



THE EQUAL PROTECTION PROJECT
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BY EMAIL (ocr.sanfrancisco@ed.gov)

San Francisco Office
Office for Civil Rights
U.S. Department of Education
50 United Nations Plaza
Mail Box 1200, Room 1545
San Francisco, CA 94102

**Re: Civil Rights Complaint Against UC Berkeley Haas School of Business
For Race- And National Origin-Based Fellowship Program**


To Whom It May Concern:

This is a federal civil rights complaint submitted pursuant to the U.S. Department of Education's Office for Civil Rights ("OCR") discrimination complaint resolution procedures.¹ We write on behalf of the Equal Protection Project of the Legal Insurrection Foundation, a non-profit entity that, among other things, seeks to ensure equal protection under the law and non-discrimination by the government, and that opposes racial discrimination in any form.

We make this civil rights complaint against the Haas School of Business at the University of California, Berkeley ("Haas"), a public institution that offers, promotes, and administers a race- and national origin-based "MBA access program" called the Haas Thrive Fellows program, whose purpose, according to its website, is "to educate, prepare, and motivate Latinx/Hispanic individuals

¹ See 42 U.S.C. § 2000d-1; 34 C.F.R. §§ 100.7, 100.8, and 100.9.

to apply and succeed at a top business school, and support their career advancement” as part of “our commitment to increase the Latinx/Hispanic population within the graduate management community.”²



Haas Thrive Fellows
MBA access program for early career candidates

DIVERSITY EVENTS
DIVERSITY SYMPOSIUM
HAAS UNDERGRADUATE DIVERSITY SYMPOSIUM
HAAS THRIVE FELLOWS

The purpose of the Haas Thrive Fellows program is to educate, prepare, and motivate Latinx/Hispanic individuals to apply and succeed at a top business school, and support their career advancement. Aligned with the [UC Berkeley Latinx-Thriving Initiative](#), Haas Thrive Fellows encompasses our commitment to increase the Latinx/Hispanic population within the graduate management community. Participants in Haas Thrive Fellows program will expand their network and build their leadership skills. Participants will have the opportunity to experience the unique culture of Berkeley Haas.

Such statements clearly signal to non-Latinx/Hispanic students that they are not eligible and need not apply. Indeed, an August 2023 guidance issued by OCR provides that “[i]n determining whether an opportunity to participate is open to all students, OCR may consider, for example, whether advertisements or other communications would lead a reasonable student ... to understand that all students are welcome to participate.”³ Here, any reasonable person would understand that all students are not welcome to participate in the Haas Thrive Fellows program.

Participants in the Haas Thrive Fellows program attend monthly meetings at which they receive, among other things, free GMAT or GRE preparation, information on graduate business admissions and financial aid, networking opportunities and “[c]ulturally relevant programming addressing the unique needs of Latinx/Hispanics in management and leadership in the US.”⁴

² See <https://haas.berkeley.edu/diversity/events/haas-thrive-fellows/> [<https://archive.ph/MkRXx>] (accessed on Sept. 1, 2024).

³ See <https://www2.ed.gov/about/offices/list/ocr/letters/colleague-20230824.pdf> [<https://archive.is/5wWb1>] (accessed on Sept. 1, 2024) at 11.

⁴ *Id.*

Curriculum Benefits Eligibility

The program will offer:

- Curriculum on
 - graduate business admissions
 - seeking financial aid for graduate studies
 - GMAT or GRE preparation
 - Building a personal brand
 - Networking skills
 - Exploring career options and opportunities
- Culturally relevant programming addressing the unique needs of Latinx/Hispanics in management and leadership in the US
- Guest speakers from the corporate community
- Graduate-level discussions and case studies led by faculty
- Networking opportunities with industry professionals and the Haas community

Curriculum **Benefits** Eligibility

Program benefits include:

- Free GMAT or GRE test preparation
- Free GMAT or GRE test sitting
- Network and connection to the Haas community
- Application fee waiver for Haas graduate programs

These benefits, however, are **only** available to “Latinx/Hispanic individuals,”⁵ and advance UC Berkeley’s self-described “bold goal” of “transforming” itself within ten years into a “Hispanic Serving Institution,” or “HSI,” that “enroll[s] and educate[s] Latinx students through a culturally-enhancing approach that centers Latinx ways of knowing and being” in order to “reflect[] the demographics” of California and to be “a vehicle for social ... equity.”⁶

⁵ *Id.*

⁶ See <https://thriving.berkeley.edu/initiatives/lti> [<https://archive.is/vPMk4>] (accessed on Sept. 1, 2024).

