



February 8, 2024

Catherine O'Hagan Wolfe
Clerk of Court
U.S. Court of Appeals for Second Circuit
40 Foley Square
New York, NY 20007

RE: *New Yorkers for Religious Liberty v. The City of New York*
Case No. 22-1801

Dear Ms. O'Hagan Wolfe:

One year ago today, the Court heard oral argument on an expedited basis due to Plaintiffs' claims of ongoing harm caused by Defendants' unconstitutional conduct. An issue discussed at oral argument and again in supplemental briefing is whether Defendants' repeal of the Covid vaccine mandate somehow mooted Plaintiffs' equitable claims. As Plaintiffs explained, equitable relief is not moot because, among other things, Defendants have continued to retaliate against public employees terminated under the mandate's unconstitutional religious accommodation policies by attaching so-called "problem codes" to their employment files, making it difficult (if not impossible) for them to be rehired without this Court's intervention. In the supplemental briefing last fall, Plaintiffs explained that, despite the passage of so many months, not *one* of the *Kane/Keil* plaintiffs had been reinstated, despite persistent attempts. Yet Defendants responded that there was no proof that "problem codes" were the issue.

We write because we have received definitive proof that Defendants' assertion is not accurate. Sarah Buzaglo is a plaintiff in *Keil v. City of New York*, now consolidated with this appeal. After being fired from her teaching job by the New York City Department of Education (DOE), Ms. Buzaglo lost her apartment due to her inability to pay rent. Homeless and unable to obtain any work in her field because of the mandate, she left the country to live with family in Israel. When she recently visited New York City for the Jewish holidays, war broke out in Israel. Tragically, she lost several relatives in the brutal October 7 terror attack. As a result, she was compelled to remain in New York City.

Sarah reapplied for her old teaching job. She had received accolades and commendation while working for the DOE, certainly never been disciplined, and it has now been an entire year since Defendants repealed the mandate.

Yet this week Ms. Buzaglo alerted us that the problem codes have repeatedly thwarted her efforts to obtain employment. First, her former principal—the same one who had solicited her application in the first place and then given her three letters of commendation—refused to give her a nomination letter need for substitute teaching.

Then, when she contacted another DOE school for employment as a substitute teacher, she was promptly cleared for application, only to have the process stalled by the “background investigation.” Ms. Buzaglo called to find out why the process was stalled. In response, she received a voicemail which stated, “*you have a problem code, sorry you can't move forward with the process or anywhere in the DOE at all.*” Ms. Buzaglo's sworn declaration is attached and incorporated hereto as **Exhibit 1**.

As Plaintiffs have repeatedly insisted, the problem codes constitute ongoing retaliation and irreparable harm that requires the Court's intervention.

The DOE has shown no interest in addressing the problem codes or their retaliatory effects. Indeed, on June 23, 2023, nine members of the United States Congress—alarmed by the substantial evidence of the ongoing use of the problem codes—wrote Chancellor David Banks of the DOE, noting that, “[s]hockingly, the same Problem Code used to flag unvaccinated teachers is also utilized for individuals accused of molesting, raping, or harming a child. As a result, these codes have a profoundly negative impact on the flagged educators and can hinder their future employment prospects.” **Exhibit 2**. Upon information and belief, neither the City nor the DOE has bothered to respond, much less take any action to preserve Plaintiffs from this ongoing harm.

Meanwhile, Plaintiff Sarah Buzaglo—and thousands of similarly situated public-school teachers, fire fighters, and police officers—are in desperate straits. A holding that Defendants have violated Plaintiffs’ constitutional rights and an immediate injunction are warranted.

Respectfully Submitted,

John J. Bursch
Counsel for Plaintiffs-
Appellants

cc: All counsel via ECF

EXHIBIT “1”

22-1801(L), 22-1876 (CON)

