UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

DO NO HARM,

Plaintiff,

v.

PFIZER, INC.,

Defendant.

Case No. 1:22-cv-07908

ORAL HEARING REQUESTED

PLAINTIFF DO NO HARM'S MEMORANDUM OF LAW IN SUPPORT OF ITS MOTION FOR TEMPORARY RESTRAINING ORDER AND PRELIMINARY INJUNCTION

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INTRODUCTION

"It is a sordid business, this divvying us up by race." *LULAC v. Perry*, 548 U.S. 399, 511 (2006) (Roberts, C.J., concurring in part, concurring in judgment in part, dissenting in part). Distinguishing between individuals '"solely because of their ancestry [is] by [its] very nature odious to a free people."' *Rice v. Cayetano*, 528 U.S. 495, 517 (2000). Racial discrimination is fundamentally '"immoral,"' '"inherently wrong,"' and '"destructive of democratic society."' *City of Richmond v. J.A. Croson Co.*, 488 U.S. 469, 521 (1989) (Scalia, J., concurring in judgment). '"[E]very time the government places citizens on racial registers and makes race relevant to the provision of burdens or benefits, it demeans us all."' *Fisher v. Univ. of Tex. at Austin*, 570 U.S. 297, 316 (2013) (Thomas, J., concurring).

Racial discrimination "demeans us all" just the same when it is done by private entities. Hence why Congress, in the Civil Rights of 1866 ("§1981"), extended the promise of equal protection and racial neutrality to creating contractual relationships. And why Congress passed Title VI of the Civil Rights Act of 1964, and Section 1557 of the Affordable Care Act: '"Simple justice requires that public funds, to which all taxpayers of all races contribute, not be spent in any fashion which encourages, entrenches, subsidizes, or results in racial discrimination."' *Barbour v. Wash. Metro. Area Transit Auth.*, 374 F.3d 1161, 1170 (D.C. Cir. 2004); *see also Bob Jones Univ. v. United States*, 461 U.S. 574, 594 (1983). Both New York State and New York City laws also prohibit racial discrimination by private entities.

Defendant Pfizer, Inc. is running a racially discriminatory fellowship—the Breakthrough Fellowship Program—that categorically excludes white and Asian-American applicants. Pfizer *requires* that applicants be Black/African American, Latino/Hispanic, or Native American. The Fellowship offers numerous benefits—a nine-year investment by Pfizer to provide professional mentorship, summer internships, post-undergraduate/post-graduate employment, and full scholarship for master's program. According to Pfizer, however, white and Asian-American applicants need not apply.

Pfizer's open exclusion of white and Asian-American applicants is illegal. Pfizer is blatantly discriminating against white and Asian-American applicants, blocking the creation of contractual relationships solely based on race, in violation of §1981. And because Pfizer, a company principally engaged in healthcare, receives federal financial assistance by accepting reimbursements from federal healthcare programs and through other means, all its operations—including the Fellowship—are covered by the federal prohibitions on racial discrimination under Title VI and Section 1557. All racial classifications—much less outright racial bars—are subject to strict scrutiny under federal law, which Pfizer cannot come close to satisfying. Pfizer's racially exclusionary Fellowship is also illegal under New York State and New York City laws, which prohibit racial discrimination in, and racially discriminatory advertisements for, internships, training programs, and employment.

Plaintiff, Do No Harm, has at least two members ("Member A" and "Member B") who are able and ready to apply to the 2023 Fellowship class but for Pfizer's race-based exclusion of white and Asian-American applicants. Pfizer recently opened the application window for the Fellowship, but when Pfizer will close the application window is uncertain. Given the uncertainty and the press of time, this Court's immediate intervention is necessary to prevent irreparable harm to Member A, Member B, and others like them. Federal, New York State, and New York City laws all allow this Court to issue injunctive relief to protect Member A and Member B from this kind of invidious racial discrimination. Do No Harm respectfully requests that the Court issue a temporary restraining order and a preliminary injunction preventing Pfizer from excluding white and Asian-American applicants solely on account of their race. Do No Harm respectfully requests the Court's action by **no later than September 30, 2022**.

BACKGROUND

A. Pfizer principally engages in healthcare, participates in federal healthcare programs, and receives federal financial assistance.

Pfizer is a healthcare pharmaceutical company that develops and manufactures medicines and other therapeutics for patients. VC ¶18. Pfizer's principal focus is healthcare. VC ¶19. Pfizer participates in the federal healthcare program, as defined in 42 U.S.C. §1320a-7b(f)(1), such as Medicare and Medicaid, by offering federally reimbursable products and medicines. VC ¶20.

Pfizer also works with healthcare providers, government health agencies, various research hospitals and institutes, and other pharmaceutical companies. VC ¶32. For instance, at least between 2014 and 2019, Pfizer's Centers for Therapeutics Innovation hosted the National Institutes of Health ("NIH")'s researchers for an innovative collaboration. VC ¶22; *see also* NIH, *Pfizer's CTI for NIH Researchers* (last visited Sep. 15, 2022), bit.ly/3RMSl6A.

In addition, Pfizer is part of the Accelerating Medicines Partnership ("AMP"), a public-private partnership between NIH, the Food and Drug Administration ("FDA") and private pharmaceutical companies. VC ¶23; NIH, *Accelerating Medicines Partnership* (last visited Sep. 15, 2022), bit.ly/3xdwehL. AMP pulls together the collective expertise and resources of NIH, FDA, industry, and patient advocacy organizations to increase "the number of new diagnostics and therapies for patients and reduce the time and cost of developing them." VC ¶24; NIH, *Accelerating Medicines Partnership*. The AMP partnership has projects covering disease such as autoimmune diseases, metabolic diseases, gene therapy, Parkinson's disease, rheumatoid arthritis, lupus, and type 2 diabetes. VC ¶25; NIH, *Accelerating Medicines Partnership*.

NIH provides a significant portion of AMP's budget. VC ¶27. For instance, NIH has provided about $26.5 million for its autoimmune disease program[1]; about $40 million for the metabolic disease

[1] NIH, *Autoimmune and Immune-Mediated Diseases* (last visited Sep. 15, 2022), bit.ly/3Bw2Qpv.

program[2]; about $39.5 million for the gene therapy program[3]; about $12 million for the Parkinson's disease program[4]; about $24.9 million for the rheumatoid arthritis and lupus program[5]; and about $31 million for the type 2 diabetes program,[6] all programs in which Pfizer participates. VC ¶¶28-29; *see generally* NIH, *Accelerating Medicines Partnership*. As a participant, Pfizer receives the results of the research and development by this NIH-funded partnership, "which will enable the development of new and effective therapies for people with autoimmune diseases." VC ¶30; Nat'l Inst. of Arthritis & Musculoskeletal & Skin Diseases, *Letter from the Director* (last visited Sep. 15, 2022), bit.ly/3x2qOWI.

