



November 21, 2024

Submitted via email

Honorable Lloyd J. Austin III
Secretary of Defense
1000 Defense Pentagon
Washington, DC 20301-1000

CC: Pete Hegseth, nominee for Secretary of Defense

Re: Objections to the U.S. Military's Use of Racial Quotas in Officer Recruitment and Military Academy Admissions

Dear Secretary Austin:

We, the Attorneys General for Kansas, Alabama, Arkansas, Florida, Georgia, Indiana, Iowa, Kentucky, Mississippi, Missouri, Montana, Nebraska, North Dakota, Ohio, Oklahoma, South Carolina, South Dakota, Texas, and Utah write to express our concerns that qualified service academy applicants and officer candidates from our states are subject to racial quotas employed by the military. This is wrong. Racial discrimination of any kind has no place in our military institutions. As Attorneys General of diverse states that rely on qualified military personnel to staff our National Guard, we are troubled at the direction the military is headed, and it needs to change as soon as possible.

Racial quotas at West Point and the Air Force

Earlier this year, in response to a lawsuit challenging its use of race in admissions, West Point admitted in federal court that "West Point considers race and ethnicity . . . [in] its admissions process."¹ The nation's oldest service academy claims it considers race and ethnicity "to further the Army's distinct interest in developing a diverse officer corps to meet its national-security mission."²

West Point's use of race is immoral and illegal. By the academy's own account: "West Point reviews its admissions process every two years and adjusts it when appropriate to ensure that race plays no greater a role than is necessary to achieve that interest."³ This is a roundabout way of saying that West Point utilizes racial quotas. It sets a racial goal for its class and uses as much racial discrimination as is needed to reach that goal.

¹ Response Brief of United States at 21, *SFFA v. West Point*, 144 S. Ct. 716 (2024) (denial of injunction pending appeal) (hereinafter "U.S. Brief").

² U.S. Brief at 13, *SFFA v. West Point*.

³ *Id.* at 14.

And the U.S. military’s use of racial discrimination apparently continues into the subsequent evaluation and promotion of officers. An Air Force Memorandum from August 2022—issued by General Charles Brown (now the chairman of the Joint Chiefs of Staff)—shows that applicants for officer positions are selected according to a matrix of race, sex and ethnicity “goals” (i.e. quotas) corresponding to the demographics of the U.S. population.⁴ The Air Force justifies these quotas with the rote assertion that “diversity and inclusion are an essential part of our society and key to the success of any organization.”⁵

While the Air Force’s racial goals are “aspirational,” they are also extremely specific: the Air Force “aspires” to an officer corps that is 64% male and 36% female, 67.5% white, 13% black, 10% “Asian” (presumably Asian American), 1.5% American Indian, 1% Native Hawaiian, 7% “multi-racial,” and 15% Hispanic individuals of any race.⁶ Further, these officer applicant pool goals must be achieved through a “diversity and inclusion outreach plan” with specific initiatives and outcomes subject to annual reporting.⁷ These racial composition percentages for the Air Force officer corps make a mockery of the Air Force’s motto: “One Team, One Fight.”⁸ Given General Brown’s subsequent elevation to Chairman of the Joint Chiefs of Staff (the President’s chief military advisor), there is good reason to believe these racial quotas may be employed by the other branches as well.

We are concerned that qualified applicants to West Point (and perhaps other service academies) and qualified candidates for officer positions are being discriminated against because they do not help the military satisfy its race-based quotas. So-called “diversity, equity, and inclusion” considerations are not justified by any military necessity and are in fact undermining the readiness and effectiveness of the U.S. military at a time of grave danger throughout the world. Americans deserve a military that is focused on keeping them safe, not meeting racial quotas. And American servicemembers deserve to be treated with equality and respect as they put their lives on the line, not divided and stereotyped by race.

Consideration of Race and Use of Racial Quotas is Unlawful

The Supreme Court has “time and again forcefully rejected the notion that government actors may intentionally allocate preference to those who may have little in common with one another but the color of their skin.”⁹

Recently, the Supreme Court considered the race-based admissions practices of Harvard College and North Carolina University and found that both schools’ admissions programs “lack[ed] sufficiently focused and measurable objectives warranting the use of race, unavoidably employ[ed] race in a negative manner, involve[d] racial stereotyping, and lack[ed] meaningful endpoints.”¹⁰ Accordingly, the schools’ use of race in admissions violated the Equal Protection Clause of the Fourteenth Amendment.

