



April 5, 2023

Julianne Bowman, Director
Gregory M. Gochanour, Regional Attorney
Chicago District Office
U.S. Equal Employment Opportunity Commission
JCK Federal Building
230 S Dearborn Street, Suite 1866
Chicago, IL 60604

Investigation Request: McDonald's Corporation

Dear Ms. Bowman and Mr. Gochanour:

America First Legal Foundation (“AFL”) is a national, nonprofit organization working to protect the rule of law, due process, and equal protection for all Americans. We write, pursuant to 29 C.F.R. § 1601.6(a), seeking issuance of a Commissioner’s charge for an inquiry into individual or systemic discrimination by McDonald’s Corporation (“McDonald’s”).¹ McDonald’s is a publicly traded corporation with its corporate headquarters located at 110 North Carpenter Street, Chicago, IL 60607.

Federal law forbids discrimination by an employer against an employee or potential employee “because of such individual’s race, color, religion, sex, or national origin.”² However, McDonald’s publicly admits to intentionally and systematically violating the law. Beginning in 2021, McDonald’s incorporated “quantitative representation metrics for leadership” into the annual incentive compensation awards for its CEO and Executive Vice Presidents.³ As part of its “Allyship through Accountability” program, the corporation measured its executives on:

1. Increasing representation of women globally at the Senior Director level and above.
2. Increasing representation of underrepresented minorities in the U.S. at the Senior Director level and above.
3. Meeting or exceeding a specified McDonald’s Inclusion Index score across all global staff employees.⁴

¹ Copies of this letter are also addressed to each Member of the Commission and AFL makes the same request of them pursuant to 29 C.F.R. § 1601.6(a).

² 42 U.S.C. § 2000e-2(a).

³ McDonald’s Corporation, 2021 Form 10-K at 5 (Feb. 24, 2022), <https://tinyurl.com/2879vd7x>.

⁴ McDonald’s, *Diversity, Equity & Inclusion*, <https://tinyurl.com/mr46kxr7> (last visited Apr. 4, 2023).

In its 2021-2022 Global DEI Report, the corporation credited its “Global Diversity, Equity and Inclusion Strategy” as the primary cause for driving an increase in women at the Senior Director and above level from 37% in 2020 to 41% in 2021, and an increase of “Underrepresented Groups” from 29% to 30%.⁵ For its 2025 goals, McDonald’s aims for these leadership roles to consist of 45% women and 35% from “historically underrepresented groups.”⁶ By 2030, McDonald’s promises “gender parity in leadership roles.”⁷ To further incentivize managers to hire and promote employees according to these quotas, in 2022, the corporation has, among other things, expanded its quantitative metrics to hold all Vice Presidents, Senior Vice Presidents, and Managing Directors “accountable for engaging in inclusive behaviors that support talent development and building a strong diverse succession pipeline” and implemented race, sex, and national origin based preferences and quotas for hiring, promotion, and training within its legal department.⁸

A Commissioner’s charge is particularly appropriate here because there is ample reason to believe that the company has knowingly and intentionally violated federal law and will continue to do so. As early as March 2022, McDonald’s was aware that its unlawful employment practices created legal risk.⁹ Regardless, the corporation has chosen to promote and use employment practices that are both patently illegal and deeply harmful.¹⁰ Discrimination based on immutable characteristics such as race, color, national origin, or sex “generates a feeling of inferiority as to their status in the community that may affect their hearts and minds in a way unlikely to ever be undone.”¹¹ More broadly, McDonald’s employment practices foment contention and

⁵ 2021-2022 McDonald’s Global DEI Report 6, <https://tinyurl.com/ysk8mnev> (“For purposes of McDonald’s Human Capital and Metrics and Equal Pay reporting, Underrepresented Groups is defined as Black, Indigenous, Asian or Pacific Islander, people of Hispanic or Latino/a/x descent or people having a combination of these identities or attributes.”); McDonald’s, *An Update on McDonald’s Diversity, Equity, and Inclusion Strategy – March 2022*, <https://tinyurl.com/2p9c5ypv> (last visited Apr. 4, 2023).

⁶ McDonald’s, *An Update on McDonald’s Diversity, Equity, and Inclusion Strategy – March 2022*, <https://tinyurl.com/2p9c5ypv> (last visited Apr. 4, 2023).

⁷ *Id.*

⁸ McDonald’s, *Diversity, Equity & Inclusion*, <https://tinyurl.com/mr46kxr7> (last visited Apr. 4, 2023).

⁹ Letter from American Civil Rights Project to McDonald’s Corporation (Mar. 25, 2022), available at <https://tinyurl.com/mrxhhspe> (last visited Apr. 4, 2022); *see also* Daniel Wiessner, *McDonald’s, Others Could Face Shareholder Suits Over Diversity Policies*, REUTERS (Mar. 29, 2022), <https://tinyurl.com/3hxaah6y>.

¹⁰ We also note that McDonald’s contracting practices facially violate 42 U.S.C. § 1981. Specifically, the corporation claims to have “committed \$250M” to “provide alternatives to traditional financing” to “increase demographic representation [sic]” of its franchisees, and it “reached its goal of increasing U.S. Systemwide spend with diverse-owned suppliers [sic], recording a 25.4% or \$4 Billion spend in 2021.” Furthermore, the corporation is colluding with its suppliers to engage in unlawful discrimination based on race, color, sex, and/or national origin. *See* 2021-2022 McDonald’s Global DEI Report 16, 23.

¹¹ *Brown v. Bd. of Education*, 347 U.S. 484, 494 (1954).

resentment—they are “odious and destructive.”¹² It truly “is a sordid business, this divvying us up” by race or sex.¹³

Thank you in advance for your consideration. Please feel free to contact me if you have any questions.

Sincerely,

/s/ Michael Ding

Michael Ding

America First Legal Foundation

Cc: The Honorable Charlotte A. Burrows, Commission Chair
The Honorable Jocelyn Samuels, Commission Vice Chair
The Honorable Keith E. Sonderling, Commissioner
The Honorable Andrea R. Lucas, Commissioner

¹² *Texas v. Johnson*, 491 U.S. 397, 418 (1989).

¹³ *League of United Latin Am. Citizens v. Perry*, 548 U.S. 399, 511 (2006) (Roberts, C.J., concurring in part).