B. Pfizer launches and oversees the Breakthrough Fellowship Program, which excludes white and Asian-American applicants.

In 2021, Pfizer launched the Breakthrough Fellowship Program which categorically excludes white and Asian-American applicants from applying. VC ¶31; Ex. A, at 4; Ex. B, at 1; *see also* Pfizer, *Breakthrough Fellowship Program* (last visited Sep. 15, 2022), bit.ly/3KSRr66. The Fellowship is a prestigious, multi-year program. VC ¶32; Ex. A, at 1. Students in their junior year of college are eligible to apply to the Fellowship, which consists of five components. VC ¶33; Ex. A, at 3-4; Ex. B, at 1-2. The first component consists of a 10-week summer internship for rising college seniors. VC ¶34; Ex. A, at 3-4; Ex. B, at 1-2. In the second component, Pfizer offers the fellows two years of full-time employment following college graduation. VC ¶35; Ex. A, at 3-4; Ex. B, at 1-2. After two years, in the third component, Pfizer will pay a full scholarship for the fellows to complete a full-time, two-year program to obtain MBA, MPH, or MS in statistics. VC ¶36; Ex. A, at 3-4; Ex. B, at 1-2. The fourth component

[2] NIH, *Common Metabolic Diseases* (last visited Sep. 15, 2022), bit.ly/3RUVAJ0.
[3] NIH, *Bespoke Gene Therapy Consortium* (last visited Sep. 15, 2022), bit.ly/3QAo362.
[4] NIH, *Parkinson's Disease* (last visited Sep. 15, 2022), bit.ly/3TZP3Pf.
[5] NIH, *Autoimmune Diseases of Rheumatoid Arthritis and Lupus* (last visited Sep. 15, 2022), bit.ly/3Ljp9SN.
[6] NIH, *Type 2 Diabetes* (last visited Sep. 15, 2022), bit.ly/3qrMTKu.

consists of summer internship between the first and second years of the Pfizer-funded master programs. VC ¶37; Ex. A, at 3-4; Ex. B, at 1-2. The fifth component consists of the fellows' return to Pfizer for post-graduate employment. VC ¶38; Ex. A, at 3-4; Ex. B, at 1-2.

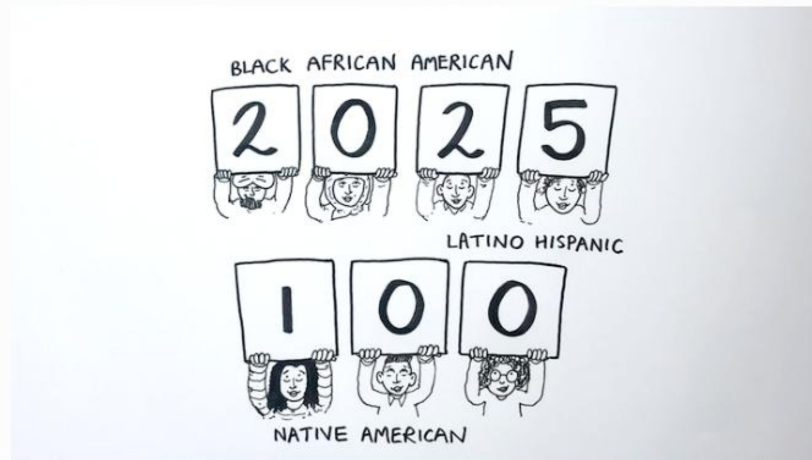
Pfizer boasts that this Fellowship is "first-of-its-kind." VC ¶39. By comparison, Pfizer offers the Summer Growth Experience Program, which appears to be open to all applicants. VC ¶40; Ex. B, at 1; *see also* Pfizer, *Pfizer Summer Growth Experience* (last visited Sep. 15, 2022), bit.ly/3qhiMFx. However, the Summer Growth Experience Program's investment in and commitment to its interns is nowhere as comprehensive as the Fellowship's investment in and commitment to the Breakthrough fellows as the Summer Growth Experience Program does not appear to offer guaranteed post-undergraduate/post-graduate employment or scholarship for master's programs. *See* VC ¶41; *see* Pfizer, *Pfizer Summer Growth Experience*.

To apply to the 2023 class of the Fellowship, an applicant must: (1) be a U.S. citizen or permanent resident; (2) be enrolled in a full-time university program, with an expected graduate in December 2023 or Spring 2024; (3) have a 3.0 GPA or higher; (4) have an interest and intent to pursue an MBA, MPH, or MS in statistics; (5) demonstrate leadership potential; and (6) be willing to work in Pfizer's New York City office or other locations. VC ¶42; Ex. A, at 3-4; Ex. B, at 1-2.

According to Pfizer, however, white and Asian-American applicants need not apply. VC ¶43; Ex. A, at 4; Ex. B, at 1. Pfizer adds that only Black/African American, Latino/Hispanic, and Native American applicants are eligible to apply to this Fellowship. VC ¶44; Ex. A, at 4; Ex. B, at 1. Pfizer explains that an applicant must "[m]eet the program's goals of increasing the pipeline for Black/African American, Latino/Hispanic and Native Americans"; and it conspicuously leaves out otherwise-qualified white and Asian-American students from eligibility. VC ¶45; Ex. A, at 4; Ex. B, at 1.

The informational video about the Fellowship that Pfizer posted on its website states that Pfizer intends that "by 2025, [it] will have a generation of 100 new leaders at Pfizer coming from

underrepresented groups and lead … [the] organization." VC ¶46; Ex. C, at 1; Pfizer, *Breakthrough Fellowship Program* (video at 0:44-0:48). The informational video's visuals and drawings make it clear that the 100 fellows will be selected from "Black African American," "Latino Hispanic," and "Native American" applicants. VC ¶47; Ex. C, at 1; Pfizer, *Breakthrough Fellowship Program* (video at 0:44-0:48).



coming from underrepresented groups and lead on this organization.

The application window for the 2023 class of the Fellowship opened in late August. VC ¶48. Although Pfizer has not announced when the application window will close, the application window is closing. VC ¶48.

