



June 25, 2024

Abigail Reardon, Esq., Chair  
Robert J. Anello, Esq., Chair  
Attorney Grievance Committee  
Supreme Court, Appellate Division  
First Judicial Department  
180 Maiden Lane, 17th Floor  
New York, New York 10038

Dear Chairs Reardon and Anello:

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 in response to public admissions and representations by Manhattan District Attorney Alvin Bragg showing he and his colleagues are knowingly and intentionally engaging in employment practices designed to balance the Manhattan District Attorney Office’s workforce demographically. Such practices, however, constitute “unlawful discrimination” violating the New York Human Rights Law, N.Y. EXEC. LAW § 290 et seq., and Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e2.<sup>1</sup> Accordingly, we request that the Attorney Grievance Committee (the “Committee”) investigate District Attorney Alvin Bragg and his colleagues in the Manhattan District Attorney’s Office (the “Office”) for violating Rule 8.4(g)(1) of the New York Rules of Professional Conduct, N.Y. Comp. Codes R. & Regs. tit. 22 § 1200.0 (2022).

## **I. Background**

A lawyer or law firm shall not engage in conduct in the practice of law that the lawyer or law firm knows or reasonably should know constitutes unlawful discrimination. N.Y. Comp. Codes R. & Regs. tit. 22 § 1200.0, Rule 8.4(g)(1). “Conduct in the practice of law” includes ... operating or managing a law firm or law practice.” N.Y. Comp. Codes R. & Regs. tit. 22 § 1200.0, Rule 8.4(g)(5). Also, a lawyer or law firm shall not “knowingly” assist or induce another to violate the Rules of Professional Conduct or do so through “the acts of another.” N.Y. Comp. Codes R. & Regs. tit. 22, § 1200.0, Rule 8.4(a).

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<sup>1</sup> See AMERICA FIRST LEGAL, *America First Legal Files Federal Civil Rights Complaint Against Manhattan DA Alvin Bragg’s Office for Racial and Sex Discrimination* (June 6, 2024), <https://bit.ly/3XJKME1>.

Alvin Bragg is the New York County District Attorney for Manhattan. Mr. Bragg can be contacted by email at [bragga@dany.nyc.gov](mailto:bragga@dany.nyc.gov). The Manhattan District Attorney's Office is headquartered at One Hogan Place, New York, NY 10013. Both the Office and Mr. Bragg can be reached by phone at 212-335-9000 and 212-335-9812, respectively. Mr. Bragg is currently registered with the New York State Unified Court System. His registration number is 3896875.<sup>2</sup> The Manhattan District Attorney's Office is a "law firm" or "law practice" under N.Y. Comp. Codes R. & Regs. tit. 22 § 1200.8.4(g)(5).<sup>3</sup> Therefore, the Committee has jurisdiction over this complaint.

## II. Discrimination to demographically "balance" a workforce is unlawful

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(1)(a)–(b). It also prohibits employers from publishing "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 above characteristics. N.Y. EXEC. LAW § 296(1)(d).

Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e-2 provides that it is an unlawful employment practice 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). It 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."<sup>4</sup> 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."<sup>5</sup> As Mr. Bragg and his colleagues know, an employer cannot favor some applicants and

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<sup>2</sup> See Appendix; *Attorney Online Services – Search, New York State Unified Court System*, (available at <https://bit.ly/3KZy7VD> (District Attorney Alvin Bragg's registration status accessed by searching "Alvin" "Bragg" in the respective first and last name fields) (last visited June 25, 2024).

<sup>3</sup> "Firm' or 'law firm' includes, but is not limited to, a lawyer or lawyers in a law partnership, professional corporation, sole proprietorship or other association authorized to practice law; or lawyers employed in a qualified legal assistance organization, a government law office, or the legal department of a corporation or other organization." N.Y. COMP. CODES R. & REGS. tit. 22, § 1200.0, Rule 1.0(h).

<sup>4</sup> *Muldrow v. City of St. Louis*, 144 S.Ct. 967, 974 (2024) (cleaned up).

