U.S. Department of Justice
Civil Rights Division

DJ 169-14-30

Assistant Attorney General
950 Pennsylvania Ave, NW - RFK
Washington, DC 20530

August 13, 2020

Via email & U.S. Mail

Peter S. Spivack
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Re: Notice of Violation of Title VI of the Civil Rights Act of 1964

Dear Mr. Spivack:

I write to notify you that the United States Department of Justice has determined that Yale University violated, and is continuing to violate, Title VI of the Civil Rights Act of 1964, 42 U.S.C. § 2000d *et seq*., by discriminating on the basis of race and national origin (hereinafter "race") in its undergraduate admissions with respect to domestic non-transfer applicants to Yale College. Yale's discrimination is long-standing and ongoing.

On April 5, 2018, the Department notified Yale that it was commencing a Title VI investigation into alleged discrimination in undergraduate admissions. Since that date, the Department has reviewed extensive documentation related to Yale's undergraduate admissions process, interviewed admissions officials, and analyzed voluminous admissions data.

Yale grants substantial, and often determinative, preferences based on race to certain racially-favored applicants and relatively and significantly disfavors other applicants because of their race. Yale's race discrimination imposes undue and unlawful penalties on racially-disfavored applicants, including in particular Asian American and White applicants.

For example, the likelihood of admission for Asian American and White applicants who have similar academic credentials is significantly lower than for African American and Hispanic applicants to Yale College. For the great majority of applicants, Asian American and White applicants have only one-tenth to one-fourth of the likelihood of admission as African American applicants with comparable academic credentials.

Pursuant to the Department's Title VI regulations, this letter provides notice of the violation found during our investigation and specifies the corrective action Yale must take to come

into voluntary compliance with Title VI and its implementing regulations. *See* 28 C.F.R. §§ 42.107(d) & 42.108(d).

Title VI provides that "[n]o person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance." 42 U.S.C. § 2000d.

Yale receives federal funding from the Department of Justice and, therefore, is subject to Title VI's anti-discrimination mandate. In exchange for federal funding from the Department, Yale also signed contractual assurances that it would comply with Title VI and the Department's implementing regulations.

To comply with Title VI, Yale cannot engage in discrimination barred by the Equal Protection Clause of the United States Constitution. *See Gratz v. Bollinger*, 539 U.S. 244, 276 n.23 (2003). Because Yale admits that it uses race in admissions, Yale bears the burden of showing that it satisfies strict scrutiny. This means that Yale bears the burden of demonstrating that its use of race is narrowly tailored to serve a compelling interest. *E.g., Fisher v. University of Tex. at Austin*, 570 U.S. 297, 309-11 (2013) (*Fisher I*); *Parents Involved in Cmty. Schs. v. Seattle Sch. Dist. No. 1*, 551 U.S. 701, 720 (2007).

Yale asserts that it has a compelling interest in obtaining the educational benefits of diversity. Yale's diversity "goals cannot be elusory or amorphous—they must be sufficiently measurable to permit judicial scrutiny of the policies adopted to reach them." *Fisher v. University of Tex. at Austin*, 136 S. Ct. 2198, 2211 (2016) (*Fisher II*). Furthermore, strict scrutiny requires Yale to "prove that the means chosen by" the school to achieve its stated interest in diversity "are narrowly tailored to that goal." *Fisher I*, 570 U.S. at 311.

Proving that a race-conscious program is narrowly tailored is a "heavy burden." *Fisher II*, 136 S. Ct. at 2211; *Parents Involved*, 551 U.S. at 747. Narrow tailoring requires, among other things, that a university use race only as a "plus" factor "in a flexible, nonmechanical way." *Grutter v. Bollinger*, 539 U.S. 306, 334 (2003). Race cannot be "decisive in practice." *Gratz*, 539 U.S. at 272 & n.19; *accord Grutter*, 539 U.S. at 337. In other words, narrow tailoring requires that race cannot be "the defining feature" of the application or "the predominant factor" that decides an applicant's admission. *Grutter*, 539 U.S. at 317, 320, 337. Additionally, "racial balancing" is "patently unconstitutional" under the Equal Protection Clause, *id.* at 330, and thus also violates Title VI. In addition, an admissions program cannot "unduly burden individuals who are not members of the favored racial and ethnic groups." *Id.* at 341 (citation omitted). Finally, a university's "race-conscious admissions policies must be limited in time." *Id.* at 342.

Applying these principles, and based on our review of information we obtained during our investigation, we have determined that Yale violated, and is continuing to violate, Title VI.

First, it appears Yale's diversity goals are not sufficiently measurable. Our investigation indicates that Yale's diversity goals appear to be vague, elusory, and amorphous. Yale's use of

race appears to be standardless, and Yale does virtually nothing to cabin, limit, or define its use of race during the Yale College admissions process.

Second, Yale's race discrimination in undergraduate admissions is also not narrowly tailored. Our investigation revealed that Yale's discrimination affects hundreds of admissions decisions each year.