C. Do No Harm has members who are ineligible to apply to the Fellowship on account of race.

Do No Harm is a nationwide membership organization consisting of a diverse group of physicians, healthcare professionals, medical students, patients, and policymakers who want to protect healthcare from a radical, divisive, and discriminatory ideology. VC ¶9; Rasmussen Decl. ¶3. Do No

Harm accomplishes its mission through education and advocacy and by drawing attention to the divisive and discriminatory ideas being embedded within medical education, training, research, practice, and policy. VC ¶10; Rasmussen Decl. ¶3.

Do No Harm has at least two members who are being harmed by Pfizer's racially discriminatory Fellowship. VC ¶49; Rasmussen Decl. ¶5. Member A and Member B meet all nonracial criteria for applying to the Fellowship—but Member A is white and Member B is an Asian-American. VC ¶¶57, 67; Member A Decl. ¶2; Member B Decl. ¶2. Member A And Member B are each currently enrolled as a full-time student in junior year at an Ivy League university. VC ¶¶51, 61; Member A Decl. ¶3; Member B Decl. ¶3. Both Members are U.S. citizens and maintain a GPA higher than a 3.0 average. VC ¶¶52-53, 63-63; Member A Decl. ¶¶4-5; Member B Decl. ¶¶4-5. Both Members are actively involved in campus life and activities and hold leadership positions in student organizations. VC ¶¶54, 64; Member A Decl. ¶6; Member B Decl. ¶6. Both Members are interested in applying to the Fellowship because it is a prestigious program that would provide a great professional development opportunity and allow them to meet professional mentors. VC ¶¶55, 65; Member A Decl. ¶7; Member B Decl. ¶7. Both would enjoy working in Pfizer's New York City office next summer and are drawn to the Fellowship by the fact that Pfizer will pay a full scholarship for an MBA program. VC ¶¶55-56, 65-66; Member A Decl. ¶¶7-8; Member B Decl. ¶¶7-8.

Both Member A and Member B are ready and able to apply to the Fellowship for the 2023 class if Pfizer stops discriminating against white and Asian-American applicants. VC ¶¶58, 68; Member A Decl. ¶9; Member B Decl. ¶9. And both Members are prepared to meet the program's requirements and expectations if they get accepted and join the Fellowship. VC ¶¶59, 60; Member A Decl. ¶10; Member B Decl. ¶10. However, Member A and Member B are barred from the Fellowship on account of race. VC ¶¶57, 67; Rasmussen Decl. ¶5; Member A Decl. ¶2; Member B Decl. ¶2.

ARGUMENT

Do Ho Harm is entitled to a TRO and a preliminary injunction if it can demonstrate the following four factors: (1) a likelihood of success on the merits; (2) a likelihood of irreparable harm without relief; (3) that the balance of harms favors granting relief; and (4) that the public interest favors granting relief. *A.H. ex rel. Hester v. French*, 985 F.3d 165, 176 (2d Cir. 2021). Do No Harm satisfies all four.

I. Do No Harm is substantially likely to succeed on the merits.

Do No Harm is substantially likely to succeed on the merits of its various claims under federal, New York State, and New York City laws. Pfizer is running a Fellowship that explicitly excludes entire classes of individuals on the account of race. Such explicit race-based exclusion was outlawed long ago. And federal, New York State, and New York City laws authorize this Court to issue injunctive relief to address racial discrimination. *See, e.g.*, *Johnson v. Ry. Express Agency, Inc.*, 421 U.S. 454, 459-60 (1975) (Section 1981); *Alexander v. Sandoval*, 532 U.S. 275, 279-80 (2001) (Title VI); 42 U.S.C. §18116(a) (Section 1557); N.Y. Exec. Law §297(9) (New York State law); N.Y.C. Admin. Code §8-502(a) (New York City law).

A. Pfizer's racially exclusionary Fellowship violates Section 1981.

The Civil Rights Act of 1866 states that "[a]ll persons … shall have the same right … to make and enforce contracts … and to the full and equal benefit of all laws … as is enjoyed by white citizens." 42 U.S.C. §1981(a). The Supreme Court has interpreted §1981 to "protec[t] the equal right of all persons … without respect to race." *Domino's Pizza, Inc v. McDonald*, 546 U.S. 470, 474 (2006) (cleaned up); *see also McDonald v. Santa Fe Trail Transp. Co.*, 427 U.S. 273, 298 (1976) (Section 1981 "was meant, by its broad terms, to proscribe discrimination in the making or enforcement of contracts against, or in favor of, any race.").

Under §1981, "a plaintiff must initially plead and ultimately prove that, but for race, it would not have suffered the loss of a legally protected right," such as the right to make and enforce contracts.

Comcast Corp. v. Nat'l Ass'n of African Am.-Owned Media, 140 S.Ct. 1009, 1019 (2020). More specifically, the plaintiff must show "'discrimination concerning one of the statute's enumerated activities'" and "'defendant['s] intent to discriminate on the basis of race.'" *Felder v. U.S. Tennis Ass'n*, 27 F.4th 834, 848 (2d Cir. 2022).

Pfizer is violating §1981 by excluding white and Asian-American applicants from the Fellowship solely based on race. ***First***, the Fellowship implicates the activities enumerated under §1981: "making … of contracts." §1981(b). "[A] contractual relationship need not already exist, because §1981 protects the would-be contractor along with those who already have made contracts." *Domino's*, 546 U.S. at 476. Section 1981 "offers relief when racial discrimination blocks the creation of a contractual relationship." *Id.* The Fellowship is designed to lead to a comprehensive contractual relationship between Pfizer and the fellows. VC ¶¶32-38. For example, at least, in exchange for an offer of post-undergraduate/post-graduate employment and scholarship for master's degrees, the fellows agree to participate in the five components of the Fellowship and work as interns. VC ¶¶34, 37; Ex. A, at 4; Ex. B, at 1.

Second, Pfizer's discrimination against white and Asian-American applicants is intentional and based on race. Intentional discrimination exists when "a law or policy … 'expressly classifies persons on the basis of race.'" *Brown v. City of Oneonta, N.Y.*, 221 F.3d 329, 337 (2d Cir. 2000) (quoting *Adarand Constructors, Inc. v. Pena*, 515 U.S. 200, 213 (1995)); *see also Hassan v. City of New York*, 804 F.3d 277, 295 (3d Cir. 2015) ("Put another way, direct evidence of intent is 'supplied by the policy itself.'"). Under §1981, "a plaintiff who alleges a policy that is discriminatory *on its face* is not required to make further allegations of discriminatory intent or animus." *Juarez v. Nw. Mut. Life Ins. Co., Inc.*, 69 F. Supp. 3d 364, 370 (S.D.N.Y. 2014). Here, Pfizer's open exclusion of white and Asian-American applicants is not neutral—it constitutes an express classification (and bar) based on race. Pfizer is *requiring* that applicants not be white or Asian American in order to be eligible to apply to the Fellowship. VC ¶¶43-47;

Ex. A, at 4; Ex. B, at 1. In other words, "but for" white and Asian-American applicants' race, *Comcast Corp.*, 140 S.Ct. at 1019, they would not be "block[ed]" from "the creation of a contractual relationship" with Pfizer, *Dominos'*, 546 U.S. at 476. Pfizer is openly violating §1981.

