

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

AMERICAN ALLIANCE FOR
EQUAL RIGHTS,

Plaintiff,

v.

HISPANIC SCHOLARSHIP FUND,
100 N. Pacific Coast Hwy, Suite 1900
El Segundo, CA 90245

Defendant.

Case No.: 1:25-cv-4207-LLA

ORAL ARGUMENT REQUESTED

DEFENDANT HISPANIC SCHOLARSHIP FUND'S
MOTION TO DISMISS PLAINTIFF'S COMPLAINT

Defendant Hispanic Scholarship Fund, by undersigned counsel and pursuant to Fed. R. Civ. P. 12(b)(1) and 12(b)(6), hereby respectfully moves to dismiss the Complaint filed by Plaintiff American Alliance for Equal Rights because (1) Plaintiff lacks standing to bring its claim; and (2) Plaintiff's Complaint must be dismissed because it fails to state a claim under 42 U.S.C. § 1981.

WHEREFORE, Defendant Hispanic Scholarship Fund respectfully request that the Court grant its Motion to Dismiss, dismiss the Complaint with prejudice, and grant all other just and equitable relief.

December 24, 2025

Respectfully submitted,

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DEFENDANT HISPANIC SCHOLARSHIP FUND'S
MEMORANDUM OF POINTS AND AUTHORITIES IN
SUPPORT OF ITS MOTION TO DISMISS PLAINTIFF'S
COMPLAINT

TABLE OF CONTENTS

	Page
TABLE OF AUTHORITIES	ii
INTRODUCTION	1
BACKGROUND	3
LEGAL STANDARDS	6
ARGUMENT	9
I. The Alliance Lacks Standing.	9
A. The Alliance and its student members have suffered no cognizable injury because no 2026 application or criteria is available to any applicant.	11
B. The Alliance’s claim is also not ripe because no 2026 application or criteria is available to any applicant.	13
C. The Alliance and its student members lack standing because they are not “able and ready” to apply for the HSF Scholar Program.	14
II. The Alliance’s Complaint Must Be Dismissed Because It Fails To State A Claim Under 42 U.S.C. § 1981.	19
A. The Terms of Use and Privacy Policy, at most, are contracts for using HSF.net, not a contract for the Scholar Program.	20
B. The HSF Scholar Program is a gift, not a contract.	24
CONCLUSION.....	31

TABLE OF AUTHORITIES

	Page(s)
Cases	
<i>Adarand Constructors, Inc. v. Pena</i> , 515 U.S. 200 (1995).....	11, 17
<i>Am. All. for Equal Rights v. Founders First Cmty. Dev. Corp.</i> , No. 24-cv-00327, 2024 WL 3625684 (N.D. Tex. July 31, 2024).....	19, 23
<i>Am. All. for Equal Rts. v. Fearless Fund Mgmt., LLC</i> , 103 F.4th 765 (11th Cir. 2024)	12, 19, 23, 28
<i>Am. First Legal Found. v. Greer</i> , 153 F.4th 1311 (D.C. Cir. 2025).....	10, 16
<i>Am. for Prosperity Found. v. Bonta</i> , 594 U.S. 595 (2021).....	30
<i>Asante v. Azar</i> , 436 F. Supp. 3d 215 (D.D.C. 2020)	11-12, 13
<i>Ascom Hasler Mailing Sys., Inc. v. U.S. Postal Serv.</i> , 885 F. Supp. 2d 156 (D.D.C. 2012)	20
<i>Ashcroft v. Iqbal</i> , 556 U.S. 662 (2009).....	8
<i>Barker v. Conroy</i> , 921 F.3d 1118 (D.C. Cir. 2019).....	10
<i>*Bingler v. Johnson</i> , 394 U.S. 741 (1969).....	24, 26
<i>Boy Scouts of Am. v. Dale</i> , 530 U.S. 640 (2000).....	30
<i>Brooklyn Daily Eagle v. Voorhies</i> , 181 F. 579 (C.C.E.D.N.Y. 1910)	28
<i>Brown v. State</i> , 230 Wis. 2d 355 (Ct. App. 1999).....	28
<i>Butler v. Enter. Integration Corp.</i> , 459 F. Supp. 3d 78 (D.D.C. 2020)	21

<i>Byrd v. Env't Prot. Agency</i> , 174 F.3d 239 (D.C. Cir. 1999).....	7
* <i>Carney v. Adams</i> , 592 U.S. 53 (2020).....	7, 10, 14, 15, 16, 17
<i>CBOCS W., Inc. v. Humphries</i> , 553 U.S. 442 (2008).....	19
<i>Chamber of Com. of United States of Am. v. Nat'l Lab. Rels. Bd.</i> , 118 F. Supp. 3d 171 (D.D.C. 2015).....	13
<i>Clark v. Cmty. for Creative Non-Violence</i> , 468 U.S. 288 (1984).....	30
<i>Coal. for Underground Expansion v. Mineta</i> , 333 F.3d 193 (D.C. Cir. 2003).....	8
<i>Cole v. Powell</i> , 605 F. Supp. 2d 20 (D.D.C. 2009).....	9
<i>Spirit Lake Tribe of Indians ex rel. Comm. of Understanding & Respect v. Nat'l Collegiate Athletic Ass'n</i> , 715 F.3d 1089 (8th Cir. 2013)	25
<i>Conesco Indus., Ltd. v. Conforti & Eisele, Inc.</i> , 627 F.2d 312 (D.C. Cir. 1980).....	24
<i>Cornelius v. NAACP Legal Def. & Educ. Fund, Inc.</i> , 473 U.S. 788 (1985).....	30
<i>Crowley v. Vilsack</i> , 236 F. Supp. 3d 326 (D.D.C. 2017)	8, 9
<i>Ctr. for Democracy & Tech. v. Trump</i> , 507 F. Supp. 3d 213 (D.D.C. 2020).....	11
<i>Davis v. Joseph J. Magnolia, Inc.</i> , 640 F. Supp. 2d 38 (D.D.C. 2009).....	24
<i>Dep't of Homeland Sec. v. Regents of the Univ. of Ca.</i> , 591 U.S. 1 (2020).....	18
<i>Des Longchamps v. Allstate Prop. & Cas. Ins.</i> , 102 F. Supp. 3d 299 (D.D.C. 2015).....	24
<i>Doe v. Kamehameha Schs./Bernice Pauahi Bishop Est.</i> , 470 F.3d 827 (9th Cir. 2006)	25

<i>Domino’s Pizza, Inc. v. McDonald,</i> 546 U.S. 470 (2006).....	19
<i>Dougherty v. Salt,</i> 227 N.Y. 200 (1919).....	27
<i>Exxon Mobil Corp. v. FERC,</i> 501 F.3d 204 (D.C. Cir. 2007).....	13
<i>FDA v. All. for Hippocratic Med.,</i> 602 U.S. 367 (2024).....	7, 17
<i>Food & Water Watch, Inc. v. Vilsack,</i> 808 F.3d 905 (D.C. Cir. 2015).....	6, 7, 8
<i>Gratz v. Bollinger,</i> 539 U.S. 244 (2003).....	11, 17
<i>Gustave-Schmidt v. Chao,</i> 226 F. Supp. 2d 191 (D.D.C. 2002).....	9
<i>Hampton v. Dillard Dep’t Stores, Inc.,</i> 247 F.3d 1091 (10th Cir. 2001)	28
<i>Haskell v. Time, Inc.,</i> 857 F. Supp. 1392 (E.D. Cal. 1994).....	28, 29
<i>Hurley v. Irish-Am. Gay, Lesbian & Bisexual Grp. of Boston,</i> 515 U.S. 557 (1995).....	30
<i>Hutchins v. District of Columbia,</i> 188 F.3d 531 (D.C. Cir. 1999).....	30
<i>Indep. Bankers Ass’n of Am. v. Smith,</i> 534 F.2d 921 (D.C. Cir. 1976).....	13
<i>Kowal v. MCI Commc’ns Corp.,</i> 16 F.3d 1271 (D.C. Cir. 1994).....	8
<i>Malone v. Saxony Coop. Apts., Inc.,</i> 763 A.2d 725 (D.C. 2000)	20
<i>Mero v. City Segway Tours of Wash. DC, LLC.,</i> 826 F. Supp. 2d 100 (D.D.C. 2011).....	20
<i>N.J. Conservation Found. v. FERC,</i> 111 F.4th 42 (D.C. Cir. 2024).....	10

