

AGREEMENT AND RELEASE

This Agreement and Release (“Agreement”) is entered into on the date of signature of the last signatory to this Agreement (“Effective Date”) by and between Students for Fair Admissions, Inc. (“SFFA”) on the one hand and the United States Department of Justice on behalf of the United States Department of Defense (“DoD”) on the other (together, the “Parties”), as follows:

1. **Scope of Agreement:** DoD enters this agreement on behalf of the United States Military Academy at West Point (“USMA”) and the United States Air Force Academy (“USAFA”) (collectively, the “MSAs”), all of which are subcomponents within DoD and subject to the authority of DoD.
2. **Background.** This Agreement is brought to resolve ongoing litigation against the MSAs. That litigation—and the Executive Branch’s policy relating to the underlying issues—are described below.
 - a. **West Point litigation.** By complaint filed on September 19, 2023, SFFA brought the matter styled *Students for Fair Admissions, Inc. v. United States Military Academy at West Point*, No. 7:23-cv-8262 (S.D.N.Y.) (“*Army*” or the “West Point Action”), asserting a claim against the United States Military Academy at West Point; the United States Department of Defense; the Secretary of Defense; the Secretary of the Army; the Superintendent of the United States Military Academy; and the Director of Admissions for the United States Military Academy at West Point. By amended complaint filed February 19, 2024, SFFA asserted a substantially similar claim against the United States Military Academy at West Point, the Secretary of the Army, the Superintendent of the United States Military Academy, and the Director of Admissions for the United States Military Academy (“West Point Defendants”).
 - b. SFFA’s amended complaint sought a declaration and injunctive relief “prohibiting [USMA] from considering or knowing applicants’ race when making admissions decisions.” *Army*-Dkt. 87 at 32.
 - c. On April 14, 2025, and June 11, 2025, the district court granted West Point’s unopposed motions for temporary stays while the parties discussed potentially resolving the litigation. *Army*-Dkt. 129, 133.
 - d. **Air Force Academy litigation.** On December 10, 2024, SFFA brought the matter styled *Students for Fair Admissions, Inc. v. United States Air Force Academy*, No. 1:24-cv-3430 (D. Colo.) (“*Air Force*” or the “Air Force Action”) asserting a claim against the United States Air Force Academy, the United States Department of Defense, the Secretary of Defense, the Secretary of the Air Force, the Superintendent of the United States Air Force Academy, and the Director of Admissions for the United States Air Force Academy (“Air Force Defendants”).
 - e. On April 14, 2025, the District of Colorado granted the Air Force Defendants’ unopposed motion to hold the case in abeyance while the parties discussed resolving the litigation. *AF*-Dkt. 25.

- f. **The Executive Branch's actions.** On January 20, 2025, President Donald J. Trump assumed office. One week later, President Trump issued Executive Order 14185, entitled *Restoring America's Fighting Force*. See 90 Fed. Reg. 8763 (Jan. 27, 2025) (EO 14185). EO 14185 declares that “[n]o individual or group within our Armed Forces should be preferred or disadvantaged on the basis of sex, race, ethnicity, color, or creed.” *Id.* § 1. The President thus announced that it is “the policy of [this] Administration that the Department of Defense ... and every element of the Armed Forces should operate free from any preference based on race or sex.” *Id.* § 2. To implement that policy, EO 14185 directed the Secretary of Defense to “conduct an internal review” with respect to “all instances of race and sex discrimination and activities designed to promote a race- or sex-based preferences system” in the United States military. *Id.* § 5. EO 14185 directed that “[t]he Department of Defense and the Armed Forces, including any educational institution operated or controlled thereby, are prohibited” from “advancing ... race or sex stereotyping.” *Id.* § 6(a).
- g. The DoD swiftly implemented that presidential directive. On January 29, 2025, the Secretary of Defense issued a “Memorandum for Senior Pentagon Leadership, Commanders of the Combatant Commands, Defense Agency and DOD Field Activity Directors” about “Restoring America’s Fighting Force” (the “January SecDef Memorandum”).¹ The January SecDef Memorandum acknowledged that, in EO 14185, “the President”—acting as “Commander in Chief”—had “prohibited any preference or disadvantage for an individual or a group within the Armed Forces on the basis of sex, race, or ethnicity.” *Id.* at 1. Accordingly, the January SecDef Memorandum announced that “a foundational tenet of the DoD must always be that the most qualified individuals are placed in positions of responsibility in accordance with merit-based, color-blind policies.” *Id.* (emphasis omitted). In a paragraph entitled “Elimination of Quotas, Objectives, and Goals,” the January SecDef Memorandum directs that “[n]o DoD Component will establish sex-based, race-based, or ethnicity-based goals for organizational composition, *academic admission*, or career fields.” *Id.* (emphasis added).
- h. On May 9, 2025, the Secretary of Defense issued a memorandum entitled “Certification of Merit-Based Military Service Academy Admissions” (the “May SecDef Memorandum”).² The May SecDef Memorandum declares that “[t]he Military Ser-