West Point’s use of race is no different from what was disallowed at Harvard. Like Harvard, West Point uses race to set aside offers of admission for members of favored racial groups who would not otherwise

⁴ See Dep’t of the Air Force, *Memorandum Regarding Officer Source of Commission Applicant Pool Goals* (Aug. 9, 2022), located at https://www.af.mil/Portals/1/documents/2022SAF/Officer_Source_of_Commission_Applicant_Pool_Goals_memo.pdf.

⁵ *Id.*

⁶ *Id.*

⁷ *Id.*

⁸ *Id.*

⁹ *Students for Fair Admission Inc., v. Presidents and Fellows of Harvard College*, 143 S. Ct. 2141, 2170 (2023) (cleaned up).

¹⁰ *Students for Fair Admission Inc., v. Presidents and Fellows of Harvard College*, 143 S. Ct. 2141, 2175.

be admitted if race were not considered. As a result, fewer members of disfavored racial groups are admitted. This practice unavoidably treats race as a negative—“How else but ‘negative’ can race be described if, in its absence, members of some racial groups would be admitted in greater numbers than they otherwise would have been?”¹¹

Furthermore, the military employs racial stereotyping when it asserts that racial diversity is necessary for its effectiveness and legitimacy. This is exactly the racial stereotyping that was rejected in *Harvard*, where the court struck down an “admissions process [that] rests on the pernicious stereotype that a black [person] can usually bring something that a white person cannot offer.”¹² The Army is clear that it believes officers of certain races usually bring something that officers of other races do not: effectiveness and legitimacy. West Point cannot justify using otherwise illegal racial quotas by resorting to stereotypes about race.

Finally, West Point’s use of racial classifications has no measurable objective and no end point. West Point’s only objective related to its use of race is to maintain admission rates of certain racial groups, which it hopes will translate into a “diverse officer corps.” But the precise racial mix in the officer corps presents a moving demographic target, untethered to any metric of effectiveness or efficiency. That is not a “focused and measurable” objective that might justify the use of race. It is also clear that West Point intends to consider race as a permanent aspect of its admissions program, so that each and every year its admitted classes have a racial makeup that is proportional to national demographics. As in *Harvard*, the lack of an end point for the use of race means that West Point’s admissions program violates the Equal Protection Clause of the 14th Amendment.

The Air Force’s use of racial quotas to select its officers is unconstitutional as well. Quotas are generally illegal in an employment context. Even in college admissions, which for a time tolerated the consideration of race as part of a supposedly “holistic” evaluation of applicants, the use of racial quotas has never been permitted. In *Grutter v. Bollinger*, the Supreme Court noted that University of Michigan Law School’s goal when considering race “is not simply to assure within its student body some specified percentage of a particular group merely because of its race or ethnic origin. That would amount to outright racial balancing, which is patently unconstitutional.”¹³

The Air Force memo includes a chart with “aspirational” percentages that is intended to balance the racial composition of the officer corps. As such, it is patently unconstitutional. The Air Force diversity program suffers from all the same flaws as West Point’s admissions. Like West Point’s race-based admissions, the Air Force’s racial quota system for officers uses race as a negative, limiting opportunities for some candidates whenever the officer candidate proportions for individuals of their race exceed the Air Force’s goals. It stereotypes airmen of all ranks when it assumes that the key to its success is what people of each race bring to the force solely by virtue of their race, and by assuming that servicemembers of one race benefit from being led by officers of the same race. And the only measure of the success of the racial quotas is that the Air Force’s racial composition goals are met—the Air Force has not advanced any other

¹¹ *SFFA v. Harvard*, 143 S. Ct. at 2169.

¹² *Id.* at 2170.

¹³ 123 S. Ct. 2325, 2339 (2003) (cleaned up). *See also, Regents of University of California v. Baake*, 98 S. Ct. 2733, 2761 (“The diversity that furthers a compelling state interest encompasses a far broader array of qualifications and characteristics of which racial or ethnic origin is but a single though important element. Petitioner's special admissions program, focused *solely* on ethnic diversity, would hinder rather than further attainment of genuine diversity.” (emphasis in original)).

performance metric that could be achieved by diversity, and therefore no reason for the quota system to ever end.

