

June 6, 2024

VIA EMAIL

Roberta Reardon, Commissioner of Labor NYS Department of Labor Building 12 W.A. Harriman Campus Albany, NY 1222

David Powell, Director Division of Human Rights Manhattan Regional Office Adam Clayton Powell State Office Building 163 West 125th Street, 4th Floor New York, NY 10027

Investigation Request: Manhattan District Attorney's Office

Dear Commissioner Reardon and Director Powell:

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 N.Y. COMP. CODES R. & REGS. tit. 9, § 465.3 (2021), to request that you file complaints with the Human Rights Division ("the Division") and investigate the Manhattan District Attorney's Office ("the Office") for violating the Human Rights Law, N.Y. EXEC. LAW § 290 et seq.

I. Background

Alvin Bragg has used his Office not to fight crime and ensure equal justice under the law for Manhattan residents but instead as a lawfare weapon against former President Donald J. Trump, "contort[ing] the law in an unprecedented manner" to snare [his] prey." Not only has Mr. Bragg apparently violated his oath and duty to refrain from abusing prosecutorial power, but there is also strong evidence that his Office violates New York State laws prohibiting employment discrimination based on race, sex, national origin, and other protected characteristics. See N.Y. EXEC. LAW §§ 296(a)–(b).

 $^{^{\}rm 1}$ Elie Honig, Prosecutors Got Trump — But They Contorted the Law, Intelligencer (May 31, 2024), https://tinyurl.com/3rdn979w.

II. The Manhattan District Attorney's Office violates the New York Human Rights Law

The Manhattan District Attorney's Office is headquartered at One Hogan Place, New York, NY 10013.² The Office website contains clear evidence of unlawful discrimination. It includes a Diversity and Inclusion page claiming that it is "dedicated to building a diverse workforce that reflects these communities." It lists its "Diversity Equity Inclusion and Justice priorities," including "[e]nsuring our staff reflects the diversity of the communities we serve." The websites for legal⁵ and professional staff⁶ contain similar statements. In fact, the very first words on the webpages for careers as legal staff and for legal training within the Office are, "[w]e are committed to the recruitment, hiring, retention, and promotion of a diverse staff." This commitment apparently guides the Office's recruitment process to fill "approximately fifty openings each year for legal staff positions."

The application for a Law Clerk position requires applicants to disclose their race, ethnicity, and gender, and there is an additional optional selection for applicants to select their "LGBT" – apparently referring to applicants' sexual orientation (with no option to identify oneself as heterosexual). The application also states that the Office "is an inclusive equal opportunity employer committed to recruiting and retaining a diverse workforce and providing a work environment that is free from discrimination and harassment based upon any legally protected status or protected characteristic..." 10

² The New York Human Rights Law grants Division jurisdiction over claims against "a city, county, town, village or other political subdivision of the state of New York shall be considered an employer of any employee or official, including any elected official, of such locality's executive, legislature or judiciary, including persons serving in any local judicial capacity, and persons serving on the staff of any local elected official." N.Y. EXEC. LAW § 292(5)(b).

³ MANHATTAN DIST. ATTY'S OFF., *Diversity, Equity, and Inclusion*, https://tinyurl.com/d27ejn4f (emphasis added) (last visited Jun. 6, 2024).

⁴ *Id*. (emphasis added)

⁵ MANHATTAN DIST. ATT'Y'S OFF., Careers, Legal Staff Employment, https://tinyurl.com/48f8ez73 (last visited Jun. 6, 2024).

⁶ MANHATTAN DIST. ATT'Y'S OFF., Careers, Professional Staff Employment, https://tinyurl.com/ye2697jt (last visited Jun. 6, 2024).

⁷ MANHATTAN DIST. ATT'Y'S OFF., supra note 5; MANHATTAN DIST. ATT'Y'S OFF., Careers, Legal Training, https://tinyurl.com/3rkwa9zr (last visited Jun. 6, 2024).

⁸ MANHATTAN DIST. ATT'Y'S OFF., supra note 5.

 $^{^9}$ New York County District Attorney's Office- Current Clerk Application for Legal Staff Positions, https://tinyurl.com/4cr2w37n. $^{10}\,Id.$

III. The Division and the Department of Labor should investigate the Office

It is particularly appropriate for your offices to issue complaints here because ample evidence suggests that the Office has knowingly and intentionally violated state law and will continue to do so in the future.

