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UNRAVELING THE INEQUITABLE NATURE OF THE MODEL MINORITY: ASIAN-AMERICANS DESERVE AFFIRMATIVE ACTION

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Cover Page Footnote

2017 Candidate for Juris Doctor, St. John's University School of Law; B.A., University of San Diego, 2012. I would like to thank my instructor Professor Cheryl Wade, for teaching a course entitled "Issues of Race and Gender in the Law" at St. John's. I also extend my special thanks to my entire family for your unwavering support in my continued successes. Finally, I thank my mother, Chris Arcitio, and grandmother, Mila Hanson, who give me the strength to shoot for the stars.

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Christopher Atlee F. Arcitio*

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I. INTRODUCTION

Critical Race Theorists Richard Delgado and Jean Stefancic emphasize the significance of the “power of stories and persuasion to come to a better understanding of how Americans see race.”¹ Therefore, I begin this scholarly piece (hereinafter “Comment”) by presenting my narrative to the world.

Dear Reader,

I am a first-generation Filipino-American who is fed up with being silent. I hope to express my frustrations in the following Comment. Overall, I have worked tirelessly to overcome boundaries that continually inhibit my dreams and aspirations. First, I have no professionals in my family. Each step in my academic career has

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¹ See RICHARD DELGADO & JEAN STEFANCIC, CRITICAL RACE THEORY: AN INTRODUCTION, 38 (N.Y. Univ. Press, 2001).

been taken alone. Although my family's support has meant the world to me, I carry my entire family's future success on my shoulders by paving a path to higher education in the United States alone. Admittedly, I am forever grateful to my grandmother, who courageously immigrated from her life of poverty in the Philippines to the United States. However, since I am among the first-generation born in the United States, I must construct my own American Dream. Second, my family remains living in poverty. Each day of my entire adult life, I witness my mother of four children struggle to carry her family on her shoulders as the sole provider. In a capitalist society dependent on money, living in poverty can breed a number of problems. I think about the members of my family who fell into the cycle of gangs, violence, and prison. I think of other members of my family who found refuge in accidental pregnancies and dead-end jobs. I think about how these very real scenarios could have been my own fate.

Now, I fight every temptation to simply accept my family's expected paths. In law school, I take the step in pursuing post-graduate education 3,000 miles away from my home and alone. Each day, I am reminded about the worry and stress of the ongoing trials and tribulations my family members face in their lives. Despite these experiences that make me who I am, the United States government has labeled me "Asian,"² making my individuality wholly invisible because Asian-Americans are presumably the "highest-income, best-educated and fastest-growing racial group"³ that "stand[s] out for their success in education and career."⁴ Because of these generalizations, society deems my unique experiences insignificant. "[A]s [a] neocolonial immigrant[] and consolidated under a larger Asian American category, [I am] invisible."⁵

In a recent article, New York Times columnist, Nicholas Kristof, boldly tackled the question of: "Why are Asian-Americans so successful in America?"⁶ In Mr. Kristof's article, he discusses the positive stereotype of Asian-Americans

² *Race*, UNITED STATES CENSUS BUREAU, (July 8, 2013)

<https://www.census.gov/topics/population/race/about.html> (defining "Asian" as "[a] person having origins in any of the original peoples of the Far East, Southeast Asia, or the Indian subcontinent including, for example, Cambodia, China, India, Japan, Korea, Malaysia, Pakistan, the Philippine Islands, Thailand, and Vietnam.").

³ *The Rise of Asian Americans*, PEW RESEARCH CENTER,

<http://www.pewsocialtrends.org/asianamericans-graphics/> (last visited Apr. 24, 2016).

⁴ *Id.*

⁵ See Tracy Lachica Buenavista, *Issues Affecting U.S. Filipino Student Access to Postsecondary Education: A Critical Race Theory Perspective*, 15 J. EDUC. FOR STUDENTS AT RISK 114, 116 (2010), <https://filipinostudies.files.wordpress.com/2014/04/buenavista.pdf>.

⁶ See Nicholas Kristof, *The Asian Advantage*, N.Y. TIMES, Oct. 10, 2015, http://www.nytimes.com/2015/10/11/opinion/sunday/the-asian-advantage.html?_r=1.

as “hard-working” and attributes such stereotype to the “no secret” success of Asian-Americans in school.⁷ Mr. Kristof’s article serves as one of many examples of the view that Americans have attributed to Asian-Americans. From a bird’s eye view, statistics indicate that Asian-Americans are the “model minority” in our society. According to the Pew Research Center, sixty-one percent of Asian-Americans ages between twenty-five and sixty-four have a college degree.⁸ For the median household income, Asian-Americans on average made \$66,000.00 in 2010, which is \$16,000.00 more than the general public.⁹ Facially, this data appears to make Americans’ views of Asian-Americans correct. However, disaggregating the data obliterates the bird’s eye view and raises a significant concern: what about the Asian-Americans who have not discovered this “no[-]secret” success?¹⁰

Americans have generally adopted the view that “through their hard work, intelligence, and emphasis on education and achievement, [Asian-Americans] have been [historically] successful.”¹¹ This view is referred to as the “model minority.”¹² Unfortunately, this view posits a generalized assumption that Asian-Americans do not deserve resources and programs that aid other minority groups, such as African-Americans and Latinos.¹³ The logic follows then that because Asian-Americans do not need help in attaining economic and educational success, they do not need government attention and assistance.¹⁴

The model minority concept has invaded the minds of Americans since the 1960’s.¹⁵ As a result, Asian-Americans are now beholden to this view. All subcategories of Asian-Americans are beholden to this view. Thus, I am beholden to this view. By artificially “essentializing”¹⁶ Asians into one single category, the Asian-Americans who lack success have largely been ignored.¹⁷ Particularly, in the context of affirmative action, Asian-Americans have occupied an awkward position. The term “affirmative action” is generally known to

⁷ *Id.*

⁸ *The Rise of Asian Americans*, *supra* note 3.

⁹ *Id.*

¹⁰ See Kristof, *supra* note 6.

¹¹ See Miranda O. McGowan & James Lindgren, *Testing the “Model Minority Myth,”* 100 NW. U. L. REV. 331, 331 (2006) (quoting Pat K. Chew, *Asian Americans: The “Reticent” Minority and Their Paradoxes*, 36 WM. & MARY L. REV. 1, 24 (1994)).

¹² McGowan & Lindgren, *supra* note 11; see also William Pettersen, *Success Story, Japanese-American Style*, N.Y. TIMES, Jan. 9, 1966, at 20-21, 33, 36, 40-41, 43, http://inside.sfuhs.org/dept/history/US_History_reader/Chapter14/modelminority.pdf (coining the term “model minority” to describe Japanese-Americans).

¹³ McGowan & Lindgren, *supra* note 11, at 336–37.

¹⁴ *Id.*

¹⁵ See Pettersen, *supra* note 12.

¹⁶ See Trina Grillo, *Anti-Essentialism and Intersectionality: Tools to Dismantle the Master’s House*, 10 BERKELEY WOMEN’S L.J. 16, 19 (1995).

¹⁷ See Adrian Liu, *Affirmative Action & Negative Action: How Jian Li’s Case Can Benefit Asian Americans*, 13 MICH. J. RACE & L. 391, 428-29 (2008); see also Farah Z. Ahmad & Christian E. Weller, *Reading Between the Data: The Incomplete Story of Asian Americans, Native Hawaiians, and Pacific Islanders*, CENTER FOR AMERICAN PROGRESS, 1, 1 (Mar. 2014), <https://www.americanprogress.org/wp-content/uploads/2014/03/AAPI-report.pdf>.

include policies and programs designed “to improve opportunities for historically excluded groups in” the United States.¹⁸

As a minority group, struggling Asian-Americans may deserve a policy such as affirmative action. Affirmative action would provide Asian-Americans with an opportunity to compete equally with those who have had “doors that have been historically closed to” them.¹⁹ On the other side of the spectrum, some Asian-Americans have complained about affirmative action, arguing that Asian-Americans have to “work harder than everybody else.”²⁰ However, oppositional arguments such as these can be built upon “self-congratulatory” praises²¹ and “internaliz[ing] the model minority myth.”²² Naturally, the contrasting views on affirmative action have been translated into heavy litigation.

