



August 21, 2023

VIA ELECTRONIC MAIL

U.S. Department of Education
400 Maryland Avenue, SW
Washington, DC 20202
EDFOIAManager@ed.gov

Freedom of Information Act Request: National Summit on Equal Opportunity in Higher Education

Dear FOIA Officer:

America First Legal Foundation is a national, nonprofit organization working to promote the rule of law in the United States, prevent executive overreach, and ensure due process and equal protection for all Americans, all to promote public knowledge and understanding of the law and individual rights guaranteed under the Constitution and laws of the United States. To that end, we file Freedom of Information Act (FOIA) requests on issues of pressing public concern, then disseminate the information we obtain, making documents broadly available to the public, scholars, and the media. Using our editorial skills to turn raw materials into distinct work, we distribute that work to a national audience through traditional and social media platforms. AFL's Twitter page has over 176,000 followers, and the Twitter page of our Founder and President has over 497,000 followers.

I. Introduction

On June 29, 2023, the Supreme Court of the United States issued a decision in *Students for Fair Admissions v. President and Fellows of Harvard College*.¹ The Court held that Harvard had used unconstitutional, discriminatory practices in its admissions process by favoring African American and Hispanic applicants over members of other races. In the ruling, the Court overturned previous Supreme Court rulings that had allowed universities to employ affirmative action programs in their admission processes.

Following the decision, President Joe Biden claimed that the Supreme Court was “not a normal court” and that it was unmoored in its efforts to “unravel basic rights and

¹ *Students for Fair Admissions, Inc. v. President & Fellows of Harvard Coll.*, 143 S. Ct. 2141, 2147 (2023).

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basic decisions.”² Vice President Kamala Harris stated that the Court did not “fully understand the importance of equal opportunity for the people of our country” and that the decision is “a denial of opportunity.”³ Secretary of Education Miguel Cardona told CBS that the “decision eliminates a valuable tool that universities have utilized to provide access to students from diverse backgrounds.”⁴

Despite the Biden Administration’s attacks on the Supreme Court, the American public overwhelmingly approves of the Supreme Court’s decision. In a national poll taken during the days following the decision, 52% of Americans supported the decision, and only 32% disapproved.⁵

Undaunted by the weight of public opinion supporting the Supreme Court’s decision to restore equal opportunity in college admissions, on July 26, 2023, the U.S. Department of Education hosted the National Summit on Equal Opportunity in Higher Education. Its purpose, as publicly stated, was to “bring together senior Biden-Harris Administration officials and national educational institutions and leaders to discuss innovative strategies and resources for colleges and students ... in the wake of the recent Supreme Court ruling on affirmative action.”⁶

Following the summit, the Departments of Education and Justice released, on August 14, 2023, a “Dear Colleague Letter”⁷ and a “Questions and Answers resource”⁸ to help universities and colleges understand the Supreme Court’s decision and how they could “continue to pursue campuses that are racially diverse.”⁹

Considering the significance of the Supreme Court decision and the precedent set, the Biden Administration’s attacks on the Court and its decision, and the Department of Education’s actions to limit the application of that decision, fulfilling this Freedom of Information Act request is imperative. It is to ensure openness and clarity within

² Zoe Richards, *Supreme Court Ends Affirmative Action, Drawing Criticism from Biden, Harris*, NBC NEWS (June 29, 2023), <https://nbcnews.to/3P1YDRl>.

³ *Id.*

⁴ Analisa Novak, *Education Secretary Miguel Cardona: Affirmative Action Ruling “Eliminates a Valuable Tool” for Universities*, CBS NEWS (June 30, 2023), <https://cbsn.ws/44eVBNC>.

⁵ Hannah Demissie, *Most Americans Approve of Supreme Court Decision Restricting Use of Race in College Admissions*, ABC NEWS, (July 2, 2023), <https://abcn.ws/3KLeKd7>.

⁶ U. S. DEP’T OF EDUC., *U.S. Department of Education to Host National Summit on Equal Opportunity in Higher Education on July 26*, <https://bit.ly/3QIh5iQ> (last visited on Aug. 17, 2023).

⁷ Kristen Clarke, Assistant Att’y Gen., Dep’t of Just., and Catherine E. Lhamon, Assistant Sec’y for Civ. Rts., Dep’t of Educ., *Dear Colleague Letter* (Aug. 14, 2023), <https://bit.ly/3DZ5PqL>.