The New York Human Rights Law prohibits employers from discriminating based on "age, race, creed, color, national origin, citizenship or immigration status, sexual orientation, gender identity or expression, military status, sex, disability, predisposing genetic characteristics, familial status, marital status, or status as a victim of domestic violence," including "in receiving, classifying, disposing or otherwise acting upon application." N.Y. EXEC. LAW §§ 296(a)–(b). Furthermore, it is unlawful for an employer to publish "any statement, advertisement or publication, or to use any form of application for employment or to make any inquiry" related to the employment that "expresses directly or indirectly, any limitation, specification or discrimination" based on the aforementioned characteristics. N.Y. EXEC. LAW § 296(d). The Office's numerous commitments to actively supporting diversity in hiring and recruitment indicate that the Office is accordingly violating the Human Rights Law by preferring applicants with characteristics that will help the Office achieve its demographic goals.

The Office repeatedly admits that considerations of race, color, national origin, and sex play a motivating factor in its employment practices. These considerations, purportedly embedded in the Office's culture and day-to-day operations, are patently illegal. The Office should not intentionally recruit and hire a workforce to align with community demographics; such discrimination is always wrong.

The Office's self-described, ongoing employment practices are patently unlawful, deeply harmful, and immoral. It claims simultaneously to recruit based on, *inter alia*, race, sex, and national origin with "diversity" top of mind but also not to discriminate based on those characteristics. However, both cannot be true. 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." Decades of case law hold that — no matter how well-intentioned — policies that seek to impose racial balancing are prohibited. More broadly, the discrimination

¹¹ Bob Jones Univ. v. United States, 461 U.S. 574, 593 (1983) ("racial discrimination in education violates a most fundamental national public policy, as well as rights of individuals").

¹² Brown v. Bd. of Education, 347 U.S. 484, 494 (1954).

¹³ See, e.g., United Steelworkers of Am. v. Weber, 443 U.S. 193, 208 (1979); Johnson v. Transp. Agency, 480 U.S. 616, 621-641 (1987); see also Bostock, 590 U.S. at 644.

highlighted in this case necessarily foments contention and resentment; it is "odious and destructive." ¹⁴ It truly "is a sordid business, this divvying us up" by race or sex. ¹⁵

We request that you file complaints and investigate the allegations contained herein to prevent further unlawful discrimination. Thank you in advance for your consideration. Please feel free to contact us if you have any questions.

Sincerely,

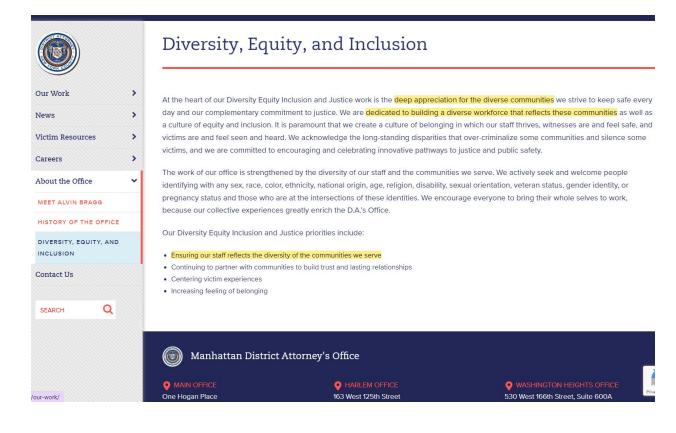
<u>/s/ Will Scolinos</u> America First Legal Foundation

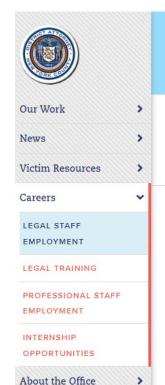
Cc: The Honorable Letitia James, New York State Attorney General

 $^{^{14}\} Texas\ v.\ Johnson,\ 491\ U.S.\ 397,\ 418\ (1989).$

 $^{^{15}}$ League of United Latin Am. Citizens v. Perry, 548 U.S. 399, 511 (2006) (Roberts, C.J., concurring in part).

