



November 1, 2023

Mr. Travis Nicholson
Director, Dallas District Office
U.S. Equal Employment Opportunity Commission
207 S. Houston Street
Dallas, TX 75202

Re: Request for Investigation of Southwest Airlines Co.

Dear Director Nicholson,

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 according to 29 C.F.R. § 1601.6(a), which provides that, “Any person or organization may request the issuance of a Commissioner charge for an inquiry into individual or systemic discrimination.” AFL hereby requests the Equal Employment Opportunity Commission (“EEOC”) open an investigation into Southwest Airlines Co. (“Southwest”) for engaging in unlawful employment practices in violation of Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e-2.1.¹

Southwest is a publicly traded corporation under your jurisdiction, having its headquarters at 2702 Love Field Drive, Dallas, Texas. Title VII of the Civil Rights Act of 1964 prohibits Southwest from discriminating against an employee or an applicant for employment because of race, color, religion, sex, or national origin; to limit, segregate, or classify employees or applicants in any way which would deprive or tend to deprive any individual of employment opportunities or otherwise adversely affect his status as an employee, because of race, color, religion, sex, or national origin; or to discriminate against any individual because of his race, color, religion, sex, or national origin in admission to, or employment in, any program established to provide apprenticeship or other training. However, Southwest openly acknowledges—even touts—its racial, sexual, and gender discrimination in its recruitment and hiring programs.²

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

² We note that 42 U.S.C. § 1981 prohibits racial discrimination in the making, performance, modification, and termination of contracts, and in the enjoyment of all benefits, privileges, terms, and conditions of the contractual relationship; the statute applies to all phases and incidents of the contractual relationship. *Comcast Corp. v. Nat’l Ass’n of Afr. Am.-Owned Media*, 140 S. Ct. 1009, 1020 (2020) (Ginsburg, J., concurring). Nevertheless, Southwest admits favoring some suppliers over others

I. Evidence of Unlawful Employment Practices

Since at least 2020, Southwest has engaged in discriminatory hiring and promotion processes under the guise of creating “more diverse, equitable, and inclusive opportunities and candidate pipelines.”³ Southwest readily admits that, in 2020, it set a goal of “[d]oubling the percentage of racial diversity and increasing gender diversity in our Senior Management Committee (Executives) by 2025 as compared to 2020” and “[i]ncreasing diversity in Senior Leadership as compared to 2020.”⁴ Southwest’s stated goals in 2020 were to have 20% “Racial/Ethnic Diversity” in its Senior Management Committee by 2025 and 16% “Racial/Ethnic Diversity” in Senior Leadership by the same 2025.⁵ Similarly, its stated goals in 2020 were to have 30% female membership in its Senior Management Committee by 2025 and 35% female membership in Senior Leadership by that same year.⁶

Southwest is following through on its promise to engage in discriminatory race-based and gender-based hiring practices through its use of explicit quotas, all in the name of “Diversity, Equity, and Inclusion.” Specifically, and as described in Southwest’s 2022 One Report:

- Out of Southwest’s 18,000 new hires in 2022 “63% were racially diverse, increasing [its] overall racial diversity from 40% in 2021 to 44%.”⁷
- Additionally, out of those 18,000 new hires, 51% were women, thus “increasing [its] gender diversity from 43% in 2021 to 44%.”⁸
- From 2020 to 2022, “[a]mong Senior Leadership (Directors and Senior Directors), racial diversity increased from 15% to 17%” and “gender diversity has increased from 33% to 37%.”⁹
- From 2020 to 2022, Southwest “increased the racial diversity of [its] Senior Management Committee (SMC) Members by two percentage points.”¹⁰

based solely on their immutable characteristics and discriminating based on race, color, national origin, religion, and sex in procurement. SOUTHWEST AIRLINES CO., SOUTHWEST AIRLINES 2022 DIVERSITY, EQUITY, & INCLUSION REPORT at 16 (Apr. 22, 2022), <https://tinyurl.com/2xvxkezw> (last visited Oct. 19, 2023).

³ SOUTHWEST AIRLINES 2022 DIVERSITY, EQUITY, & INCLUSION REPORT at 20.

⁴ *Id.*

⁵ *Id.*

⁶ *Id.*

⁷ SOUTHWEST AIRLINES CO., 2022 ONE REPORT at 12 (Apr. 22, 2022), <https://tinyurl.com/3z6k6nma> (last visited October 19, 2023).

