

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK**

**Gamma Rho Chapter of the Alpha Phi
Delta Fraternity**
190 Tompkins Avenue
Brooklyn, NY 11206

Alpha Phi Delta Fraternity, Inc.
15 Whaley Avenue
Staten Island, NY 10312

Manjeet Singh
94-11 120th Street
Richmond Hill, NY 11419

Ruhed Chowdhury
190 Tompkins Avenue
Brooklyn, NY 11206

Dylan Hom
1648 10th Street
Brooklyn, NY 11215

Roman Brito
605 East 138th Street #6A
Bronx, NY 10454

Isaias Franco
3530 Bainbridge Avenue #6J
Bronx, NY 10467

David Jules
1064 East 103rd Street
Brooklyn, NY 11236

Nelson Reyes, Jr.
519 West 152nd Street #1C
New York, NY 10031

Bryan Mendez
1732 Manatuck Boulevard
Bayshore, NY 11706

Case No. _____

Judge _____

**COMPLAINT FOR PRELIMINARY
AND PERMANENT INJUNCTIVE
RELIEF**

JURY DEMAND ENDORSED HEREON

Alasco Prescott

190 Tompkins Avenue
Brooklyn, NY 11206

Christian Obando

74 West 92nd Street #20B
New York, NY 10025

Mohammed Jaffery

190 Tompkins Avenue
Brooklyn, NY 11206

Jovany Mujica

190 Tompkins Avenue
Apt. 3
Brooklyn, New York 11206

Plaintiffs.

vs.

City University of New York

205 East 42 St.
New York, NY 10017

Baruch College

One Bernard Baruch Way
(55 Lexington Ave. at 24th St.)
New York, NY 10010

James Milliken

Chancellor, City University of New York
205 East 42nd Street
New York, NY 10017

Mitchel Wallerstein

Office of the President
One Bernard Baruch Way
(55 Lexington Ave. at 24th St.)
New York, NY 10010

David Christy

Office of the Provost and Senior Vice
President for Academic Affairs
One Bernard Baruch Way
(55 Lexington Ave. at 24th St.)

New York, NY 10010

Art King

Division of Student Affairs
One Bernard Baruch Way
(55 Lexington Ave. at 24th St.)
New York, NY 10010

Matthew Edwards

One Bernard Baruch Way
(55 Lexington Ave. at 24th St.)
New York, NY 10010

Defendants.

I. PRELIMINARY STATEMENT

This action is brought by twelve current or former students at Baruch College who are members of the Gamma Rho Chapter of the Alpha Phi Delta Fraternity. For the purpose of this Complaint, these individuals, the Chapter, and the Fraternity are collectively referred to as “Plaintiffs.” Their suit is against the City University of New York, its Baruch College, and a number of the University and College Administrators in their official and individual capacities. These parties are collectively referred to as “Defendants.” Plaintiffs hereby state as follows:

II. JURISDICTION & VENUE

1. Plaintiff Alpha Phi Delta Fraternity (hereinafter the “Fraternity”) is a New York non-profit corporation that is an international Italian Heritage Fraternity.
2. Plaintiff Gamma Rho Chapter (hereinafter the “Chapter”) of Alpha Phi Delta Fraternity is an unincorporated association made up entirely and exclusively of male college students who attend Baruch College, but is neither recognized by nor seeks recognition from

Baruch College. The Chapter is a college social fraternity group, affiliated with the Fraternity.

3. Manjeet Singh is a male student at Baruch College and a member of the Chapter.
4. Ruhed Chowdhury is a male student at Baruch College and a member of the Chapter.
5. Dylan Hom is a male student at Baruch College and a member of the Chapter.
6. Roman Brito is a male student at Baruch College and a member of the Chapter.
7. Isaias Franco is a male student at Baruch College and a member of the Chapter.
8. David Jules is a male student at Baruch College and a member of the Chapter.
9. Nelson Reyes, Jr. is a male student at Baruch College and a member of the Chapter.
10. Bryan Mendez is a male student at Baruch College and a member of the Chapter.
11. Alasco Prescott is a male student at Baruch College and a member of the Chapter.
12. Christian Obando is a male student at Baruch College and a member of the Chapter.
13. Mohammed Jaffery is a male student at Baruch College and a member of the Chapter.
14. Jovany Mujica is a male former student at Baruch College and a member of the Chapter
15. Plaintiffs Singh, Chowdhury, Hom, Brito, Franco, Jules, Reyes, Mendez, Prescott, Obando, Jaffery, and Mujica are hereinafter referred to as the “Individual Plaintiffs.”
16. Defendant City University of New York (“CUNY”) is a public university and a body corporate established, organized and operated pursuant to New York Education Law, Title VII, Art. 125, §§ 6201 *et seq.*, financed largely by the State and City of New York, *id.* § 6221(D), with its principal place of business at 535 East 80th Street, in the City, County and State of New York, and operating many individual campuses throughout all five boroughs/counties within the City of New York.