Appendix





Contact Us

CAREERS

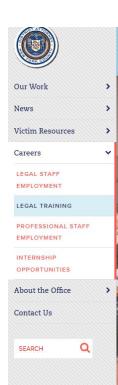
Legal Staff Employment

We are committed to the recruitment, hiring, retention, and promotion of a diverse staff.

Current Opportunities for Admitted Attorneys >>

Each year several hundred law school graduates and practicing attorneys apply for positions as Assistant District Attorneys. There are approximately fifty openings each year for legal staff positions. Most of the staff is hired directly out of law school, while some of the staff join the office as laterals or after clerking. Given the diverse nature of our community, the ability to work with people of different backgrounds is critical. In addition, the office seeks to have a legal staff that reflects the diversity of the community that we serve.

New Assistant District Attorneys commit themselves to serving the office for three years. Most stay well beyond their commitment. Traditionally, the new class joins the office several weeks after taking the bar examination. After completing a six-week orientation and training program, ADAs begin work in their bureaus.



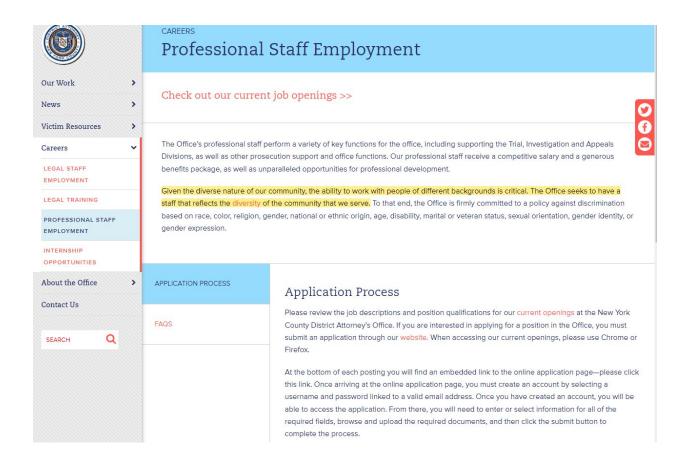




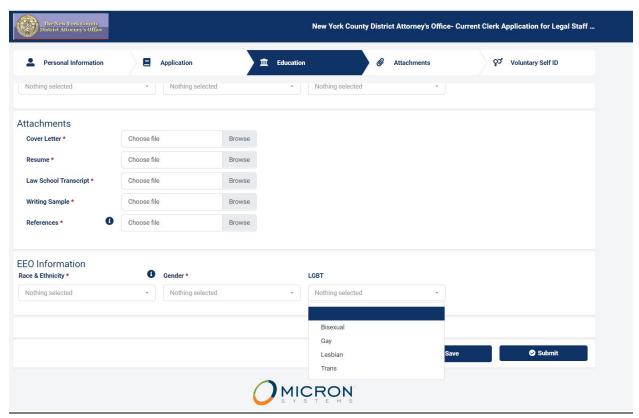
We are committed to the recruitment, hiring, retention, and promotion of a diverse staff.

The New York County District Attorney's Office recognizes that legal training is essential to a prosecutor's development. We have therefore established an extensive and in-depth training program that begins when Assistant District Attorneys first enter the office, and extends throughout their professional lives.

Training begins with orientation, where arriving ADAs are instructed on the fundamentals of prosecution laws and procedures, criminal court practice, and ethical obligations. As they progress in their careers, ADAs receive training in trial advocacy, grand jury procedures, supreme



The City of New York is an inclusive equal opportunity employer committed to recruiting and retaining a diverse workforce and providing a work environment that is free from discrimination and harassment based upon any legally protected status or protected characteristic, including but not limited to an individual's sex, race, color, ethnicity, national origin, age, religion, disability, sexual orientation, veteran status, gender identity, or pregnancy.



The New York County District Attorney's Office is an inclusive equal opportunity employer committed to recruiting and retaining a diverse workforce and providing a work environment that is free from discrimination and harassment based upon any legally protected status or protected characteristic, including but not limited to an individual's sex, race, color, ethnicity, national origin, age, religion, disability, sexual orientation, veteran status, gender identity, or pregnancy.

^{*} Required Fields