<i>Nat'l Sec. Couns. v. CIA</i> , 931 F. Supp. 2d 77 (D.D.C. 2013)	12
<i>Ne. Fla. Chapter of Associated Gen. Contractors of Am. v. City of Jacksonville</i> , 508 U.S. 656 (1993)	17
<i>Patterson v. McLean Credit Union</i> , 491 U.S. 164 (1989)	19
<i>Personavera, LLC v. Coll. of Healthcare Info. Mgmt. Execs.</i> , Civ. Action No. 18-633, 2021 WL 1313108 (E.D. Pa. Apr. 8, 2021)	28
<i>Player v. State of Ala. Dep't of Pensions & Sec.</i> , 400 F. Supp. 249 (M.D. Ala. 1975)	19
<i>Riley v. Nat'l Fed'n of the Blind of N. Carolina, Inc.</i> , 487 U.S. 781 (1988)	29
<i>Runyon v. McCrary</i> , 427 U.S. 160 (1976)	25, 31
<i>Sec'y of State of Md. v. Joseph H. Munson Co.</i> , 467 U.S. 947 (1984)	29
<i>Sindt v. United States Citizenship & Immigr. Servs.</i> , No. CV 22-774, 2023 WL 2301978 (D.D.C. Mar. 1, 2023)	13
<i>Spitalnick v. King & Spalding, LLP</i> , No. CV JKB-24-1367, 2025 WL 608013 (D. Md. Feb. 25, 2025)	16-17
<i>Stone v. Comm'r</i> , 23 T.C. 254 (1954)	25
<i>Students for Fair Admissions, Inc. v. President & Fellows of Harvard Coll.</i> , 600 U.S. 181 (2023)	9, 11
<i>Sully-Miller Contracting Co. v. Gledson/Cashman Constr., Inc.</i> , 103 Cal. App. 4th 30 (Cal. Ct. App. 2002)	20
<i>Thermalon Indus., Ltd. v. United States</i> , 34 Fed. Cl. 411 (1995)	26
<i>United States v. Amirikian</i> , 197 F.2d 442 (4th Cir. 1952)	25
<i>Wash. All. of Tech. Workers v. U. S. Dep't of Homeland Sec.</i> , 892 F.3d 332 (D.C. Cir. 2018)	3

<i>Wheeler v. Panini Am., Inc.</i> , No. CV 22-00763, 2022 WL 17039208 (D.D.C. Nov. 17, 2022).....	31
<i>Worth v. Jackson</i> , 451 F.3d 854 (D.C. Cir. 2006)	13, 17
<i>Zoob v. Jordan</i> , 841 A.2d 761 (D.C. 2004)	24
Statutes	
42 U.S.C. § 1981	2, 6, 9, 13, 19, 20, 24, 31
Cal. Bus. & Prof. Code § 17539.100 <i>et seq.</i>	27, 29
Cal. Consumer Privacy Act, Cal. Civ. Code § 1798.100 <i>et seq.</i>	22
Rules and Regulations	
Fed. R. Civ. P. 12(b)(1).....	2, 6, 7
Fed. R. Civ. P. 12(b)(6).....	6, 8, 9
Other Authorities	
2025 HSF Scholar Program Application, HSF (archived Dec. 1, 2025), perma.cc/FQV3-KDFZ	4, 11, 27
About HSF, HSF (archived Dec. 1, 2025), perma.cc/6PH5-RMX8	23
17A Am. Jur. 2d Contracts § 1	20
Complaint, <i>AAER and Do No Harm v. Buckfire & Buckfire, P.C.</i> , No. 25-cv- 13617 (S.D. Mich.) (Nov. 13, 2025) (Ex. 1).....	12
Complaint, <i>AAER et al. v. City of Chicago</i> , No. 25-cv-1017 (N.D. Ill.) (Jan. 29, 2025) (Ex. 2)	12
Complaint, <i>AAER v. The Women, LLC</i> , No. 25-cv-441 (E.D. Tenn.) (Sept. 12, 2025) (Ex. 5)	13
Complaint, <i>AAER v. Zamanillo</i> , No. 24-cv-509 (D.D.C.) (Feb. 22, 2024) (Ex. 4)	13
<i>Empowering Courageous Leaders</i> , HSF (archived Dec. 1, 2025) perma.cc/F5DL- GXHM	18
Motion for a Temporary Restraining Order and Preliminary Injunction, <i>AAER v.</i> <i>Zamanillo</i> , No. 24-cv-509 (D.D.C.) (Feb. 22, 2024) (Ex. 3).....	12

Press Release, United States Department of Education Announces Earliest FAFSA Form Launch in Program History, U.S. Dep’t of Educ. (Sept. 24, 2025), https://www.ed.gov/about/news/press-release/us-department-of-education-announces-earliest-fafsa-form-launch-program-history	15
<i>Privacy Policy</i> , HSF (updated Jan. 2021), https://www.hsf.net/privacy-policy	6
Restatement (Second) of Contracts § 71 cmt. c	25
Scouting America, <i>What are the Scout Oath and Scout Law?</i> , https://www.scouting.org/about/faq/question10/ (last visited Dec. 21, 2025).....	23
<i>Sign Up</i> , HSF (archived Dec. 1, 2025), perma.cc/PJ37-FTC6	5
<i>Terms of Use Agreement</i> , HSF, https://www.hsf.net/terms-of-use	5, 6, 21, 22

INTRODUCTION

This case seeks to end decades of scholarships and opportunities that support the educational uplift of Hispanic students. And the law that the American Alliance for Equal Rights (the “Alliance”) claims necessarily brings about that end is a statute that has co-existed with such scholarships and opportunities for racial minorities for a century. The Court should reject the Alliance’s invitation to dismantle a longstanding and important fixture in American higher education.

The Alliance brings this suit to stop the Hispanic Scholarship Fund (“HSF”) from giving scholarships and other benefits to students of Hispanic Heritage—a philanthropic effort that HSF has engaged in since 1975. According to the Alliance, the Civil Rights Act of 1866, which commands that all people are entitled to make and enforce contracts in the same manner as white citizens, forbids HSF from directing its charitable giving for the HSF Scholar Program exclusively to Hispanic students. The Alliance is wrong.

As an initial matter, the Alliance’s suit is so premature that it cannot satisfy the basic requirements of standing. (§ I.) The 2026 HSF Scholar Program application is not open, the 2026 criteria have not been announced, and the 2026 timeline is not public. Accordingly, the Alliance’s alleged injury to its anonymous members is pure conjecture, which is insufficient to establish standing. (§ I.A.) For this same reason, the Alliance’s claim is not ripe for review. (§ I.B.) Separately, the anonymous student members on which the Alliance bases its standing have taken no affirmative steps in pursuit of membership in the HSF Scholar Program. (§ I.C.) Neither student has applied or been rejected from past years’ HSF Scholar Programs at any point prior to this suit; applied to the upcoming 2026 HSF Scholar Program; created an account on HSF.net; or even claimed to have completed the FAFSA (the Free Application for Federal Student Aid form), the submission of which the Alliance avers is required. In short, neither student has demonstrated that

he would have standing to bring suit in his own right—as must be true for the Alliance to have standing here—because neither student has demonstrated that he is able and ready to apply. To put a finer point on it, neither student has taken any steps to differentiate himself from the millions of high school, college, and graduate school students who might theoretically apply for the HSF Scholar Program. That is fatal to the Alliance’s case, and the Complaint must be dismissed under Rule 12(b)(1) for any one of these three reasons alone.

As for the merits, the Alliance’s § 1981 claim fails as a matter of law because it fails to allege an essential element for liability—a contract. (§ II.) The Alliance does not even purport to allege a contract for the HSF Scholar Program itself. That was the kind of contract alleged in *Fearless Fund* and numerous other cases brought by the Alliance but is nowhere alleged or found here. Lacking that direct approach, the Alliance fashions a novel theory out of whole cloth: that the Terms of Use and Privacy Policy found on nearly every website on the internet is a contract for the HSF Scholar Program. (§ II.A.) That theory is baseless. But even more importantly, it violates a key tenet of the rules of contract—namely, that the terms of a contract are set by the written words manifesting the bargained-for exchange between the parties, nothing more. The Terms of Use and Privacy Policy may be contracts, but their limited scope is clear from their written terms. Specifically, in exchange for the rights HSF asks of its website users, the website users get a license to use the website consistent with the terms. That’s it. The Alliance asks this Court to read terms, including the HSF Scholar Program, into the Terms of Use and Privacy Policy that are simply not there. That is an invitation that this Court must decline.

While the Alliance’s primary theory for locating a contract in this case is the Terms of Use and Privacy Policy—a theory that would upend the meaning of those agreements across the internet—it hints at other theories that are equally unavailing because scholarships are canonical

gifts, not contracts. (§ II.B.) HSF is aware of no case, and the Alliance does not identify one, where an educational scholarship awarded by a charitable non-profit consistent with its charitable purposes has been deemed a contract. That is no surprise. Scholarships and programs, like the HSF Scholar Program, fail to meet multiple requirements for contracts. Even more, the First Amendment’s protection of charitable expressive conduct places a heavy thumb on the scale against interpreting scholarships as anything other than gifts.

For these reasons and as further detailed below, the Alliance’s Complaint should be dismissed with prejudice.