Deference to the Military Does Not Extend to Violating Constitutional Rights

West Point has argued that “limited consideration of race is necessary to create an effective fighting force.”¹⁴ And due to that alleged necessity, courts should defer to the military and allow it to use racial discrimination: “courts must give great deference to the professional judgment of military authorities concerning the relative importance of a particular military interest.”¹⁵

Military interests cannot justify racial discrimination. In *Harvard*, the court stated specifically that “our precedents have identified only two compelling interests that permit resort to race-based government action. One is remediating specific, identified instances of past discrimination that violated the Constitution or a statute... The second is avoiding imminent and serious risks to human safety in prisons, such as a race riot.”¹⁶ Neither consideration is present in the military’s use of racial preferences and quotas. They are explicitly justified by the supposed value of racial diversity for its own sake, not as remedy for past discrimination or as a safety protocol.

The racial discrimination practiced by West Point and the Air Force would not survive strict scrutiny. The military is therefore not arguing that it should be allowed to use racial discrimination because its practices would be legal in any other context, but instead because the military should receive deference to commit illegal and unconstitutional acts whenever the military insists that such acts concern a military interest. Deferring to the military in this instance would not be legal.

The first time the Supreme Court employed strict scrutiny and approved a racial classification due to deference to the military was in the infamous *Korematsu* case, when the court approved the Roosevelt administration’s plan to put Japanese Americans in internment camps during the Second World War, writing that “the military urgency of the situation demanded” approval.¹⁷ Nonetheless, the court has since acknowledged that *Korematsu* was “gravely wrong the day it was decided.”¹⁸ If the military did not deserve deference to employ racial discrimination in the midst of World War II, then it should not receive deference now, outside of a declared war. This is especially true as now when the asserted interest relates only to a general alleged enhancement of fighting ability, or improved perceptions of legitimacy, and not to any immediate military objective or hazard.

There are, however, no distinct interests that would justify treating the military academies or the military as a whole differently from civilian colleges. The military has not asserted any real or specific, let alone necessary, military interest that would be imperiled if they were to stop using racial quotas. There is no evidence that a precise racial mix in the officer corps, even if it could be accomplished through the military’s use of racial quotas, would make the military more effective or legitimate.

¹⁴ U.S. Brief at 24, *SFFA v. West Point*.

¹⁵ U.S. Brief at 22, *SFFA v. West Point* (citing *Goldman v. Weinberger*, 475 U.S. 503, 507 (1986)).

¹⁶ *SFFA v. Harvard*, 143 S. Ct. at 207.

¹⁷ *Korematsu v. United States*, 65 S. Ct. 193, 197 (1944).

¹⁸ *Trump v. Hawaii*, 138 S. Ct. 2392, 2423 (2018).

Perceptions of legitimacy, conclusory statements concerning effectiveness, the possibility of leveraging diversity into an enhancement of deterrence abilities—these are the justifications offered by the military for its use of illegal and immoral racial discrimination. This vague insistence that a specific racial composition is important to the military is not a compelling interest that might justify racial discrimination and the military does not deserve deference to continue using racial quotas. It does not matter that the military is using racial discrimination to achieve goals that it believes are good for the military. “Eliminating racial discrimination means eliminating all of it.”¹⁹.

Racial Stereotyping Does Not Improve National Security

Besides being illegal, the military is wrong about the need for racial discrimination to create a more effective fighting force. A more effective fighting force must be based on equality under the law—not on racial classifications. What President Truman wrote in 1948 is still true today: “it is essential that there be maintained in the armed services of the United States the highest standards of democracy, with equality of treatment and opportunity for all those who serve in our country's defense.”²⁰

West Point is wrong when it asserts that racial balancing in the officer corps is necessary to accomplish the Army’s national-security mission.²¹ The Army’s national-security mission is best accomplished through the promotion of officers on the basis of individual merit, not the fulfillment of racial quotas. By minimizing merit considerations in favor of racial considerations, the military loses out on the talents of qualified individuals who are discouraged or blocked from advancing through the ranks because their race does not fit the military’s artificial diversity goals.