IN THE UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

NEW YORKERS FOR RELIGIOUS LIBERTY, INC., GENNARO AGOVINO, CURTIS CUTLER, LIZ DELGADO, JANINE DEMARTINI, BRENDAN FOGARTY, SABINA KOLENOVIC, KRISTA ODEA, DEAN PAOLILLO, DENNIS PILLET, MATTHEW RIVERA, LAURA SATIRA, FRANK SCHIMENTI, JAMES SCHMITT, MICHAEL KANE, individually, and for all others similarly situated, WILLIAM CASTRO, individually, and for all others similarly situated, MARGARET CHU, individually, and for all others similarly situated, HEATHER CLARK, individually, and for all others similarly situated, STEPHANIE DI CAPUA, individually, and for all others similarly situated, ROBERT GLADDING, individually, and for all others similarly situated, NWAKAEGO NWAIFEJOKWU, individually, and for all others similarly situated, INGRID ROMERO, individually, and for all others similarly situated, TRINIDAD SMITH, individually, and for all others similarly situated, AMARYLLIS RUIZ-TORO, individually, and for all others similarly situated

Plaintiffs-Appellants,

MATTHEW KEIL, JOHN DE LUCA, DENNIS STRK, SARAH BUZAGLO, BENEDICT LOPARRINO, JOAN GIAMMARINO, AMOURA BRYAN, EDWARD WEBER, CAROLYN GRIMANDO,

Consolidated Plaintiffs-Appellants,

– v. –

CITY OF NEW YORK, ERIC ADAMS, DAVE CHOKSHI, in his official capacity as Health Commissioner of the City of New York, NEW YORK CITY DEPARTMENT OF EDUCATION,

Defendants-Appellees,

ROBERTA REARDON,

Defendant.

On Appeal from the United States District Court
for the Eastern and Southern Districts of New York

DECLARATION OF SARAH BUZAGLO

Sarah Buzaglo declares as follows, pursuant to 28 U.S.C. § 1746:

1. My name is Sarah Buzaglo and I am a Plaintiff-Appellant in the above-captioned action.
2. I respectfully submit this Declaration in support of Plaintiffs-Appellants' 28(j) letter.
3. I know the facts stated herein to be true based upon my personal knowledge, except for statements which are made on information and belief, and as to those, I verily believe them.

My Employment with the New York City Department of Education ("DOE")

4. On August 7, 2018, I received an email from Mrs. Melanie Katz, Principal of FDR High School. Mrs. Katz indicated that she had identified my application on the "New Teacher Finder" and was interested in me interviewing with her.
5. On August 8, at 12:16, Mrs. Katz sent me an email with a calendar invitation to teach a model lesson on August 9 to an ELA class in summer school. I accepted the invitation and taught the lesson.
6. On August 10, 2018, I received an email from Mrs. Katz confirming that she nominated me as an ELA teacher at her school, Franklin Delano Roosevelt HS, located at 5800 20th Avenue, Brooklyn, NY.
7. I received my official "Welcome to the NYCDOE email" containing my file number, employee ID, and the New Teacher Checklist on August 20, 2018.
8. During my term with the DOE, I received multiple commendations and was never disciplined.

The Termination of My Employment

9. I am an Orthodox Jew who refused to be vaccinated for Covid-19 because of my adherence to my sincerely held religious beliefs.

10. On February 20, 2022, I received the following email from the Division of Human Resources that I was terminated from the DOE due to my failure to comply with the vaccine mandate.

Dear BUZAGLO, SARAH:

You have previously received notice regarding your failure to comply with the New York City Health Commissioner's Order requiring vaccination of all NYCDOE staff and that you would be terminated from DOE as a result. Compliance with that Order is a condition of employment. Since you did not comply with the Order and did not choose to extend your leave without pay, despite notice and an opportunity to do so, your employment with the New York City Department of Education is terminated, effective February 18, 2022. Please note that your health insurance coverage through the City also ceases upon termination.

If you have not already done so, you must return all DOE-issued equipment and materials, including your ID, to your supervisor. Information about COBRA will be mailed separately to you at the address on file in NYCAPS. Your school and/or office will be notified of your termination as well.

Thank you for your service to the New York City Department of Education.

11. I was stunned by the abrupt, cold, and impersonal nature of the communication. To be sure, Mrs. Katz did not reach out.
12. It felt like all the time, effort and even money I had invested in education, my students and my city had been made to evaporate in an instant by some unnamed bureaucrats.
13. Did they know or care about the hundreds of dollars I spent out of pocket for games, activities, and posters for my classroom; or about the snacks I brought my students on exam days to help alleviate the anxiety; or about the jacket I left on a window sill for a homeless student to take, since I was instructed by my AP that purchasing gifts for students is not allowed; or how I agonized over N., a junior who disappeared for two weeks only to return

with a ring on her finger and a sad air that lingered; or how many calls I made for L., a senior who was arrested and incarcerated, but came running to introduce me to his mother during graduation; or how I supported H., a Muslim student who was mocked for her hijab, by incorporating a project about respecting religious beliefs and inviting students to share from their own experiences; or how I refused to give up on Z. M., a student who arrived in my classroom unable to write a full sentence in English, but with hours of patience and tutelage was able to pass the ELA Regent Exam; or how every year during Chancellors Day, I volunteered to create and deliver professional development workshops for my colleagues on implementing technology in assessments and lesson plans?