For example, in 2014, the Students for Fair Admissions, Inc. (“SFFA”) initiated a complaint against Harvard University, seeking a declaratory judgment on the college’s admission policies.²³ The SFFA purported to represent Asian-Americans “who were denied admission to higher[-]education institutions.”²⁴ In addition to the declaratory judgment, the SFFA sought an “outright prohibition of racial preferences in university admissions – period.”²⁵ On balance, the SFFA’S complaint is fundamentally guilty of “essentializing”²⁶ the Asian-American experience.

In this Comment, I seek to demonstrate that Asian-Americans are deserving of affirmative action programs and policies. By embracing a non-essentialist approach, disaggregating the data, and dispelling the model minority concept, Americans may finally understand that Asian-Americans have extremely diverse experiences and, therefore, are deserving of affirmative action consideration. Part II summarizes the historical origins of the model minority concept and concludes that it is more akin to a myth. Part III focuses on the role of the model minority concept in the affirmative action context. Part IV calls upon Asian-Americans to reconsider their own views of affirmative action. Part V provides a powerful illustration that embodies the wonders of affirmative action.

¹⁸ *Affirmative Action Overview*, NATIONAL CONFERENCE OF STATE LEGISLATURES (Feb. 7, 2014), <http://www.ncsl.org/research/education/affirmative-action-overview.aspx>.

¹⁹ See Harvey Gee, *Changing Landscapes: The Need for Asian Americans to be Included in the Affirmative Action Debate*, 32 GONZ. L. REV. 621, 636 (1996–1997).

²⁰ *The Model Minority Is Losing Patience*, THE ECONOMIST (Oct. 3, 2015), <http://www.economist.com/news/briefing/21669595-asian-americans-are-united-states-most-successful-minority-they-are-complaining-ever>.

²¹ See Gabriel J. Chin et al., *Beyond Self-Interest: Asian Pacific Americans Toward a Community of Justice, A Policy Analysis of Affirmative Action*, 4 UCLA ASIAN PAC. AM. L.J. 129, 162 (1996).

²² See Denny Chan, *An Invisibility Cloak: The Model Minority Myth and Unauthorized Asian Immigrants*, 3 U.C. IRVINE L. REV. 1281, 1302 (2013).

²³ Complaint at 1, *Students for Fair Admissions, Inc. v. President and Fellows of Harvard College*, 807 F.3d 472 (1st Cir. 2015) (No. 15-1823).

²⁴ *Id.* at 7, ¶ 13.

²⁵ *Id.* at 6, ¶ 9.

²⁶ DELGADO & STEFANCIC, *supra* note 1, at 56.

II. THE MODEL MINORITY

This past February, film fans all around the world tuned into a gathering of the entertainment community at the Academy Awards, also known as the “Oscars.” Avid film fans anticipated Leonardo DiCaprio finally receiving an Oscar for Best Actor.²⁷ Additionally, a long-time comedian, Chris Rock, hosted the ceremony, so you definitely did not want to miss this. However, as you begin to tune in to the Oscars, you witness Mr. Rock use the opportunity of enormous viewership to offend and disappoint the world.²⁸ In a running joke about the Academy Awards’ tabulation, Mr. Rock presented three Asian-American children purporting to represent the accounting firm of PricewaterhouseCoopers.²⁹ In the running joke, Mr. Rock stated that the accounting firm “sent us their most dedicated, accurate, and hard-working representatives.”³⁰ As the crowd laughed, he further stated that “[i]f anybody’s upset about that joke, just tweet about it on your phone that was also made by these kids.”³¹ Aside from the highly offensive nature of his comments, Mr. Rock’s running joke is a prime example that the model minority concept is alive and well in the hearts and minds of the American people.³²

As illustrated through Mr. Rock’s comments, “[t]he model minority [concept describes] Asian-Americans as one monolithic. . . group that has achieved success through education and hard work without the assistance of governmental benefits.”³³ In this section, I will lay out the origins of the model minority concept. Additionally, I hope to demonstrate that the concept has been inextricably weaved into the hearts and minds of the American people. Lastly, I hope to demonstrate the model minority concept is incorrect, inaccurate, and simply a myth.

A. *The Construction of the Model Minority*

Before I begin to discuss the concept of model minority, I make the following assumptions. First, I use the term “Asian-American” as official government statistics refer to persons of Asian heritage in the United States.³⁴ Second, I assume “that the boundaries that define ‘Asian American. . .’ are

²⁷ Lauren Alexis Fisher, *Leonardo DiCaprio Finally Wins His First Oscar!*, BAZAAR (Feb. 28, 2016), <http://www.harpersbazaar.com/culture/film-tv/news/a14393/leonardo-dicaprio-oscar-win/>.

²⁸ Lowen Liu, *Why Chris Rock’s Asian Joke Was Such a Disappointment*, SLATE’S CULTURE BLOG (Feb. 29, 2016, 12:25 PM), http://www.slate.com/blogs/browbeat/2016/02/29/why_chris_rock_and_alig_s_racist_asian_jokes_at_the_oscars_were_such_a.html.

²⁹ Melena Ryzik, *Chris Rock’s Asian Joke at Oscars Provokes Backlash*, N.Y. TIMES, (Feb. 29, 2016), <http://www.nytimes.com/2016/03/01/movies/chris-rocks-asian-joke-at-oscars-provokes-backlash.html>.

³⁰ Entertainment Tonight, *Jeremy Lin, Constance Wu and More Slam Chris Rock for Asian Jokes at the Oscars*, YOUTUBE (Mar. 1, 2016), <https://www.youtube.com/watch?v=pwF-vUY1DWE>.

³¹ *Id.*

³² See Chan, *supra* note 22, at 1299.

³³ See Gee, *supra* note 19, at 637.

³⁴ See UNITED STATES CENSUS BUREAU, *supra* note 2.

[artificially and] socially constructed.”³⁵ Scholars Richard Delgado and Jean Stefancic define this idea as the “social construction thesis, [which] holds that . . . races are products of social thought and relations.”³⁶ Third, I assume that “immigrants from Asia. . . did not arrive [in the United States] thinking of themselves as ‘Asian’ or of a common race. . . .”³⁷ Finally, I assume that Asian-Americans never asked for a categorization of an all-inclusive “Asian-American” label.

In a 1966 New York Times Article entitled *Success Story: Japanese American Style*, author William Pettersen highlighted the struggles of Japanese-Americans in the United States, ranging from blatant discrimination to the placing of all persons of Japanese heritage in internment camps.³⁸ Despite these obstacles, Pettersen argued that “[b]y any criterion of citizenship we choose, the Japanese[-]Americans are better than any other group in society. . . .”³⁹ Pettersen concluded that Japanese have established a level of success by “almost totally unaided effort.”⁴⁰ Pettersen’s article was the initial spark that introduced the model minority concept to the United States and the term then spread like wildfire. One year after the Pettersen’s New York Times article, the U.S. News and World Report issued a story entitled *Success Story of One Minority Group in the United States*, describing Chinese-Americans in the United States.⁴¹ “At a time when Americans are awash in worry over the plight of racial minorities – [o]ne such minority, the nation’s 300,000 Chinese-Americans, is winning wealth and respect by dint of its own hard work.”⁴²

Although these “preliminary articles”⁴³ focus on Asian-American subgroups, the American people applied the model minority concept to all Asian-Americans. “[R]eputable mainstream publications like *Newsweek*, *New Republic*, *Fortune*, *Parade*, and *Time*” began bolstering the model minority concept by citing aggregate statistics of Asian-Americans.⁴⁴ For example, in a 1986 *Fortune* article entitled *America’s Super Minority*, author Anthony Ramirez cites the following: “[w]hile a scant 2% of the U.S. population are Asian[-]American . . .

³⁵ Robert Teranishi et al., *iCount: A Data Quality Movement for Asian Americans and Pacific Islanders in Higher Education*, NAT’L COMM’N ON ASIAN AM. AND PAC. ISLANDER RES. IN EDUC., 5 (2013), http://aapip.org/files/publication/files/2013_icount_report.pdf (arguing that “while the population represents a single entity . . . the demography of the [Asian-American and Pacific Islander] population represents a complex set of social realities for the individuals who fall within this category.”).

