



U.S. Department of Justice

Civil Rights Division

Office of the Assistant Attorney General
Washington, D.C. 20530

September 9, 2026

Via E-mail to: Tania.Faransso@wilmerhale.com

Ms. Tania Faransso
Wilmer Cutler Pickering Hale and Dorr LLP
2100 Pennsylvania Avenue NW
Washington DC 20037

Re: University of California, Berkeley, School of Law – Title VI Findings

Dear Ms. Faransso:

On March 27, 2025, the U.S. Department of Justice (“Department”), pursuant to an agreement with the U.S. Department of Education (“ED”), initiated a compliance review to determine whether the admissions practices of the University of California, Berkeley are in compliance with Title VI of the Civil Rights Act of 1964, 42 U.S.C. § 2000d et seq. (“Title VI”), as interpreted by the Supreme Court’s decision in *Students for Fair Admissions, Inc. v. President & Fellows of Harvard College*, 600 U.S. 181 (2023) (“*SFFA*”). On April 18, 2025, the Department expanded this investigation to include University of California, Berkeley, School of Law (“Berkeley Law”). **The Department finds that Berkeley Law violated Title VI by discriminating against Asian and white applicants based on race when selecting its incoming classes of 2024 and 2025, well after the *SFFA* decision issued.**

Procedural Background

Title VI authorizes funding agencies to conduct periodic compliance reviews and investigations of the practices and policies of the recipients of federal funding.¹ Enforcement under Title VI requires funding agencies to advise recipients of their failure to comply and to determine whether compliance can be obtained by voluntary means. If the agency determines that the noncompliance with Title VI cannot be corrected by voluntary means, it may seek to compel compliance through enforcement.²

The federal government, including ED, provides direct federal financial assistance to Berkeley.³ The Department, working in cooperation with ED, conducted a compliance review to ensure that Berkeley is complying with Title VI.

The Department carefully reviewed and analyzed the evidence Berkeley Law produced, as well as other publicly available information, all of which forms the basis of the Department’s findings.

¹ 42 U.S.C. § 2000d-1.

² 34 C.F.R. § 100.8; *cf.* 28 C.F.R. § 42.108.

³ UC Berkeley has received a total of **\$369,122,992.35** from ED as of September 3, 2026.

Intent to Discriminate

“What colleges and universities will need to do after affirmative action is eliminated is find ways to achieve diversity that can’t be **documented** as violating the Constitution.”

— Berkeley Law Dean Erwin Chemerinsky⁴

The evidence shows that Berkeley Law deliberately discriminates against applicants based on race. Berkeley Law used race in its admissions practices in defiance of Title VI and *SFFA*.

A. Berkeley Law’s dean admits using race and racial proxies in admissions

The day after the *SFFA* ruling, Dean Erwin Chemerinsky penned an opinion piece in the *Los Angeles Times* defending affirmative action.⁵ He wrote that “the court left unclear whether any factors used in admissions decisions to achieve diversity are constitutional if they are done with the purpose and effect of increasing access for minority applicants.”⁶ Likewise, the year before the Supreme Court issued its decision in *SFFA*, Dean Chemerinsky told *The New Yorker* that the way to get around the impending affirmative action ban would be to replace the “explicit use of race” with “proxies for race.”⁷ In an opinion piece in *The Hill*, Dean Chemerinsky even laid out multiple plans for schools to evade *SFFA*.⁸ Admissions practices like these have been rejected by the Supreme Court as unlawful discrimination.

Dean Chemerinsky knew his practices were crossing the line: “How this is presented becomes so important. If it’s presented with strong race neutral justifications, I think it’s much more likely to be allowed. And I think it’s very important **not to talk about it in terms of it being an attempt to circumvent the decision.**”⁹ Despite his own warning to “not talk about it,” Dean Chemerinsky admits on the school’s website (entitled, “From the Dean: Diversity and Inclusion at Berkeley Law”) that Berkeley Law intends to “aggressively” pursue racial diversity in its student body:

⁴ Jay Caspian Kang, *The Sad Death of Affirmative Action*, *The New Yorker* (Nov. 4, 2022) <https://perma.cc/8WYQ-FGWA> (emphasis added).

⁵ Erwin Chemerinsky, The Supreme Court’s Ultimate “Judicial Activism”: *Striking Down Affirmative Action in College Admissions*, *Los Angeles Times* (June 29, 2023), <https://perma.cc/LX72-XGHB>.