14. Did they know or care about how, as an untenured teacher with less than four full years of service, I have three letters of commendation in my file from Mrs. Katz?

My Efforts to become Employed Post-Termination

15. Shortly after my official termination, I attempted to gain employment at a private yeshiva high school. I was called in for an interview, told that they want to hire me, and shortly thereafter informed that it wouldn't work out. Upon further exploration and inquiry, I learned that the decision was based on a problem code the DOE had placed in the files of all those terminated for not being vaccinated.
16. This code, as I understand it, is the same one given to any employee who has experienced a disciplinary hearing/issue, ranging from sexual abuse to physical abuse of a student, and other inappropriate behavior. Prospective employers who view the applicant's file see no more than a code, with no specific explanation as to its basis. Consequently, employment is virtually out of the question.

17. My other and repeated applications to become employed all met with the same unspecified denial.

My Life Turned Upside-Down

18. Because of my inability to obtain gainful, legal employment, I was unable to pay rent for my apartment. In June 2022, I was forced to give my landlord one month's notice.

19. I could also not afford proper healthcare, and developed a bad case of asthma with a chronic "hacking" cough that left me in bed for days on end. I was forced to lean on the kindness of my parents and friends to pay for my inhalers and lung specialist appointments.

20. I could not afford any form of housing. Rather than become homeless, I chose to live with family abroad. On July 13, 2022, I flew to Israel to live with my parents.

21. In Israel, I attempted to rebuild my life, seeking out a new community, forming new friendships, and trying to recover from the hardships of the past year.

22. Even while I was residing in Israel, I still followed the news in the hopes that I could possibly regain my employment with the DOE so that I could afford to return to my job, community, and the neighborhood which I loved and in which I was raised.

23. On September 10, 2023, I flew from Israel to NYC to celebrate the Jewish holidays of Rosh Hashanah, Yom Kippur, Sukkot, and Simchat Torah with my parents, who had also flown back to New York. My intention was to fly back to Israel immediately following the holiday of Simchat Torah.

24. Tragically, on the holiday itself, war erupted in Israel. Several of my relatives were murdered in the October 7 massacre. As a result, my parents and I chose not to return under the current circumstances.

25. I am currently living with my parents in Brooklyn, NY, where I have been living since October 7. I cannot afford housing on my own.

The Persistent Problem Codes

26. On February 21, 2023, after New York City had officially repealed the vaccine mandate, I emailed Mrs. Katz, my former principal at FDR, to inquire about getting my job back. I received no response from her (other than an automated “out of office” email).

27. Mrs. Katz did not respond to my emails or follow-up phone calls.

28. Recently, I began seeking employment once more as a teacher. I reached out to the DOE, inquiring about becoming a substitute teacher. I was informed by HRConnect, the DOE’s human resources web portal, that I would need a letter of nomination from a principal to proceed.

29. On January 30, 2024, I emailed Mrs. Katz:

My name is Sarah Buzaglo. I am a certified NYS ELA teacher who was hired by you in 2018 as an English teacher working under Mr. Poska. I have many fond memories of my time there, and still wear my red and whites with pride!

I'm reaching out to request a nomination letter for substitute teaching.....I am currently residing in Brooklyn and seeking employment once more with the DOE, but as a substitute teacher, as I think it would be most fitting for me. I was told by the DOE's Sub central to request a nomination letter from my principal in order to get the process started. I was also told the window [for nomination] is still open.

If you would be so kind as to provide that letter it could help me immensely in this new chapter.

File #: 0916700

30. Mrs. Katz did not respond to my email. I called her secretary, who took down my number,

promised to pass on my message, and said that Mrs. Katz would call me back. I never received a callback.