B. Pfizer's racially exclusionary Fellowship violates Title VI and Section 1557.

1. Pfizer is covered by Title VI and Section 1557 because it is a program or activity that receives federal financial assistance.

Pfizer is covered by Title VI and Section 1557 because it receives federal financial assistance through reimbursement for federal healthcare programs and because it receives assistance from NIH personnel and NIH-funded partnership. Title VI provides that no person "shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance." 42 U.S.C. §2000d. Under Title VI, as amended, "the term 'program or activity' and the term 'program' mean *all of the operations* of … an entire corporation": (i) "if assistance is extended to such corporation … as a whole" or (ii) if the corporation "is principally engaged in the business of providing education, health care, housing, social services, or parks and recreation." 42 U.S.C. §2000d-4a(3)(A)(i)-(ii) (emphasis added).

Section 1557 of the Affordable Care Act similarly prohibits racial discrimination. It incorporates Title VI by stating that "[a]n individual shall not, on the ground prohibited under title VI … be excluded from participation in, be denied the benefits of, or be subjected to discrimination under, any health program or activity, any part of which is receiving Federal financial assistance, including credits, subsidies, or contracts of insurance." 42 U.S.C. §18116(a); *see also Cummings v. Premier Rehab Keller, PLLC*, 142 S.Ct. 1562, 1570 (2022) (The ACA "outlaws discrimination … by healthcare entities receiving federal funds"). "The phrase 'health program or activity' in section 1557 plainly includes all the operations of a business principally engaged in providing healthcare." *T.S. ex rel. T.M.S.*, 43 F.4th

737, 743 (7th Cir. 2022). Consistent with Section 1557's plain text, HHS regulations define "health program or activity" to "encompas[s] all of the operations of entities principally engaged in the business of providing healthcare that receive Federal financial assistance," 45 C.F.R. §92.3(b), including those "provided by [HHS]," §92.3(a)(1).

All of Pfizer's operations—including the Fellowship—are covered by Title VI and Section 1557. ***First***, Pfizer holds itself out as a corporation principally engaged in "health care." 42 U.S.C. §2000d-4a(3)(A)(ii); §18116(a); *T.S.*, 43 F.4th at 743; 45 C.F.R. §92.3(b). "Principally engaged" means "the primary activities of a business, excluding only incidental activities." *Doe v. Salvation Army*, 685 F.3d 564, 571 (6th Cir. 2012). Pfizer's principal activities are in healthcare as it is evident from the fact that it produces medicine and pharmaceutical products and participates in federal healthcare programs. *See supra* 3-4. Accordingly, its "entire" operations—including the Fellowship—constitute a "program or activity" under Title VI. 42 U.S.C. §2000d-4a(3)(A)(ii). For the same reason, and—as explained below—because it receives HHS funding, Pfizer and "all [its] operations" including the Fellowship constitute a "health program or activity" under Section 1557. *T.S.*, 43 F.4th at 743; *see also* §18116(a).

Second, Medicare reimbursements constitute "federal financial assistance," which triggers Title VI and Section 1557. *See, e.g.*, *Cummings*, 142 S.Ct. at 1569 (entity subject to Section 1557 "which appl[ies] to entities that receive federal financial assistance, because it receive[d] reimbursement through Medicare and Medicaid"); *see also, e.g.*, *United States v. Baylor Univ. Med. Ctr.*, 736 F.2d 1039, 1045 (5th Cir. 1984) ("Our conclusion [is] that Congress intended Medicare and Medicaid to constitute 'federal financial assistance'" under Title VI.); *People by Vacco v. Mid Hudson Med. Grp., P.C.*, 877 F. Supp. 143, 149-50 (S.D.N.Y. 1995) ("Medicare and Medicaid, funded by payroll taxes …, [are] just the sort of 'assistance' meant to trigger [federal] non-discrimination obligations."); *United States v. Univ. Hosp. of SUNY at Stony Brook*, 575 F. Supp. 607, 612 (E.D.N.Y. 1983) ("[A] hospital that receives

reimbursement under the Medicare or Medicaid programs receives federal financial assistance within the meaning of [federal law].”).

Third, Pfizer is a “recipient” of Medicare reimbursements. “Entities that receive federal assistance, whether directly or through an intermediary, are recipients” of federal financial assistance. *NCAA v. Smith*, 525 U.S. 459, 468 (1999). In *Grove City College v. Bell*, the Supreme Court explained that there is “no basis” to conclude that “only institutions that themselves apply for federal aid or receive checks directly from the federal government” are recipients of federal financial assistance. 465 U.S. 555, 564 (1984). In that case, the Court concluded that a private college was a recipient of federal financial assistance when it “enroll[ed] students who receive[d] federal grants [to] be used for educational purposes” even though it “accept[ed] no direct assistance.” *Id.* at 558. To be sure, the Supreme Court later clarified that “entities that only benefit economically from federal assistance are not” recipients of federal financial assistance. *NCAA*, 525 U.S. at 468 (citing *U.S. Dep’t of Transp. v. Paralyzed Veterans of Am.*, 477 U.S. 597 (1986)). Balancing *Grove City College* and *Paralyzed Veterans*, the “relevant question” is “whether the [entity] is an ‘intended recipient’ of the funds Congress has appropriated,” and not just a mere beneficiary. *Bennett-Nelson v. La. Bd. of Regents*, 431 F.3d 448, 452 (5th Cir. 2005).

Applying these principles, it becomes apparent that Pfizer is an “intended recipient” of reimbursements from federal healthcare programs like, for example, Medicare Part D prescription-drug program. Pfizer directly and indirectly receives Medicare reimbursements funds that were appropriated for Medicare Part D. *See Pfizer, Inc. v. U.S. Dep’t of Health & Hum. Servs.*, 42 F.4th 67, 71 (2d Cir. 2022) (describing how “[t]he federal government, through Medicare, would pick up the rest of $225,000 tab” for a Pfizer drug). Moreover, courts have observed that “the ‘intended recipients’ of [Medicare and Medicaid] benefits are not … individuals qualified for Medicare or Medicaid, but instead are entities qualified to participate in, and receive reimbursement from, those programs.” *United States v. Nastasi*, 2002 WL 1267995, at *3 (E.D.N.Y. Apr. 17, 2002). Pfizer “participat[es] in … Federal

health care program[s]" like Medicare and receive reimbursements. 42 U.S.C. §1320a-7; *cf. Pfizer*, 42 F.4th at 72 (Pfizer challenged HHS's advisory opinion finding Pfizer's scheme to induce purchases of federally-reimbursed medicines unlawful under the federal Anti-Kickback Statute, in order to avoid "the possibility of … complete exclusion from federal reimbursement for its drugs").