17. Baruch College is a College unit of CUNY located at 55 Lexington Avenue, New York, NY 10010.
18. James Milliken is the Chancellor of the CUNY and is sued in both his official and individual capacities. Upon information and belief, Chancellor Milliken has ultimate control over and responsibility for, *inter alia*, CUNY's policies and procedures in non-academic areas, including those applicable to student organizations such as those at issue in this action, including the Baruch College Student Government and social fraternities.
19. Mitchel Wallerstein is the President of Baruch College and is sued in both his official and individual capacities. Upon information and belief, President Wallerstein has ultimate control over and responsibility for, *inter alia*, Baruch College's policies and procedures in non-academic areas, including those applicable to student organizations such as those at issue in this action, including the Baruch College Student Government and social fraternities.
20. David Christy is the Provost of Baruch College and is sued in both his official and individual capacities. Baruch College's Office of the Provost, over which Defendant Christy presides and from which he reports to Defendant Wallerstein, is responsible for the formulation of, oversight of, and has some level of control over the administration and enforcement of Baruch College's policies and procedures applicable to, *inter alia*, student organizations such as those at issue in this action, including the Baruch College social fraternities.
21. Art King is the Vice President for Student Affairs and Dean of Students of Baruch College and is sued in both his official and individual capacities. Baruch College's Office of the Vice President for Student Affairs and Dean of Students, over which Vice

President King presides and as to which he reports to Defendants Christy and Wallerstein, is responsible for the formulation of, oversight of, and has some level of control over the administration and enforcement of Baruch College's policies and procedures applicable to, *inter alia*, student organizations such as those at issue in this action, including the Baruch College social fraternities.

22. Matthew Edwards is the Chair of the Faculty-Student Disciplinary Committee at Baruch College and is sued in his official and individual capacities. Upon information and belief, Defendant Edward's responsibilities include administration and enforcement of Baruch College's policies and procedures applicable to students and student organizations, including the Baruch College social fraternities.
23. The Court has jurisdiction over this case pursuant to 28 U.S.C. § 1331, federal question jurisdiction, as this matter pertains to 42 U.S.C. 1983, et seq.
24. Venue is proper pursuant to 28 U.S.C. § 1391.

III. FACTUAL BACKGROUND

25. The Fraternity was established in 1914 and has chapters composed of students at 40 colleges and universities with nearly 30 additional alumni chapters. Some of the Fraternity's values include building men of good character, stimulating good scholarship and good fellowship, and providing service to the community and humanity as a whole.
26. The Gamma Rho Chapter was chartered on August 22, 1989 for students of Baruch College to become members of Alpha Phi Delta.
27. There are currently 12 members of the Chapter.
28. New members are only proposed by existing Chapter members.

29. Chapter members typically evaluate students and seek students who the Chapter members believe would embody the ideals and values of the Chapter. The potential new members then typically spend several weeks getting to know the Chapter member, which includes a formal interview with Chapter members. The Chapter members then evaluate other aspects of the prospective new members including GPA.
30. At a weekly chapter meeting composed of only Chapter members, the Chapter members vote for whom membership will be extended. The prospective member must receive 75% of the Chapter members approval for membership to even be extended.
31. Non-members are prohibited from attending Chapter meetings concerning these decisions, as well as other weekly membership meetings discussing business central to the Chapter.
32. The Chapter participates in a variety of philanthropic and services efforts which include but are not limited to participating in The American Cancer Society's Relay for Life Event hosted by Baruch College and being a top fundraising team for that cause, participating regularly in local organizations efforts to provide food to those in need, helping facilitate and volunteering to help with blood drives and working with relief effort groups following Hurricane Sandy in 2012.
33. On August 28, 2014 in a document entitled "Message from the Provost" Defendant Christy wrote, "I, on the recommendation of the Student Affairs team, have decided to impose a moratorium on Greek social organizations' pledging activities during the Fall 2014 semester."
34. At this time, the Chapter was recognized by and officially affiliated with Baruch College.

