



June 6, 2024

VIA EMAIL

Mindy Weinstein, Director
Debra Lawrence, Regional Attorney
131 M Street, NE
Fourth Floor, Suite 4NWO2F
Washington, DC 20507-0100

Investigation Request: Manhattan District Attorney's Office

Dear Ms. Weinstein and Ms. Lawrence:

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), providing that “Any person or organization may request the issuance of a Commissioner charge for an inquiry into individual or systemic discrimination,” to request that the Equal Employment Opportunity Commission (“the Commission”) investigate Manhattan District Attorney’s Office (“the Office”) for violating Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e-2.¹

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.”² 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 federal law prohibiting employment discrimination based on race, sex, national origin, and other protected characteristics. 42 U.S.C. § 2000e-2.

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

² 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 Civil Rights Act of 1964

The Manhattan District Attorney’s Office is headquartered at One Hogan Place, New York, NY 10013. The Office has more than fifteen employees, placing its employees and applicants within the jurisdiction of the Commission. The Office has unambiguously represented on its website that it engages in unlawful discrimination.

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.**”³ It lists its “Diversity Equity Inclusion and Justice **priorities,**” including “[e]nsuring our staff reflects the **diversity of the communities we serve.**”⁴ 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.**”⁷ This commitment apparently guides the Office’s recruitment process to fill “approximately fifty openings each year for legal staff positions.”⁸

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).⁹ 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

³ MANHATTAN DIST. ATT’Y’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 Commission should investigate the Office

An investigation of the Office by the EEOC is particularly appropriate here because ample evidence suggests that the Office has knowingly and intentionally violated federal law and will continue to do so in the future.

Title VII targets and declares unlawful employment practices that treat a person worse “because of such individual’s race, color, religion, sex, or national origin.” That “worse” treatment must pertain to—must be “with respect to”—employment “terms [or] conditions.” 42 U.S.C. § 2000e–2(a)(1). The “terms or conditions phrase is not used in the narrow contractual sense; it covers more than the economic or tangible.”¹¹

Commissioner Lucas has also stated that “an employer still cannot use racial or sex-based quotas . . . [and] also cannot take race-motivated actions to maintain a demographically ‘balanced’ workforce.”¹² It is also unlawful for an employer “to limit, segregate, or *classify*” an employee in ways that “adversely affect his status as an employee, because of such individual’s race, color, religion, sex, or national origin.” 42 U.S.C. § 2000e–2(a)(2) (emphasis added). By promoting diversity goals that aim to replicate public demographic information, the Manhattan District Attorney’s Office, under the leadership of District Attorney Alvin Bragg, has admitted to numerous violations of federal law.

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. *See* 42 U.S.C. §§ 2000e-2(a), (d).¹³ The law is that an unlawful employment practice is established when the evidence demonstrates that race, color, religion, sex, or national origin was *a* motivating factor for an employer — it need not be *the* motivating factor. 42 U.S.C. § 2000e-2(m). The Office should not intentionally recruit and hire a workforce to align with community demographics; such discrimination is always wrong.

¹¹ *Muldrow v. City of St. Louis*, 144 S.Ct. 967, 974 (2024) (2024) (cleaned up); *Bostock v. Clayton County*, 590 U. S. 644, 658, 681 (2020).

¹² Andrea R. Lucas, *With Supreme Court Affirmative Action Ruling, It’s Time for Companies to Take a Hard Look at Their Corporate Diversity Programs*, REUTERS (Jun. 29, 2023), <https://tinyurl.com/5y7kmjsk> (last visited Jun. 6, 2024).; *see also* Rosemary Joyce, *DEI in the Workplace*, REUTERS: PRACTICAL LAW – THE JOURNAL (Jun. 2024), <https://tinyurl.com/2kbtu975> (last visited Jun. 6, 2024) (advising employers to further diversity aspirations “in ways *other than* numerical metrics, targets, percentages, or impermissible quotas (such as through awareness of workforce demographics, aspirational goals, and expanded and concerted efforts to recruit, attract, and retain diverse workforces”).

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.

The Office’s self-described, ongoing employment practices are patently unlawful, deeply harmful, and immoral.¹⁴ 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.”¹⁵ Decades of case law hold that — no matter how well-intentioned — policies that seek to impose racial balancing are prohibited.¹⁶ More broadly, the discrimination highlighted in this case necessarily foments contention and resentment; it is “odious and destructive.”¹⁷ It truly “is a sordid business, this divvying us up” by race or sex.¹⁸ A Commissioner’s charge should be issued here.