Alternatively, Pfizer receives federal financial assistance through other types of assistance. "[N]onmoney assistance" can constitute federal financial assistance. *Paralyzed Veterans*, 477 U.S. at 613 n.14; *see also Demonte v. Dep't of Bus. & Pro. Regul.*, 877 F. Supp. 1563 (S.D. Fla. 1995) ("training … received from the DEA, FBI and the Department of Treasury constituted Federal financial assistance"). HHS Title VI-implementing regulations—like various federal agencies' regulations—state that federal financial assistance includes "the detail of Federal personnel" and "any Federal … arrangement … which has as one of its purposes the provision of assistance." 45 C.F.R. §80.13(f)(2), (5). As explained above, NIH provided assistance to Pfizer by detailing its researchers at Pfizer's CTI. *See supra* 3-4; VC ¶22; *see also* NIH, *Pfizer's CTI for NIH Researchers*. And NIH is currently providing similar types of assistance to Pfizer through FNIH's AMP. VC ¶¶23-30. NIH is providing its expertise, resources, and funding for the AMP partnership, in which Pfizer participates, constituting both monetary and non-monetary assistance. Moreover, the NIH-funded AMP partnership is "arrange[d]" with a "purpos[e]" of providing "assistance" to Pfizer and other pharmaceutical companies that benefit from the research and development that come out of the collaborative, public-private partnership spearheaded by NIH. §80.13(f)(5); *see supra* 3-4; VC ¶¶23-30.

2. Pfizer's exclusion of white and Asian-American applicants from the Fellowship cannot satisfy strict scrutiny.

Section 1557 provides that "an individual shall not, on the ground prohibited under title VI …, be excluded from participation in, be denied the benefit of, or be subjected to discrimination under any health program or activity, any part of which is receiving federal financial assistance." 42 U.S.C.

§18116(a). Title VI similarly states that "[n]o person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance." §2000d.

"Title VI's protections are coextensive with the Equal Protection Clause of the Fourteenth Amendment." *Students for Fair Admissions, Inc. v. President & Fellows of Harv. Coll.*, 980 F.3d 157, 185 (1st Cir. 2020). The Equal Protection Clause prohibits the government from "deny[ing] to any person … the equal protection of the laws." U.S. Const. amend. IX, §1. The "central mandate" of equal protection is "racial neutrality." *Miller v. Johnson*, 515 U.S. 900, 904 (1995). Whenever an individual is treated "unequally because of his or her race, that person has suffered an injury that falls squarely within the language and spirit of the Constitution's guarantee of equal protection." *Adarand Constructors, Inc. v. Pena*, 515 U.S. 200, 229-30 (2000).

"[A]ll racial classifications … must be analyzed by a reviewing court under strict scrutiny." *Id.* at 227. This is true "even for so-called 'benign' racial classification." *Johnson v. California*, 543 U.S. 499, 505 (2005). "'Racial classifications are simply too pernicious to permit any but the most exact connection between justification and classification.'" *Patrolmen's Benevolent Ass'n of City of N.Y. v. City of New York*, 310 F.3d 43, 53 (2d Cir. 2002). Strict scrutiny is a "searching examination, and it is the government that bears the burden to prove that the reasons for any racial classification are clearly identified and unquestionably legitimate." *Fisher*, 570 U.S. at 310 (cleaned up). "To survive …. strict scrutiny, a racial classification must be narrowly tailored to further a compelling governmental interest." *Patrolmen's Benevolent Ass'n*, 310 F.3d at 52. The burden rests on Pfizer to satisfy strict scrutiny.

Pfizer cannot satisfy strict scrutiny.

First, Pfizer cannot provide a compelling interest that justifies its racially exclusionary Fellowship. As a threshold matter, Pfizer's racial classifications are particularly pernicious because they are *exclusionary*. It is difficult to imagine what interests could possibly justify categorically excluding entire

classes of individuals solely because of their race. Indeed, courts have rejected many interests as not compelling enough to justify racial classifications—much less full-scale, race-based exclusion. Remedying "the effects of societal discrimination is not a compelling interest." *Shaw v. Hunt*, 517 U.S. 909, 910 (1996). Relatedly, a "generalized assertion that there has been past discrimination" cannot serve as a compelling interest for present racial segregation. *J.A. Croson Co.*, 488 U.S. at 498; *see also Parents Involved in Cmty. Schs. v. Seattle Sch. Dist. No. 1*, 551 U.S. 701, 720-21 (2007). Nor can providing "role models" for minority students. *Wygant v. Jackson Bd. of Educ.*, 476 U.S. 267, 276 (1986). "'[R]acial balance is not to be achieved for its own sake.'" *Parents Involved*, 551 U.S. at 729-30; *see also, e.g.*, *Patrolmen's Benevolent Ass'n*, 310 F.3d at 52-54 (NYC's race-based assignment for police officers was not justified by a compelling interest); *MD/DC/DE Broads. Ass'n v. FCC*, 236 F.3d 13, 21 (D.C. Cir. 2001) (employment practices favoring certain race groups to promote "'programming diversity'" was not compelling interest); *Lomack v. City of Newark*, 463 F.3d 303, 309-10 (3d Cir. 2006) (diversity in workplace for the fire department did not amount to compelling interest).

Here, Pfizer's stated objectives are to "increas[e] diversity by fostering a more inclusive workplace" and to "increase[e] the pipeline for Black/African American, Latino/Hispanic and Native Americans." VC ¶45; Ex. A, at 4; Ex. B, at 1. These generalized objectives seeking to increase diversity in the workplace—untied to any "past intentional discrimination" by Pfizer that it seeks remedy, *Parents Involved*, 551 U.S. at 720—fall woefully short of a compelling interest.

Second, Pfizer's racially exclusionary Fellowship is not narrowly tailored. Narrow tailoring requires "the most exact connection between justification and classification." *Wygant*, 476 U.S. at 280. And narrow tailoring also typically requires proof that racial classifications are "necessary" to achieve the compelling interest. *Parents Involved*, 551 U.S. at 734-35.