⁸ *Id.*

⁹ *Id.*

¹⁰ *Id.*

II. The Commission Should Investigate Southwest

Southwest’s “DEI” hiring and promotion practices facially violate 42 U.S.C. § 2000e-2(a)(2), which prohibits hiring practices that limit, segregate, or classify applicants for employment because of race, color, sex, or national origin in violation of the statute. Decades of case law have held that — no matter how well-intentioned — quotas and employment practices aimed to achieve such “balancing” are strictly prohibited. *Students for Fair Admissions*, 143 S. Ct. 2141 (2023); *Bostock v. Clayton County, Georgia*, 140 S. Ct. 1731 (2020); see also *United Steelworkers of America v. Weber*, 443 U.S. 193, 208 (1979); *Johnson v. Transp. Agency*, 480 U.S. 616, 632 (1987).

Southwest’s unlawful employment practices are also deeply harmful. 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, the discrimination highlighted in this case necessarily foments contention and resentment, it is “odious and destructive.”¹² It truly “is a sordid business, this divvying us up” by race, color, national origin, or sex.¹³

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

Sincerely,

/s/ Ian D. Prior
Senior Advisor
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
The Honorable Kalpana Kotagal, Commissioner

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

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).

APPENDIX

Progress Toward Our 2025 Goals

In 2020 we set Company goals to strengthen and improve our efforts to create more diverse, equitable, and inclusive opportunities. One of these goals included increasing the diverse representation among Executives and Senior Leaders.

Since 2020, we have increased the racial/ethnic diversity of our Senior Management Committee (SMC) and continue to focus on gender diversity.

We have increased both racial/ethnic and gender diversity in Senior Leadership—and we continue to measure our progress and evolve our hiring and development practices to support these goals.

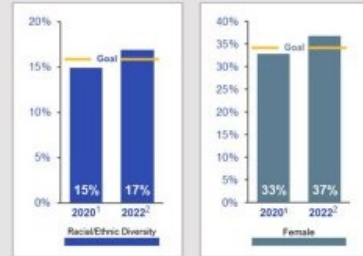
Executive Diversity

Goal: Doubling the percentage of racial diversity and increasing gender diversity in our Senior Management Committee (Executives) by 2025 as compared to 2020.



Senior Leadership Diversity

Goal: Increasing diversity in Senior Leadership³ as compared to 2020.



20 Based on Employees' voluntary self-identification as of December 31, 2022.
¹As of 7/31/2020
²As of 12/31/2022
³Directors and Senior Directors (Senior Director was changed to Managing Director in early 2023)

Supplier Diversity

Southwest is proud of our Corporate Commitment to Supplier Diversity and diversifying our supplier base. This strengthens our relationships with our Customers, Communities, and Suppliers to help us achieve our goals to be the most loved, most efficient, and most profitable airline in the world. The Southwest Supplier Diversity Program is comprised of two programs—Small Business Program and Diverse Business Program.

Small Business Program

Qualifications: Must meet the North American Industry Classification Systems (NAICS) standards for small businesses and be at least 51% owned, controlled, and operated by U.S. citizens who are socially and economically disadvantaged as defined by the SBA.

- Small Business Enterprise (SBE)
- Small Disadvantaged Business (SDB)
- Women Owned Small Business (WOSB)
- Historically Underutilized Business Zone (HUB Zone)
- Veteran Owned Small Business (VOSB)
- Service-Disabled Veteran Owned Small Business (SDVOSB)

Diverse Owned Business Program

Qualifications: A diverse-owned business that must be at least 51% owned, controlled, and operated by a member of a socially disadvantaged group as defined by the SBA.

- Minority Business Enterprise (MBE)
- Women Business Enterprise (WBE)
- Gay, Bisexual, and Transgender Owned Business (LGBT)
- Disabled Owned Business Enterprise (DOBE)
- Historically Underutilized Business (HUB)
- Veteran Business Enterprise (VBE)
- Service-Disabled Veteran Owned Business (SDVOSB)

We are proud of the Supplier connections created:

- Strategic technology supplier (MBE) that connects original equipment manufacturers and professional services resources with customers for technology support and modernization.
- Multi-year contract award to a HUB Zone certified safety training company.
- Small and diverse business (MBE, SBE, SDV) that provides support to ensure accuracy with various asset shipments throughout our stations.

Southwest continues to partner with federal, state, local, and non-profit certifying agencies and organizations in support of the growth and development of small and diverse-owned businesses. We are committed to fostering an environment that moves us forward and makes a difference in the communities that we serve.



