



Back to School, Back to Scrutiny

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DOJ and DOE Priority: Race-Conscious Admissions

Students for Fair Admissions (SFFA)

HOLDING

Harvard's and UNC's admissions programs violated Title VI and equal-protection principles because they expressly considered race in deciding whom to admit.

Why the programs failed

- 1 No measurable endpoint**
The asserted diversity goals were too abstract for judicial review.
- 2 Race operated as a negative**
A benefit to some applicants necessarily disadvantaged others.
- 3 Race relied on stereotypes**
Broad racial categories were treated as proxies for viewpoint or experience.

What the decision prohibits

- 1 Direct consideration of race**
Race cannot be a plus factor in an admissions decision.
- 2 Racial balancing**
Institutions cannot pursue a predetermined racial composition.
- 3 Indirect circumvention**
Universities may not recreate the same regime through essays or other means.

What remains permissible

- 1 Individual experience**
An applicant may discuss how race affected their life.
- 2 Experience-based evaluation**
A university may consider courage, determination, leadership, or other qualities shown by that experience.
- 3 Race-neutral approaches**
Schools may pursue diversity through lawful criteria that do not award a benefit because of race.

Students for Fair Admissions, Inc. v. President & Fellows of Harvard College, 600 U.S. 181 (2023).

New IPEDS Survey

- Admissions and Consumer Transparency Supplement (ACTS)
 - Expands reporting of admissions outcomes by race, sex, academic credentials, socioeconomic status and application pathway
 - Covered multiple years – up to seven for certain data points
 - First due in March/April 2026
- The ACTS is under challenge
 - In March 2026, Massachusetts filed suit against the Department of Education
 - 17 states and numerous associations, colleges and universities intervened
 - In April 2026, the court granted a preliminary injunction (later extended to intervenors)
 - No final decisions has been issued

Major DOJ findings in 2026

MAY 14

DIRECT USE

Yale Medicine

DOJ found intentional race discrimination in the 2023–2025 incoming classes.

JUN 10

PROXY DESIGN

UC Davis Medicine

DOJ cited the “Davis Scale,” racial-balancing goals, and statements about skirting restrictions.

JUL 20

WORKFLOW

UC San Diego Medicine

DOJ cited hardship subgroups, sorting practices, and reviewer access to race at the interview stage.

AUG 6

TAGS + DATA

Duke Law

DOJ cited essay-response tags, race-correlated characteristics, and applicant-level disparities.

AUG 27

ESSAYS

GW Medicine

DOJ alleged essays helped identify race and affected interview selection, scoring, and admissions.

SEP 9

RACE + PROXIES

UC Berkeley Law

Joint DOJ/ED findings cited race, essay prompts, identity grouping, and statistical disparities.

Many More DOJ Investigations Underway

DOJ has announced additional compliance reviews or investigations

Stanford	George Mason
UC Berkeley	Arizona State
UCLA	CUNY
UC Irvine	Harvard
15 unnamed medical schools	

Common Themes Across DOJ Investigations

1. Racial Proxies

- Facially neutral criteria may violate Title VI (socioeconomic disadvantage, geographic indicators, hardship scales, essay prompts, diversity-related tags) if used as a proxy for race

2. Admission Workflows

- Investigations focused on what reviewers see; how decisions are made (demographic information, reviewer guidance/training, applicant tagging); statements made

3. Statistical Outcome Analysis

- Data can and will be used to support findings of discrimination
- Inconsistency between govt's approach under Title VI (programs/activities that receive federal financial assistance) and Title VII (employment)

Best Practices

- Create an internal task force (legal, admissions, institutional research, compliance/risk)
 - Frame ACTS as a risk-management and governance issue - - not a data collection exercise
- Conduct a “mock DOJ review”
 - Audit admissions processes and workflows
 - Inventory potential race proxies and document educational rationales
- Understand what your data shows
 - Leverage widely-used statistical methodologies (odds ratio, statistical significance, regression analysis)
 - Conduct analyses under privilege

Special Guest Topic: Immigration

https://www.linkedin.com/posts/eeoc_every-day-american-workers-are-being-replaced-activity-7505258770529239040-8tXf?utm_source=social_share_send&utm_medium=member_desktop_web&rcm=ACoAAAIXQCABhWT0SSA9ZxpIS14DbGojWBZGiXo



Why Workplace Immigration Enforcement?

- The Trump Administration believes employers are *deliberately & deceptively cheating* the immigration system by –
 - Recruiting, hiring, & promoting foreign nationals over US citizens
 - Employing unauthorized foreign nationals

What Does This Mean for Universities?