³⁶ DELGADO & STEFANCIC, *supra* note 1, at 7; see also Natsu Taylor Saito, *Model Minority, Yellow Peril: Functions of “Foreignness” in the Construction of Asian American Legal Identity*, 4 ASIAN L.J. 71, 77 (1997) (noting “the social construction of an Asian ‘race’ . . . served as the basis for placing Asian-Americans in the racial hierarchy . . .”).

³⁷ Saito, *supra* note 36.

³⁸ Pettersen, *supra* note 12.

³⁹ *Id.*

⁴⁰ *Id.*

⁴¹ *Success Story of One Minority Group in U.S.*, U.S. NEWS & WORLD REP., Dec. 26, 1966 at 6; see also Chan, *supra* note 22, at 1299.

⁴² *Id.* (further discussing a low rate of crime among Chinese-Americans noting that “[i]n crime-ridden cities, Chinese districts turn up as islands of peace and stability.”).

⁴³ See Chan, *supra* note 22, at 1299.

⁴⁴ *Id.*

[s]ome 35% of Asian[-]Americans graduate from college. . . .”⁴⁵ Furthermore, the author notes that “[e]ven though Asian[-]Americans are generally. . . immigrants. . . [,] they are already way ahead of the rest of the nation at the bank.”⁴⁶ Therefore, by the end of the twentieth century, Americans were fully immersed in and acclimated to attributing the model minority to Asian-Americans.⁴⁷

The problematic use of misleading, aggregated data⁴⁸ only served to bolster the model minority concept for Americans.⁴⁹ As one scholar concluded, “[t]his ‘model minority’ theme has become a largely unquestioned assumption about current social reality.”⁵⁰ From the 1966 New York Times article on Japanese-Americans to Chris Rock’s highly inappropriate running joke at the Oscars, Asian-Americans are continually portrayed as a homogenous race that has “achieved economic success through a combination of talent, hard work, and conservative values.”⁵¹

Understanding the concept of the model minority at its crux, the next logical question is: If such an idea is a positive attribution to Asian-Americans, what is the problem here?

Briefly, the acceptance of the model minority breeds a multitude of problems. First, the model minority concept “is. . . a gross generalization” of the diverse Asian-American experience in the United States.⁵² Second, current aggregated statistics supporting the model minority concept are misleading.⁵³ Third, the concept largely “ignor[es] [the] differences in achievement amongst different Asian sub-groups,”⁵⁴ diverting much needed attention away from struggling Asian-Americans and their need for public assistance programs such as affirmative action.

B. Putting an End to the Model Minority Once and for All

The model minority label necessarily entails an “assumption that being ‘Asian’ is an automatic guarantor of success.”⁵⁵ Assumptions about an entire race have the potential to be extremely dangerous.⁵⁶ In fact, scholars have routinely deemed the model minority label to be a stereotype,⁵⁷ in which every positive element. . . matche[s]. . . a negative counter-part. To be intelligent is to lack

⁴⁵ Anthony Ramirez, *America’s Super Minority*, FORTUNE, Nov. 24, 1986, at 149 (concluding that “Asian-Americans are [simply] smarter than the rest of us”).

⁴⁶ *Id.*

⁴⁷ See Chan, *supra* note 22, at 1299.

⁴⁸ Teranishi, *supra* note 35, at 29.

⁴⁹ See Ahmad & Weller, *supra* note 17, at 8.

⁵⁰ See Robert S. Chang, *Toward an Asian American Legal Scholarship: Critical Race Theory, Post-Structuralism, and Narrative Space*, 81 CALIF. L. REV. 1241, 1259 (1993).

⁵¹ See Theodore Hsien Wang & Frank Wu, *Beyond the Model Minority Myth: Why Asian Americans Support Affirmative Action*, 53 GUILD PRAC. 35, 35 (1996).

⁵² See McGowan & Lindgren, *supra* note 11, at 335.

⁵³ *Id.*

⁵⁴ See Liu, *supra* note 17, at 428-29.

⁵⁵ Bernadette N. Lim, *I Am Not a Model Minority*, THE HARVARD CRIMSON, (Feb. 13, 2014), <http://www.thecrimson.com/article/2014/2/13/harvard-model-minority/>.

⁵⁶ See Chin et al., *supra* note 21, at 151; McGowan & Lindgren, *supra* note 11, at 335.

⁵⁷ See McGowan & Lindgren, *supra* note 11.

personality. To be hard-working is to be unfairly competitive. To be family-oriented is to be clannish, “too ethnic,” and unwilling to assimilate. To be law-abiding is to be rigidly rule-bound, tied to traditions in the homebound, unappreciative of democracy and free expression.⁵⁸

Therefore, “like any racial stereotype, the model minority myth hurts those who are its subject.”⁵⁹ In this case, the model minority concept imposes blanket expectations on Asian-Americans for simple membership in the Asian race.⁶⁰

i. Essentialism and Asian-Americans: Make Room for Individuality

According to the U.S. Census Bureau, “Asian” is defined as “[a] person having origins in any of the original peoples of the Far East, Southeast Asia, or the Indian subcontinent including, for example, Cambodia, China, India, Japan, Korea, Malaysia, Pakistan, the Philippine Islands, Thailand, and Vietnam.”⁶¹ In 2010, the Census reported over twenty-five subcategories under Asian-American.⁶² Each of these sub-groups has “a complex set of social realities” and “a high degree heterogeneity.”⁶³ Put simply, Asian-Americans are an ethnically diverse group.⁶⁴

Since the label Asian-American encompasses “tremendous diversity” of subcategories, one should be sensitive to blindly applying the model minority concept to the Asian-Americans.⁶⁵ Unfortunately, this does not hold true. Instead, the model minority concept remains deeply embedded in the hearts and minds of the American people.⁶⁶

Critical race theorists describe this method of thinking as “essentializ[ing] Asian Americans.”⁶⁷ The theory of “essentialism. . . entails a search for the proper unit, or atom, for [dealing with] social analysis and change.”⁶⁸ The search involves “paring something down until the heart of the matter stands alone.”⁶⁹ Further, “[a]n essentialist outlook assumes that the experience of being a member of the group under discussion is a stable one, one with a clear meaning, a meaning constant through time, space, and different historical, social, political, and

⁵⁸ See Frank H. Wu, *Neither Black Nor White: Asian Americans and Affirmative Action*, 15 B.C. THIRD WORLD L.J. 225, 240-41 (1995).

⁵⁹ Chin et al., *supra* note 21, at 151.

⁶⁰ See Frieda Wong & Richard Halgin, *The “Model Minority”: Bane or Blessing for Asian Americans?*, 34 J. OF MULTICULTURAL COUNSELING & DEV. 38, 47 (2006).

⁶¹ UNITED STATES CENSUS BUREAU, *supra* note 2.

⁶² *2010 Census Briefs*, UNITED STATES CENSUS BUREAU, at 14 (March 2012), <http://www.census.gov/prod/cen2010/briefs/c2010br-11.pdf> (listing Asian Indian, Bangladeshi, Bhutanese, Burmese, Cambodian, Chinese, Taiwanese, Filipino, Hmong, Indonesian, Iwo Jiman, Japanese, Korean, Laotian, Malaysian, Maldivian, Mongolian, Nepalese, Okinawan, Pakistani, Singaporean, Sri Lankan, Thai, Vietnamese, Other Asian).

⁶³ Teranishi et. al., *supra* note 35; see also Wu & Wang, *supra* note 51, at 39.

⁶⁴ Teranishi et. al., *supra* note 35 at 8; Wu & Wang, *supra* note 51, at 39.

⁶⁵ See Wu & Wang, *supra* note 51 at 42.

⁶⁶ See Wu, *supra* note 58, at 238; Chan, *supra* note 22, at 1299.

⁶⁷ See Liu, *supra* note 17.

⁶⁸ See DELGADO & STEFANCIC, *supra* note 1, at 56.