BACKGROUND

Founded in 1975, HSF empowers students and parents with the knowledge and resources to successfully complete a higher education and provides support services and scholarships to as many exceptional students, scholars, and alumni as possible. *See* Compl. ¶ 11, Dkt. 1.¹ HSF engages in a range of charitable activities in support of its mission to empower students and parents. For example, one of its charitable initiatives is the “[S]cholarship [F]inder,” which HSF provides on its website as a resource that anyone can access to find a searchable database of links to thousands of scholarships. *See About HSF*, HSF (archived Dec. 1, 2025), perma.cc/6PH5-RMX8 (incorporated into Complaint ¶ 14). Other initiatives include HSF’s “[C]ollege [F]inder,” which lists thousands of colleges, *see id.*; and its scholarships, through which HSF has gifted over \$750 million to more than 65,000 students, *see id.* ¶¶ 14, 26. One of its goals, as alleged, is to provide “scholarships and support services to as many exceptional Hispanic American students as

¹ HSF’s references to the allegations in the Complaint are not admissions as to the accuracy of the facts alleged. Rather, this motion relies on allegations the Alliance has made in its Complaint because they “are generally taken as true for purposes of a motion to dismiss.” *Wash. All. of Tech. Workers v. U. S. Dep’t of Homeland Sec.*, 892 F.3d 332, 338-39 (D.C. Cir. 2018) (quoting *Hughes v. Rowe*, 449 U.S. 5, 10 (1980) (per curiam)).

possible.” *Id.* ¶ 11 (citation omitted). Reflecting this goal, one of HSF’s charitable programs, which directly furthers HSF’s goal of supporting exceptional Hispanic students, is the Scholar Program. The Scholar Program recognizes the contributions of “exceptional Hispanic American students,” *id.* (citation omitted), gives the selected students access to support services such as mentoring and conferences, *id.* ¶ 30, and provides the opportunity to receive scholarship funds, depending on the funds’ availability and relative need, *see 2025 HSF Scholar Program Application*, HSF (archived Dec. 1, 2025), perma.cc/FQV3-KDFZ (incorporated into Compl. ¶ 3). In recent years, the application for the Scholar Program has been available online during an application window that is open according to the dates HSF lists on its website. *See id.*

As of the filing of the Alliance’s Complaint, the application process for the 2026 HSF Scholar Program is not yet open. *See id.*; *see also* Compl. ¶¶ 15, 34, 41. Thus no Alliance members, nor anyone else, have applied or can apply to be part of the 2026 Scholar Program. The closed 2025 application, on which the Alliance relies exclusively in its Complaint, opened in January 2025 and closed in February 2025. *See id.* ¶ 15. The Alliance assumes the 2026 application dates will mirror those of the 2025 application season, *see* Compl. ¶¶ 15, 34, 41, but as of the filing of the Complaint, HSF has not made the 2026 application dates available. *See* Alliance Mot. for TRO and Prelim. Inj.8 (“PI Mot.”), App. 2, 5 (discussing only 2025 dates). Regardless, the Alliance does not claim to have any members that applied to be part of the Scholar Program in 2025, nor does it claim that any of its members has *ever* applied to the Scholar Program. *See* Compl. ¶¶ 31-45 (only alleging that members “would” apply). The Complaint also does not allege specifics regarding the 2026 eligibility requirements. Nor could it. The 2026 eligibility requirements are not available as of the filing of the Complaint or this Motion. Instead, the Alliance relies on the 2025 requirements to support its claims for forward-looking relief. *See* Compl. ¶¶ 3, 15, 16, 28, 30, 32A-

B, 33, 39A-B, 40. *Inter alia*, the 2025 requirements provided that the HSF Scholar Program was open to students of all races that “identify as being of Hispanic Heritage.” *See id.* ¶ 3.

At any time during the year, both within and outside the Scholar Program application window—and thus for purposes beyond applying to the Scholar Program—anyone can sign up for an HSF account via HSF’s website, HSF.net. *See Sign Up*, HSF (archived Dec. 1, 2025), perma.cc/PJ37-FTC6 (incorporated into Compl. ¶ 21). The Sign Up page does not reference or require a user to disclose his race or ethnicity. *Id.* The HSF.net website includes a “Terms of Use and Privacy Policy.” Compl. ¶¶ 20-30. To sign up for an HSF account on the site, users “are told that they must ... agree” to HSF’s Terms of Use and Privacy Policy (collectively “the Agreements”). *Id.* ¶ 20-21. The Alliance’s allegation that the Scholar Program creates contracts rests not on a direct contract for the Scholar Program but on the Agreements for use of HSF’s general website.

The Terms of Use begin by providing that “[t]his page explains the terms by which you may use our online and/or mobile services, web site, and software provided on, or in connection with, the service (collectively the “Service”).” *Terms of Use Agreement*, HSF <https://www.hsf.net/terms-of-use> (incorporated into Compl. ¶ 22). It then provides that “[b]y accessing or using the Service, you signify that you have read, understood, and agree to be bound by this Terms of Use Agreement ... and to the collection and use of your information, as set forth in the HSF Privacy Policy, whether or not you are a registered user of our Service.” *Id.* The Terms of Use also provides that it applies to “all visitors, users, and others who access the Service.” *Id.* And they provide that users’ content remains the users’ but “by providing or sharing User Content through the Service, you agree to allow others to view, edit, and/or share your User Content in accordance with your settings and this Agreement.” *Id.* “For example,” it continues, “by submitting

a scholarship application through the Service, you agree to allow donors to view certain information provided by you and to allow readers of scholarship essays to read and review your essays.” *Id.*

The Privacy Policy explains how “[HSF] collect[s], use[s], disclose[s], and protect[s] information that [it] collect[s] through the process of providing [its] Service, and your choices about the collection and use of your information.” *Privacy Policy*, HSF (updated Jan. 2021), <https://www.hsf.net/privacy-policy> (incorporated into Compl. ¶ 24).

In exchange for agreeing to the Terms of Use and Privacy Policy, users are “granted a non-exclusive, limited, non-transferable, freely revocable license to use the Service for [their] personal, noncommercial use only and as permitted by the features of the Service.” *Terms of Use Agreement*, HSF, <https://www.hsf.net/terms-of-use> (incorporated into Compl. ¶ 22) The Alliance does not allege any other written contractual agreement from which § 1981 liability might arise.

The Alliance filed its Complaint on December 3, 2025, and simultaneously filed a Motion for Preliminary Injunction and a Temporary Restraining Order. HSF now moves the Court to dismiss the Complaint with prejudice.

LEGAL STANDARDS

A claim must be dismissed if the Court lacks subject-matter jurisdiction to entertain the claim. Fed. R. Civ. P. 12(b)(1). Dismissal is similarly required when the Complaint fails to state a claim “upon which relief can be granted.” Fed. R. Civ. P. 12(b)(6).

Standard for Rule 12(b)(1) Dismissal for Lack of Standing

A motion to dismiss for lack of standing is evaluated under Rule 12(b)(1). *Food & Water Watch, Inc. v. Vilsack*, 808 F.3d 905, 913 (D.C. Cir. 2015). To establish standing, a plaintiff “must state a plausible claim that [they have] suffered an injury in fact fairly traceable to the actions of the defendant that is likely to be redressed by a favorable decision on the merits.” *Id.* (quoting

Humane Soc’y of the U.S. v. Vilsack, 797 F.3d 4, 8 (D.C. Cir. 2015)). An “injury in fact” is “a harm ... that is concrete and actual or imminent, not conjectural or hypothetical.” *Byrd v. Env’t Prot. Agency*, 174 F.3d 239, 243 (D.C. Cir. 1999) (quoting *Steel Co. v. Citizens for a Better Env’t*, 523 U.S. 83, 103 (1998)). Article III standing requires an injury in fact in order to “screen[] out plaintiffs who might have only a general legal, moral, ideological, or policy objection to a particular ... action.” *FDA v. All. for Hippocratic Med.*, 602 U.S. 367, 381 (2024). Thus, where a plaintiff seeks to challenge an allegedly discriminatory selection process, the plaintiff must either apply or be “able and ready” to apply at the time the complaint is filed to have Article III standing. *See Carney v. Adams*, 592 U.S. 53, 60 (2020) (quoting *Gratz v. Bollinger*, 539 U.S. 244, 262 (2003)). A plaintiff who has filed suit before being rejected from an application pool for a purportedly unlawful reason must “sufficiently differentiate[] himself from a general population of individuals affected in the abstract by the legal provision he attacks.” *See id.* at 64. An applicant fails to do so, and thus fails to establish Article III standing, where, for example, he claims that he “would apply,” but that statement “of general intent” lacks “supporting evidence,” such as, e.g., “without any actual past injury, without reference to an anticipated timeframe, without prior ... applications, without prior relevant conversations, without efforts to determine likely openings, without other preparations or investigations, and without any other supporting evidence.” *Id.* at 63-64.

In reviewing a Rule 12(b)(1) motion, a court will “presum[e] that general allegations embrace those specific facts that are necessary to support the claim”; it should not “assume the truth of legal conclusions, nor ... accept inferences that are unsupported by the facts set out in the complaint.” *Food & Water Watch*, 808 F.3d at 913 (citations omitted). A court “may reject as overly speculative those links which are predictions of future events (especially future actions to

be taken by third parties)” “[w]hen considering any chain of allegations for standing purposes.” *Id.* (citations omitted). Finally, a court “may consider materials outside of the complaint” in determining standing. *Id.* (citing *Coal. for Underground Expansion v. Mineta*, 333 F.3d 193, 198 (D.C. Cir. 2003)).

Standard for Rule 12(b)(6) Dismissal for Failure to State a Claim

To survive a Rule 12(b)(6) motion for failure to state a claim, “[a] complaint must contain sufficient factual matter, accepted as true, to ‘state a claim to relief that is plausible on its face.’” *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (quoting *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007)). “A claim is facially plausible when ‘the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged.’” *Crowley v. Vilsack*, 236 F. Supp. 3d 326, 329 (D.D.C. 2017) (quoting *Iqbal*, 556 U.S. at 678). “The factual allegations in the complaint need not be ‘detailed’; however, the Federal Rules demand more than ‘an unadorned, the-defendant-unlawfully-harmed-me accusation.’” *Id.* (quoting *Iqbal*, 556 U.S. at 678). “Threadbare recitals of the elements of a cause of action, supported by mere conclusory statements, do not suffice.” *Iqbal*, 556 U.S. at 678. A motion to dismiss for failure to meet these requirements to state a claim is assessed under Rule 12(b)(6). In assessing a Rule 12(b)(6) motion for failure to state a claim, a court will accept a plaintiff’s factual allegations as true and construe the complaint in plaintiff’s favor, giving it benefit of inferences that can be derived from the facts alleged, but “[t]he court need not accept as true ... either ‘a legal conclusion couched as a factual allegation,’ or ‘inferences ... unsupported by the facts set out in the complaint,’” *Crowley*, 236 F. Supp. 3d at 329-30 (first quoting *Papasan v. Allain*, 478 U.S. 265, 286 (1986); and then quoting *Kowal v. MCI Commc’ns Corp.*, 16 F.3d 1271, 1276 (D.C. Cir. 1994)).