35. The Chapter was not subject to any disciplinary proceedings nor did it have any pending complaints with Baruch College or CUNY regarding its pledging process.
36. Nonetheless, the Defendants subjected the Chapter to this punitive moratorium.
37. Defendant Christy extended and expanded this moratorium in a letter dated January 14, 2015. In addition to banning pledging activities, the new moratorium also prohibited social fraternities and sororities from engaging in “intake processes” such as recruitment until July 1, 2015.
38. Again, at this time, the Chapter was not subject to any disciplinary actions nor did it have any pending complaints with Baruch College or CUNY regarding its intake processes.
39. Nonetheless, the Defendants subjected the Chapter to another punitive moratorium.
40. Ever since this “moratorium” was extended and expanded, it has remained in full force and effect at Baruch College through the present day.
41. The Baruch College website requires that “Greek Clubs” who wish to remain recognized by and affiliated with the College must fulfill a series of obligations. These obligations include: submitting a letter from a national organization verifying eligibility, registering with the Office of Student Life each year, participating in new membership education programs, and maintaining good status.
42. Prior to the beginning of the 2015-2016 school year, the Chapter made the conscious decision to no longer maintain or seek recognition by or affiliation with Baruch College.
43. Since this time, the Chapter has not attempted to fulfill or fulfilled any of the requirements for registered “Greek Clubs” found on the Baruch College website.

44. Since this time, the Chapter has not received or utilized any of the benefits that are enjoyed by student organizations or “Greek Clubs” that are recognized by or affiliated with Baruch College.
45. Additionally since this time, the Chapter was no longer subject to the Baruch College rules and procedures governing student organizations and “Greek Clubs,” including Defendant Christy’s never-ending “moratorium.”
46. As Defendant Edwards admitted in his August 25, 2017 Faculty-Student Disciplinary Committee Finding, “it is undisputed that the Chapter was not registered with Baruch College during the 2015-16 and 2016-17 academic years.”
47. Despite this undisputed evidence that the Chapter was no longer recognized by or affiliated with Baruch College, the College has systematically employed its disciplinary processes to harass and harm the Fraternity, the Chapter, and its members.
48. In April 2017 Baruch College issued written charges against at least ten individual students, including Plaintiffs Hom, Singh, and Chowdhury with “participat[ing] in membership intake in violation of an imposed moratorium on all pledging and intake processes for Baruch College social Greek Organizations” during the Fall 2016 Semester.” Without benefit of hearing or the process set out in CUNY own regulations and procedures, Baruch put immediate holds on all activities of these students, including a hold on the diplomas of Plaintiffs Hom, Chaowdhury and Singh.
49. Again, Defendant Edwards admitted, it is undisputed that the Chapter was not registered with Baruch College during the Fall 2016 Semester.
50. Nonetheless, and quite perplexingly, in an opinion issued by the Faculty-Student Disciplinary Committee on August 25, 2017 following a July 31, 2017 hearing in front of

that same body, Plaintiffs Hom, Singh, and Chowdhury were found in violation of this “moratorium” to which the Gamma Rho Chapter of Alpha Phi Delta was not subject. Baruch College did not accuse the Chapter or its members of hazing, underage drinking, or any other illegal or dangerous activities. The accusations were limited to the members’ decisions to exercise their First Amendment associational rights. The Faculty-Student Disciplinary Committee, chaired by Defendant Edwards, as penalty suspended Plaintiffs Dylan Hom, Manjeet Singh, and Ruhed Chowdury from Baruch College until the end of the fall 2017 semester, and ordered the suspension to be noted in their transcripts until June 1, 2018.

51. The immediate effect of this suspension on Plaintiffs Hom and Chowdhury, who had completed all of their coursework and had earned their degree from Baruch but did not receive their diplomas at the June 2017 Baruch commencement, meant that they would not receive their diplomas until the beginning of 2018. This has prevented each of them from pursuing active employment opportunities. Plaintiff Singh has not been able to register for the credits he needs to complete his course requirements and will not receive his diploma until June 2018.
52. Despite the recognition that the Chapter was not affiliated with or recognized by Baruch College at the time of the allegations, the Faculty-Student Disciplinary Committee chose to further discipline Plaintiffs Singh, Hom, and Chowdhury based on its decision to “defer to Baruch College’s conclusion that the Alpha Phi Delta, Gama Rho Chapter was a Baruch College Greek social organization subject to the Moratorium, during the 2016-2017 academic year, even though it is undisputed that the Chapter was not registered with Baruch College during the 2015-16 and 2016-17 academic years.”