⁶⁹ *Id.*

personal contexts.”⁷⁰ In the context of race, “the goals of a ‘unified’ group” apply to the any and all subcategories within it.⁷¹ Essentialism can be illustrated through a scenario. Imagine “a group of pebbles on the beach; they are all pebbles, but [each individual pebble is] shaped and colored in different ways. Essentialist. . . theory has picked one pebble [from the entire beach] and asked it to represent all.”⁷²

In the context of the model minority concept, the dangers of essentializing are clear. Attributing the model minority to an otherwise ethnically diverse group, treats Asian-Americans “as a monolithically successful group and [risks] ignoring differences in achievement amongst different Asian sub-groups.”⁷³ Through an essentialist lens, the oppression of Asian-Americans remains hidden.⁷⁴ On a micro-level, an essentialist lens “strip[s] [Asian-Americans] of [their individual] humanity.”⁷⁵ Any personal or academic achievements simply become the expected result of membership in the Asian-American race.⁷⁶ Lastly, essentialism completely ignores what critical race theorists call intersectionality, the idea that the combination of race, sex, class, national origin, and sexual orientation may exist at an intersection of a person’s identity and play out in various settings.⁷⁷ By simply focusing on race, essentialism ignores the simultaneous interplay between a person’s racial identity as an Asian-American and other significant identities that an Asian-American holds. For example, the experience of being an Asian-American and a woman may entail additional pressures or obstacles that may inhibit or support an Asian-American’s overall achievements in the United States.⁷⁸ Essentialism simply does not recognize the intersectionality between sex and race.

The better approach is to adopt anti-essentialism. Critical race scholars Richard Delgado and Jean Stefancic believe that this theory rests on the fundamental assumption that “[n]o person has a single, easily stated, unitary identity.”⁷⁹ Through anti-essentialism, we define experiences as closely as their full complexity allows.⁸⁰ We consider all voices.⁸¹ By adopting anti-

⁷⁰ See Grillo, *supra* note 16 (defining essentialism as “the notion that there is a . . . group’s experience that can be described independently from other aspect of the person”).

⁷¹ DELGADO & STEFANCIC, *supra* note 1, at 56.

⁷² Grillo, *supra* note 16, at 22.

⁷³ Liu, *supra* note 17.

⁷⁴ Chang, *supra* note 50, at 1261.

⁷⁵ Lim, *supra* note 55.

⁷⁶ *Id.* (noting that the model minority stereotype does not consider personal achievements as “the byproduct of hard work”).

⁷⁷ See DELGADO & STEFANCIC, *supra* note 1, at 51.

⁷⁸ BuzzFeed Yellow, *Asian American Women Share Their Body Insecurities*, YOUTUBE (Mar. 20, 2016), <https://www.youtube.com/watch?v=bk0rprbsPgY> (discussing Asian-American women and their body insecurities).

⁷⁹ See DELGADO & STEFANCIC, *supra* note 1, at 9.

⁸⁰ See Grillo, *supra* note 16, at 22. Ms. Grillo provides three lessons to be learned from the anti-essentialism and intersectionality critique. *Id.* The first lesson is to “look carefully at what is in front of our faces” and pay attention. *Id.* The second lesson is to avoid being pressed from choosing which part of yourself is most important to you because oppressions cannot be dismantled separately as they mutually reinforce each other. *Id.* at 27. The last lesson is to be

essentialism, we begin to notice the areas in which we are privileged, and in those areas, we need to be more cognizant of “listen[ing] to the concrete, lived experiences of those who are less privileged.”⁸² Through an anti-essentialist lens, we begin to notice the unfairness of attributing one across the board to Asian-Americans.⁸³ We begin to wonder whether the model minority concept is simply a myth.

ii. Disaggregating the Data on “Asian-Americans”

Earlier, I opened this Comment with a finding by the Pew Research Center, a reputable “nonpartisan fact tank that informs the public about the issues, attitudes and trends shaping America and the world.”⁸⁴ Founded in 2004,⁸⁵ the Pew Research Center purports to “generate a foundation of facts”⁸⁶ that “allow the voice of the people to be heard.”⁸⁷ In particular, I cited a finding that the 2010 median annual household income for Asian-Americans was \$66,000.00, \$16,200.00 more than the general public.⁸⁸

Interestingly enough, throughout parts of this same Pew Research Center report, the organization lists only six Asian-American subgroups: Chinese, Filipino, Indian, Vietnamese, Korean, and Japanese.⁸⁹ Without critiquing the figure itself, Pew Research Center is guilty of masking statistics of other Asian-American subcategories such as Thai, Laotian, and Hmong Americans.⁹⁰ Additionally, the statistic fails to consider the geographic concentration of Asian-Americans in the United States. Lastly, the statistic fails to consider non-traditional income earners in the house.⁹¹ In essence, the Pew Research Center’s presentation of Asian-American’s median annual household income only serves to perpetuate the model minority concept. Laypersons relying on the Pew Research Center statistic may fall in the trap of internalizing or reaffirming the

careful about “essentializing the experiences of persons in the group to which we belong.” *Id.* at 28.

⁸¹ *Id.*

⁸² *Id.* at 29.

⁸³ *Id.*

⁸⁴ *About Pew Research Center*, PEW RESEARCH CENTER, <http://www.pewresearch.org/about/> (last visited Apr. 24, 2016).

⁸⁵ *Id.*

⁸⁶ *Our Mission*, PEW RESEARCH CENTER, <http://www.pewresearch.org/about/our-mission/> (last visited Apr. 24, 2016).

⁸⁷ *Id.*

⁸⁸ *See The Rise of Asian Americans*, *supra* note 3.

⁸⁹ *Id.*

⁹⁰ *See* Harvey Gee, *Asian Americans, Critical Race Theory, and the End of the Model Minority Myth*, 19 TEMP. POL. & CIV. RTS. L. REV. 149, 180 (2009).

⁹¹ *See* Gabriel J. Chin, et. al., *supra* note 21, at 149. Scholars have described this second point of additional income earners in the household as “family consolidation,” the phenomenon that one household may be comprised of more than one nuclear family; *see also* Buenavista, *supra* note 5, at 120; *see also* Julianne Hing, *Asian Americans Respond to Pew: We’re Not Your Model Minority*, COLORLINES, (June 21, 2012), <http://www.colorlines.com/articles/asian-americans-respond-pew-were-not-your-model-minority>.

model minority image of Asian-Americans. As a result, “[m]arginalized communities within the Asian-American umbrella become overlooked and underserved.”⁹² By all accounts, Americans then fail to acknowledge the nuance and disparities among Asian-Americans.⁹³

In the following section, I will argue that existing aggregated data on Asian-Americans, such as the Pew Research Center statistic, is wholly inadequate and misleading, and only serves to perpetuate the model minority concept.⁹⁴ Since “Asian[-]American” encompasses a diverse range of dialects and ethnicities,⁹⁵ I argue that the adequate approach is to disaggregate the data. By engaging in such searching examination of the statistics, I will unravel the truth: “sweeping generalizations of Asian-Americans as the [model] “minority cannot replace unnerving disaggregated data that bring truth to the inequalities that many Asian-Americans face daily.”⁹⁶ In essence, I will reaffirm what scholars have concluded for years: the model minority concept is more akin to a myth.⁹⁷

Before beginning my discussion, I make the following assumptions. First, I do not purport to test the statistical accuracy of the selected statistics mentioned below because I only argue that disaggregating the data on Asian-Americans helps to reveal the model minority concept as more akin to a myth. Second, the statistical sources cited below are not exhaustive. The reader is free to conduct his or her own statistical research. Lastly, I have chosen to focus only on educational attainment, employment rates, and median household income.

a. Educational Attainment

Critical race scholars Richard Delgado and Jean Stefancic define the model minority concept as the idea that “Asians are the perfect minority group—quiet, industrious, with intact families and high educational aspiration and achievement.”⁹⁸ As a first generation Filipino-American, I can genuinely identify with the model minority concept’s attempt to summarize the Asian-American experience in America. Speaking from my own experience, most Filipinos value strong, intact families.⁹⁹ Additionally, as immigrants, some Filipinos value the importance of education as an opportunity that is oftentimes not available in their motherland, the Philippines. As a child, I recall my grandmother and mother

⁹² See Sahra Vang Nguyen, *The Truth About “The Asian Advantage” and “Model Minority Myth,”* HUFFPOST POLITICS, (Oct. 14, 2015), http://www.huffingtonpost.com/sahra-vang-nguyen/the-truth-about-the-asian_b_8282830.html.

⁹³ See Lim, *supra* note 55.

⁹⁴ See Saito, *supra* note 36, at 90 (recognizing that misrepresentations of Asian-Americans’ success are based in part on the promulgation of inaccurate and misleading information).