In deciding a Rule 12(b)(6) motion, a court may only consider “the facts alleged in the complaint, documents attached as exhibits or incorporated by reference in the complaint and matters about which the Court may take judicial notice.” *Gustave-Schmidt v. Chao*, 226 F. Supp. 2d 191, 196 (D.D.C. 2002). “A court can consider materials outside the complaint without converting the motion to one for summary judgment when the documents are incorporated into the complaint and are central to the plaintiff’s claim.” *Cole v. Powell*, 605 F. Supp. 2d 20, 23 n.1 (D.D.C. 2009) (citing *Jacobsen v. Oliver*, 201 F. Supp. 2d 93, 110 (D.D.C. 2002)) (considering documents and facts “mentioned in the complaint [that were] central to plaintiffs claim,” without converting defendant’s motion to dismiss). “If the facts as alleged fail to establish that a plaintiff has stated a claim upon which relief can be granted, then the court must grant the defendant’s Rule 12(b)(6) motion and dismiss the complaint.” *Crowley*, 236 F. Supp. 3d at 330.

ARGUMENT

I. The Alliance Lacks Standing.

The Alliance lacks standing to pursue its § 1981 claim, and thus this Court lacks subject matter jurisdiction. Organizations may establish standing in only two ways: (1) in the organization’s own right and (2) on behalf of its members. *Students for Fair Admissions, Inc. v. President & Fellows of Harvard Coll.*, 600 U.S. 181, 199 (2023) (observing that an organization must satisfy Article III’s “standing requirements” and can do so via one of only two routes). The Alliance makes no attempt to establish that *it* has suffered any injury or is otherwise harmed by the allegedly unlawful acts at issue here. *See* Compl. ¶¶ 9-10, 31-45 (failing to pursue standing of the organization’s own right and relying instead on student members). Accordingly, the Alliance’s standing depends wholly on whether it has shown ““(1) at least one of [its student] members would have standing to sue in his or her own right; (2) the interests [they] seek[] to protect are germane to the [Alliance]’s purpose; and (3) neither the claim asserted nor the relief requested requires the

participation of individual members” in the litigation. *N.J. Conservation Found. v. FERC*, 111 F.4th 42, 53 (D.C. Cir. 2024) (quoting *Sierra Club v. FERC*, 827 F.3d 59, 65 (D.C. Cir. 2016)). The Alliance fails on the first prong because its student members would not have standing to sue on their own right; therefore, the Alliance lacks standing, and the Complaint must be dismissed.

Students A and B fail even the most basic requirements for standing. They lack a “concrete and particularized” “injury in fact” and merely allege “a grievance that amounts to nothing more than an abstract and generalized harm to a citizen’s interest in the proper application of the law.” *Carney*, 592 U.S. at 58 (first quoting *Lujan v. Defs. of Wildlife*, 504 U.S. 555, 560-61 (1992); and then citing *Hollingsworth v. Perry*, 570 U.S. 693, 706 (2013)).

First, as of the filing of the Complaint—the point from which standing must be established—no person of any ethnicity can apply for the Scholar Program because, on that date, the application was not live. The Alliance agrees. *See* Compl. ¶¶ 15, 34, 41; *see Barker v. Conroy*, 921 F.3d 1118, 1125 (D.C. Cir. 2019) (“[S]tanding is assessed at the time of filing.”). As of the filing of this motion, it is *still* not live. Nor does the Complaint establish what the 2026 application criteria will be. *See* Compl. ¶¶ 3, 11, 14, 15, 17, 21, 22, 24, 25, 29; *Am. First Legal Found. v. Greer*, 153 F.4th 1311, 1314 (D.C. Cir. 2025) (“At the motion-to-dismiss stage, a plaintiff must allege facts plausibly supporting each element of its standing.” (quoting *Food & Water Watch*, 808 F.3d at 913)). Accordingly, any alleged injury is purely speculative and insufficient to establish standing.

Second, for the same reasons mentioned above, the claim is unripe for review. Therefore, dismissal is required.

And third, the Alliance’s student members are not “able and ready” to apply. *See Carney*, 592 U.S. at 60. Neither student has previously applied to the Scholar Program, let alone applied

and been rejected because they are not of Hispanic Heritage. Compl. ¶¶ 35, 39B; App. 87 ¶ 6; App. 93 ¶ 10; *see Students for Fair Admissions, Inc.*, 600 U.S. at 201 (standing where member students had applied to school and “were denied admission”); *see also Gratz*, 539 U.S. at 262 (standing established where student arguing he was “able and ready” to apply as a transfer student had applied to the University as a freshman applicant, and was denied admission); *Adarand Constructors, Inc. v. Peña*, 515 U.S. 200, 212 (1995) (standing for forward-looking relief existed where company had bid on multiple relevant projects in the past and was very likely to bid on them again). Lacking that typical basis for demonstrating standing when challenging a selection process, Students A and B must squeeze into an exception by demonstrating that they are “able and ready” to apply. As explained below, neither student has made this showing, and, therefore, both lack standing. For either or all of these reasons, the Court lacks subject matter jurisdiction, and the Complaint must be dismissed.

A. The Alliance and its student members have suffered no cognizable injury because no 2026 application or criteria is available to any applicant.

The Alliance seeks an injunction barring HSF “from closing the current application window or selecting winners for the program.” Compl. ¶ 57B. But there is no “*current* application window.” As of the filing of this suit, and as of the filing of this Motion, there is no live application available. *2025 HSF Scholar Program Application*, HSF (archived Dec. 1, 2025), perma.cc/FQV3-KDFZ (incorporated into Compl. ¶ 3); *see also* Compl. ¶¶ 15, 34, 41 (projecting application opening in January 2026). The eligibility requirements for the January 2026 application have not been announced. Accordingly, neither Student A nor B, nor any other student for that matter, can allege anything about an anticipated future 2026 Scholar Program. *See Ctr. for Democracy & Tech. v. Trump*, 507 F. Supp. 3d 213, 222 (D.D.C. 2020) (“[A]llegations of possible future injury are not sufficient.” (quoting *Clapper v. Amnesty Int’l USA*, 568 U.S. 398, 409 (2013))); *see also Asante v.*

Azar, 436 F. Supp. 3d 215, 224 (D.D.C. 2020) (“Where a plaintiff seeks prospective declaratory and injunctive relief, they ‘must establish an ongoing or future injury that is “certainly impending.”’” (quoting *Williams v. Lew*, 819 F.3d 466, 472 (D.C. Cir. 2016))). This is a particularly acute failure in this case because the Alliance seeks only prospective relief. Compl. ¶¶ 34, 41, 57; see *Nat’l Sec. Couns. v. CIA*, 931 F. Supp. 2d 77, 91 (D.D.C. 2013) (“[W]hen a plaintiff seeks prospective declaratory or injunctive relief... [it] ‘must show [it] is suffering an ongoing injury or faces an immediate threat of [future] injury.’” (quoting *Dearth v. Holder*, 641 F.3d 499, 501 (D.C. Cir. 2011))). Instead, the Alliance relies on the “2025 HSF Scholar Program Application” for its eligibility claims with no support for an inference that the requirements would be the same for 2026. See Compl. ¶¶ 3, 15, 16, 28, 30, 32A-B, 33, 39A-B, 40; see *infra*, at 18 (discussion of necessarily modified application to accommodate DACA program). That is insufficient and fails to allege a cognizable injury. It seems that the Alliance is aware of this insufficiency as it has consistently otherwise brought suit based on a representational standing theory where an applicant had been previously rejected, the application cycle was open, or at least the criteria for the selection process were available. See, e.g., *Am. All. for Equal Rts. v. Fearless Fund Mgmt., LLC*, 103 F.4th 765, 770 (11th Cir. 2024) (observing that “[t]he Alliance sued Fearless the day after applications opened for the [relevant] entry period”).² But not so here. The Complaint must therefore be dismissed.

