a representation of the word Allah and multiple renditions of "God is Great" in writing. Hostility to that flag by protestors reflects hostility to the Iranian regime, not to Muslims. The Saudi flag includes sacred Islamic text; protests against the Saudi government are not necessarily anti-Islamic. The flags of Libya, Tunisia, Turkiye, Pakistan, and Malaysia among others include prominent Islamic crescents and symbols, and the Greek, Swedish, Norwegian, Georgian, and Swiss flags among others have crosses to represent Christianity. Even the logo for the soccer team Real Madrid has a cross on it. Protests or opposition to those flags with religious symbols clearly indicate opposition to the countries and organizations represented by those symbols; they are not evidence of discriminatory intent against the religions with symbols in the flags. Nor does non-discriminatory animus need to be conflated with the owner of the flag being an official representative of such flag. Someone can be hostile to a flag with Real Madrid's logo in full knowledge that the owner is not a soccer player for Real Madrid and without intending to discriminate against Christians.

The scope of what constitutes discrimination expands greatly when attacks on these flags are automatically construed as discriminatory *with no other evidence* supporting a discriminatory motive. The Court's Memorandum Order in this regard is unprecedented in its ruling and, in the words of Plaintiff's counsel, opens "the floodgates" to new claims.

CONCLUSION

The Court should reverse the preliminary injunction to correct a clear error of law. As set forth in the Complaint and in Plaintiff's presentation at the preliminary injunction hearing, the case does not implicate any right to contract under 42 U.S.C. § 1981, nor does it allege any state action. Without this showing, or even any related allegations, Plaintiff has no case on the merits under § 1981.

Dated: August 30, 2025.

Respectfully Submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on August 30, 2025, I caused a true and correct copy of the foregoing Memorandum to be served via ECF upon all counsel of record via the Court's CM/ECF system.

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