We are committed to transforming UC Berkeley into a Latinx Thriving university

Transforming UC Berkeley into a Latinx Thriving Institution

In 2018, Chancellor Carol Christ announced UC Berkeley's commitment to become a Hispanic Serving Institution (HSI) within the next ten years, one of the 'boldest goals' in the university's [strategic plan](#)⁶. Becoming an HSI is not just about a designation based on meeting a numerical target. We are striving to create a campus where every student thrives. In the Chancellor's words, this happens through "the commitment that all students have equal access to Berkeley's extraordinary opportunities."

Becoming an HSI is not an end goal but a continual space to develop "servingsness" which is conceptualized as the ability of HSIs to enroll and educate Latinx students through a culturally-enhancing approach that centers Latinx ways of knowing and being, with the goal of providing transformative experiences that lead to both academic and non-academic outcomes.

As a public institution, the University of California, Berkeley has a responsibility to serve the people of California, which includes reflecting the demographics of our state; being a vehicle for social mobility and equity; and providing education, research, and public service to California, the nation, and the world.

Further, UC Berkeley's website contains an "Affirmations and Commitments" page on which it publicly avows that it is "prepar[ing] for a Latinx-thriving culture where policies, practices, and resource allocations are in alignment with our values and aspirations of becoming an HSI, anti-racist and pro-equity campus" and that it is "look[ing] forward to the day when the University of California, Berkeley, achieves HSI designation, gains the necessary resources to advance the well-being of all Latinx and Underrepresented Minority (URM) students, and promotes HSI themes beyond the pursuit of an enrollment threshold."⁷

The Haas Thrive Fellows Program Violates The Law

Haas violates Title VI by conditioning eligibility for participation in the Haas Thrive Fellows program on a student's race and national origin. And, because Haas is a public institution, its offering and administering of this discriminatory program also violates the Equal Protection Clause of the Fourteenth Amendment.⁸

⁷ See <https://thriving.berkeley.edu/initiatives/lti/about/affirmations-and-commitments> [<https://archive.is/TzrU0>] (accessed on Sept. 1, 2024).

⁸ Although your office does not enforce Title II of the Civil Rights Act of 1964, that statute makes it unlawful to discriminate based on race or color in a place of "public accommodation," such as Haas. 42 U.S.C. § 2000(a)(a). The Haas Thrive Fellows program also violates California's antidiscrimination law, Cal. Gov. Code § 11135(a), as well as Haas's own non-discrimination policy and the non-discrimination policy of Haas's parent institution, the University of California. See <https://haas.berkeley.edu/about/the-haas-difference/diversity/> [<https://web.archive.org/web/20240824130836/https://haas.berkeley.edu/about/the-haas-difference/diversity/>] (accessed on Sept. 1, 2024) and <https://ophd.berkeley.edu/policies-and->

Title VI prohibits intentional discrimination based on race, color or national origin in any “program or activity” that receives federal financial assistance. *See* 42 U.S.C. § 2000d. The term “program or activity” means “all of the operations . . . of a college, university, or other postsecondary institution, or a public system of higher education.” *See* 42 U.S.C. § 2000d-4a(2)(A); *Rowles v. Curators of the Univ. of Mo.*, 983 F.3d 345, 355 (8th Cir. 2020) (“Title VI prohibits discrimination on the basis of race in federally funded programs,” and thus applies to universities receiving federal financial assistance). As the University of California, Berkeley receives federal funds, it is subject to Title VI.⁹

It does not matter if the recipient of federal funding discriminates in order to advance a benign “intention” or “motivation.” *Bostock v. Clayton Cty.*, 140 S. Ct. 1731, 1742 (2020) (“Intentionally burning down a neighbor’s house is arson, even if the perpetrator’s ultimate intention (or motivation) is only to improve the view.”); *accord Automobile Workers v. Johnson Controls, Inc.*, 499 U. S. 187, 199 (1991) (“the absence of a malevolent motive does not convert a facially discriminatory policy into a neutral policy with a discriminatory effect” or “alter [its] intentionally discriminatory character”). “Nor does it matter if the recipient discriminates against an individual member of a protected class with the idea that doing so might favor the interests of that class as a whole or otherwise promote equality at the group level.” *Students for Fair Admissions Inc. v. President & Fellows of Harv. Coll.*, 600 U.S. 181, 289-90 (2023) (Gorsuch, J., concurring).

Simply put, “Title VI prohibits a recipient of federal funds from intentionally treating any individual worse even in part because of his race, color, or national origin and without regard to any other reason or motive the recipient might assert.” *Id.* at *290 (cleaned up). Thus, regardless of Haas’s reasons for sponsoring and promoting the Haas Thrive Fellows program, it violated and continues to violate Title VI by doing so.