There is no evidence that Pfizer ever "considered methods other than explicit racial classification to achieve [its] stated goals." *Id.* at 735. Indeed, the Fellowship was purposefully designed with

the intent of providing professional benefits to all applicants, *except* white and Asian-American applicants. Contrary to the command that race-based considerations be the "last resort," Pfizer excluded white and Asian-American applicants as the first resort. *Id.* Outright exclusion of all white and Asian-American applicants is not "exact[ly] connect[ed]," *Wygant*, 476 U.S. at 280, to Pfizer's stated objectives of increasing diversity. *See Gratz v. Bollinger*, 539 U.S. 244, 271-72 (2003) (automatic 20 points awarded to "underrepresented minority" applicants solely because of race was not narrowly tailored); *cf. MD/DC/DE Broads. Ass'n*, 236 F.3d at 22 ("a sweeping requirement is the antithesis of rule narrowly tailored to meet a real problem"). Nor is it narrow. Because Pfizer's race-based exclusion of white and Asian-American applicants from the Fellowship cannot satisfy strict scrutiny, it violates Title VI and Section 1557.

C. Pfizer's racially exclusionary Fellowship violates New York State and City laws.

New York State and New York City laws prohibit racial discrimination in—and racially discriminatory advertisements for—internships, training programs, and employment. The Fellowship implicates all these provisions, because—as a multi-year program—it shepherds the fellows through internship and training phases to employment phases. Pfizer is violating every single racial discrimination ban under these laws because its Fellowship is discriminatory on its face, expressly barring white and Asian-American applicants from applying to the Fellowship. Moreover, Pfizer is unlawfully advertising its racially discriminatory Fellowship with a race requirement, in violation of state and local laws.

1. Pfizer's exclusion of white and Asian-American applicants from the Fellowship is discriminatory on its face and requires no further evidence of motive or burden-shifting analysis.

The Second Circuit has held that "claims of discrimination under the Human Rights Laws of … New York State are evaluated using the same analytic framework used in Title VII actions." *Farias v. Instructional Sys., Inc.*, 259 F.3d 91, 98 (2d Cir. 2001). Title VII and New York State law "may be used

to aid in the interpretation of New York City Human Rights Law," but they constitute the "*floor* below which the City's Huan Rights law cannot fall." New York City law "must be given 'an independent liberal construction.'" *Loeffler v. Staten Island Univ. Hosp.*, 582 F.3d 268, 278 (2d Cir. 2009).

"[U]nder Title VII, when a policy is 'discriminatory on its face,' the defendant's motive is irrelevant." *Feemster v. BSA Ltd. P'ship*, 548 F.3d 1063, 1070 (D.C. Cir. 2008) (quoting *Trans World Airlines, Inc. v. Thurston*, 469 U.S. 111, 121 (1985)). "[T]he absence of a malevolent motive does not convert a facially discriminatory policy into a neutral policy with a discriminatory effect." *UAW v. Johnson Controls, Inc.*, 499 U.S. 187, 199 (1991). Rather, whether the defendant's policies amount to intentional discrimination turns not on "why the employer discriminates but rather on the explicit terms of the discrimination." *Id.* In cases like this, "'the *McDonnell Douglas* search for a motive is unnecessary and therefore inapplicable.'" *Patrolmen's Benevolent Ass'n of City of N.Y. v. City of New York*, 74 F. Supp. 2d 321, 333 (S.D.N.Y. 1999) (quoting *Johnson v. New York*, 49 F.3d 75, 79 (2d Cir. 1995)). And further burden-shifting analysis is especially "inapplicable" if "defendants concede that their decision was based on race and they would not have made the same decision absent race." *Id.*; *see also Johnson Controls*, 499 U.S. at 200 ("'For the plaintiff to bear the burden of proof in a case in which there is direct evidence of a facially discriminatory policy is wholly inconsistent with settled Title VII law.'").

Here, Pfizer's racially exclusionary Fellowship is "discriminatory on its face" and requires no further direct evidence of discriminatory motive or intent. *Trans World Airlines*, 469 U.S. at 121. Pfizer readily concedes and broadcasts that its decision to create the racially exclusionary Fellowship was based on race—namely, to "[m]eet the program's goals of increasing the pipeline for Black/African American, Latino/Hispanic and Native Americans." VC ¶45; Ex. A, at 4; Ex. B, at 1. And Pfizer's information video makes it clear that the 100 fellows whom it seeks to select by 2025 will come from those three racial groups and exclude white and Asian American applicants. *See supra* 5-6. Pfizer would

not have excluded white and Asian-American applicants "absent race." *Patrolmen's Benevolent Ass'n*, 74 F. Supp. 2d at 333.

2. Pfizer's exclusion of white and Asian-American applicants from the Fellowship violates racial discrimination bans in internships, training programs, and employment under state and local laws.

The Fellowship's exclusion of white and Asian-American applicants implicates—and violates—various bans on racial discrimination in internships, training programs, and employment under New York State and New York City laws because it is a multi-year program that guides the fellows through internship and training phases to employment phases.

Internship. New York State law makes it unlawful for an employer to "refuse to hire or employ or to bar … from internship an intern or to discriminate against such intern … because of the intern's … race." N.Y. Exec. Law §296-c(2)(a). In addition, New York State law makes it unlawful to "discriminate against an intern in receiving, classifying, disposing or otherwise acting upon applications for internships because of the intern's … race." §296-c(2)(b). New York City law also makes it clear that anti-discrimination protections for employees "apply to interns." N.Y.C. Admin. Code §8-107(23). And it is unlawful under New York City law to "bar" a person from internships because of "actual or perceived" "race" and to discriminate in handling applications. §8-107(1)(a)(2), (b).

The Fellowship offers "[a]n initial 10-week summer internship for rising undergraduate college seniors." VC ¶34; Ex. A, at 3-4; Ex. B, at 1. And Pfizer offers another summer internship between the first and second years of the all-paid-for master's program. VC ¶37; Ex. A, at 3-4; Ex. B, at 1. Contrary to New York State's and New York City's prohibitions on racial discrimination in internships, Pfizer is categorically "bar[ring]" white and Asian-American applicants from applying to the Fellowship and "discriminat[ing] against" them. N.Y. Exec. Law §296-c(2)(a); N.Y.C. Admin. Code §8-107(1)(a)(2).

In addition, Pfizer is discriminating against white and Asian-American applicants "in receiving, classifying, disposing, or otherwise acting upon applications for internships because of … race." N.Y. Exec. Law §296-c(2)(b); N.Y.C. Admin. Code §8-107(1)(b).