<sup>5</sup> *Id.*; see *Bostock v. Clayton County*, 590 U. S. 644, 658, 681 (2020).

workers over others to create or maintain a demographically ‘balanced’ workforce; this is black letter law.<sup>6</sup>

### III. The evidence is Mr. Bragg and the Office unlawfully discriminate

If the representations made by Mr. Bragg and his colleagues on the Manhattan District Attorney’s Office website regarding “diversity” [sic] hiring are accurate then Mr. Bragg and his Office are illegally favoring some applicants at the expense of others to demographically balance the attorney workforce.

For example, the Office’s website contains a Diversity and Inclusion page claiming it is “**dedicated to building a diverse workforce that reflects these communities.**”<sup>7</sup> The website lists its “Diversity Equity Inclusion and Justice priorities,” including “[e]nsuring our staff reflects the diversity of the communities we serve.”<sup>8</sup> The websites for legal<sup>9</sup> and professional staff<sup>10</sup> 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.**”<sup>11</sup> This commitment guides the Office’s recruitment process to fill “approximately fifty openings each year for legal staff positions.”<sup>12</sup>

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<sup>6</sup> Mr. Bragg and his colleagues knew, or should have known, the black letter law is that the Equal Protection Clause applies “without regard to any differences of race, of color, or of nationality”—it is “universal in [its] application.” The guarantee of equal protection cannot mean one thing when applied to one individual and something else when applied to a person of another color. *Students for Fair Admissions, Inc. v. President & Fellows of Harvard Coll.*, 600 U.S. 181, 206 (2023). The Constitution does not permit race-based government decisionmaking simply because an employer claims a remedial purpose and claims pure motives. See *Grutter v. Bollinger*, 539 U.S. 306, 371 (2003) (THOMAS, J., concurring in part and dissenting in part) (citing *Adarand Constructors, Inc. v. Peña*, 515 U.S. 200, 239 (1995) (SCALIA, J., concurring in part and concurring in judgment)). Rather, race-or sex-based government decisionmaking is almost always categorically prohibited. *Parents Involved in Cmty. Sch. v. Seattle Sch. Dist. No. 1*, 551 U.S. 701, 751–52 (2007) (THOMAS, J., concurring); 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 (June 29, 2023), <https://bit.ly/3XGywnw> (last visited June 25, 2024).; see also Rosemary Joyce, *DEI in the Workplace*, REUTERS: PRACTICAL LAW – THE JOURNAL (June 2024), <https://bit.ly/45FGn6K> (last visited June 25, 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”).

<sup>7</sup> MANHATTAN DIST. ATT’Y’S OFF., *Diversity, Equity, and Inclusion*, <https://bit.ly/3xuhVc3> (emphasis added) (last visited June 25, 2024).

<sup>8</sup> *Id.* (emphasis added)

<sup>9</sup> MANHATTAN DIST. ATT’Y’S OFF., *Careers, Legal Staff Employment*, <https://bit.ly/3zaEuCT> (last visited June 25, 2024).

<sup>10</sup> MANHATTAN DIST. ATT’Y’S OFF., *Careers, Professional Staff Employment*, <https://bit.ly/3L2gFA1> (last visited June 25, 2024).

<sup>11</sup> MANHATTAN DIST. ATT’Y’S OFF., *supra* note 9 (emphasis added); MANHATTAN DIST. ATT’Y’S OFF., *Careers, Legal Training*, <https://bit.ly/3zfGudc> (last visited June 25, 2024).

<sup>12</sup> MANHATTAN DIST. ATT’Y’S OFF., *supra* note 9.

Similarly, 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).<sup>13</sup> 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...”<sup>14</sup>

#### **IV. The Committee should investigate District Attorney Bragg and the Office for misconduct**

The Office 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.<sup>15</sup> However, both cannot be true. If Mr. Bragg and his colleagues are demographically balancing the Manhattan District Attorney Office’s attorney and support workforce, as they claim to be, then they are knowingly and intentionally violating state and Federal nondiscrimination laws.<sup>16</sup> Such conduct facially violates N.Y. Comp. Codes R. & Regs. tit. 22, § 1200.0, Rule 8.4(g).