⁶ *Id.*

⁷ Kang, *supra* note 4.

⁸ Erwin Chemerinsky, *California Enhanced Diversity Without Affirmative Action. Here’s How*, *The Hill* (July 21, 2023), <https://perma.cc/B348-AA4G>.

⁹ AALS Conference on Affirmative Action: Welcome & Panel 1 https://www.youtube.com/watch?v=1Shl_vJ0x14, at 23:46 (emphasis added).

Diversity and inclusion are integral to every aspect of Berkeley Law. Our tremendous diversity is one of our greatest strengths, and **we must continue to aggressively pursue it — in our student body, our staff, and our faculty — in terms of race . . .**¹⁰

The Department’s investigation reviewed video of Chemerinsky also admitting that Berkeley Law practices “**unstated affirmative action**” in faculty hiring. In the video, Chemerinsky frankly explains the practice and how Berkeley Law hides it, and **pledges to commit perjury to protect it**:

What I mean by unstated affirmative action is, what if the college or university doesn’t tell anybody, doesn’t make any public statements, but still wants to do it. I’ll give you an example from our law school—but **if ever I’m deposed I’m going to deny** I said this to you. When we do faculty hiring, we’re quite conscious that diversity is important to us. And we say diversity is important, it’s fine to say that. But, I’m very careful when we have a faculty appointments committee meeting. Any time somebody says, you know, we should really prefer this candidate over this candidate, because this person would add to diversity—don’t say that! You can think it, you can vote it, but our discussions are not privileged, so **don’t ever articulate that that’s what you’re doing!**¹¹

Berkeley Law’s Dean Chemerinsky has repeatedly expressed his intention to defy the Supreme Court’s ruling in *SFFA*. He also has expressed his willingness to hide his discrimination if caught.

Chemerinsky’s sentiments were echoed by admissions officers at Berkeley Law. For example, when Dean of Admissions Kristin Theis-Alvarez received a complaint from a law professor about Berkeley Law’s illegal admissions practices, she responded by acknowledging “the risk of becoming a target of litigation,” but countered “that this is a time to be as clear as possible about our values.”¹² As demonstrated below, Berkeley Law’s admissions officers followed its leaders’ preferences and discriminated based on race in their admissions practices to further these diversity goals.

B. Berkeley Law’s application materials demonstrate its use of race

Berkeley Law’s application form implements Dean Chemerensky’s plan to use essays as a backdoor to solicit applicants’ racial demographics. It asks applicants:

¹⁰ Dean Erwin Chemerinsky, “*From the Dean: Diversity and Inclusion at Berkeley Law*,” UC Berkeley Law (Dec. 14, 2020), <https://perma.cc/MRF6-ZFHA> (archived Aug. 28, 2026) (emphasis added).

¹¹ Alexander Hall, *Dean Caught Saying Berkeley Law Uses “Unstated Affirmative Action:” ‘I’m Going to Deny I said This’* Fox News (June 30, 2023, 9:37 PM), <https://perma.cc/4JVU-9PH8> (emphasis added).

¹² November 4, 2023 email from Kristin Theis-Alvarez, UCBL_CRD_00001171.

How will you (your perspective, experience, Voice) contribute diversity in our classrooms and community? Feel free to address any factors or attributes you consider important and relevant. In the past, **applicants have included information about characteristics such as: race/ethnicity . . .**¹³

Berkeley's application also outlines a plan to separate students by race when asking them to identify their race. The application form states:

Some students feel that, in a classroom setting, they **feel supported when grouped with other students with whom they share a primary identity.** . . . If this resonates with you, what would you consider to be your PRIMARY identity? Check only ONE.

- ☐ Native American/Canadian Aboriginal
- ☐ Native Hawaiian/Other Pacific Islander
- ☐ Asian/Pacific Islander
- ☐ Black/African American
- ☐ Caucasian/White
- ☐ Chicano/Latino
- ☐ Middle Eastern
- ☐ North African
- ☐ South Asian
- ☐ Other
- ☐ Muti-ethnic
- ☐ Decline to state¹⁴

C. The University of California System's policies on *SFFA*

The University of California claims that *SFFA* “has not changed the legal landscape for UC’s admissions and outreach practices,”¹⁵ because the university was already subject to California Proposition 209. Adopted in 1996, Proposition 209 is a state constitutional provision that prohibits the state from “discriminat[ing] against, or grant[ing] preferential treatment to, any individual or group on the basis of race . . . in the operation of . . . public education.”¹⁶ But the University of California’s longstanding policies show that it has always used the race-based admissions practices that *SFFA* prohibits. For example, in an amicus brief that the University of

¹³ “Fall 2025 – 1L Application,” University of California, Berkeley, School of Law, UCBL_CRD_00000664 (emphasis added).