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

Sincerely,

/s/ Will Scolinos

America First Legal Foundation

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

¹⁴ *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”).


¹⁵ *Brown v. Bd. of Education*, 347 U.S. 484, 494 (1954).


¹⁶ See, e.g., *United Steelworkers*, 443 U.S. at 208; *Johnson*, 480 U.S. at 621-641; see also *Bostock*, 590 U.S. at 650.

¹⁷ *Texas v. Johnson*, 491 U.S. 397, 418 (1989).

¹⁸ *League of United Latin Am. Citizens v. Perry*, 548 U.S. 399, 511 (2006) (Roberts, C.J., concurring in part).

Appendix



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Diversity, Equity, and Inclusion


At the heart of our Diversity Equity Inclusion and Justice work is the **deep appreciation for the diverse communities** we strive to keep safe every day and our complementary commitment to justice. We are **dedicated to building a diverse workforce that reflects these communities** as well as a culture of equity and inclusion. It is paramount that we create a culture of belonging in which our staff thrives, witnesses are and feel safe, and victims are and feel seen and heard. We acknowledge the long-standing disparities that over-criminalize some communities and silence some victims, and we are committed to encouraging and celebrating innovative pathways to justice and public safety.


The work of our office is strengthened by the diversity of our staff and the communities we serve. We actively seek and welcome people identifying with any sex, race, color, ethnicity, national origin, age, religion, disability, sexual orientation, veteran status, gender identity, or pregnancy status and those who are at the intersections of these identities. We encourage everyone to bring their whole selves to work, because our collective experiences greatly enrich the D.A.'s Office.


Our Diversity Equity Inclusion and Justice priorities include:

- **Ensuring our staff reflects the diversity of the communities we serve**
- Continuing to partner with communities to build trust and lasting relationships
- Centering victim experiences
- Increasing feeling of belonging


 **Manhattan District Attorney's Office**


 **MAIN OFFICE**
One Hogan Place

 **HARLEM OFFICE**
163 West 125th Street

 **WASHINGTON HEIGHTS OFFICE**
530 West 166th Street, Suite 600A

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CAREERS

Professional Staff Employment

[Check out our current job openings >>](#)

The Office's professional staff perform a variety of key functions for the office, including supporting the Trial, Investigation and Appeals Divisions, as well as other prosecution support and office functions. Our professional staff receive a competitive salary and a generous benefits package, as well as unparalleled opportunities for professional development.

Given the diverse nature of our community, the ability to work with people of different backgrounds is critical. The Office seeks to have a staff that reflects the diversity of the community that we serve. To that end, the Office is firmly committed to a policy against discrimination based on race, color, religion, gender, national or ethnic origin, age, disability, marital or veteran status, sexual orientation, gender identity, or gender expression.




APPLICATION PROCESS


Application Process

Please review the job descriptions and position qualifications for our **current openings** at the New York County District Attorney's Office. If you are interested in applying for a position in the Office, you must submit an application through our **website**. When accessing our current openings, please use Chrome or Firefox.

At the bottom of each posting you will find an embedded link to the online application page—please click this link. Once arriving at the online application page, you must create an account by selecting a username and password linked to a valid email address. Once you have created an account, you will be able to access the application. From there, you will need to enter or select information for all of the required fields, browse and upload the required documents, and then click the submit button to complete the process.

[FAQS](#)



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CAREERS

Legal Training



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



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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.

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.

New York County District Attorney's Office- Current Clerk Application for Legal Staff ...

Personal Information
Application
Education
Attachments
Voluntary Self ID

Nothing selected
Nothing selected
Nothing selected

Attachments

Cover Letter *	<input type="text" value="Choose file"/>	<input type="button" value="Browse"/>
Resume *	<input type="text" value="Choose file"/>	<input type="button" value="Browse"/>
Law School Transcript *	<input type="text" value="Choose file"/>	<input type="button" value="Browse"/>
Writing Sample *	<input type="text" value="Choose file"/>	<input type="button" value="Browse"/>
References *	<input type="text" value="Choose file"/>	<input type="button" value="Browse"/>

EEO Information

Race & Ethnicity *	Gender *	LGBT
<input type="text" value="Nothing selected"/>	<input type="text" value="Nothing selected"/>	<input type="text" value="Nothing selected"/>
		<ul style="list-style-type: none"> <li style="background-color: #003366; color: white; padding: 2px;">Nothing selected <li style="padding: 2px;">Bisexual <li style="padding: 2px;">Gay <li style="padding: 2px;">Lesbian <li style="padding: 2px;">Trans

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Race & Ethnicity *	Gender *	LGBT
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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