² See also Ex. 1, Compl. ¶¶ 25-29, 35-38, 46-47, *AAER and Do No Harm v. Buckfire & Buckfire, P.C.*, No. 25-cv-13617 (S.D. Mich.) (Nov. 13, 2025) (alleging members applied for, and were denied, at-issue scholarships in August-October 2025, before suit was filed); Ex. 2, Compl. ¶¶ 34, 42, *AAER et al. v. City of Chicago*, No. 25-cv-1017 (N.D. Ill.) (Jan. 29, 2025) (alleging “investor portal” was open from December 28, 2024, through January 31, 2025, and that a member submitted application that expressly listed “qualification criteria”); Ex. 3, Motion for a Temporary Restraining Order and Preliminary Injunction at 2, *AAER v. Zamanillo*, No. 24-cv-509 (D.D.C.) (Feb. 22, 2024) (alleging Smithsonian’s internship program’s application would be open February

B. The Alliance’s claim is also not ripe because no 2026 application or criteria is available to any applicant.

Additionally, by prematurely filing this suit, the Alliance not only lacks standing, but its claim is also not ripe for review. *See Indep. Bankers Ass’n of Am. v. Smith*, 534 F.2d 921, 926 (D.C. Cir. 1976) (“While standing to sue focuses on the parties before the court, ripeness asks whether the issues presented by those parties are appropriate for judicial review at this time.”); *Asante*, 436 F. Supp. 3d at 224 (“Ripeness ‘shares the constitutional requirement of standing that an injury in fact be certainly impending.’” (quoting *Nat’l Treasury Emps. Union v. United States*, 101 F.3d 1423, 1427 (D.C. Cir. 1996))). Simply put, at this time, the Court has no 2026 application criteria or requirements by which to judge whether §1981 is violated. *Sindt v. United States Citizenship & Immigr. Servs.*, No. CV 22-774, 2023 WL 2301978, at *3 (D.D.C. Mar. 1, 2023) (“Constitutional ripeness is [also] assessed at the outset of the litigation.”); *Chamber of Com. of United States of Am. v. Nat’l Lab. Rels. Bd.*, 118 F. Supp. 3d 171, 187 (D.D.C. 2015) (same). Without such criteria and requirements, this Court lacks subject matter jurisdiction. *Asante*, 436 F. Supp. 3d at 224; *see also Exxon Mobil Corp. v. FERC*, 501 F.3d 204, 207-208 (D.C. Cir. 2007) (“[R]ipeness goes to our subject matter jurisdiction.”); *Worth v. Jackson*, 451 F.3d 854, 860-62 (D.C. Cir. 2006) (finding challenge to purportedly discriminatory agency “policies and practices” was unripe because the policy was not yet written and claim thus rested on “speculation”). The Complaint should therefore be dismissed.

26, 2024 through April 1, 2024); Ex. 4, Compl. ¶ 14, *AAER v. Zamanillo*, No. 24-cv-509 (D.D.C) (Feb. 22, 2024) (incorporating into complaint the upcoming application round’s “application materials” and the Smithsonian internship program’s website page that included *inter alia* “the scoring rubric [which allowed prospective applicants] to see how applications will be assessed”); Ex. 5, Compl. ¶¶ 3, 18, *AAER v. The Women, LLC*, No. 25-cv-441 (E.D. Tenn.) (Sept. 12, 2025) (incorporating into complaint micro-loan program’s website page listing eligibility “guidelines” for the September 15 through October 31, 2025 application cycle that AAER sought to enjoin).

C. The Alliance and its student members lack standing because they are not “able and ready” to apply for the HSF Scholar Program.

A plaintiff seeking to challenge an allegedly discriminatory selection process must have either applied or been “able and ready” to apply when the complaint was filed to have Article III standing. *See Carney*, 592 U.S. at 60 (quoting *Gratz*, 539 U.S. at 262). An applicant fails to demonstrate that he is “able and ready” to apply for standing purposes when he states “[he] would apply,” but that statement is not backed up by “supporting evidence” such as “any actual past injury”; when the context “suggests an abstract, generalized grievance, not an actual desire to [be selected],” as at least partially evidenced by a “failure to apply previously when he was eligible”; and when the applicant fails to “sufficiently differentiate[] himself from a general population of individuals affected in the abstract by the [alleged legal wrong] he attacks.” *Id.* at 63-64. The crux of the inquiry here is thus whether Students A and B have taken sufficient steps to differentiate themselves from the millions of theoretical student applicants. *See id.* at 64 (requiring “sufficient[] differentiat[ion]” for standing to be established). They have not. Multiple indicia confirm this truth.

Students A and B do not allege a single affirmative step they have taken to demonstrate that they are “able and ready” to apply or that they have anything “more than an abstract generalized grievance.” *See id.* at 60, 65. While insufficient on its own to make them “able and ready,” Students A and B could have at least tried to begin to differentiate themselves from the universe of potential applicant students by accessing the HSF portal where some resources available to all portal users currently exist and where they expect the 2026 application will be posted. But they admittedly have not. *See Compl.* ¶¶ 15, 34, 41. Students A and B do not even claim to have completed a FAFSA form, the submission of which they assume will be a requirement for the 2026 application cycle because it was a requirement for the 2025 application. *See Compl.* ¶¶ 16, 32, 39. This is so even though the FAFSA form has been open for months—

since September 24, 2025. Press Release, United States Department of Education Announces Earliest FAFSA Form Launch in Program History, U.S. Dep’t of Educ. (Sept. 24, 2025), <https://www.ed.gov/about/news/press-release/us-department-of-education-announces-earliest-fafsa-form-launch-program-history>. And Student B, a second-year law student, *see* Compl. ¶ 39A-B, has been presumptively eligible to apply for the HSF Scholar Program for at least the last several years since he was a high school senior and throughout his college years, but he has never once applied, *see id.* ¶¶ 40-44 (no reference to previous applications to the HSF Scholar Program).

At most, the Complaint alleges that Students A and B are aware of the Scholar Program based on some cursory review of the HSF website at some point in 2025. Nothing more. Indeed, the Students were not even aware of HSF, and its work and mission, until this year—casting more than a little suspicion on the authenticity of their interest in the Scholar Program as opposed to their interest in this lawsuit. *See* App. 87 ¶ 6 (Student B alleges that “[b]efore this year, [he] was unaware of the HSF Scholars Program”); *see also* Compl. ¶ 39B (alleging that Student B “only recently learned of the HSF program”); *Carney*, 592 U.S. at 62-64 (observing that in combination with the would-be judge’s “failure to apply previously when he was eligible,” his decision to file suit instead of taking steps to be “able and ready” to apply after he read a law review article which argued that Delaware’s judicial eligibility requirements were unconstitutional because they excluded independents “show[ed] a desire to vindicate his view of the law” not an “actual desire to become a judge”).

The Supreme Court’s recent decision in *Carney* is instructive. There, an individual identifying as a “political independent” at the time of suit challenged the “political balance requirement” in the Delaware Constitution which excluded those who, like him, were not registered as either a Republican or a Democrat from serving as a member of the state judiciary.

Carney, 592 U.S. at 55-56, 62. He averred that he wanted to be a judge and was able and ready to apply to be a judge, but for the sole roadblock of the balance requirement. Adams had not actually *applied* to become a judge, but he asserted that he “‘would apply for any judicial position that [he] thought [he] was qualified for’” and moreover, that he was “‘qualified for any position that would come up,’” if it were not for the state constitutional provision at issue which would make doing so futile. *See id.* at 61. The Court disagreed, refusing to find that he was able and ready. Specifically, it held that he failed to show that “at the time he commenced the lawsuit, Adams was ‘able and ready’ to apply for a judgeship in the reasonably foreseeable future,” *id.* at 63, and it thus remanded with instructions to dismiss the case because he “failed to show that ‘personal,’ ‘concrete,’ and ‘imminent’ injury upon which [its] standing precedents insist,” *id.* at 66.

So too here. The Alliance relies heavily on the same bare “I would apply ...” language that was insufficient in *Carney*. *Id.* at 63; *see* Compl. ¶¶ 34, 41. Also, as was the case in *Carney*, the Alliance then backs up these “few words of general intent” with insufficient “supporting evidence.” *Carney*, 592 U.S. at 63, 64. Notably, in both cases there are no allegations of “any actual past injury.” *Id.* at 63; *supra*, at 14-15 (no past injury alleged). To be sure, Students A and B allege they would apply during the 2026 application window. *See* App. 88 ¶ 9; App. 93 ¶ 9; *cf.* *Carney*, 592 U.S. at 63 (planned timeframe for application goes to standing). But they have merely taken a guess at when the application will be open this year and said they would apply then. Regardless of when the application actually *will* open, it is *Plaintiff’s* burden to “allege facts plausibly supporting each element of its standing.” *Am. First Legal Found.*, 153 F.4th at 1314 (quoting *Food & Water Watch*, 808 F.3d at 913); *see Carney*, 592 U.S. at 63 (discussing anticipated timeframe’s relevance to “able and ready” standing inquiry). Without more, like taking “concrete steps to prepare or submit” an application, *Spitalnick v. King & Spalding, LLP*, No. CV

JKB-24-1367, 2025 WL 608013, at *5 (D. Md. Feb. 25, 2025), *reconsideration denied*, No. CV JKB-24-1367, 2025 WL 1474835 (D. Md. May 22, 2025), the students have failed to “differentiate[themselves] from a general population of individuals affected in the abstract by the [program] [they] attack[],” namely the millions of high school seniors, college, and graduate school students in America, *see Carney*, 592 U.S. at 64.

This failure to “sufficiently differentiate[themselves] from [the] general population of individuals affected in the abstract by” the portion of the Scholar Program the Alliance attacks is fatal. *See id.* As the Supreme Court recently explained, “Article III does not contemplate a system where 330 million citizens can come to federal court whenever they believe [an entity] ... is acting contrary to the Constitution or other federal law,” and it is the injury in fact requirement that stands as the bulwark keeping “federal courts from becoming a ‘vehicle for the vindication of the value interests of concerned bystanders.’” *All. for Hippocratic Med.*, 602 U.S. at 382 (quoting *Allen v. Wright*, 468 U.S. 737, 756 (1984)). Surely, the injury in fact requirement likewise prevents the millions of high school seniors, college students, and graduate students in the United States from coming to “federal court whenever they believe [an entity] ... is acting contrary to ... federal law.” *See id.* It is no surprise then that courts that have found applicants to demonstrate standing through the “able and ready” exception have done so on much stronger facts than these. *See, e.g. Adarand Constructors*, 515 U.S. at 212; *Gratz*, 539 U.S. at 256, 262; *Ne. Fla. Chapter of Associated Gen. Contractors of Am. v. City of Jacksonville*, 508 U.S. 656, 666, 668-69 (1993) (finding standing where contractors had *inter alia* “regularly bid on construction contracts in Jacksonville”); *Worth*, 451 F.3d at 856, 859 (finding Title VII plaintiff bringing forward-looking claim for relief was ready and able where he had applied for multiple open positions within the Department of Housing and Urban Development (HUD), there were “no ... doubts” as to future positions being opened by

organization, and allegedly discriminatory “affirmative employment plan” policy was in place at the time when plaintiff filed suit).