31. On February 8, 2024, at 7:17am, I followed up with another email to try and receive a response:

Hi Mrs. Katz,

I am following up on this email request for a letter. I spoke with your secretary several weeks ago and she said that you would call / respond, but I never received a call or email back.

Thank you.

32. Her response was swift and arrived in my inbox at 7:23am without any explanation, context, or sympathy.

My apologies.

We are not able to nominate you at this time.

Best of luck in your search.

33. Since I realized that Mrs. Katz was not likely to be responsive to my need for gainful employment, I had also reached out to Mrs. Jodie Cohen, the Principal of James Madison High School in Brooklyn NY, where I was a student teacher as part of my master's degree program.

34. On January 30, I emailed Mrs. Cohen. Within two hours, I was invited to come to the high school and meet with Assistant Principal Dr. Jose Inoa. The next day, he met with me and nominated me on the spot, telling me to let him know as soon as I received DOE clearance so that I could begin working at James Madison promptly.

35. Once nominated, I commenced the online application process, which includes 17 separate

steps.

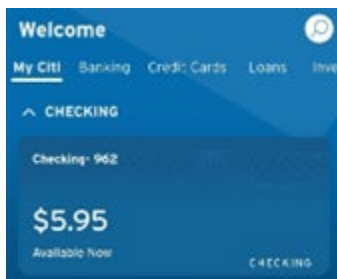
36. The process got hung up on step #5, “background investigation.”

37. On Friday, February 2, 2024, I called HRConnect, the DOE’s Human Resources processing office and left a voicemail message requesting an explanation for the hold-up.

38. On Monday, February 5, I received a voicemail message, which stated the following: “You will need to contact opi.info@schools.nyc.gov since it appears you have a problem code on your account that we cannot you assist with.” The audio file of this recording can be shared with the Court upon request.

My Untenable Status Quo

39. To date, I am struggling with financially supporting myself. As of this writing, I have \$5.95 remaining in my bank account. Here is a screen capture of my bank account today:



40. To date, I have still been locked out of my DOE email account - which contains my lesson plans, slides, and other materials I need to return to teaching. I feel helpless, because my career was derailed not once, but twice now.

41. I feel betrayed by the many DOE bureaucrats and city legislators who have allowed me to reach this point. I feel saddened at the injustice of it all.

42. If it were not for my deep faith in God, and my belief that everything He does is for the good, I would be bitter and fall into a pit of hopelessness. Instead, I choose to believe that

this is merely God teaching me resilience and the power of hope.

43. I choose to believe that justice will prevail, and that the court system will recognize injustice and do its best to uphold not only the law, but my constitutional right to exercise my religious beliefs in this great democracy, and to support myself without violating these beliefs.

Dated: February 8, 2024

/s/ Sarah Buzaglo

Sarah Buzaglo

EXHIBIT “2”

NICHOLAS A. LANGWORTHY
23RD DISTRICT, NEW YORK



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1630 LONGWORTH HOUSE OFFICE BUILDING
WASHINGTON, DC 20515-3223
(202) 225-3161

DISTRICT OFFICES
8201 MAIN STREET
SUITE 13
WILLIAMSVILLE, NY 14221
(716) 547-6844

THE FENTON BUILDING
2-6 EAST SECOND STREET
JAMESTOWN, NY 14701
(716) 488-8111

1 BLUEBIRD SQUARE
OLEAN, NY 14760
(585) 543-5033

89 MARKET STREET
CORNING, NY 14830
(607) 377-3130

RULES
OVERSIGHT
AGRICULTURE

Congress of the United States
House of Representatives
Washington, DC 20515-3223

June 23, 2023

Chancellor David Banks
New York City Department of Education
52 Chambers St, Suite 1
Manhattan, NY 10007
United States

Dear Chancellor Banks,

I am writing to request greater information about the New York City Department of Education's (NYCDOE) practice of assigning "Problem Codes" to the records of New York City educators who lawfully chose not to receive COVID-19 vaccinations. Despite recent claims by the Department, these Problem Codes have had serious external consequences for current and former employees.

As you know, The Problem Code in question serves disciplinary purposes, and whether the codes are permanent or temporary is irrelevant. Shockingly, the same Problem Code used to flag unvaccinated teachers is also utilized for individuals accused of molesting, raping, or harming a child. As a result, these codes have a profoundly negative impact on the flagged educators and can hinder their future employment prospects.