¹ See Peter B. Hegseth, *Memorandum for Senior Pentagon Leadership, Commanders of the Combatant Commands, Defense Agency and DOD Field Activity Directors re: Restoring America's Fighting Force* (Jan. 29, 2025), <https://media.defense.gov/2025/Jan/29/2003634987/-1/-1/1/RESTORING-AMERICAS-FIGHTING-FORCE.PDF>.

² Peter B. Hegseth, *Memorandum for Senior Pentagon Leadership, Defense Agency and DOD Field Activity Directors re: Certification of Merit-Based Military Service Academy Admissions* (May 9, 2025), <https://media.defense.gov/2025/May/09/2003707514/-1/-1/1/CERTIFICATION-OF-MERIT-BASED-MILITARY-SERVICE-ACADEMY-ADMISSIONS.PDF>.

vice Academies (MSA) are elite warfighting institutions” and that “[the] Department owes it to our Nation ... to ensure admissions to these prestigious institutions are based exclusively on merit.” *Id.* The memorandum explained that “[s]electing anyone but the best erodes lethality [and] our warfighting readiness, and undercuts the culture of excellence in our Armed Forces.” *Id.* Thus, “[i]n alignment with” his prior directives, the Secretary of Defense directed “the Secretaries of the Military Departments to certify within 30 days that, for purposes of the 2026 MSA admission cycle, as well as all subsequent admission cycles, the MSA admissions offices will (1) Apply no consideration of race, ethnicity, or sex; and (2) Offer admission based exclusively on merit.” *Id.* The Under Secretary of Defense for Personnel and Readiness is further directed to “certify the MSAs are compliant with merit-based admissions processes upon the completion of the 2026 admissions cycle.” *Id.*

3. **DoD’s determinations regarding the consideration of race in admissions at the MSAs.** DoD has made the following determinations about the use of race as a factor in the admissions processes of the MSAs:

- a. The Department of Defense has determined, based on the military’s experience and expertise—and after reviewing the relevant evidence—that the consideration of race and ethnicity in admissions at the MSAs does not promote military cohesiveness, lethality, recruitment, retention, or legitimacy; national security; or any other governmental interest. The United States no longer believes that the challenged practices are justified by a “compelling national security interest in a diverse officer corps.” Dkt.150 at 7, *Students for Fair Admissions, Inc. v. United States Naval Academy*, No. 1:23-cv-2699 (D. Md.).
- b. It is the military judgment of the Department of Defense that recruiting and promoting individuals based on merit alone, and not based on their immutable characteristics, improves unit cohesion and performance.
- c. Further, the Department of Defense has now determined that neither the recruitment and retention of talented officers nor the legitimacy of the U.S. military are positively affected by the MSAs consideration of race in admissions. The Department of Defense has now determined that merit-only admissions practices increase the legitimacy of the U.S. Military.
- d. Likewise, the Department of Defense has now determined that race-based admission practices at MSAs do not support any valid military interest. The Department of Defense has now determined that, when certain military academies were considering race in admissions, neither the MSAs nor the Department of Defense had conducted any official study to quantify the effect that race-based admissions had on the composition of the MSAs or the officer corps.