Under Mr. Bragg’s leadership, the Manhattan District Attorney’s Office is apparently engaging in patently unlawful, deeply harmful, and immoral employment practices.<sup>17</sup> 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.”<sup>18</sup> Decades of case law hold that — no matter how well-intentioned — racial balancing employment policies are prohibited.<sup>19</sup> More broadly, the discrimination highlighted

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<sup>13</sup> New York County District Attorney’s Office- Current Clerk Application for Legal Staff Positions, <https://bit.ly/3XxTSUa> (last visited June 26, 2024).

<sup>14</sup> *Id.*

<sup>15</sup> *Id.*

<sup>16</sup> If they are not, and their public claims and representations made regarding the role that “diversity” plays in employee hiring and retention are false, then Mr. Bragg and his colleagues have arguably engaged in conduct involving dishonesty and misrepresentation that is prejudicial to the administration of justice. This, too, would be attorney misconduct. See N.Y. Comp. Codes R. & Regs. tit. 22 § 1200.8.4(c), (d).

<sup>17</sup> *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”).

<sup>18</sup> *Brown v. Bd. of Education*, 347 U.S. 484, 494 (1954).

<sup>19</sup> 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.

in this case necessarily foments contention and resentment; it is “odious and destructive.”<sup>20</sup> It truly “is a sordid business, this divvying us up” by race or sex.<sup>21</sup>

Based on the evidence, we request that the Committee investigate the allegations herein to determine whether Mr. Bragg and his colleagues have violated Rule 8.4(g)(1) of the New York Rules of Professional Conduct.

Thank you in advance for your consideration. Please feel free to contact us at info@aflegal.org if you have any questions.

Sincerely,

/s/ Will Scolinos  
America First Legal Foundation


Cc: Jorge Dopico, Esq., Chief Attorney

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<sup>20</sup> *Texas v. Johnson*, 491 U.S. 397, 418 (1989).

<sup>21</sup> *League of United Latin Am. Citizens v. Perry*, 548 U.S. 399, 511 (2006) (Roberts, C.J., concurring in part).

Appendix



**New York State Unified Court System**  
Attorney Online Services - Search


**Close**

**Attorney Detail Report as of 06/25/2024**

<b>Registration Number:</b>	3896875
<b>Name:</b>	ALVIN LEONARD BRAGG
<b>Business Name:</b>	DISTRICT ATTORNEY'S OFFICE, NEW YORK COUNTY
<b>Business Address:</b>	ONE HOGAN PLACE NEW YORK, NY 10013 (New York County)
<b>Business Phone:</b>	(212) 335-9812
<b>Email:</b>	
<b>Date Admitted:</b>	10/16/2000
<b>Appellate Division Department of Admission:</b>	1st
<b>Law School:</b>	HARVARD
<b>Registration Status:</b>	Attorney - Currently Registered
<b>Next Registration:</b>	Oct 2024

**Disciplinary History**

*No record of public discipline*

 The Detail Report above contains information that has been provided by the attorney listed, with the exception of REGISTRATION STATUS, which is generated from the OCA database. Every effort is made to insure the information in the database is accurate and up-to-date.

The good standing of an attorney and/or any information regarding disciplinary actions must be confirmed with the appropriate Appellate Division Department. Information on how to contact the Appellate Divisions of the Supreme Court in New York is available at [www.nycourts.gov/courts](http://www.nycourts.gov/courts).



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MEET ALVIN BRAGG

HISTORY OF THE OFFICE

**DIVERSITY, EQUITY, AND INCLUSION**

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SEARCH

/our-work/

## 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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LEGAL TRAINING

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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.



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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





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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*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.*

 Personal Information

 Application


 Education

 Attachments


 Voluntary Self ID

Nothing selected    Nothing selected    Nothing selected

### Attachments

<b>Cover Letter *</b>	Choose file	Browse
<b>Resume *</b>	Choose file	Browse
<b>Law School Transcript *</b>	Choose file	Browse
<b>Writing Sample *</b>	Choose file	Browse
<b>References *</b> 	Choose file	Browse

### EEO Information

<b>Race &amp; Ethnicity *</b>	 <b>Gender *</b>	<b>LGBT</b>
Nothing selected	Nothing selected	Nothing selected
		Bisexual
		Gay
		Lesbian
		Trans

Save

 Submit



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