⁹⁵ See Lim, *supra* note 55.

⁹⁶ See Bernadette Lim, “Model Minority” Seems Like a Compliment, but It Does Great Harm, N.Y. TIMES, (Oct. 16, 2015), <http://www.nytimes.com/roomfordebate/2015/10/16/the-effects-of-seeing-asian-americans-as-a-model-minority/model-minority-seems-like-a-compliment-but-it-does-great-harm>.

⁹⁷ See Wu & Wang, *supra* note 51, at 38 (arguing “the model minority myth is based on poor social science [and] reveals the risk of relying on racial generalizations”).

⁹⁸ See DELGADO & STEFANCIC, *supra* note 1, at 81.

⁹⁹ See Buenavista, *supra* note 5, at 121.

teaching me to take full advantage of the educational opportunities in United States, since they did not have those same opportunities in the Philippines. Therefore, I can identify with the central tenets of the model minority concept. However, I now realize that having a strong family and educational aspirations do not necessarily translate into achievement. Some Filipino youth in the United States suffer a host of obstacles that may inhibit their ability to attain educational success.¹⁰⁰ But the model minority concept renders these obstacles completely insignificant. The model minority concept perpetuates the assumption that Filipino-Americans are “problem free within academic and social contexts.”¹⁰¹

Filipino-Americans are not the only Asian-American subcategory that suffer in silence from education disparities. In a 2014 article entitled *Reading Between the Data: The Incomplete Story of Asian Americans, Native Hawaiians, and Pacific Islanders*, Center for American Progress scholars Farah Ahmad (hereinafter “Ahmad”) and Christian Weller (hereinafter “Weller”) disaggregate Pew Research Center data for Asian-American educational attainment.¹⁰² Specifically, Ahmad and Weller focused on completion of high school education and post-secondary education.¹⁰³ In 2013, the Pew Research Center reported 86% of Asian-Americans completed their high school education, higher than the national average of 85%.¹⁰⁴

At first glance, the reported statistic appears to satisfy the model minority concept. However, as Ahmad and Weller are quick to point out, “data aggregation masks the tremendous and rapidly changing diversity in the Asian[-]American population.”¹⁰⁵ Indeed, Ahmad and Weller found that disaggregating the reported 86% unraveled Asian-American subgroups who had significantly lower high school completion rates.¹⁰⁶ In particular, Cambodians reported a rate of 62% and Hmongs reported a rate of 61%.¹⁰⁷

Similarly, for post-secondary educational attainment, the aggregated data revealed a “skewed example of reality.”¹⁰⁸ The aggregated data revealed that “49% of Asian-Americans ages twenty-five and older reported having a bachelor’s degree or higher in 2010”.¹⁰⁹ A closer examination at the subcategories of Asian-Americans reveal that Indian-Americans comprised 70% of the figure, while groups such as Vietnamese and Laotians had a reported rate of 26% and 13% respectively.¹¹⁰ Given the heterogeneity in subcategories under the

¹⁰⁰ *Id.* Filipino Youth in the United States have fewer postsecondary opportunities and exhibit “high secondary ‘push out’ rates” [because they] suffer from depression and other mental health issues, demonstrate lower levels of participation and retention in higher education, and attend less selective colleges. . . .” *Id.* at 114.

¹⁰¹ *Id.* at 121.

¹⁰² See Ahmad & Weller, *supra* note 17, at 15-16.

¹⁰³ *Id.*

¹⁰⁴ *Id.* at 15.

¹⁰⁵ *Id.* at 8.

¹⁰⁶ *Id.* at 15.

¹⁰⁷ *Id.*

¹⁰⁸ *Id.* at 16.

¹⁰⁹ *Id.*

¹¹⁰ *Id.* Other significant subcategory statistics include Hmongs at 13%, Thai at 42%, and Japanese at 46%. *Id.*

Asian-American label, the application of the model minority concept grossly paints an inaccurate picture of all Asian-Americans subsumed in this “panethnic category.”¹¹¹

As I have continued to argue throughout this Comment, the use of deceiving and misleading aggregated population data necessarily implicates the grouping of people with very different cultural, social, and historical backgrounds.¹¹² As I have demonstrated, examining the data in a meaningful way will unmask the diversity contained in the Asian-American label. For example, in 2015, 65% of Asian-Americans in California were college eligible, while only 47.9% of Filipinos in California were college eligible.¹¹³ Ahmad and Weller’s conclusion remains accurate, “data aggregation misses experiences of key subpopulations.”¹¹⁴ Thus, the disaggregated data speaks for itself. The “specious generalizations about ‘model minorities’” is more akin to a myth.¹¹⁵ “We need to see Asian-Americans ... for what they are: dynamic, diverse and much more than one-dimensional stereotypes.”¹¹⁶

b. Employment Rates

Aside from educational attainment, the next logical category to analyze is Asian-American employment rates. Since the model minority concept necessarily entails success and achievement through “hard work, intelligence, and emphasis on education,”¹¹⁷ data on employment rates among Asian-Americans may further shed light on the model minority concept’s validity.

In a 2011 article entitled *Diversity and Change: Asian American and Pacific Islander Workers*, the Center for Economic and Policy Research similarly disaggregates the 2009 American Community Survey’s (“ACS”) results among Asian-Americans and Pacific Islanders.¹¹⁸ “The ACS is a large, nationally representative mail-in survey conducted. . . by the Census Bureau.”¹¹⁹ The ACS presents questions requesting a “respondent’s household, employment situation, health, education, and other personal characteristics.”¹²⁰ In 2009, the ACS reported that approximately 68% of Asian-Americans ages sixteen to sixty-four

¹¹¹ See Wong & Halgin, *supra* note 60, at 41.

¹¹² See Ahmad & Weller, *supra* note 17, at 8.

¹¹³ “API” IS NOT FOR PACIFIC ISLANDERS, <https://pbs.twimg.com/media/CdDM7KXUEAA-Cuq.jpg> (last visited April 24, 2016).

¹¹⁴ See Ahmad & Weller, *supra* note 17, at 7.

¹¹⁵ See Ellen D. Wu, *Asian Americans and the ‘Model Minority’ Myth*, L.A. TIMES, (Jan. 23, 2014), <http://www.latimes.com/opinion/op-ed/la-oe-0123-wu-chua-model-minority-chinese-20140123-story.html>.

¹¹⁶ *Id.*

¹¹⁷ See McGowan & Lindgren, *supra* note 11, at 331.

¹¹⁸ See Hye Jin Rho et. al., *Diversity and Change: Asian American and Pacific Islander Workers*, CENTER FOR ECONOMIC AND POLICY RESEARCH 1, 1 (2011), <http://cepr.net/documents/publications/aapi-2011-07.pdf>. The authors conclude three themes about Asian-American and Pacific Islanders work in the United States. First, the groups are highly diverse. *Id.* Second, the groups “face many challenges in the labor market.” *Id.* Lastly, trends in the economic circumstances of [the groups] closely mirror those of the broader workforce. *Id.* at 2.

¹¹⁹ *Id.* at 7.

¹²⁰ *Id.*

years old were “somewhat less likely to have employment than whites in the same age range,” about 2% below whites.¹²¹

Again, the statistics appear to bolster the model minority concept. Additionally, the United States Census Bureau appears to further legitimize the statistics. Both appear to support the validity of the model minority concept. On the contrary, the authors unequivocally argue that “the relatively high *average* economic indicators for [Asian-American Pacific Islanders] workers obscure large differences *within* the [Asian-American Pacific Islander] workforce.”¹²²

Before disaggregating the data, the authors outright concede that the ACS is a gross representative tool to detail the Asian-American and Pacific Islander experience.¹²³ Similar to the Pew Research Center results, ACS fails to provide sufficient ethnic breakdowns of the Asian-American category.¹²⁴ Indeed, the ACS relied on the historical categorization of Asian-Americans in major United States government surveys.¹²⁵ Therefore, newly discovered subcategories or subcategories with a small population may not be included. Despite the ACS’s insufficiency, the authors utilize the ACS because it provided “the most comprehensive and up-to-date look at AAPI [(Asian American Pacific Islander)] workers available.”¹²⁶

Upon analyzing the data, the authors point out that disaggregating ACS’s reported 68% percent unemployment rate on the contrary reveals “employment rates vary widely among AAPIs.”¹²⁷ Indeed, while Filipinos, Malaysians, and Asian Indians reported individual employment rates of 74%, 71%, and 69% respectively, other subcategories under Asian-Americans such as Pakistani, Thai, and Bangladeshi revealed employment rates lower than 68%.¹²⁸ In 2009, Pakistani’s employment rate was a startling 59%, Thai’s reported an employment rate of 64%, and Bangladeshi’s employment rate reported a low of 60%.¹²⁹

The authors’ disaggregation of the ACS’s data reveals the “obscure large differences *within* the AAPI workforce.”¹³⁰ By unraveling the differences among the subcategories of Asian-Americans in the labor force, we begin to see that “AAPI workers are highly diverse.”¹³¹ In fact, the authors report that AAPIs work across the entire spectrum of occupations.¹³² In 2009, the top twenty reported occupations for AAPI women included occupations such as registered nurses, cashiers, waiters and waitresses, and office clerks.¹³³ For AAPI men, the

¹²¹ *Id.* at 42.