4. **MSAs’ permanent end of the use of race and ethnicity in all aspects of admissions.** MSAs will no longer consider race or ethnicity in admissions. To this end, the MSAs:

- a. will maintain no race- or ethnicity-based objective or goal, including any attempt to make the racial composition of the MSAs approximate the racial composition of any branch of the military, those branches' respective officer corps, or the U.S. population;
- b. will ensure that, if an applicant selects a race or ethnicity on his or her application, no one with responsibility over admissions can see, access, or consider that information before a final admissions decision on that applicant has been made;
- c. will not track the racial composition of applicants or prospective students or otherwise aggregate applicants or prospective students by race or ethnicity for the purpose of making admissions decisions;
- d. will take all necessary steps, including providing relevant training and refresher training to Admissions Office staff, to ensure adherence to these policies.

These changes have been approved by the highest levels of the military and the U.S. government and, as reflected in the May 2025 SecDef Memorandum, are intended to be permanent.

5. **Resolution of litigation.** For and in consideration of DoD's promises above, the sufficiency of which is hereby acknowledged, and intending to be legally bound, SFFA does hereby remise, release, and forever discharge and completely and absolutely release the West Point Defendants, Air Force Defendants, and Department of Defense (collectively, the "Released Parties") from the claims, causes of action, and requests for relief that were brought or could have been brought to challenge the MSAs' former admissions policies. The Released Parties are each entitled to enforce this Agreement against SFFA without regard for whether the Released Party is a party to this Agreement.

6. **SFFA's rights in case of change of policy.** In the event that DoD or the MSAs revise the policies or practices challenged in the Actions in the future, they shall notify SFFA as soon as reasonably possible after issuance of the policy, so that SFFA can seek judicial relief. For the avoidance of doubt, SFFA and its members do not release any right to challenge such revised policies or practices. The provision of any non-public records documenting a policy change pursuant to this section is subject to confidentiality between the Parties, including the Released Parties, and such documents may not be released without these Parties' consent or pursuant to a court order.

7. **Stipulation of dismissal.** Within three (3) business days of the Effective Date, SFFA will file a joint stipulation of dismissal in the West Point Action and the Air Force Action, dismissing the Actions with prejudice with each side to bear its own fees and costs.

8. **Entire agreement.** This Agreement represents the full and complete agreement between the Parties to resolve the West Point Action and the Air Force Action. Any representations, warranties, promises, or conditions, whether written or oral, not specifically incorporated into this Agreement shall not be binding on the Parties. All other discussions, negotiations, and writings have been and are merged into this Agreement.

9. **Changes only in writing.** Neither this Agreement nor any terms or provision hereof may be changed, waived, discharged, or terminated except by an instrument in writing duly signed by the Party against which enforcement of the change, waiver, discharge, or termination is sought.

10. **Rule of construction.** The Parties agree that, in the event of any ambiguity or dispute regarding the interpretation of this Agreement, the Agreement will be interpreted as if each Party participated equally in its drafting.

11. **Necessary authority.** The Parties represent, knowing that all other Parties will rely on such representation, that each signatory has the right, power, and authority to: (i) sign this Agreement and Release; (ii) bind itself to the terms of this Agreement and Release; (iii) with respect to SFFA, to so bind its members, successors, and assigns; and (iv) to receive the consideration set forth in this Agreement and Release.

12. **Signature in counterpart.** This Agreement can be signed in two original counterparts, each of which shall for all purposes be considered an original of this Agreement. Execution and delivery of this Agreement by electronic means (including via e-mail or .pdf) shall be sufficient for all purposes and shall be binding on any person or Party who so executes.

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the Effective Date.

Date: 8/11/2025

STUDENTS FOR FAIR ADMISSIONS, INC.

By: 

President, SFFA

Date: 8/11/25

UNITED STATES DEPARTMENT OF JUSTICE

By: 

Assistant Attorney General, Civil Division