



An Overview of Intentional Discrimination Under Title VI of the Civil Rights Act of 1964

This document is intended to provide a brief overview of intentional discrimination under Title VI of the Civil Rights Act of 1964 (Title VI). It is not intended to provide a comprehensive summary of the law.

Title VI's Prohibition on Intentional Discrimination

Title VI prohibits discrimination on the basis of race, color, or national origin in any program or activity receiving federal financial assistance. 42 U.S.C. § 2000d. The purpose of Title VI is simple: to ensure that public funds are not spent in a way that discriminates, or encourages or subsidizes discrimination, on these bases.

Title VI bars intentional discrimination. See *Guardians Ass'n v. Civil Serv. Comm'n*, 463 U.S. 582, 607–08 (1983); *Alexander v. Choate*, 469 U.S. 287, 292–93 (1985). Generally, intentional discrimination occurs when a recipient of federal financial assistance acted, at least in part, because of the actual or perceived race, color, or national origin of the alleged victims of discriminatory treatment. *Doe ex rel. Doe v. Lower Merion Sch. Dist.*, 665 F.3d 524, 548 (3d Cir. 2011). Intentional discrimination under Title VI occurs when an entity takes an action “because of, not merely ‘in spite of,’ its adverse effects” based on race, color, or national origin. *Pers. Adm’r of Mass. v. Feeney*, 442 U.S. 256, 279 (1979). Notably, animus, ill will, or hostility based on race, color, or national origin is not necessary to prove intentional discrimination. See, e.g., *Bangerter v. Orem City Corp.*, 46 F.3d 1491, 1501 (10th Cir. 1995).

Investigating Potential Intentional Discrimination

Federal agencies investigate allegations of race, color, and national origin discrimination in programs or activities that receive federal financial assistance. Agencies may ask their recipients of federal financial assistance for data and information necessary to evaluate a recipient’s compliance with Title VI, including whether the recipient has engaged in intentional discrimination.

Under **Executive Order 12250**, the Civil Rights Division of the Department of Justice is responsible for ensuring consistent and effective enforcement and implementation of Title VI and related federal funding statutes across federal agencies. As a result, the Civil Rights Division often provides legal counsel, training, and review related to agency enforcement, regulatory, and sub-regulatory action. For more information about Executive Order 12250 please refer to www.justice.gov/crt/fcs.

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Courts have developed a number of analytical frameworks, also referred to as methods of proof, for assessing intentional discrimination claims. The elements of a Title VI intent claim derive from and are similar to the analysis of cases decided under the Fourteenth Amendment's Equal Protection Clause and Title VII of the Civil Rights Act of 1964, as amended. When evaluating intentional discrimination under Title VI, it can be helpful to look at how courts have analyzed intentional discrimination under civil rights laws beyond Title VI, because the methods of proving intent are often similar.

Ultimately, the "totality of the relevant facts" will determine whether the recipient intentionally discriminated in violation of Title VI. See *Washington v. Davis*, 426 U.S. 229, 242 (1976) (discussing analysis of intentional discrimination generally). More than one type of analysis may apply to the facts of a particular situation, and the analytical frameworks may be used individually or together. Regardless of the method or methods of proof ultimately used, the central question remains whether the recipient acted intentionally based on race, color, or national origin.

Evidence used to prove intentional discrimination may be direct or circumstantial.

Direct Evidence of Intentional Discrimination

Direct evidence proves a fact without inference or interpretation. Express classifications and comments or conduct by decision makers are two key types of direct evidence.

Direct Evidence of Intentional Discrimination	
<i>Express Classification</i>	<i>Comments or Conduct by Decision Maker</i>
➤ An explicit condition on the receipt of benefits or services, or an adverse action explicitly taken , based on race, color, or national origin	➤ A statement or conduct from a decision-maker that expresses a discriminatory motive based on race, color, or national origin is direct evidence of discriminatory intent

Circumstantial Evidence of Intentional Discrimination

Circumstantial, or indirect, evidence implies a fact by allowing for inference. Two common methods of using circumstantial evidence to prove intentional discrimination are the *Arlington Heights* factors and the *McDonnell-Douglas* method. Both methods are named after the cases in which they were first articulated: *Village of Arlington Heights v. Metropolitan Housing Development Corporation*, 429 U.S. 252 (1977) and *McDonnell Douglas Corporation v. Green*, 411 U.S. 792 (1973).

Practice Tip: Evaluating whether intentional discrimination occurred is a fact specific analysis that relies on the totality of the facts and circumstances at issue. The McDonnell Douglas Framework and Arlington Heights Factors are two methods for considering circumstantial evidence of discriminatory intent and may be used together.

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- Arlington Heights Factors.** This method of proof, originally developed for Equal Protection Clause cases, uses a number of different types of circumstantial evidence that, taken collectively, can demonstrate that the recipient acted, at least in part, because of race, color, or national origin. Importantly, the Arlington Heights factors are non-exclusive, and the key inquiry is whether the evidence, viewed together, establishes discriminatory intent. This framework does not rely exclusively on the use of a comparator that was treated more favorably to prove discrimination. It is particularly useful where the complaint is about the treatment of a group, not individuals, and the investigation reveals many different kinds of evidence. Be sure to consider this method where a complaint challenges an expressly neutral practice that nevertheless disadvantages a larger class defined by race, color, or national origin. For instance, a complaint alleging that a state agency denies or limits access to a federally funded program based on language barriers could be investigated using this method.
- McDonnell-Douglas Framework.** Plaintiffs use this framework, originally developed for employment discrimination cases, to show that a defendant treated similarly situated individuals differently because of race, color, or national origin. The framework is most commonly applied in cases alleging discrimination in individual instances. Consider using this method for investigations involving the selection of individuals, such as for program participation, benefits, or services, particularly where the recipient provides a nondiscriminatory explanation for its decision. This method is most likely to be helpful where the complaint is about one or a few individuals and involves easily identifiable similarly situated individuals not in the protected class. For instance, a complaint alleging that a state agency denied benefits to a family because of that family’s national origin might be investigated using this method.