¹²² *Id.* at 4.

¹²³ *Id.* at 7.

¹²⁴ *Id.* at 8. The authors also argue that the “ACS underserves the AAPI community [because] . . . the sample size is too small.” *Id.*

¹²⁵ *Id.* at 6. According to the Decennial Census Public Use Microdata Samples, “twenty ‘Asian’ categories existed” in the year 2000. *Id.*

¹²⁶ *Id.* at 7.

¹²⁷ *Id.* at 42.

¹²⁸ *Id.* at 43.

¹²⁹ *Id.*

¹³⁰ *Id.* at 4.

¹³¹ *Id.* at 1.

¹³² *Id.* at 30.

¹³³ *Id.*

top twenty reported occupations included computer software engineers, first-line supervisors of retail sales workers, cooks, and truck drivers.¹³⁴

Accordingly, the disaggregated data reveals the fallacious and misleading nature of the model minority concept. As the authors observe, “the common portrait of AAPIs as a ‘model minority’ is misleading.”¹³⁵ By ignoring the tremendous diversity of experience within the AAPI community, the model minority concept “unfairly pigeonholes Asian[-]Americans, characterizing them in a way that assumes they will behave in certain stereotypical ways.”¹³⁶ This “laissez-faire approach”¹³⁷ ultimately obscures the reality of Asian-Americans. As one scholar has concluded, “the model minority label is much more a bane than a blessing for Asian[-]Americans.”¹³⁸

c. Median Household Income

Earlier, I cited a key Pew Research Center finding: 2010 median annual household income for Asian-Americans was \$66,000.00, \$16,200 more than the general public.¹³⁹ As I have pointed out earlier, this statistic cites only six Asian-American subcategories.¹⁴⁰ Facially, the statistic points out “nuggets of information that cement the idea that Asians are exceptional in other ways.”¹⁴¹ However, I argue that this Pew Research Center finding is guilty of relying on the model minority concept. In essence, I argue the use of the model minority concept depicts an inaccurate painting of an extremely diverse community.

Interestingly enough, a 2012 article entitled *Asian Americans Respond to Pew: We’re Not Your Model Minority*, expresses complete outright, blatant dismay for the Pew Research Center’s studies on Asian-Americans.¹⁴² Author Julianne Hing accuses the report of simply “mix[ing] some fact with too much mythology about what people imagine Asians to be.”¹⁴³ By portraying communities with stark contrasts in disparities, the Pew Research Center is guilty of perpetuating the model minority concept.¹⁴⁴ Essentially, “[n]umbers without context don’t help readers understand what kind of meaning they should place on the information they’re given.”¹⁴⁵

Since I began this section with a statistic of average median household, I will end it with a closer look into this economic indicator to truly reveal the truth behind the model minority concept.

¹³⁴ *Id.*

¹³⁵ *Id.* at 37.

¹³⁶ See Wong & Halgin, *supra* note 60, at 47.

¹³⁷ See Chin, et. al., *supra* note 21, at 151 (stating that the model minority concept implements a laissez-faire approach to all Asian Pacific Americans, “notwithstanding the tremendous heterogeneity among the ethnicities that make up the racial category ‘APA’”).

¹³⁸ See Wong & Halgin, *supra* note 60, at 47.

¹³⁹ *The Rise of Asian Americans*, *supra* note 3.

¹⁴⁰ *Id.*

¹⁴¹ See Julianne Hing, *supra* note 90.

¹⁴² *Id.*

¹⁴³ *Id.*

¹⁴⁴ *Id.*

¹⁴⁵ *Id.*

In a 2013 National Commission on Asian American and Pacific Islander Research in Education report entitled *iCount: A Data Quality Movement for Asian Americans and Pacific Islanders in Higher Education*, authors Robert Teranishi, Libby Lok, and Bach Mai Dolly Nguyen disaggregate the United States Census Bureau, ACS data from 2008 to 2010.¹⁴⁶ Specifically, the authors measured the “[d]ifference[s] in [m]edian [h]ousehold [i]ncome for [s]elected Asian-American [subcategories] from the [m]edian [h]ousehold [i]ncome for [a]ll Asian-Americans.”¹⁴⁷ Not surprisingly, the measurements revealed startling results. While Asian-Indians on average reported a median household income of approximately \$21,000.00 above the average median household income for all Asian-Americans, Indonesians reported an income of approximately \$9,000 below the average.¹⁴⁸ Moreover, while the Taiwanese reported a median household income difference of approximately \$4,000.00 above the average, Pakistanis reported an overall difference in income of approximately \$5,000.00 below the average.¹⁴⁹ Notably, Hmongs reported the overall lowest income of approximately negative \$22,000.00 below the average median household income for all Asian-Americans.¹⁵⁰

Disaggregating the data reveals what I and the authors have argued all along: the idea that Asian-Americans are “successful minorities who have quietly moved to the pinnacle of success in various contexts through hard work and determination”¹⁵¹ is completely inaccurate and inapplicable to a population who “represents a complex set of social realities for the individuals who fall within this category.”¹⁵² By simply essentializing subcategories of people under the guise of the “Asian . . . American umbrella,”¹⁵³ we risk disproportionately impacting those subcategories of people who may face an entirely different economic and social reality than their subcategory counterparts.¹⁵⁴

Throughout this Comment, I have attempted to debunk the model minority image painted on Asian-Americans, a dynamic, heterogeneous, and evolving population.¹⁵⁵ I have argued that disaggregating existing data on Asian-Americans shatters all support for the model minority concept. Indeed, by revealing the context behind the aggregated data, we can observe the heterogeneity of the Asian-American population. We realize that applying a blanket concept to an ethnically diverse category is simply unacceptable. We realize that the model minority concept is irreconcilable with the disaggregated statistics. We, therefore,

¹⁴⁶ See Teranishi, et. al., *supra* note 35, at v.

¹⁴⁷ *Id.* at 9.

¹⁴⁸ *Id.*

¹⁴⁹ *Id.*

¹⁵⁰ *Id.*

¹⁵¹ See Wong & Halgin, *supra* note 60, at 38.

¹⁵² See Teranishi et. al., *supra* note 35, at 5.

¹⁵³ See Hing, *supra* note 90 (noting that the “Asian Pacific American umbrella includes over 45 distinct ethnicities speaking over 100 language dialects).

¹⁵⁴ See Teranishi et. al., *supra* note 35, at 5.