- Higher education institutions are at particular risk because –
 - You are already a target, and one federal agency audit can now spread to other agencies if issues are found
 - Universities sponsor H-1B workers & permanent residency processes at a higher rate
 - Federal funding and contracts lead to additional scrutiny of I-9 records – and your decentralized structure complicates compliance

Higher Ed H-1B Sponsorship Rates are High

How Higher Ed Compares to Other Industries

Out of the more than 304,000 H-1B visas issued across all industries so far in fiscal year 2025, higher ed institutions hold about 16,800 or 5.5 percent. Scientific and technical services make up the largest portion.

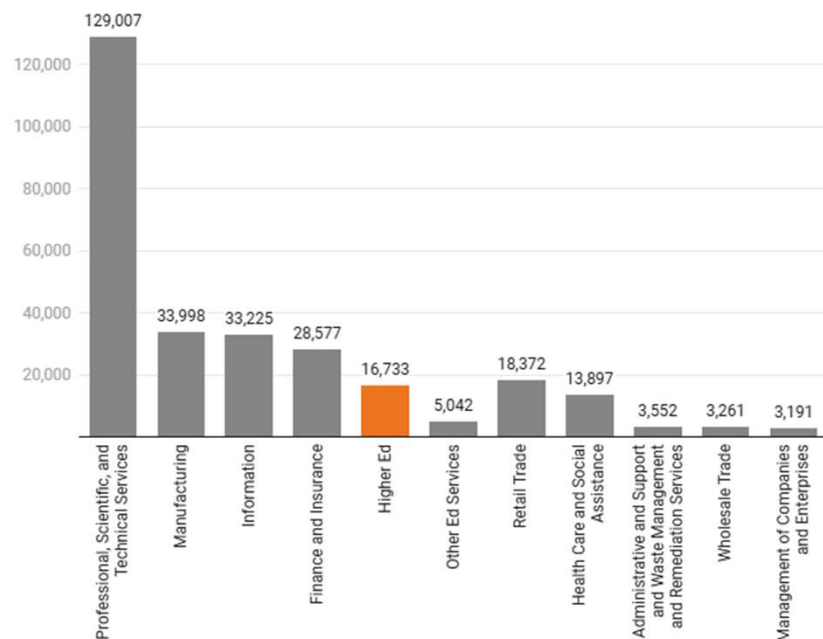


Chart: Inside Higher Ed • Source: U.S. Citizenship and Immigration Services • Created with [Datawrapper](#)

Disciplines With the Highest Percentage of H-1B Faculty

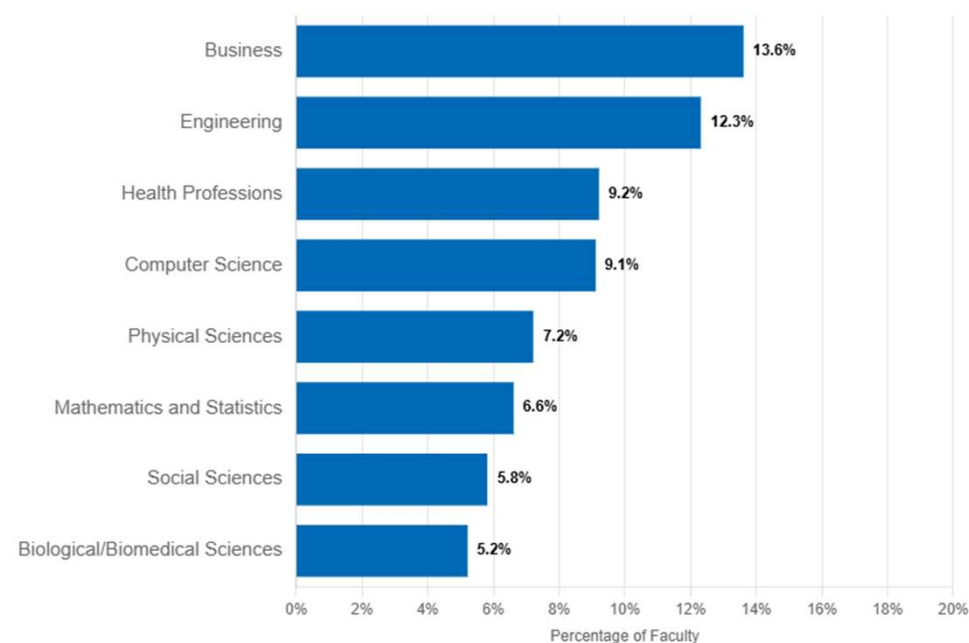


Figure 4. Disciplines With the Highest Percentage of H-1B Faculty



Government “Why” #1

Discriminating Against US Citizens

- *Open AI & Cloudera*
- Claim – Intentionally deterred U.S. citizens from applying by creating separate green card recruitment process
- Open AI settled for \$3.2 million in August 2026 for violations in *only 10 applications*
- Cloudera – sued April 2026, lawsuit ongoing
 - Suspension from sponsoring green cards – 6 months *based on allegations alone*
 - Previous similar settlements *but no suspension*:
\$14 million – Facebook (2021), \$25 million – Apple (2023)