⁸ U. S. DEP’T OF EDUC., *Questions and Answers Regarding the Supreme Court’s Decision in Students for Fair Housing, Inc. v. Harvard College and University of North Carolina* (Aug. 14, 2023), <https://bit.ly/3sheOcc>.

⁹ U. S. DEP’T OF EDUC., *Advance Diversity and Opportunity in Higher Education: Justice and Education Departments Release Resources to Advance Diversity and Opportunity in Higher Education* (Aug. 14, 2023), <https://bit.ly/3YGO5u7>.

the Department of Education and to ensure it is held accountable to the public for any movement it takes regarding affirmative action in higher education.

II. Requested Records

The timeframe for each of the following items is May 1, 2023, to the date each item is processed.

- A. All records regarding or relating to the July 26, 2023, “National Summit on Equal Opportunity in Higher Education.”
- B. All records regarding or relating to the August 14, 2023 “Dear Colleague Letter” and “Questions and Answers resource” announced by the Department in a press release entitled “Advance Diversity and Opportunity in Higher Education: Justice and Education Departments Release Resources to Advance Diversity and Opportunity in Higher Education.”
- C. All communications discussing the United States Supreme Court’s decision in “Students for Fair Admissions v. President and Fellows of Harvard College.”
- D. All calendar records containing the names “Kristen Clarke” or “Neera Tanden” or “Steve Benjamin.”
- E. All emails including the terms “affirmative action” or “diversity in higher education” or “equity” or “inclusive campus communities.”

III. Custodians

- A. All political appointees in the Office of the Secretary, including, but not limited to, the following:
 - a. Miguel Cardona
 - b. James Lane
 - c. Roberto Rodriguez
 - d. Sheila Nix
 - e. Lawanda Toney
 - f. Dietra Trent
 - g. Alexis Holmes
 - h. Melody Gonzales
- B. Under Secretary James Kvaal
- C. Catherine Lhamon and all political appointees and career employees in the Office of Civil Rights, including, but not limited to, the following:

- a. Sam Ames
- b. Monique Dixon
- c. Alejandro Reyes
- d. Seth Galanter
- e. Alice Abrokwa
- f. Jasmine Bolton
- g. Jady Hsin
- h. Adaku Onyeka-Crawford
- i. Heather Gunnarson
- j. Trina Shields
- k. Lisa Chang
- l. Randolph Wills
- m. Mia Karvonides
- n. Emily McCarthy
- o. Sherell Evans
- p. Joshua Schopf

IV. Fee Waiver

Per 5 U.S.C. § 552(a)(4)(A)(iii), AFL requests a waiver of all search and duplication fees associated with this request.

First, AFL is a qualified non-commercial public education and news media requester. AFL is a new organization, but it has already demonstrated its commitment to the public disclosure of documents and the creation of editorial content through regular substantive analyses posted on its website. For example, its officials routinely appear on national television and use social media platforms to disseminate the information it has obtained about federal government activities. In this case, AFL will make your records and your responses publicly available for the benefit of citizens, scholars, and others. The public's understanding of your policies and practices will be enhanced through AFL's analysis and publication of the requested records. As a nonprofit organization, AFL does not have a commercial purpose, and the release of the information requested is not in AFL's financial interest. This has previously been recognized by the Department of Education, as well as the Departments of Defense, Energy, Interior, State, and Homeland Security, and the Office of the Director of National Intelligence.

Second, a waiver is proper as disclosure of the requested information is "in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government."¹⁰

¹⁰ 5 U.S.C. § 552(a)(4)(A)(iii).

V. Processing and Production

Processing should occur in strict compliance with the process guidance of the Attorney General's Memorandum on the Freedom of Information Act Guidelines. If you have any questions about our request or believe further discussions regarding search and processing would facilitate a more efficient production of records of interest to AFL, then please contact me at FOIA@aflegal.org. If AFL's request for a fee waiver is not granted in full, please contact us immediately upon making that determination. To accelerate your release of responsive records, AFL welcomes production on an agreed rolling basis. Please provide responsive records in an electronic format by email. Alternatively, please provide responsive records in native format or in PDF format on a USB drive to America First Legal Foundation, 611 Pennsylvania Ave SE #231 Washington, DC 20003.

Thank you in advance for your cooperation.

Sincerely,

/s/ Ian D. Prior

Ian D. Prior

America First Legal Foundation