Training program. New York State law also makes it unlawful for an employer "[t]o deny or withhold from any person because of race, … the right to be admitted or participate in a guidance program, an apprenticeship training program, on-the-job training program, executive training program, or other occupational training or retraining program." N.Y. Exec. Law §296(1-a)(b). New York City law also makes it unlawful "deny to or withhold from any person because of his or her actual or perceived race … the right to be admitted to or participate in a guidance program, an apprentice training program, on-the-job program, or other occupational training or retraining program." N.Y.C. Admin. Code §8-107(2)(b).

The Fellowship also constitutes a training program. It was designed to ensure that "students receive mentoring and professional development" as well as the "the opportunity to grow within the organization." Ex. A, at 3. And with multiple summers of internship experience and fully-paid-for master's program, Pfizer is making a substantial investment in training the fellows. Nevertheless, Pfizer is categorically "deny[ing]" and "withhold[ing] from" white and Asian-American applicants "the right to be admitted or participate" in the Fellowship solely because of their race. N.Y. Exec. Law §296(1-a)(b); N.Y.C. Admin. Code §8-107(2)(b).

Employment. New York State law also makes it unlawful "for an employer, because of an individual's … race …, to refuse to hire or employ or to bar … from employment such individual …." N.Y. Exec. Law §296(1)(a). New York City law—like New York State law—makes it unlawful for an employer to "refuse to hire or employ or to bar … from employment" "any person" because of race. N.Y.C. Admin. Code §8-107(1)(a)(2). The Fellowship is designed to lead to employment with Pfizer. For instance, the Fellowship offers two years of post-undergraduate employment and post-

graduate employment following all-paid-for master's program. VC ¶¶35, 38; Ex. A, 3-4; Ex. B, at 1. Alternatively, the summer internships themselves could constitute employment. VC ¶¶34, 37. However, because of white and Asian-American applicants' race, Pfizer is categorically barring them from the employment opportunities that come through the Fellowship.

3. Pfizer is violating the bans on racially discriminatory advertisements for internships, training programs, and employment under state and local laws.

In addition to making it unlawful to discriminate against individuals based on race in internships, training programs, and employment, New York State and New York City laws make it unlawful to post racially discriminatory advertisements for the internships, training programs, and employment. Specifically, New York State law make it unlawful to "print or circulate … any statement, advertisement or publication … which expresses, directly or indirectly, any limitation, specification or discrimination as to … race, … or any intent to make such limitation, specification or discrimination." N.Y. Exec. Law §296-c(2)(c) (internship); §296(1-a)(d) (training program); §296(1)(d) (employment). New York City law similarly makes it unlawful to "declare, print or circulate … any statement, advertisement or publication" that expresses any race-based limitation, specification, discrimination. N.Y.C. Admin. Code §8-107(1)(d) (employment); §8-107(2)(d) (training program); *see also* §8-107(23) (interns).

Pfizer's announcement for the Fellowship directly and indirectly expresses limitation, specification, and discrimination based on race. VC ¶¶43-47. Pfizer's announcement states that the Fellowship requires that applicants be Black/African American, Latino/Hispanic, or Native American. VC ¶¶43-47. According to Pfizer, however, white and Asian-American applicants need not apply. VC ¶43. Pfizer's announcements, FAQs, informational video, and advertisements for the Fellowship were published and widely circulated on the internet, including Pfizer's website, Facebook, and popular job

sites like LinkedIn and ZipRecruiter. VC ¶31; Ex. C, at 5-9. All these posts and advertisements "expres[s] … limitation, specification or discrimination" based on race—*e.g.*, that white and Asian-American applicants are not eligible to apply. VC ¶31; Ex. C, at 5-9.

II. Do No Harm and its members will suffer irreparable harm without immediate relief.

Do No Harm and its members will suffer irreparable harm absent relief from this Court. "The injury in cases of this kind is that a 'discriminatory classification prevent[s] the plaintiff from competing on an equal footing.'" *Adarand*, 515 U.S. at 211; *Parents Involved*, 551 U.S. at 719 (injury is "being forced to compete in a race-based system that may prejudice the plaintiff"). The injury is "the denial of equal treatment resulting from the imposition of the barrier, not the ultimate inability to obtain the benefit." *Ne. Fla. Chapter of Assoc. Gen. Contractors of Am. v. City of Jacksonville*, 508 U.S. 656, 666 (1993). And this injury is irreparable. *See, e.g.*, *Coal. for Equity & Excellence in Md. Higher Ed. v. Md. Higher Ed. Comm'n*, 295 F. Supp. 3d 540, 556 (D. Md. 2017) ("'Irreparable injury comes from the maintenance of segregative policies[.]'"); *cf. Hisp. Nat'l L. Enf't Ass'n NCR v. Prince George's Cty.*, 2021 WL 1575772, at *23 (D. Md. Apr. 21, 2021) ("Where the Court has found a likelihood of success on Plaintiffs' equal protection claim, the deprivation of such a constitutional right alone would constitute irreparable harm.").

Moreover, although currently unspecified, the application deadline for the 2023 class for the Fellowship is approaching. VC ¶48. Do No Harm's Member A and Member B are currently ineligible to apply for the Fellowship under Pfizer's race requirement, but are ready and able to apply if Pfizer stops discriminating on account of race. VC ¶11; Rasmussen Decl. ¶5; Member A Decl. ¶9; Member B Decl. ¶9. Once this unknown application deadline closes, and Pfizer selects the 2023 fellows, "'there can be no do-over and no redress.'" *Planned Parenthood of N.Y.C., Inc. v. U.S. Dep't of Health & Hum. Servs.*, 337 F. Supp. 3d 308, 343 (S.D.N.Y. 2018) (quoting *League of Women Voters v. Newby*, 838 F.3d 1,

9 (D.C. Cir. 2016)). Member A and Member B—who are college juniors now—will completely miss the chance to apply to the Fellowship as they will turn college seniors next application cycle and miss the undergraduate internship phase, as well as all the other phases. *See* VC ¶¶11, 33; Rasmussen Decl. ¶5; Member A Decl. ¶3; Member B Decl. ¶3. Immediate relief from this Court is warranted to prevent these irreparable injuries.