Worse, the consideration of race distracts the military from its most important responsibility—protecting Americans from foreign adversaries. The U.S. faces serious threats from a host of foreign adversaries. Following a series of foreign policy mistakes and setbacks in Afghanistan and other areas, our adversaries in Russia, China, Iran and elsewhere have openly and stridently challenged U.S. interests and even attacked U.S. forces and allies. Yet rather than remaining focused on deterrence and—if necessary—fighting and winning our nation’s wars, U.S. military commanders are counting up their forces and dividing them into useless racial categories, hoping they aren’t punished when they fail to produce the “right” number of officers with a particular skin complexion.

The Military Should Not Be Politicized

Unfortunately, racial discrimination in the military is just one instance of a larger trend of increasing politicization of the military. Examples abound:

- In order to make a point about its domestic political opposition, this administration has dedicated the military to rooting out “domestic extremism” in the ranks, including a theatrical “Stand-Down to Address Extremism in the Ranks” in early 2021. Besides using the opportunity to frame the domestic political opposition as extremist, the Secretary of Defense re-defined “extremism” to

¹⁹ *SSFA v. Harvard*, 143 S. Ct. at 2161.

²⁰ The White House, *Desegregation of the Armed Forces* (July 26, 1984).

²¹ U.S. Br. at 27.

include “Advocating widespread unlawful discrimination based on race, color, national origin, religion, sex (including pregnancy), gender identity, or sexual orientation.”²²

- In August 2021, in order to boost the administration’s campaign to convince more Americans to receive COVID-19 vaccinations, the Secretary of Defense mandated vaccination of all active-duty and reserve military personnel. This mandate was never rooted in realistic health policy considerations. That’s why it was rescinded in the National Defense Authorization Act for Fiscal Year 2023.
- President Biden’s June 25, 2021, Executive Order on Diversity, Equity, Inclusion, and Accessibility in the Federal Workforce further embedded partisan political priorities into the military, including expanded use of affirmative action and transgender medical treatment for military servicemembers.²³
- More recently, West Point decided to remove “Duty, Honor, Country” from its mission statement.²⁴ These are now considered objectionable terms at a military academy more focused on managing the racial composition of its incoming classes than on traditional military values.

In each instance, military resources were diverted from national security and military readiness in order to make headlines for the current administration. The military must remain above partisan politics. Further politicization—especially when it involves racial discrimination—weakens national security and distracts from keeping Americans safe. This must change.

Conclusion

A United States military that reflects America and has the respect of Americans and our allies must live up to American values by treating each individual equally, not as a representative of a racial or ethnic group. And a United States military that is effective at protecting Americans and American interests cannot be distracted and divided by endless racial balancing and quotas.

The military should seek its legitimacy by aspiring to the best of this nation’s traditions, not its worst. “It must become the heritage of our Nation to rise above racial classifications that are so inconsistent with our commitment to the equal dignity of all persons.”²⁵ And the military should remember that its officers swear to support and defend the constitution of the United States, which condemns racial quotas. As Justice Harlan wrote in his dissenting opinion in *Plessy v. Ferguson*, “in view of the constitution, in the eye of the law, there is in this country no superior, dominant, ruling class of citizens. There is no caste system here. Our Constitution is color-blind and neither knows nor tolerates classes among citizens. In respect of civil rights, all citizens are equal before the law.”²⁶ Our national security depends on the military acting consistently with the constitution that it purports to defend.

²² Report on Countering Extremist Activity Within the Department of Defense, Dep’t of Defense, December 2021, available at <https://media.defense.gov/2021/dec/20/2002912573/-1/-1/0/report-on-countering-extremist-activity-within-the-department-of-defense.pdf>.

²³ The White House, *Executive Order on Diversity, Equity, Inclusion, and Accessibility in the Federal Workforce* (June 25, 2021).

²⁴ See Press Release, West Point Mission Statement Update, Mar. 11, 2024, available at <https://www.westpoint.edu/news/press-releases/west-point-mission-statement-update-0>.

²⁵ *Pena-Rodriguez v. Colorado*, 137 S. Ct. 855, 867 (2017)

²⁶ 16 S. Ct. 1138, 1146 (1896).

We urge the military to immediately cease its unlawful use of racial quotas and end its illegal and immoral racial discrimination of Americans.


Sincerely,



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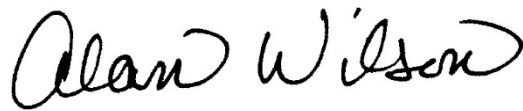
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