Creating a Sense of Belonging Through DEI

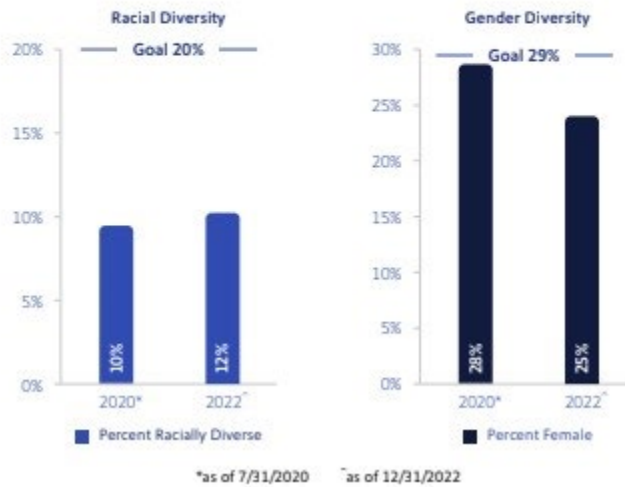
We reflect our commitment to DEI in the practices and Teams that turn that commitment into innovation and positive change, including increasing diversity among Leadership and the Board of Directors; evolving our hiring and development practices; and creating robust community partnerships.

The following table outlines the DEI goals we set in 2020 and the actions we've taken toward achieving them. Our DEI goals are aimed at strengthening our Culture and continuing to represent the communities we serve.

Goal	Actions Taken
<p>Hiring & Development Practices: Evolving hiring and development practices to support diversity goals, including posting all new open Leadership positions (Vice Presidents and below) and requiring diverse Candidate slates for each role.</p>	<ul style="list-style-type: none"> Created required diversity hiring training for all Hiring Managers. Created a Diversity Center of Excellence to help identify partners across the country to aid in diversifying our talent pipeline. In 2022, of our more than 18,000 New Hires, 63% were racially diverse, increasing our overall racial diversity from 40% in 2021 to 44%. Additionally, 51% were women, increasing our gender diversity from 43% in 2021 to 44%.
<p>Senior Leadership Diversity: Measuring progress in increasing diversity in Senior Leadership as compared to July 2020.</p>	<ul style="list-style-type: none"> Published our first DEI Report in April 2022 highlighting our efforts in People, Culture, community, and supply chain and shared a diversity breakdown at each level of the organization. Among Senior Leadership (Directors and Senior Directors), racial diversity increased from 15% to 17% and gender diversity has increased from 33% to 37%.
<p>Senior Management Committee (Executive) Diversity: Doubling the percentage of racial diversity and increasing gender diversity in our Senior Management Committee by 2025 as compared to July 2020.</p>	<ul style="list-style-type: none"> Our requirement for posting all new, open Vice President positions is part of our overall Talent and Succession planning activities, which includes a focus on building a diverse bench for our Senior Management Committee. Since 2020, we increased the racial diversity of our Senior Management Committee (SMC) Members by two percentage points.
<p>Community Partners: Engaging a breadth of community partners to leverage the Company's relationships in sourcing diverse talent.</p>	<ul style="list-style-type: none"> With more than 150 community partners, we're working to grow these relationships across the country. We look to our partners to identify diverse Candidate pipelines. In 2022, participated in 78 DEI-focused hiring and outreach events, resulting in nearly 15,000 new Candidates in our resource management system and 263 New Hires.

Executive Leadership⁴ Diversity

Since 2020, we've seen an increase in the racial diversity of our Senior Management Committee (SMC) from 10% to 12%



Inclusion Wearables: Pronoun Pins



We understand that self-expression is important to our Employees as is the opportunity to bring their best and whole selves to work. In 2022, we introduced inclusion-focused wearables which were Company-approved and optional for all Employees to wear in adherence with our uniform appearance standards. This included pronoun pins which allow Employees to express their gender identity and for others to easily know how someone identifies.

"The pronoun pin launch was extremely important to me for many reasons. As a Non-Binary identifying Leader, it allowed me to be my true authentic self without having to re-introduce myself to others while subtly offering a place for other Employees to have a conversation. Where it may not have initially been brought up, it has been able to spark more inclusive conversations that are led by compassionate curiosity. It made me proud that the Company I LUV backed me for who I am, allowing me to wear these pins either on my lanyard or as a uniform piece as a statement to our Customers and Passengers reinforcing Southwest's commitment to celebrating Pride!"

Heather R., BWI Ramp Manager

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INTRO

CULTURE &
VALUES

BRAND &
REPUTATION

COMMUNICATIONS &
REPORTING

TALENT