And, because Haas is part of a public institution, its creation, sponsorship and promotion of the Haas Thrive Fellows program also violates the Equal Protection clause of the Fourteenth Amendment.

procedures/nondiscrimination-policy-statement
[<https://web.archive.org/web/20240822120958/https://ophd.berkeley.edu/policies-and-procedures/nondiscrimination-policy-statement>] (accessed on Sept. 1, 2024).

⁹ *See, e.g.*, <https://financialaid.berkeley.edu/types-of-aid-at-berkeley/loans/federal-direct-loans/> [<https://web.archive.org/web/20240527113956/https://financialaid.berkeley.edu/types-of-aid-at-berkeley/loans/federal-direct-loans/>] (accessed on Sept. 1, 2024); https://www.usaspending.gov/award/CONT_AWD_NNG12FA45C_8000_-NONE_-NONE- [<https://archive.is/Thocx>] (accessed on Sept. 1, 2024).

“Any exception to the Constitution’s demand for equal protection must survive a daunting two-step examination known ... as strict scrutiny.” *Id.* at 184 (internal quotation marks and citation omitted). The program at issue here flunks that exacting test.

Under strict scrutiny, suspect classifications “are constitutional only if they are narrowly tailored measures that further compelling governmental interests.” *Adarand Constructors v. Pena*, 515 U.S. 200, 227 (1995). It is the government that bears the burden to prove “that the reasons for any [racial] classification [are] clearly identified and unquestionably legitimate.” *Richmond v. J. A. Croson Co.*, 488 U.S. 469, 505 (1989). Here, Haas cannot carry its burden.

A “racial classification, regardless of purported motivation, is presumptively invalid and can be upheld only upon an extraordinary justification.” *Shaw v. Reno*, 509 U.S. 630, 643-44 (1993). Haas cannot demonstrate that restricting eligibility for the program based on race or national origin serves any legitimate governmental purpose, let alone an extraordinary one. Classifications based on such immutable characteristics “are so seldom relevant to the achievement of any legitimate state interest” that government policies “grounded in such considerations are deemed to reflect prejudice and antipathy—a view that those in the burdened class are not as worthy or deserving as others.” *City of Cleburne v. Cleburne Living Ctr.*, 473 U.S. 432, 440 (1985).

Indeed, the Supreme Court has recognized only two interests compelling enough to justify racial classifications. The first is remedying the effects of past *de jure* segregation or discrimination in the **specific** industry and locality at issue **in which the government played a role**, and the second is “avoiding imminent and serious risks to human safety in prisons, such as a race riot.” *Students for Fair Admissions*, 600 U.S. at 207 (citation omitted).¹⁰ Neither applies here.

To the extent the Haas Thrive Fellows program is intended to achieve racial or ethnic balance – indeed, UC Berkeley’s website acknowledges that it strives to “achiev[e] representation aligned with the demographics of the population it serves”¹¹ – such an objective has been “repeatedly condemned as illegitimate” and “patently unconstitutional” by the Supreme Court. *Parents Involved in Cmty. Sch.*, 551 U.S. at 726, 730 (“Accepting racial balancing as a compelling state interest would justify the imposition of racial proportionality throughout American society, contrary to our repeated recognition that at the heart of the Constitution’s guarantee of equal protection lies the simple command that the Government must treat citizens as individuals, not as simply components of a racial, religious, sexual or national class”) (cleaned up, citation omitted).

And, irrespective of whether the favoring students possessing immutable characteristics furthers a compelling interest, a race-conscious program must be based on “individualized

¹⁰ Until recently the courts represented a third interest, “the attainment of a diverse student body,” see *Parents Involved in Cmty. Sch. v. Seattle Sch. Dist. No. 1*, 551 U.S. 701, 720-22 (2007), but that was substantively overruled by *Students for Fair Admissions*. *Students for Fair Admissions*, 600 U.S. at 233 (Thomas, J. concurring).

¹¹ See <https://thriving.berkeley.edu/initiatives/lti/about/affirmations-and-commitments> [<https://archive.is/TzrU0>] (accessed on Sept. 1, 2024).

consideration,” and race must be used in a “nonmechanical way.” *Grutter v. Bollinger*, 539 U.S. 306, 334 (2003). Here, the race- and nationality-based selection criterion is mechanically applied. If applicants are not “Latinx/Hispanic individuals,” they are automatically ineligible for the program. To the extent that any individualized consideration exists, it only applies to distinguish between applicants who have first satisfied the threshold racial and ethnic litmus test.