Pfizer's circulation of racially discriminatory advertising also constitutes irreparable injury. Irreparable injury is "presume[d]" if "a defendant has violated a civil rights statute" and engaged in discrimination. *Silver Sage Partners, Ltd. v. City of Desert Hot Springs*, 251 F.3d 814, 827 (9th Cir. 2001); *cf. Harte v. McGuinness*, 1986 WL 223602, at *2 (S.D.N.Y June 13, 1986) ("the denial of … equal treatment can … itself constitute irreparable harm"). In addition, discriminatory advertising discourages individuals from legally protected activities. *Hous. Rights Ctr. v. Donald Sterling Corp.*, 274 F. Supp. 2d 1129, 1140 (C.D. Cal.) (preliminarily enjoining defendants from using the word "Korean" in advertisements for rental units in violation of the federal Fair Housing Act's ban on racially discriminatory advertisements), *aff'd sub nom.*, 84 F. App'x 801 (9th Cir. 2003). And Pfizer's continued use of racially discriminatory advertisement for the Fellowship—which indicates that white and Asian-Americans need not apply—will "discourage" other Do No Harm members who are white and Asian American from applying, "in a way not easy to quantify or remedy." *Hous. Rights Ctr.*, 274 F. Supp. 2d at 1140.

III. The balance of harms favors granting relief.

The balance of harms tips in favor of granting relief because after weighing "the competing claims of injury," *Yang v. Kellner*, 458 F. Supp. 3d 199, 216 (S.D.N.Y. 2020), it becomes clear that "a preliminary injunction will 'not substantially injure other interested parties,'" *League of Women Voters*, 838 F.3d at 12. The harm caused by Pfizer's discrimination is substantial. On the other side of the ledger, a slight delay in the application cycle, if any, will not cause any undue harm. For example, courts

have ordered extension of deadlines—including even statutorily imposed deadlines—to avoid irreparable harm to plaintiffs. *See, e.g.*, *Rodriguez v. Pataki*, 2002 WL 1334733, at *1 (S.D.N.Y. June 17, 2002) ("enjoin[ing] until further notice" the state's petitioning process and requiring parties to prepare a "revised petitioning timetable"). There is no reason why the Court should not stay or extend Pfizer's private, self-imposed deadline—whatever it may be—for a brief period.

Moreover, Pfizer brought any burdens on itself by adopting racially discriminatory practices and advertisements in the first place. *See, e.g.*, *Kos Pharms., Inc. v. Andryx Corp.*, 369 F.3d 700, 728 (3d Cir. 2004) ("[W]hen the potential harm to each party is weighed, a party 'can hardly claim to be harmed [where] it brought any and all difficulties occasioned by the issuance of an injunction upon itself.'"); *Bionpharma Inc v. CoreRx, Inc.*, 2022 WL 246742, at *8 (S.D.N.Y. Jan. 27, 2022) (defendant "should have been aware … [of] potential liability"). Pfizer can claim no legitimate interest in running a racially exclusionary program or violating federal, New York State, and New York City laws.

IV. The public interest favors granting relief.

"[P]rivate civil rights enforcement"—especially to vindicate the federally protected right to equal protection—significantly furthers "[t]he public interest." *Quaratino v. Tiffany & Co.*, 166 F.3d 422, 426 (2d Cir. 1999). And "[i]t is in the public interest for courts to carry out the will of Congress." *Myland Pharm., Inc. v. Shalala*, 81 F. Supp. 2d 30, 45 (D.D.C. 2000). Enforcing the will of Congress as expressed in the Civil Rights Act of 1866, Title VI, and Section 1557 will certainly further the public interest. *See id.*

Here, the public interest will be especially furthered by granting relief because there is simply no place for racially exclusionary programs like Pfizer's Fellowship. "'[A]n explicit policy of assignment by race may serve to stimulate our society's latent race consciousness suggesting the utility and propriety of basing decisions on a factor that ideally bears no relationship to an individual's worth or needs.'" *Shaw v. Revno*, 509 U.S. 630, 643 (1993). In addition, "'[s]imple justice requires that public

funds, to which all taxpayers of all races contribute, not be spent in any fashion which encourages, entrenches, subsidizes, or results in racial discrimination.'" *Barbour*, 374 F.3d at 1170; *see also Bob Jones Univ.*, 461 U.S. at 594.

And the New York State Legislature expressly sought to "protec[t] … the public welfare, health and peace of the people of [the] state" and to "fulfil[l] … the constitution of [New York] concerning civil rights." N.Y. Exec. Law §290(2). The New York City Council was also gravely concerned with racial discrimination—finding that "discrimination … threaten[s] the rights and proper privileges of [New York City's] inhabitants and menace the institutions and foundations of a free democratic state." N.Y.C. Admin. Code §8-101. Everyone—even other temporarily frustrated applicants—will ultimately benefit from an application process not tainted by unlawful racial discrimination.

CONCLUSION

Discriminating against individuals on account of the color of their skin "scars the soul of both the segregated and the segregator" and has "always been evil." Martin Luther King, Jr., *Desegregation and the Future* (Dec. 15, 1956).

Racial discrimination is also illegal under federal, New York State, and New York City laws. The Court should grant Do No Harm's motion for a temporary restraining order and a preliminary injunction; restrain or enjoin Pfizer from selecting the 2023 class of the Breakthrough Fellowship Program; restrain or enjoin Defendants from excluding applicants from the Breakthrough Fellowship Program based on race; if necessary, stay the application deadline until such a time the Court deems proper; and prevent Pfizer from posting racially discriminatory advertisements for the Fellowship.[7]

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[7] The Court should also waive the bond requirement under Rule 65(c). This Court has "'wide discretion in the matter of security and it has been held proper for the court to require no bond where there has been no proof of likelihood of harm [to the non-movant].'" *See Rex Med., L.P. v. Angiotech Pharms.*

Dated: September 15, 2022

Respectfully submitted,

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CERTIFICATE OF SERVICE

I filed this memorandum with the Court via ECF. Because Pfizer has not yet entered an appearance, I am also serving the verified complaint, the proposed order to show cause, this memorandum, the exhibits, and the declarations by certified mail, returned receipt requested, and by an in-person server at the address of Pfizer's known registered agent below:

Pfizer, Inc. (c/o CT Corporation System)
28 Liberty Street,
New York, New York 10005

Dated: September 15, 2022 _/s/ Dennis J. Saffran_

(U.S.), Inc., 754 F. Supp. 2d 616, 626 (S.D.N.Y. 2010). Pfizer will also not incur any financial harm from being ordered not to discriminate against white and Asian-American applicants in violation of the laws. Moreover, waiving bond is especially appropriate because Do No Harm is "seeking to vindicate important rights" under §1981, Title VI, Section 1557, New York State law, and New York City law. *P.J.E.S. ex rel. Escobar Francisco v. Wolf*, 502 F. Supp. 3d 492, 520 (D.D.C. 2020).