Methods for Evaluating Intentional Discrimination	
<i>McDonnell Douglas Framework</i>	<i>Arlington Heights Factors</i>
<ul style="list-style-type: none"> ➤ Was a member of a protected group harmed? (E.g. were they rejected from a program?) ➤ Was a similarly-situated individual treated better than the member of the protected group? (E.g. was a member of a different group accepted to the program?) ➤ Does the recipient of federal financial assistance being investigated have a legitimate non-discriminatory reason for the action? ➤ Is the recipient’s stated non-discriminatory reason unreasonable, or pretextual? 	<ul style="list-style-type: none"> ➤ Were members of a protected group harmed by a decision? ➤ What is the historical background of the decision? ➤ Were there departures from normal procedures in making the decision? ➤ What is the legislative or administrative history of the decision? ➤ Has there been a pattern regarding decisions related to the group that was harmed? ➤ Are there statistics showing the decision harmed one group more than another? ➤ What other information about the context of the decision can you discover?

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Below are some helpful fact-specific examples of intentional discrimination analyses from recent litigation in which the Civil Rights Division has filed briefs:

- In *United States v. Hesperia*, 5:19-cv-02298 (C.D. Cal.), the Department of Housing and Urban Development referred and the United States brought Fair Housing Act and Title VI claims against the City of Hesperia and other defendants. The [Complaint](#) alleges that defendants intentionally discriminated on the basis of race and national origin by enacting a “crime-free” ordinance intended to drive Black and Latino renters from their homes and deter Black and Latino renters from moving to Hesperia. The “crime free” ordinance mandated criminal background checks and screenings for tenants and required eviction for any purported criminal activity.
- In *Padilla v. City of New York*, 13-CV-0076 (E.D.N.Y), plaintiffs alleged that the New York Police Department and its staff intentionally discriminated in violation of Title VI on the basis of national origin by refusing to communicate in Spanish with Spanish-speaking victims of domestic violence with limited English proficiency. The Civil Rights Division’s [Statement of Interest](#) explained how the plaintiffs’ evidence, including statements made by Police Department staff that allegedly were dismissive of language access needs and allegations that the Police Department was on notice of language access responsibilities, supported a claim of intentional discrimination.
- In *Faith Action for Community Equity v. Hawaii Department of Transportation*, 13-CV-00450 (D. Haw.), plaintiffs alleged that the Hawaii Department of Transportation intentionally discriminated in violation of Title VI on the basis of national origin by refusing to provide translated written driver’s license exams and prohibited the use of interpreters for the exam, preventing people with limited English proficiency from obtaining a license. The Civil Rights Division filed statements of interest ([2014 Statement of Interest](#) and [2015 Statement of Interest](#)) describing how the evidence, including allegations that the defendant knew of its obligations to provide language services but refused to continue to do so despite knowing the obvious adverse impact and significant harm its actions would cause, supported an intentional discrimination claim.
- In *T.R. v. School District of Philadelphia*, No. 15-04782 (E.D. Pa.), plaintiffs alleged that the School District intentionally discriminated in violation of Title VI on the basis of national origin by failing to translate and interpret critical documents for parents of students with disabilities with limited English proficiency. The Civil Rights Division’s [Statement of Interest](#) explained how the evidence, including allegations that the School District knew of the critical need for language services and that failing to provide comprehensive language services could result in serious consequences, supported a claim of intentional discrimination.
- In *Methelus v. School Board of Collier County*, 16-CV-00379 (M.D. Fla.), plaintiffs alleged that the School Board intentionally discriminated in violation of Title VI on the basis of national

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origin by adopting and implementing a policy that denied students with limited English proficiency enrollment in certain high schools. The Civil Rights Division's [Statement of Interest](#) described how the evidence, including allegations that the policy was adopted after an increase in immigration and that an employee allegedly stated that the policy was targeted to "new kids enrolling at our schools," supported a claim of intentional discrimination.

- In *Stanton Square v. City of New Orleans*, 2:23-cv-05733 (E.D. La.), plaintiff alleged that the city intentionally discriminated in violation of the Fair Housing Act and Title VI on the basis of race, color, or national origin by preventing the development of a multifamily apartment complex. The Civil Rights Division's [Statement of Interest](#) explained that the plaintiff sufficiently alleged evidence of intentional discrimination, including that the City's decision was motivated at least in part by discriminatory opposition from constituents and that the City departed from its normal procedures in making the decision.

Additionally, the Civil Rights Division's [Title VI Legal Manual](#) contains a wealth of information about Title VI, including further information about [intentional discrimination](#).

Voluntary Resolution and Enforcement Under Title VI

Title VI requires agencies to attempt to voluntarily resolve allegations of discrimination before initiating any administrative or judicial proceedings to compel compliance. 42 U.S.C. § 2000d-1. If, after attempting to reach a voluntary resolution, an agency determines one cannot be achieved, the agency may seek to compel compliance with Title VI, including through administrative proceedings to terminate federal financial assistance or referral of the case to the Department of Justice to determine if litigation is warranted. See 42 U.S.C. § 2000d-1; 28 C.F.R. § 42.108. Several procedural requirements must be satisfied before an agency may terminate federal funds, including providing the recipient an opportunity for a formal hearing and filing a report with Congress.

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