Further, a policy is not narrowly tailored if it is either overbroad or underinclusive in its use of racial classifications. *J.A. Croson Co.*, 488 U.S. at 506. Because the “Latinx/Hispanic individual” eligibility requirement for the Haas Thrive Fellows program applies in an undifferentiated fashion to multiple racial/ethnic groups, it is overbroad and therefore not narrowly tailored. *Id.* (the “gross overinclusiveness” and undifferentiated use of racial classifications suggests that “the racial and ethnic groups favored by the [policy] were added without attention to whether their inclusion was justified”).

Indeed, in *Students for Fair Admissions*, the Supreme Court found that similar racial categories as those used by Haas were “imprecise,” “plainly overbroad,” “arbitrary,” “undefined” and “opaque.” *Students for Fair Admissions*, 600 U.S. at 186-87, 217, and declared that “it is far from evident ... how assigning students to these racial categories and making admissions decisions based on them furthers the educational benefits that the universities claim to pursue.” *Id.* at 217.

Similarly, the ineligibility of black, white, Asian – or any non-“Latinx/Hispanic” student, for that matter – for the Haas Thrive Fellows program makes that program underinclusive, since the ethno-racial restriction is arbitrary and excludes swaths of who could benefit from the program but who are not permitted to apply due to their race and ethnicity.

Finally, for a policy to survive narrow-tailoring analysis, the government must show “serious, good faith consideration of workable race-neutral alternatives,” *Grutter*, 539 U.S. at 339, and that “no workable race-neutral alternative” would achieve the purported compelling interest. *Fisher v. Univ. of Tex. at Austin*, 570 U.S. 297, 312 (2013). There is no evidence that any such alternatives were ever contemplated here.

Because Haas’s racial and ethnic requirements for the Haas Thrive Fellows program are presumptively invalid, and in the absence of any compelling government justification for such invidious discrimination, its use of such criteria violates federal civil rights statutes and constitutional equal protection guarantees.

OCR Has Jurisdiction

OCR has jurisdiction over this complaint. Haas is part of a public institution which is a recipient of federal funding, including from the U.S. Department of Education.¹² It is therefore liable for violations of Title VI and the Equal Protection Clause.

¹² See footnote 9 above, and also, e.g. <https://www.berkeley.edu/heerf-report/> (accessed on Sept. 2, 2024)

The Complaint is Timely

This complaint is timely brought because it includes allegations of discrimination based on race or national origin that occurred within the last 180 days and are ongoing. Indeed, the application deadline was July 31, 2024 and the decision on who was accepted into the program for the 2024-25 academic year was issued just over two weeks ago, on August 15, 2024.¹³

Important Dates

APPLICATION OPENS	APPLICATION DEADLINE	DECISION RELEASE
May 1, 2024	July 31, 2024	August 15, 2024

Request for Investigation and Enforcement

In *Richmond v. J. A. Croson Co.*, Justice Scalia aptly noted that “discrimination on the basis of race is illegal, immoral, unconstitutional, inherently wrong and destructive of a democratic society.” 488 U.S. at 505. This is true regardless of which race suffers discrimination. Race- and nationality-based admissions preferences “fly in the face of our colorblind Constitution and our Nation’s equality ideal” and “are plainly – and boldly – unconstitutional.” *Students for Fair Admissions*, 600 U.S. at 287 (Thomas, J., concurring).

Because the discriminatory scholarship eligibility criteria for the Haas Thrive Fellows program are presumptively invalid, and because Haas cannot show any compelling justification for those restrictions, Haas’s limitation of this scholarship based on race and ethnicity violates federal civil rights statutes and constitutional equal protection guarantees.

The Office for Civil Rights has the power and obligation to investigate Haas’s role in creating, supporting and promoting this program and to impose whatever remedial relief is necessary to hold it accountable for that unlawful conduct. This includes, if necessary, imposing fines, initiating administrative proceedings to suspend or terminate federal financial assistance and referring the case to the Department of Justice for judicial proceedings to enforce the rights of the United States under federal law. After all, “[t]he way to stop discrimination,” the Supreme Court has taught, “is to stop discriminating.” *Parents Involved in Cmty. Sch.*, 551 U.S. at 748.

¹³ See <https://haas.berkeley.edu/diversity/events/haas-thrive-fellows/> [<https://archive.ph/MkRXx>] (accessed on Sept. 1, 2024).

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Accordingly, we respectfully ask that the Department of Education's Office for Civil Rights open a formal investigation, impose such remedial relief as the law permits for the benefit of those who have been illegally excluded from the Haas Thrive Fellows program based on discriminatory criteria, and ensure that all ongoing and future programming through Haas comports with the Constitution and federal civil rights laws.

Very truly yours,

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