Earlier this year, City Hall had publicly denied the use of problem codes on the records of employees who chose not to receive the COVID-19 vaccination with this statement:

"No code is part of anyone's permanent personnel record or is ever sent to any other department, agency or outside organization. In fact, no outside entity can see any code placed on anyone's internal [human-resources] record for any reason."¹

However, this statement from City Hall has been found to be factually inaccurate. In an email dated February 9, 2022, NYC Department of Education employee Eric Amato stated, "PR =

¹ NYC teachers who refused COVID vaccine slapped with 'scarlet letter' in personnel files: lawyer." New York Post, 14 Feb. 2023, nypost.com/2023/02/14/nyc-teachers-who-refused-covid-vaccine-slapped-with-scarlet-letter-in-personnel-files-lawyer/

Problem code – Problem code was added to all employees who were placed on 2VM vaccine mandate leave. It was placed there the day you went on the leave.”²

Removing a Problem Code is an arduous process, even with legal assistance, and most educators are unaware of its presence until they face employment rejections elsewhere. Therefore, City Hall’s further assertion that the Department of Education does not disclose these codes to external parties is also incorrect. Moreover, the Department sent educators’ fingerprints to the Federal Bureau of Investigation (FBI) and the New York Criminal Justice Services.³ Many questions surround the City’s protocols and procedures for sharing or flagging fingerprints, especially after the inclusion of Problem Codes. However, City Hall denies any such occurrences:

“City Hall added that the standard background – check procedure is: HR units request information from the FBI or state agency based solely on fingerprinting information.”⁴

City Hall’s false and misleading statements regarding the existence, nature, utilization, and impact of Problem Codes on teachers’ livelihoods cannot be accepted at face value. The City has been less than forthcoming about the Problem Codes issued to educators. I therefore request answers to the following questions related to the use of Problem Codes:

1. What is the purpose of these Problem Codes and how are they utilized by the New York City Department of Education?
2. Can you explain the discrepancy between City Hall's claim that the Problem Codes have no external consequences and the reports stating otherwise?
3. Is it true that the same Problem Code used for unvaccinated teachers is also used for individuals accused of child molestation, rape, or harm to a child? If so, why are these different situations treated the same way?

² The New York City Department of Education Problem Code Continues to Prevent Unvaxxed Employees from Working." Advocatz, 12 Feb. 2023, advocatz.com/2023/02/12/the-new-york-city-department-of-education-problem-code-continues-to-prevent-unvaxxed-employees-from-working/

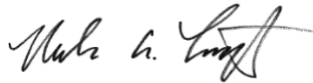
³ Fingerprints of unvaccinated NYC teachers reportedly sent to FBI with 'problem codes,' raising privacy concerns." Fox News, 13 February 2023, www.foxnews.com/media/fingerprints-unvaccinated-nyc-teachers-reportedly-sent-fbi-problem-codes-invasion-privacy.

⁴ Fingerprints of unvaccinated NYC teachers reportedly sent to FBI with 'problem codes,' raising privacy concerns." Fox News, 13 February 2023, www.foxnews.com/media/fingerprints-unvaccinated-nyc-teachers-reportedly-sent-fbi-problem-codes-invasion-privacy.

4. How and when are educators informed about the presence of a Problem Code in their record?
5. Did the Department send educators' fingerprints to the FBI and the New York Criminal Justice Services?
6. Can you address City Hall's denial of the occurrences related to the sharing or flagging of fingerprints and the inclusion of Problem Codes?
7. Are there any plans to review or revise the current practices and policies related to the assignment of Problem Codes based on personal medical decisions?
8. What steps will be taken to rectify any unjust consequences faced by educators as a result of Problem Codes being assigned to them?

I look forward to receiving responses to my questions and request a full review into how the Department chooses to use Problem Codes in employees' personnel records.

Sincerely,



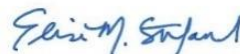
Nicholas A. Langworthy
Member of Congress



Andrew Garbarino
Member of Congress



Claudia Tenney
Member of Congress



Elise Stefanik
Member of Congress



Anthony D'Esposito
Member of Congress



Nick LaLota
Member of Congress



Michael V. Lawler
Member of Congress



Marcus Molinaro
Member of Congress



Brandon Williams
Member of Congress