Furthermore, Students A and B are not “able” to apply for an additional, and *wholly* ethnicity-neutral reason: the 2026 application is not live, and *no one* is yet “able” to apply. *See, e.g.*, Compl. ¶¶ 15, 34, 41. This fact is dispositive of the “able” part of the *Carney* analysis because it is pure conjecture what the requirements for the application to the 2026-27 Scholar Program even *are*. Thus, it is impossible to know whether a student is “able” or “ready” to meet them. The claim that Students A and Student B “satisf[y] all the eligibility criteria aside from the demographic one,” Compl. ¶¶ 32, 39, is based on the assumption that the 2025 criteria will be the same in 2026, *see, e.g., id.* ¶¶ 32A, 39A. To the contrary, Plaintiff’s own papers establish that the criteria can and do vary from year to year, for example in response to legal or political developments. *See* App. 2 (noting “DACA” under “Eligibility Requirements”); *Dep’t of Homeland Sec. v. Regents of the Univ. of Ca.*, 591 U.S. 1, 1 (2020) (observing DACA program was announced by the Department of Homeland Security in 2012); *Empowering Courageous Leaders*, HSF (archived Dec. 1, 2025) perma.cc/F5DL-GXHM (incorporated into Compl. ¶ 14) (stating that HSF has awarded scholarships “[s]ince 1975”). Moreover, as discussed above, neither student indicates that they have completed what the Alliance itself describes as the “plainly binding” financial aid form eligibility requirement; instead, both students merely claim they “would submit” these forms. *See* Compl. ¶¶ 16, 32C, 39C. That is insufficient.

Accordingly, the Alliance has failed to allege that Students A or B are “able and ready” to apply, and, therefore, the Complaint must be dismissed.

II. The Alliance’s Complaint Must Be Dismissed Because It Fails To State A Claim Under 42 U.S.C. § 1981.

Section 1981 states that “[a]ll persons . . . shall have the same right in every State and Territory to make and enforce contracts . . . as is enjoyed by white citizens.” 42 U.S.C. § 1981(a). To state a claim under § 1981, a plaintiff must first sufficiently allege the existence of a contract between the plaintiff and defendant. *Domino’s Pizza, Inc. v. McDonald*, 546 U.S. 470, 475-76 (2006). “It is clear that Section 1981 creates no new body of contract jurisprudence and that the existence of a contract is to be determined through the application of traditional contract principles.” *Player v. State of Ala. Dep’t of Pensions & Sec.*, 400 F. Supp. 249, 264 (M.D. Ala. 1975), *aff’d sub nom. Player v. State Dep’t of Pensions & Sec.*, 536 F.2d 1385 (5th Cir. 1976); *see Domino’s Pizza, Inc.*, 546 U.S. at 476-77. “[A] plaintiff cannot state a claim under § 1981 unless he has (or would have) rights under the existing (or proposed) contract that he wishes ‘to make and enforce.’” *Domino’s Pizza, Inc.*, 546 U.S. at 480-81 (quoting 42 U.S.C. § 1981). The HSF Scholar Program is a gift, not a contract. The Alliance has not sufficiently alleged a contract for the Scholar Program under traditional contract principles and therefore fails to state a claim.

For starters, the Alliance does not even purport to allege a contract for the Scholar Program itself. *See* Compl. ¶¶ 1-57 (failing to allege a direct contract for the Scholar Program); *cf. Fearless Fund*, 103 F.4th at 775 (Section 1981 lawsuit where original contest rules explicitly stated that they constituted “A CONTRACT”); *Am. All. for Equal Rights v. Founders First Cmty. Dev. Corp.*, No. 24-cv-00327, 2024 WL 3625684, at *3 (N.D. Tex. July 31, 2024) (Section 1981 lawsuit in which it was “not disputed” that the grants subject to the dispute constituted a contract); *Patterson v. McLean Credit Union*, 491 U.S. 164, 177-78 (1989) (Section 1981 lawsuit concerning a direct employment contract between plaintiff employee and defendant employer); *CBOCS W., Inc. v. Humphries*, 553 U.S. 442, 445-46 (2008) (similar). Instead, the Alliance conclusively alleges that

the “contract” for § 1981 purposes is HSF’s “Terms of Use and Privacy Policy” for HSF.net, HSF’s web portal. Compl. ¶ 21; *see id.* ¶¶ 20-30. But that alleged contractual relationship, by its own clear terms, is separate and distinct from the benefits of the Scholar Program, including the scholarships gifted to HSF Scholars, and therefore cannot serve as the basis for liability under § 1981. The Court’s inquiry can end there. But to go further, the benefits of the Scholar Program and the scholarship are no-strings-attached gifts from HSF to the recipients. Furthermore, the Scholar Program is not a contest that creates a contractual relationship between applicants and HSF. Finally, the First Amendment strongly supports holding that the Scholar Program is a gift and nothing more. Accordingly, lacking a “contract” for § 1981 purposes, the Complaint must be dismissed for failing to state a claim.

A. The Terms of Use and Privacy Policy, at most, are contracts for using HSF.net, not a contract for the Scholar Program.

A contract is “an agreement to do, or refrain from doing, a particular thing, upon a sufficient consideration.” 17A Am. Jur. 2d Contracts § 1; *Ascom Hasler Mailing Sys., Inc. v. U.S. Postal Serv.*, 885 F. Supp. 2d 156, 181-82 (D.D.C. 2012). To show that a contract exists, the Alliance is required to show that the parties have “‘a mutual intent to contract including offer, acceptance, and consideration.’” *Ascom Hasler Mailing Sys.*, 885 F. Supp. 2d at 182 (citation omitted). A “contract must ‘be sufficiently definite as to its material terms, (which include, for example, subject matter, price, payment terms, quantity, quality, and duration).’” *Mero v. City Segway Tours of Wash. DC, LLC.*, 826 F. Supp. 2d 100, 105 (D.D.C. 2011) (citation omitted); *see also Malone v. Saxony Coop. Apts., Inc.*, 763 A.2d 725, 729 (D.C. 2000) (D.C. contracts law noting that “[f]or there to be an enforceable contract, there must be mutual assent of each party to all the essential terms of the contract”); *Sully-Miller Contracting Co. v. Gledson/Cashman Constr., Inc.*, 103 Cal. App. 4th 30, 36 (Cal. Ct. App. 2002) (California contracts law noting that a contract “consists of mutual

promises made in exchange for each other by each of the two contracting parties. . . . In essence, mutuality of obligation must exist where the exchange of promises between promisor and promisee is meant to represent the contract’s consideration” (internal quotation marks and citations omitted)). The terms of a contract are defined by the parties and must be enforced by the courts. *Cf. Butler v. Enter. Integration Corp.*, 459 F. Supp. 3d 78, 92 (D.D.C. 2020).

The Alliance alleges that HSF’s Terms of Use and Privacy Policy are contracts. *See* Compl. ¶ 22. But to the extent they are contracts, they are contracts to use HSF’s website, HSF.net, not contracts for access to the benefits of the Scholar Program or guaranteed scholarship funds.³ The Terms of Use begins by providing that “[t]his page explains the terms by which you may use our online and/or mobile services, web site, and software provided on, or in connection with, the service (collectively the “Service”).” *Terms of Use Agreement*, HSF, <https://www.hsf.net/terms-of-use> (last visited Dec. 21, 2025) (incorporated into Compl. ¶ 22). It then provides that “[b]y accessing or using the Service, you signify that you have read, understood, and agree to be bound by this Terms of Use Agreement . . . and to the collection and use of your information, as set forth in the HSF Privacy Policy, whether or not you are a registered user of our Service.” *Id.* The Terms of Use also provides that it applies to “all visitors, users, and others who access the Service.” *Id.* In exchange for agreeing to the Terms of Use and Privacy Policy, users are “granted a non-exclusive, limited, non-transferable, freely revocable license to use the Service for [their] personal, noncommercial use only and as permitted by the features of the Service.” *Id.* Notably, users are

³ HSF’s Terms of Use and Privacy Policy are wholly ethnicity neutral. *See* Ex. 5 to Alliance Mot. for TRO and Prelim. Inj., at App. 12-16 (screenshots of “Sign Up” screens showing that account creation does not ask any questions about ethnicity—the only background related question it asks is “Role”—e.g., “Student” (App. 15)).

not granted the right to apply for the Scholar Program or an opportunity to apply for the associated scholarship. *See id.*

Indeed, the Terms of Use makes only a single reference to the scholarship at all. In a section titled “User Content,” the Terms of Use provides that:

The User Content you create remains yours; however, by providing or sharing User Content through the Service, you agree to allow others to view, edit, and/or share your User Content in accordance with your settings and this Agreement. For example, by submitting a scholarship application through the Service, you agree to allow donors to view certain information provided by you and to allow readers of scholarship essays to read and review your essays.

Id. This singular statement in the Terms of Use, which does no more than authorize third parties to review user content, does not create a contract for the Scholar Program.