¹⁵⁵ See Ahmad & Weller, *supra* note 17, at 7.

must conclude that the model minority concept is more akin to a myth (hereinafter “the myth of model minority”).¹⁵⁶

Unfortunately, the push for disaggregated statistics remains abysmal.¹⁵⁷ The Census Bureau and the Pew Research Center have not indicated any future changes in their methodologies.¹⁵⁸ Therefore, the myth of model minority remains deeply entrenched in the hearts and minds of the American people. This is evident through the running joke of Chris Rock.¹⁵⁹ The dangers of aggregated statistics are clear: they perpetuate the impression that “the general public and institutional stakeholders and policy makers . . . don’t necessarily need to dig deep into [the Asian-American] communities to understand that any sort of disparities that exist.”¹⁶⁰

d. Asian-Americans are Invisible

Earlier, I began this Comment with a personal anecdote about my background and the obstacles I faced as a first-generation Filipino born in the United States. I attested to the very real pitfalls that many of my family members fell into. These pitfalls ranged from entering a cycle of gangs, violence, prison, or accidental pregnancies with dead-end jobs. However, since I have been artificially lumped into the Asian-American label, I reap the “poisonous prize” of the myth of the model minority.¹⁶¹ Therefore, my pitfalls become outshined by the myth of model minority. By “focus[ing] only on those in the upper echelons of the [Asian-American] community, . . . everyone else [is] invisible.”¹⁶²

This cloak of invisibility over Asian-Americans serves to help people “ignore[] and gloss[] over [any] concerns [of the Asian] community.”¹⁶³ By shielding the diverse experiences of Asian-American subcategories with the inaccurate myth of model minority, people are persuaded that Asians are not the damsel in distress minority group. “The portrayal of Asian-Americans as successful permits the general public, government officials, and the judiciary to ignore or marginalize the contemporary needs of Asian-Americans.”¹⁶⁴ In essence, the public generally assumes that Asian-Americans are doing so well that they “don’t need public assistance or culturally specific programs, don’t deserve private foundation support, and don’t need educational help.”¹⁶⁵ “Since the public assumes that [Asian-Americans] are uniformly doing well, [it] do[es] not hear [their] requests for help.”¹⁶⁶ These dangerous assumptions about Asian-

¹⁵⁶ See Wu, *supra* note 114.

¹⁵⁷ See Teranishi et. al., *supra* note 35, at 1.

¹⁵⁸ *Id.*

¹⁵⁹ E.g. Awards 2.0, *Oscars 2016: Host Chris Rock Rapped over Asian-American “Joke,”* YOUTUBE (Feb. 29, 2016), <https://www.youtube.com/watch?v=gdtNu9UFRDM>.

¹⁶⁰ See Hing, *supra* note 90. (quoting Deepa Iyer, head of the National Council of Asian Pacific Americans and executive director of South Asian-Americans Leading Together).

¹⁶¹ See McGowan & Lindgren, *supra* note 11, at 341.

¹⁶² See Hing *supra* note 90.

¹⁶³ See Chan, *supra* note 22, at 1299.

¹⁶⁴ See Chang, *supra* note 50, at 1259.

¹⁶⁵ See McGowan & Lindgren, *supra* note 11, at 337.

¹⁶⁶ See Chin, et. al., *supra* note 21, at 151.

Americans only serve to block their access to an otherwise beneficial program. Because of “poor social science,”¹⁶⁷ the myth of model minority helps the public to turn a blind eye to what scholars have pointed out for decades: “Asian[-]Americans can benefit from affirmative action.”¹⁶⁸

III. THE AFFIRMATIVE ACTION PROGRAM

The term “affirmative action” had its birth and infancy in the United States Civil Rights Movement in the 1960s.¹⁶⁹ On July 2, 1964, the 88th Congress enacted the Civil Rights Act of 1964, which provided additional civil rights to minorities and women.¹⁷⁰ Specifically, the Act proclaimed 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[s] or activity receiving Federal financial assistance.”¹⁷¹ In an effort to implement Congress’ new legislation, President John F. Kennedy issued Executive Order 10925, which called for an immediate study of the government’s employment practices that would recommend “affirmative steps” to implement a national policy of nondiscrimination.¹⁷² Additionally, the Executive Order called upon federal contractors to “take affirmative action” to hire employees “without regard to their race, creed, color, or national origin.”¹⁷³

Title VI’s full force reigned under President Kennedy’s successor, Vice President Lyndon Johnson. In a historic 1965 affirmative action address to Howard University, a historically black college and university, President Johnson addressed the unjust and unfair treatment of African-Americans.¹⁷⁴ In a speech entitled “To Fulfill These Rights,” President Johnson highlighted the progress of the civil rights legislations that had been passed to ensure African-American’s freedom from discrimination.¹⁷⁵ The President was quick to recognize that this freedom was not enough.¹⁷⁶ In the eyes of President Johnson, permitting African-Americans to reap the opportunities offered in the United States was insufficient.¹⁷⁷ Since years of discrimination have made it “impossible for otherwise equal runners to compete . . . pass[ing] the baton to the next generation

¹⁶⁷ See Wu & Wang, *supra* note 51, at 38.

¹⁶⁸ See Gee, *supra* note 19, at 624..

¹⁶⁹ Judson MacLaury, *President Kennedy’s E.O. 10925: Seedbed of Affirmative Action*, FEDERAL HISTORY 2010 42, 42 (2010), http://shfg.org/shfg/wp-content/uploads/2011/01/4-MacLaury-design4-new_Layout-1.pdf

¹⁷⁰ 42 U.S.C. § 2000d (1991).

¹⁷¹ *Id.*

¹⁷² Proclamation No. 10,925, 26 Fed. Reg. 1977 (March 8, 1961).

¹⁷³ *Id.*

¹⁷⁴ Lyndon B. Johnson, President, United States, Commencement Address at Howard University: To Fulfill These Rights (June 4, 1965).

¹⁷⁵ *Id.*

¹⁷⁶ *Id.*

¹⁷⁷ *Id.*

[necessarily entailed] runners with less speed, having covered a shorter distance, and having less stamina” had discrimination been disallowed.¹⁷⁸

You do not wipe away the scars of centuries by saying: Now you are free to go where you want, do as you desire, and choose the leaders you please. You do not take a person who, for years, has been hobbled by chains and liberate him, bring him up to the starting line of a race and then say, “[y]ou are free to compete with all the others,” and still justly believe that you have been completely fair.¹⁷⁹

In its present form, affirmative action refers “to a broad array of race-, ethnicity-, and gender -conscious programs, enacted by the government and private sector . . . to promote equality of opportunity and racial diversity.”¹⁸⁰ Affirmative action programs and policies target “members of historically underrepresented groups”¹⁸¹ by “open[ing] doors that have been historically closed” to such groups.¹⁸² At its core, affirmative action programs and policies have allowed “qualified men and women to compete equally . . . [to] gain admittance to academic institutions.”¹⁸³

A. *Affirmative Action Excludes Asian-Americans*

Although affirmative action presumably opens the opportunities for all minorities, Asian -Americans have yet to reap such benefits. Since the myth of model minority effectively renders the concerns and experiences of Asian-Americans invisible, Asian-Americans are completely insulated from any considerations for affirmative action.¹⁸⁴ As one scholar pointed out, “[w]hen most Americans hear the term ‘affirmative action,’ they tend to think of remedial programs implemented for African[-]Americans and Hispanic[-]Americans . . . [b]ut rarely do Americans think of Asian[-]Americans as being in need of affirmative action.”¹⁸⁵ Because the myth of model minority remains present in the hearts and minds of Americans, “Asian[-]Americans are cut off from [beneficial] resources and services that other minority groups receive.”¹⁸⁶

Indeed, the myth of model minority crosses all boundaries, infesting the hearts and minds of the American people. In particular, the myth of model minority has followed affirmative action jurisprudence in the court system. For example, in *Regents of the University of California v. Bakke*, Justice Lewis F.

¹⁷⁸ See Chin et. al., *supra* note 21, at 131.

¹⁷⁹ Johnson, *supra* note 173.

¹⁸⁰ See Chin, et. al., *supra* note 21, at 133.

¹⁸¹ *Id.*

¹⁸² See Gee, *supra* note 19, at 636.

¹⁸³ *Id.*

¹⁸⁴ See McGowan & Lindgren, *supra* note 11, at 337.

¹⁸⁵ See Harvey Gee, *supra* note 19, at 622.

¹⁸⁶ See Wong & Halgin, *supra* note 60, at 46.