Yale uses race at multiple points in its admissions process. Yale uses race when it initially rates applicants, when it again rates those previously rated applicants, and again when it considers applicants at subsequent stages of the admissions process. Yale discriminates based on race among comparable applicants to whom Yale's own admissions staff gave identical ratings earlier in the admissions process. Yale's use of race at multiple steps of its admissions process results in a multiplied effect of race on an applicant's likelihood of admission. Yale's race discrimination contrasts starkly with the program upheld in *Fisher II*, in which the University of Texas considered race as one "subfactor" of its multi-factor assessment of applicants, and "[t]he admissions officers who ma[d]e the final decision as to whether a particular applicant will be admitted ma[d]e that decision without knowing the applicant's race." 136 S. Ct. at 2206-07.

Yale's admissions data and other information also show that the University is using race as more than just plus factors but rather as predominant criteria that in practice are determinative in many admissions decisions. Data also show that this determinative effect of race is multiplied for competitive applicants. Yale's approach is thus a far cry from the admissions process in *Fisher II*, where "race [was] but a 'factor of a factor of a factor' in the holistic-review calculus." *Id.* at 2207 (citation omitted).

Yale's oversized use of race favors some applicants because of their race and correspondingly disfavors other applicants because of their race, with most Asian American and White applicants unduly bearing the brunt of the preferences Yale grants to its racially-preferred applicants. Yale grants racial and national origin preferences in favor of African American, Hispanic, and certain other applicants and disfavors most Asian American and White applicants. Yale's use of race cannot satisfy the narrow tailoring requirement because Yale "unduly burden[s] individuals who are not members of the favored racial and ethnic groups." *Grutter*, 539 U.S. at 341 (citation omitted).

For example, data produced by Yale show that Asian American applicants have a much lower chance of admission than do members of Yale's preferred racial groups, even when those Asian Americans have much higher academic qualifications and comparable ratings by Yale's admissions officers. Every year from 2000 to 2017, Yale offered admission to Asian American applicants to Yale College at rates below their proportion of the applicant pool. During this same 18-year period, Yale offered admission to White applicants at rates below their proportion of the applicant pool in a majority of years. And, every year during the same 18-year period, Yale admitted applicants to Yale College from Yale's preferred racial groups at rates higher than their representation in the applicant pool.

Additionally, Yale's data and other information show that Yale is racially balancing its admitted class, with the major racial groups remaining remarkably stable for approximately the

last decade. *Grutter*, 539 U.S. at 329-30 (finding that a university's "assur[ing] within its student body some specified percentage of a particular group merely because of its race or ethnic origin" "amount[s] to outright racial balancing" (citations omitted)).

Finally, it does not appear that Yale can satisfy its heavy burden of showing that it was unable to obtain its asserted educational benefits of diversity before it began discriminating on the basis of race. *See Fisher II*, 136 S. Ct. at 2211. Yale's race discrimination dates back more than four decades, to at least the 1970s, and Yale's race discrimination contains no time limits. Instead, it appears that Yale intends to continue discriminating on the basis of race, apparently in perpetuity. Indeed, Yale admits that it intends to continue its race-based admissions process for the "foreseeable future."

Yale points to its use of certain race-neutral admissions practices and rejection of other alternatives as infeasible. Yale's consideration of race-neutral alternatives, however, appears conclusory, includes no detailed studies by Yale about Yale and its admissions process, and often relies on anecdotal accounts of what may be occurring at other universities rather than how alternatives would particularly affect Yale's diversity.

Yale bears "the ultimate burden of demonstrating, before turning to racial classifications, that available, workable race-neutral alternatives do not suffice." *Fisher I*, 570 U.S. at 312-13. Yale has not met its burden. The totality of the information produced by Yale demonstrates that Yale's multi-decade use of race continues unabated without any serious effort by Yale to consider an admissions process that is free of race discrimination.

We would like to secure Yale's compliance with Title VI by voluntary means. 28 C.F.R. §§ 42.107 & 42.108; *see also* 42 U.S.C. § 2000d-1. To that end, Yale must agree not to use race or national origin in its upcoming 2020-2021 undergraduate admissions cycle, and, if Yale proposes to consider race or national origin in future admissions cycles, it must first submit to the Department of Justice a plan demonstrating that its proposal is narrowly tailored as required by law. Any such proposal should include an end date to Yale's use of race.

Please be advised that if Yale does not agree to this remedial measure by August 27, 2020, we may determine that "compliance cannot be secured by voluntary means." 28 C.F.R. § 42.108; *see also* 42 U.S.C. § 2000d-1. If we make that determination, the Department will be prepared to file a lawsuit to enforce Yale's Title VI obligations. *See* 42 U.S.C. § 2000d-1; 28 C.F.R. § 42.108(d).

Sincerely,

Eric S. Dreiband

08/13/2020
ERIC S. DREIBAND
Assistant Attorney General
Civil Rights Division