CLOUDERA



Government “Why” #1

Discriminating Against US Citizens

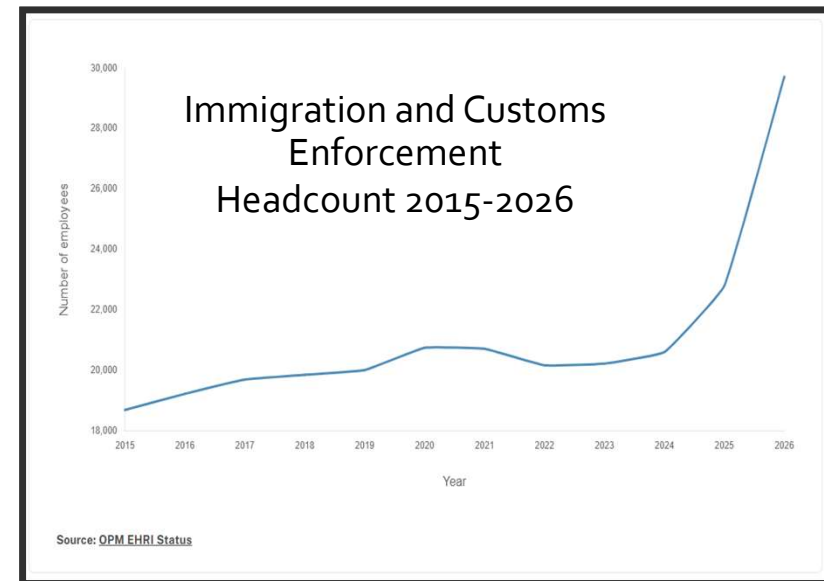
- Other DOJ and DOL Settlements in 2026
 - *Last week*, Cognizant was suspended from PERM and H-1B sponsorship
 - Common theme – be careful of recruitment language!
 - Job ads unlawfully favored H-1B and other temporary visa holders while excluding U.S. citizens and permanent residents
 - Job ads restricted positions to H-1B visa holders without legal justification
 - Limited recruitment to H-1B visa holders for certain positions
 - Preferential recruitment of foreign H-1B workers over U.S. workers

Government “Why” #2

Employing Unauthorized Workers

Increase in I-9 Audits & Increase in Risk

- ICE headcount **increased 44%** from 2024 to 2026
- Previous **maximum** – 6,000 I-9 audits *annually*
- Planned **minimum**– 6,000 I-9 audits *monthly*
- **March 2026** - Government quietly changed what counts as “substantive” error
- ***Eliminates window to correct*** after inspection starts



Government “Why” #2 Employing Unauthorized Workers

Typical Client I-9 Risk

Client #1 – 10,000 records

- Percent Noncompliance: **52%**
- Estimated Fine Risk:
\$11.6 million
- But able to reduce it to –
\$0.6 million

Client #2 – 24,000 records

- Percent Noncompliance: **54%**
- Estimated Fine Risk:
\$27.7 million
- But able to reduce it to –
\$7.3 million

Also – the False Claims Act can multiply exposure for Universities

Best Practices

- **Create an internal task force** (legal, international student & scholar services, HR/talent acquisition, compliance/risk)
 - Workplace immigration compliance touches many areas of the higher education infrastructure and it can be difficult to coordinate effectively between functions – but coordination is critical to compliance
- **Perform audits to understand what is actually happening** with visa sponsorship programs and I-9 compliance
 - Audit I-9 and E-Verify records, policies, and procedures to understand and then mitigate risk
 - Gather data to understand how you are using H-1B and “green card” sponsorship
 - Conduct analyses under privilege to get legal advice on areas of risk

Key Takeaways

Key Takeaways

- Admissions and workplace immigration are now areas of heightened enforcement risk
 - Be proactive
 - Ensure your process is defensible
 - Understand what your data shows and what is actually happening on the ground

Questions