¹⁴ “Fall 2025 – 1L Application,” University of California, Berkeley, School of Law, UCBL_CRD_00000664 (Note two “Pacific Islander” choices, which appears in the original.) (emphasis added).

¹⁵ “Guidance on Proposition 209 for Admissions and Outreach Staff,” University of California, UCB_CRD_00000039 (Aug. 10, 2023).

¹⁶ Cal. Const. art. I, § 31.

California submitted in *SFFA*, the university admits that it responded to Proposition 209 by “implement[ing] numerous and wide-ranging race-neutral measures designed to increase . . . racial diversity.”¹⁷ In *SFFA*, the Supreme Court clarified that these types of race proxies were prohibited race discrimination under the Equal Protection Clause as well as Title VI.¹⁸

Statistical Evidence of Intentional Discrimination

Berkeley Law has produced applicant-level admissions data for school years 2019–2025. Our analysis of this applicant data reveals that when accounting for LSAT, undergraduate GPA, and race, admissions models show highly statistically significant racial preferences in 2024 and 2025. **In 2025, black applicants had 5.8 times higher odds of admission than comparable white applicants with similar qualifications.** In 2024, a black applicant had 6.5 times higher odds of admission than a comparable white applicant. Berkeley discriminated against Asian applicants in favor of black applicants to a similar degree.

The data also shows robust and consistent gaps in median LSAT scores amongst admits from different racial groups. The LSAT median scores, disaggregated by race, are shown for the admitted applicants of the 2021-2025 incoming classes in the table below.

Race	2021	2022	2023	2024	2025
Asian	172	172	173	172	172
White	171	172	173	172	172
Hispanic	168	169.5	170	169	170
Black	165.5	166	167	164	167

As can be seen in this table, the median black admit consistently has an LSAT score about 5 points lower than the median white or Asian admits. These trends were stable across each admission year, both before and after the U.S. Supreme Court decided *SFFA*. In 2024 and 2025 (combined), **half of the admitted black applicants had LSAT scores that were below 95% of the admitted white applicants.** Worse, more than **a third of admitted black applicants (37%) had LSAT scores below 99% of admitted white applicants.**

The data produced by Berkeley Law demonstrates a strong intentional bias against Asian and white applicants, with a corresponding bias in favor of black applicants. The magnitude and durability of the race preferences confirmed by Berkeley Law’s applicant-level data could not reasonably have occurred by chance and provide substantial evidence of intentional discrimination.

¹⁷ Brief for the President and Chancellors of the University of California as Amici Curiae Supporting Respondents at 4, *Students for Fair Admissions, Inc. v. President & Fellows of Harvard College*, No. 20-1199 (2023).

¹⁸ *SFFA* at 230 (“[U]niversities may not simply establish through application essays or others means the regime we hold unlawful today.”).

Tania Faransso
September 9, 2026

Findings

The Department finds that Berkeley Law deliberately discriminated against Asian and white applicants based on race in its law school admissions. This discrimination is apparent from the significant disparity in objective academic metrics between racially preferred applicants, and applicants from non-preferred races. Berkeley Law carried out this program using racial proxies, essay prompts, and other tactics that contradict *SFFA* and other established law.

For these reasons, the Department concludes that Berkeley Law discriminated on the basis of race for at least the law school's incoming classes of 2024 and 2025 in violation of Title VI as interpreted by *SFFA*. This discrimination is ongoing.

Resolution

Having determined that Berkeley Law deliberately discriminated on the basis of race in its decisions to admit and deny applicants, and refused to comply with requests for compliance information, the Department seeks to enter into a voluntary resolution agreement with the University to ensure that admissions and oversight practices are brought into legal compliance.

If you have any questions about this letter, please contact Deputy Assistant Attorney General Jeffrey Morrison at jeffrey.morrison@usdoj.gov or (202) 353-1845. Thank you in advance for your attention and cooperation.

Regards,



Harmeet K. Dhillon
Assistant Attorney General
Civil Rights Division
United States Department of Justice