The Privacy Policy likewise is not a contract for the Scholar Program or an opportunity to be considered for the program. Indeed, privacy policies are found on nearly every website and in some states are legally *required* for most websites that collect users’ data. *See* Cal. Consumer Privacy Act, Cal. Civ. Code § 1798.100 *et seq.* Thus, the “privacy policy explains how [HSF] collect[s], use[s], disclose[s], and protect[s] information that [it] collect[s] through the process of providing [its] Service, and your choices about the collection and use of your information.” App. 38; Compl. ¶ 24 (incorporating Privacy Policy). The Service that the Privacy Policy contemplates providing is the same Service referenced in the Terms of Use, i.e., the HSF.net website and portal. App. 38 (“Capitalized terms that are not defined in this Privacy Policy have the meaning given to them in our Terms of Use.”). Accordingly, the Agreements are intended to be read together granting certain rights to HSF in exchange for the user’s license to use HSF.net. *See Terms of Use Agreement*, HSF <https://www.hsf.net/terms-of-use> (incorporated into Compl. ¶ 22) (providing license).

This is a far cry from cases like *Fearless Fund*, where the “original contest rules warned applicants, in no uncertain terms, that ‘BY ENTERING THIS CONTEST, YOU AGREE TO THESE OFFICIAL RULES, WHICH ARE A CONTRACT.’” 103 F.4th at 775 (quoting the contest’s Official Rules). There, the contract was expressly related to entering the contest. Similarly, in *Founders First Community*., the defendant did not dispute that the program it offered constituted a contract where there were particular requirements and consideration, including that the recipient business “must be able to add at least one job that pays an average of \$50,000 in yearly salary and benefits.” 2024 WL 3625684, at *1, 3. In contrast, the contract here is for access to HSF.net, which has numerous uses separate and apart from the Scholar Program, including access to a “Scholarship Finder” and “College Prep” resources, which are available to anyone who accesses HSF.net regardless of race or ethnicity.⁴ Plaintiff does not allege the existence of any requirement for the recipients to perform anything in exchange for the Scholar Program or the scholarship.

Without more, the Alliance mentions that HSF Scholars must sign “the HSF Scholar pledge and survey.” Compl. ¶ 27. The Alliance mentions that the pledge imposes additional “obligations,” including to “giv[e] back to the Latino community,” and “promise to fill out and submit several ‘online Scholar surveys.’” *Id.* But those “obligations” are no more a contract than the Boy Scout or Girl Scout pledge. *See* Scouting America, *What are the Scout Oath and Scout Law?*, <https://www.scouting.org/about/faq/question10/> (last visited Dec. 21, 2025) (noting that Scouting America’s pledge asks Scouts to (1) “[t]ell the truth and keep promises”; (2) “[v]olunteer to help others without expecting a reward”; (3) be “polite,” “helpful,” “courteous,” “kind,” and “brave”;

⁴ *See About HSF*, HSF (archived Dec. 1, 2025), perma.cc/6PH5-RMX8 (incorporated into Complaint ¶ 14).

(4) “[f]ollow the rules of your family, school, and pack” and obey your community and country’s laws; and (5) “[w]ork to pay your own way”). Those pledges are not the type of consideration required to form a contract. *See Zoob v. Jordan*, 841 A.2d 761, 765 (D.C. 2004) (“[A] mere promise to make a gift is unenforceable.”); *Davis v. Joseph J. Magnolia, Inc.*, 640 F. Supp. 2d 38, 45 (D.D.C. 2009) (“[A] promise is illusory when performance of that promise is optional.”). The Alliance’s argument is too attenuated to warrant any consideration, as a mere promise to give back to the community and fill out surveys is far from meeting any element of a contract.

Ultimately, the Alliance asks this Court to rewrite the contracts at issue here to say something that they simply do not. That is a task this Court cannot undertake. *Conesco Indus., Ltd. v. Conforti & Eisele, Inc.*, 627 F.2d 312, 315 (D.C. Cir. 1980) (“We are of the general opinion that it is not the function of the courts to rewrite contracts.”); *Des Longchamps v. Allstate Prop. & Cas. Ins.*, 102 F. Supp. 3d 299, 306 (D.D.C. 2015) (“This Court’s job is to interpret the contract’s words, not to rewrite the contract to suit one party’s interests.”). Because the only contracts that the Alliance alleges are the Terms of Use and Privacy Policy, which are not contracts for the Scholar Program, the Alliance’s § 1981 claim fails, and the Complaint must be dismissed.

B. The HSF Scholar Program is a gift, not a contract.

Because the Terms of Use and Privacy Policy are the only contracts the Alliance alleges, and those contracts are not contracts for the Scholar Program as would be required for the Alliance’s § 1981 claim, the Court can end its inquiry there. However, for the avoidance of doubt and to the extent the Alliance purports to allege a contract in some other manner, it too fails because the HSF Scholar Program, including the scholarship, is a gift, not a contract and thus not subject to § 1981. “[T]he ordinary understanding of ‘scholarships’ and ‘fellowships’ [is] as relatively disinterested, ‘no-strings’ educational grants, with no requirement of any substantial *quid pro quo* from the recipients.” *Bingler v. Johnson*, 394 U.S. 741, 751 (1969). Indeed, as illustrated in the

Restatement (Second) of Contracts, when one person promises another money to go to college, but it is clear that the funder is providing a gift rather than paying a salary for the college attendance, the money is a mere gratuity. *See* Restatement (Second) of Contracts § 71 cmt. c (citing § 24 ill. 2); *see also Doe v. Kamehameha Schs./Bernice Pauahi Bishop Est.*, 470 F.3d 827, 888-89 (9th Cir. 2006) (Kozinski, J., dissenting) (“I don’t believe section 1981 would apply at all if the schools were run entirely as a philanthropic enterprise and allowed students to attend for free. ... I have found no case where section 1981 has been applied to a charity. Were the schools to forego charging tuition, their relationship to their students would probably not be deemed ‘contractual’ as that term is used in section 1981 and *Runyon* [*v. McCrary*, 427 U.S. 160, 172-73 (1976)].”).

If a grant is structured as a gift, even where the gift is given with a specific purpose, it will not constitute a legally enforceable contract where it lacks the essential elements of a mutual intent to be bound and a *quid pro quo*. *See, e.g., Spirit Lake Tribe of Indians ex rel. Comm. of Understanding & Respect v. Nat’l Collegiate Athletic Ass’n*, 715 F.3d 1089, 1093 (8th Cir. 2013) (“However meaningful the ... grant may have been there was no contract because there was no indication of mutual intent to create a legal obligation.”); *Stone v. Comm’r*, 23 T.C. 254, 261-63 (1954) (holding that fellowship from John Simon Guggenheim Foundation did not constitute a contract; although the Foundation placed conditions on grants consistent with its tax-exempt status, it did not, *inter alia*, “direct and control ... the details and means by which the project is carried out, to require conformity with a schedule of working hours, to supervise the work to see that it is satisfactorily done, or ... require reports on the progress of or the completion of the task”), *acq.*, C.B. 1957-1, 5; *United States v. Amirikian*, 197 F.2d 442, 443 (4th Cir. 1952) (expressing in dicta that a gift would not constitute a contract if “made in recognition of past achievements or present

abilities, or if payment was given not for services, but out of affection, respect, admiration, charity or like impulses”) (citation omitted).

In contrast, if a grant is offered in consideration for performance from the grantee, it can be enforced as a contract. *See, e.g., Thermalon Indus., Ltd. v. United States*, 34 Fed. Cl. 411, 415 (1995) (analyzing whether a federal grant constituted a contract by evaluating “significant consideration” that passed to the government in the form of license and ownership of research, as well as evidence of the parties’ intent to be bound by and comply with the grant terms).

Here, for those students who are selected as HSF Scholars and also receive scholarship funding, the HSF Scholar Program is the quintessential “disinterested, ‘no-strings’ educational grant[], with no requirement of any substantial *quid pro quo* from the recipients” aimed at helping students of Hispanic Heritage complete a higher education. *Bingler*, 394 U.S. at 751. First, the Alliance fails to allege any material terms imposing any kind of promise or performance by HSF Scholars. Instead, the Alliance alleges simple eligibility requirements to apply for the scholarship, including, based on the 2025 criteria, “be[] of Hispanic Heritage,” be a “U.S. citizen, permanent legal resident, or DACA,” have a minimum 3.0 GPA, “[p]lan to enroll full-time in an accredited ... school,” and “[s]ubmit the FAFSA or state-based financial aid forms,” if applicable. Compl. ¶ 3; *see also id.* ¶ 16. That is it. The Alliance does not allege that scholarship recipients are directed by HSF in any way regarding how to use their scholarship funds. Indeed, recipients who receive scholarship money may use the funds as they see fit to further their education. There are no requirements as to when or how the funds are used, and there is no allegation that recipients have to provide anything in exchange for the funds or access to the Scholar Program benefits. Second, HSF provides Scholars with “invaluable Scholar Support Services and [the opportunity

to] be eligible to receive a scholarship, *depending on available funds*.”⁵ There is no promise to provide funds, even to HSF Scholars; they are only gifted if *available*. Therefore, providing the gift is optional for HSF—that is not a contract.