53. Unsurprisingly, Baruch College then denied the reasonable appeal from these three students.
54. Baruch College continues to threaten and impose similar disciplinary action against additional members of the Chapter for their similar decision to exercise their First Amendment associational rights.
55. Without any hearing or process, Baruch College has placed and/or threatened to place a hold on the accounts of Plaintiffs Mujica, Franco, Jules, Mendez, Obando, Prescott, Jaffery, and Reyes Jr., merely because they have chosen to engage in activity protected by the First Amendment. These holds would render them unable to register for courses and jeopardizes their ability to complete their degree programs in a timely fashion.
56. Baruch's conduct is all the more intentional and arbitrary given the way it has treated Plaintiff Jovany Mujica, who was actually exonerated by Defendant Edwards' panel yet could not timely register for courses he needed in the fall 2017 semester; as a member of the Chapter Plaintiff Mujica has been the subject of Baruch's continuing threats and harassment.
57. As a result, other individual members of the Chapter fear that they too will be punished by the Defendants merely for exercising their Constitutional rights.

IV. PRELIMINARY AND PERMANENT INJUNCTIVE RELIEF PURSUANT TO 42

U.S.C. § 1983 FOR VIOLATIONS OF THE FIRST AND FOURTEENTH

AMENDMENTS TO THE UNITED STATES CONSTITUTION

58. Plaintiffs reallege and incorporate all the allegations contained in preceding paragraphs of this Complaint as though fully written herein.

59. Defendants are subject to the Fourteenth Amendment, including Equal Protection, of the United States Constitution and as a result they are subject to the First Amendment to the United States Constitution which prohibits Defendants from violating Plaintiffs' Constitutional and legal rights to freedom of (i) intimate association, (ii) expressive association, and (iii) speech.

60. 42 U.S.C. §1983 states in part, "Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress . . ."

61. Defendants acted under color of state law within the meaning of 42 U.S.C. § 1983.

62. While acting under color of state law, Defendants deprived, and continue to deprive, Plaintiffs of their Constitutional rights in part by punishing Plaintiffs for exercising their freedom of association and freedom of speech when they tried to recruit new members of their fraternity.

63. The very essence of the First Amendment to the United States Constitution is that each individual makes his own decision as to whether joining an organization would be beneficial to him, and the state and its agents, such as Defendants, are forbidden by the Constitution from interfering with, burdening, limiting, infringing, or usurping that right to choose.

64. Under the Constitution and the laws of the United States it is the associational and privacy right and protected liberty of each person to choose his social intimates based on his personal values and other preferences or any other basis he sees fit.
65. The Constitutional right to freedom of speech established by the First Amendment to the U.S. Constitution requires that an organization and its members be free both to communicate with prospective members about the organization and membership without regulation or restriction of the content of such communication, and to be free of any time, place or manner restriction and of any required communication to any entity concerning the organization that does not meet a sufficiently legitimate purpose.
66. Defendant acted under color of law, to deprive Plaintiffs of their rights and privileges secured by the First and Fourteenth Amendment to the United States Constitution and other Constitutional provisions when they punished and/or threatened and harassed Plaintiffs for their involvement in a constitutionally protected association not recognized by or affiliated with Baruch College.
67. As a result of Defendants' First Amendment violations, Plaintiffs suffer ongoing harm including the deprivation of their Constitutional rights and the threat of the existence and growth of the fraternity.
68. Because of Defendants' unlawful actions, Plaintiffs are entitled to injunctive relief against the Defendant under the Civil Rights Act of 1871 U.S.C. §1983.

V. DAMAGES

69. Plaintiffs reallege and incorporate all the allegations contained in the preceding paragraphs of this Complaint as though fully written herein.

70. The Plaintiffs have been damaged financially as a result of the conduct of the Defendants and are entitled to both compensatory and punitive damages in amounts to be determined at trial.

VI. ATTORNEY FEES & COSTS

71. Plaintiffs reallege and incorporate all the allegations contained in the preceding paragraphs of this Complaint as though fully written herein.

72. Plaintiffs herein seek attorneys' fees and costs pursuant 42 U.S.C. § 1988.

VII. PRAYER FOR RELIEF

WHEREFORE, the Plaintiffs hereby request that this Court:

A. Grant Plaintiffs' request herein for preliminary and permanent injunctive relief enjoining Defendant from denying Plaintiffs of their rights under the Constitution of the United States by prohibiting them from associating in their social fraternity not recognized or affiliated with Baruch College.

B. Award attorneys' fees, costs and expenses incurred by Plaintiffs in this action pursuant to statute.

C. For any further relief the Court deems just and appropriate under the circumstances.

/s/ Timothy M. Burke
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JURY DEMAND

Plaintiffs hereby demand a trial by jury on all issues so triable.

/s/ Edward S. Sawchuk
Edward S. Sawchuk (ES9586)