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The Harvard Crimson interviews Vinay Harpalani (Justice Department Continues Investigation Into Harvard Admissions)

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Justice Department Continues Investigation Into Harvard Admissions

By Camille G. Caldera

The Harvard Crimson
December 18, 2019



Harvard College maintains offices at 86 Brattle Street, near Harvard Yard. By [Kathryn S. Kuhar](#)

A Department of Justice investigation into alleged discrimination in Harvard's race-conscious admissions policies remains ongoing, according to a Freedom of Information Act request filed by The Crimson last month.

In a Dec. 10 letter of response, Kilian B. Kagle — who heads the FOIA Branch of the department's Civil Rights Division — wrote that records "pertaining to the investigation into the equity of the admissions process at Harvard College [...] pertain to an ongoing law enforcement proceeding." As a result, Kagle denied access to any relevant documents.

"Disclosure thereof could reasonably be expected to interfere with law enforcement proceedings," Kagle wrote.

The Justice Department [first declined to provide documents](#) related to the probe in Oct. 2017 in response to a FOIA request filed by the nonprofit organizations American Oversight and the Lawyers' Committee for Civil Rights Under Law. At the time, Justice Department officials also wrote that the requested documents pertained to an ongoing investigation.

James Peyton McCrary — a law professor at George Washington University who retired from the Civil Rights Division in 2016 — wrote in an email that “noteworthy” investigations often span multiple years.

“Investigations of noteworthy matters can be ongoing for several years,” McCrary wrote.

Harvard's admissions practices have separately become the subject of high-profile litigation over the past several years. A lawsuit — originally filed against Harvard by anti-affirmative action advocacy group Students for Fair Admissions in 2014 — has since passed through [a discovery period](#) and [a three-week trial](#) in federal court that ultimately brought a decision [in favor of Harvard](#). SFFA quickly [filed to appeal](#) that ruling.

Samuel R. Bagenstos — a law professor at the University of Michigan who served in the Civil Rights Division from 2009 to 2011 — speculated that SFFA's ongoing lawsuit may have affected the Justice Department's decision to continue the investigation.

“It's not at all uncommon for the Department of Justice to watch and wait,” he said. “If there is ongoing litigation going on involving an issue that they're investigating, they might want to see what emerges from the trial from the litigation that is going on.”

In addition to its investigation, the Justice Department filed an amicus brief in the SFFA case calling for the unsealing of admissions data related to the lawsuit in [April 2018](#). They also filed a “statement of interest” in the case in [August 2018](#) claiming that Harvard's admissions policies perpetrate “unlawful racial discrimination” against Asian American applicants.

Bagenstos said the Justice Department may also seek to participate in the appeal of the case.

“They could file an amicus brief on appeal, or participate in oral arguments as amicus. That seems to me quite likely,” he said. “The Justice Department does tend to participate in that way in cases that raise important issues that are central to the policy agenda of the current administration, and this fits that, so they could do that.”

“I suppose there's some very small possibility they can try to intervene as a party on appeal,” he added.

University of New Mexico law professor Vinay Harpalani wrote in an email that he believes the mere existence of the Justice Department investigation supports SFFA.

“SFFA knows that the Trump Administration is sternly behind eliminating race-conscious admissions policies, which the Obama Administration was not,” Harpalani wrote. “This emboldens SFFA to continue.”

Harpalani said he believes the “real purpose” of the investigation is to pressure other universities with race-conscious admissions policies.

“Just by conducting the investigation, the Trump Administration is showing that it is willing to challenge race-conscious admissions and to use its resources to do so,” he said. “This puts pressure on universities to voluntarily reduce or eliminate the use of race as an admissions factor, lest they be subject to federal investigation.”

The Department of Education and the Department of Justice are also concurrently investigating allegations of discrimination against Asian-American applicants at [Yale University](#).

Harvard spokesperson Rachael Dane declined to comment on the Justice Department’s investigation.

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