Similarly, the existence of these conditions does not convert the awarding of the gift into a contest for contract purposes. A gift does not become a contract merely because it is being conferred based on the recipient’s good character and grades. *See Dougherty v. Salt*, 227 N.Y. 200, 201-03 (1919) (promissory note awarded on account of recipient’s good character and grades was a gift). This is so even if the awarded item is something that usually is contractual in nature, like a written promissory note, so long as the gift “was neither offered nor accepted with any other purpose.” *Id.* at 202-03. HSF certainly has no other purpose besides its charitable mission for conferring the monetary and nonmonetary benefits of the Scholar Program, and the Alliance has not alleged one. California, HSF’s principal place of business, expressly exempts charitable trusts and 501(c)(3) organizations, like HSF, from the rules governing contests. *See* Cal. Bus. & Prof. Code § 17539.3(b) (“As used in Sections 17539.1 and 17539.2, ‘person’ includes a firm, corporation, or association, but does not include any charitable trust, corporation, or other organization exempted from taxation under Section 23701d of the Revenue and Taxation Code or Section 501(c) of the Internal Revenue Code.”). And HSF is aware of no case in the District of Columbia where a scholarship from a charitable organization has given rise to a contract.

To put a finer point on it, the Alliance fails to identify any case where an educational scholarship program from a private philanthropic organization has been determined to be a contest creating a contract, and HSF is aware of none. *See* PI Mot. 8 (collecting contest cases). Each of

⁵ 2025 HSF Scholar Program Application, HSF (archived Dec. 1, 2025), perma.cc/FQV3-KDFZ (incorporated into Compl. ¶ 3) (emphasis added); *see also* 2025 HSF Scholar Program Application, HSF <https://www.hsf.net/scholarship> (same).

the cases on which the Alliance relies is inapposite. *First*, this case is not *Fearless Fund*. *Fearless Fund* referred to its grant selection process explicitly as a “contest.” *Fearless Fund*, 103 F.4th at 775-76. And in *Fearless Fund*, “the contest end[ed] in the formation of a contractual relationship between *Fearless* and the winner.” *Id.* at 776. Neither circumstance applies here. The Alliance does not allege that HSF anywhere refers to the Scholar Program selection process as a contest, and the Alliance does not allege that any contract is formed at the conclusion of the selection process between the recipients and HSF. Instead, the Alliance relies on the Terms of Use and Privacy Policy required to use the website. *Second*, all of the other cases on which the Alliance relies for this point are cases that employ contests as marketing tools to draw people in and promote a business.⁶ *See Brooklyn Daily Eagle v. Voorhies*, 181 F. 579, 581-83 (C.C.E.D.N.Y. 1910) (considering a statute prohibiting the postmaster from carrying “advertisement of a lottery” and concluding that the consideration necessary for the existence of a lottery was satisfied where “[a]dvertising and the sales resulting thereby” amounted to a benefit); *Haskell v. Time, Inc.*, 857 F. Supp. 1392, 1395 (E.D. Cal. 1994) (addressing consideration under California’s statutory definition of a contest and finding that “[t]o enlist subscribers, defendants include ‘sweepstakes’ entries with their subscription advertisements”); *Personavera, LLC v. Coll. of Healthcare Info. Mgmt. Execs.*, Civ. Action No. 18-633, 2021 WL 1313108, *1-4, *11 (E.D. Pa. Apr. 8, 2021) (concerning a “contest” to build a scalable product with “Guidelines and the Competitor Agreement” and a “promise[.]” to “win a prize”). And, to the extent the Alliance relies on *Haskell*

⁶ The Alliance relies on *Hampton v. Dillard Dep’t Stores, Inc.*, 247 F.3d 1091, 1104 (10th Cir. 2001) for the proposition that “[n]early all jurisdictions have adopted the rule that contract law governs the sponsor-contest relationship.” Compl. ¶ 51 (internal quotation marks in original omitted by Complaint). But that quoted language is taken from a parenthetical in *Hampton* characterizing *Brown v. State*, 230 Wis. 2d 355, 373-81 (Ct. App. 1999), which concerns the contract created by a lottery ticket, which no one disputes gives rise to a contractual relationship.

for the proposition that “‘answering an essay question’ is ‘a contest,’” Compl. ¶ 51, *see also* PI Mot. 8, that is nothing more than creative wordsmithing. In *Haskell*, the Court was evaluating whether various actions by magazines were lotteries or contests under California law where the differentiating factor is whether the competition requires “skill.” 857 F. Supp. at 1404. Because one of those competitions “require[d] listing presidents in order of date of service, answering an essay question, and a ‘wordfind,’” the court determined that it was a “contest” and not an “illegal lottery” under California law. *Id.* at 1404-05. But again, that has nothing to say about this case because charitable organizations are exempt from California’s contest law. *See* Cal. Bus. & Prof. Code § 17539.3(b). And even more, the Alliance has identified no support for the idea that an essay as part of an educational scholarship application converts the scholarship from a gift to a contract, and HSF is aware of none.

Lest there be any doubt that the Scholar Program should be understood as charitable gift-giving, the First Amendment places a heavy thumb on the scale. Awarding scholarships and conferring program benefits *is* expressive conduct. Like other forms of charitable financial activities, e.g., soliciting donations, awarding scholarships implicates a broad variety of speech interests and generally garners First Amendment protection. The Supreme Court has “squarely held, on the basis of considerable precedent, that charitable solicitations ‘involve a variety of speech interests ... that are within the protection of the First Amendment,’ and therefore have not been dealt with as ‘purely commercial speech.’” *Riley v. Nat’l Fed’n of the Blind of N. Carolina, Inc.*, 487 U.S. 781, 787-88 (1988) (discussing holding of, and quoting, *Schaumburg v. Citizens for a Better Environment*, 444 U.S. 620, 632 (1980)); *see also* *Sec’y of State of Md. v. Joseph H. Munson Co.*, 467 U.S. 947, 959-62 (1984).

Underlining how philanthropic transactions and activities are distinct from business transactions, the Supreme Court has observed that charitable donating aligns the donor with a cause and this “functions as a general expression of support for the recipient and its views.” *See Cornelius v. NAACP Legal Def. & Educ. Fund, Inc.*, 473 U.S. 788, 799 (1985) (citing *Buckley v. Valeo*, 424 U.S. 1, 66 (1976) (per curiam)); *cf. Am. for Prosperity Found. v. Bonta*, 594 U.S. 595, 606-15 (2021) (equating donating money to an organization with joining that organization, treating contributors and members interchangeably in context of compelled disclosure analysis). Put simply, because it conveys a message about which causes it wants to support, an organization’s choice about where to spend money is expressive conduct. *See Clark v. Cmty. for Creative Non-Violence*, 468 U.S. 288, 294 (1984) (observing message may be delivered by conduct that is intended to be, and in context would reasonably be understood by a viewer to be, communicative); *Hurley v. Irish-Am. Gay, Lesbian & Bisexual Grp. of Boston*, 515 U.S. 557, 573 (1995) (similar).

Under these precedents, the conduct at issue in this case, awarding scholarships and other programmatic benefits, is expressive conduct.⁷ It is both “intend[ed] to convey a particular message,” and the likelihood that the message is understood by others is great, as the Complaint, which itself references HSF’s ideological mission, makes clear. *See Hutchins v. District of Columbia*, 188 F.3d 531, 548 (D.C. Cir. 1999) (citing *Spence v. Washington* for the proposition that “to be expressive, conduct must intend to convey a particular message, and the likelihood of that message being understood by others must be great” (418 U.S. 405, 410-11 (1974))); Compl.

¶ 11.

⁷ HSF’s non-monetary activities, such as providing mentorships or online programming, are also expressive conduct protected by the First Amendment. *See, e.g., Boy Scouts of Am. v. Dale*, 530 U.S. 640, 649-50 (2000) (expressive activity when Scout leaders spent time instructing and engaging youth members in order to instill values).

HSF's charitable intent in operating the Scholar Program is clear, and the First Amendment and the ordinary principles of contract law are aligned in considering the relevance of this intent. *See Runyon*, 427 U.S. at 168 (emphasizing that the schools in question were "commercially operated"). The Alliance's allegations are only the most tenuous and minimal alleged indicia of contract. *Supra*, at 24-28. This clearly cannot transform HSF's expressive intent in granting recognition through the Scholar Program into a contract. The Scholar Program conveys a gift. It does not create a contract.

In short, scholarships are canonical gifts, and the selection process for determining how to award those gifts does not convert them into contracts. No court has held otherwise, and this Court should not be the first. Indeed, dismissal with prejudice is warranted here because any amendment to the Alliance's § 1981 claim, which is the sole claim it has brought, would be futile. *See Wheeler v. Panini Am., Inc.*, No. CV 22-00763, 2022 WL 17039208, at *8 (D.D.C. Nov. 17, 2022) (explaining that dismissal with prejudice is "warranted" where amendment would be futile because an amended claim would not survive a motion to dismiss (first citing Fed. R. Civ. P. 15(a); and then citing *Hettinga v. United States*, 677 F.3d 471, 480 (D.C. Cir. 2012))). There is no version of the Alliance's claim that can change the fundamentals of contract law in a manner that transforms the HSF Scholar Program from a gift into a contract. Accordingly, any iteration of the Alliance's § 1981 claim will necessarily fail to state a claim.

CONCLUSION

For the foregoing reasons, the Complaint should be dismissed with prejudice.

Respectfully submitted,

/s/ Edward H. Williams II

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December 24, 2025

CERTIFICATE OF SERVICE

I hereby certify that on December 24, 2025, a copy of the foregoing Defendant Hispanic Scholarship Fund's Notice of Motion to Dismiss Defendant's and Memorandum of Points and Authorities in Support of Motion to Dismiss Plaintiff's Complaint were served on all parties of record.

/s/ Edward H. Williams II

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