Powell laid the legal foundations for the acceptance of affirmative action.¹⁸⁷ By recognizing diversity as a compelling government interest, Justice Powell validated the presence and perspectives of ethnic and racial minorities as contributions to a diverse student body¹⁸⁸ by “allow[ing] students of different races and backgrounds to rub shoulders, share meals, and debate issues in an open-minded, intellectual community.”¹⁸⁹ At its core, affirmative action programs can “challenge harmful stereotypes.”¹⁹⁰

Although the affirmative action program in *Bakke* included consideration of Asian-Americans,¹⁹¹ Justice Powell relegated his consideration of Asian-Americans to one footnote. Specifically, in a footnote discussing preferential admissions, Justice Powell notes that “[t]he inclusion of [Asians] is especially curious in light of the substantial numbers of Asians admitted through the regular admissions process.”¹⁹² Despite paving the way for the constitutional acceptance of affirmative action, Justice Powell’s insignificant consideration of Asian-Americans exemplifies his internalization of the myth of model minority. Instead of recognizing Asian-Americans’ request for help, “the public assumes that [Asian-Americans] are uniformly doing well.”¹⁹³

Other examples of the myth of model minority’s presence include model affirmative action programs that have come before the United States Supreme Court. In *Gratz v. Bollinger*, the Court decided upon the constitutionality of University of Michigan’s use of racial preferences in its undergraduate admissions.¹⁹⁴ The Office of Undergraduate Admissions restructured its admission’s policy to include additional point values under a selection index that included a miscellaneous category that awarded an automatic 20 points for an applicant’s “membership in an underrepresented racial or ethnic minority

¹⁸⁷ See *Regents of the University of California v. Bakke*, 438 U.S. 265, 320 (1978).

¹⁸⁸ *Id.* at 315.

¹⁸⁹ See Chin, et. al., *supra* note 21, at 134 (arguing that affirmative action creates a better America because it “moves us toward a more just society that benefits all Americans”).

¹⁹⁰ See Gabriel J. Chin, *Bakke to the Wall: The Crisis of Bakkean Diversity*, 4 WM. & MARY BILL RTS. J. 881, 889 (1996).

¹⁹¹ See *Bakke*, 438 U.S. at 274-75. Under the special admissions program, applicants were asked if they considered themselves “economically or educationally disadvantaged.” Additionally, applicants were asked to indicate if they considered themselves “members of a ‘minority group,’ which the [m]edical [s]chool [listed as either] ‘Blacks,’ ‘Chicanos,’ ‘Asians,’ and ‘American Indians.’” In contrast to meeting a grade point average requirement in the general admission program, applicants under the special admissions program did not have to meet such requirement. Applicants were then invited to interview and assigned a benchmark score by a special admissions committee. The committee would then recommend applicants for admission to the general admissions committee.

¹⁹² *Id.* at 309 n.45.

¹⁹³ See Chin, et. al., *supra* note 21, at 151.

¹⁹⁴ See *Gratz v. Bollinger*, 539 U.S. 244, 251 (2003). The OUA considered factors such as “high school grades, standardized test scores, high school quality, curriculum strength, geography, alumni relationships, and leadership.” *Id.* at 253. During 1995 to 1996, the school began to consider other factors such as “the quality of the applicant’s high school, the strength of [the] high school’s curriculum, [the] applicant’s unusual circumstances, and [the] applicant’s geographical residence.” *Id.* at 254.

group.”¹⁹⁵ In the eyes of the university, “underrepresented minorities” included only African-Americans, Hispanics, and Native-Americans.¹⁹⁶ Notably, Asian-Americans were not considered deserving of the school’s affirmative action programs and policies.¹⁹⁷ Similarly, in *Grutter v. Bollinger*, the Court dealt with an affirmative action program that championed a “longstanding commitment to ‘one particular type of diversity,’ that is, ‘racial and ethnic diversity with special reference to the inclusion of students from groups which have been historically discriminated against, like African-Americans, Hispanics and Native[-]Americans.”¹⁹⁸ Through this commitment, the school sought to enroll a “critical mass of [underrepresented] minority students.”¹⁹⁹ Again, Asian-Americans were not considered deserving of the school’s affirmative action policies.²⁰⁰

The blatant miscalculation in failing to consider Asian-Americans in affirmative action policies is alarming. This miscalculation can be attributed to the cloak of invisibility that all Asian-Americans must unfortunately wear.²⁰¹ In particular, the myth of model minority regularly assumes that Asian-Americans do not need affirmative action.²⁰² Therefore, Asian-Americans, even as an ethnically diverse group, are automatically excluded without any analysis.²⁰³

Indeed, rather than recognizing their cries for help, Asian-Americans have instead been unjustly used to condemn and invalidate affirmative action. Specifically, United States Supreme Court Justice Clarence Thomas has historically used the misleading accomplishments of Asian-Americans as a minority group to justify “opposition to affirmative action.”²⁰⁴ Recently, in *Fisher v. University of Texas*, Justice Thomas argued against the University of Texas’ admission policies,²⁰⁵ where an applicant’s race would serve as a “meaningful factor” in the university’s decision to admit.²⁰⁶ In a lengthy dissent,

¹⁹⁵ *Id.* at 255-56. The guidelines under the selection index provided that qualified applicants from underrepresented minority groups be “admitted as soon as possible.” Through these guidelines, the university managed its rolling admissions system through the use of “protected seats.” Particular groups, including underrepresented minorities, were eligible for these seats. If the seats were not filled, they were used to admit other “qualified candidates remaining in the applicant pool.” *Id.*

¹⁹⁶ See *Gratz*, 539 U.S. at 254.

¹⁹⁷ *Id.*

¹⁹⁸ See *Grutter v. Bollinger*, 539 U.S. 306, 316 (2003). In addition to diversity, admissions official must consider the applicant’s undergraduate grade point average, law school admissions test score, the applicant’s personal statement, letters of recommendation, and an essay describing the ways in which the applicant will contribute to the life and diversity of the law school. *Id.* at 315.

Admission officials are free to consider “soft variables” such as the enthusiasm of the applicant’s recommenders, the applicant’s undergraduate institution, the quality of the applicant’s essay, and whether the applicant took difficult undergraduate courses. *Id.*

¹⁹⁹ *Id.* at 316.

²⁰⁰ *Id.*

²⁰¹ See Hing, *supra* note 90.

²⁰² See Wu & Wang, *supra* note 51, at 40.

²⁰³ *Id.*

²⁰⁴ See Gee, *supra* note 89, at 174. Former Supreme Court Justice John Paul Stevens has similarly utilized the holistic success of Asian-Americans to justify the abandonment of affirmative action. *Id.*

²⁰⁵ See *Fisher v. Univ. of Texas*, 133 S. Ct. 2411, 2422 (2013) (Thomas, J., dissent).

²⁰⁶ *Id.* at 2416. Following *Gratz v. Bollinger*, *Grutter v. Bollinger*, and the Top Ten Percent Law, the school developed a newly refined admission’s policy where applicants were subject to a new

Justice Thomas argued that Whites and Asian-Americans are injured parties to the university's affirmative action policies.²⁰⁷ "There can be no doubt that the University's discrimination injures white and Asian applicants who are denied admission because of their race."²⁰⁸ Justice Thomas further opined that whites and Asian-Americans students are presumably far more prepared for school than their alleged affirmative action counterparts.²⁰⁹ Instead of recognizing the tremendous diversity of Asian-Americans, Justice Thomas falls guilty of internalizing the myth of model minority as a sword against affirmative action.

The rhetoric used about Asian-Americans in relation to affirmative action policies demonstrates the myth of model minority's intersection with the law. Since the myth of model minority insulates any considerations that Asian-Americans are in need of affirmative action,²¹⁰ opponents of affirmative action are free to use the myth of model minority to invalidate affirmative action policies.²¹¹ Unfortunately, this illogical use of the myth of model minority erroneously assumes that racial diversity necessarily means that some groups must be disadvantaged.²¹² By portraying the affirmative action policies as a "zero sum game,"²¹³ Asian-Americans may never reap the benefits of such policies.

B. *Asian-Americans Should Be Considered Under Existing Affirmative Action Programs*

In 2014, the Students for Fair Admissions, Inc. (hereinafter "Petitioner") initiated a lawsuit against Harvard College (hereinafter "Harvard") alleging that Harvard engages in "racially and ethnically discriminatory policies and procedures in administering the undergraduate admissions program."²¹⁴ Not surprisingly, Petitioner claimed Harvard's admissions program violated Title VI.²¹⁵ Specifically, Petitioner alleged that Harvard invidiously discriminates

holistic metric known as the Personal Achievement Index (hereinafter "PAI") that would assess the applicant's contribution to the University. *Id.* at 2415. The PAI measures a variety of factors such as the applicant's "leadership and work experience, awards, extracurricular activities, community service, and other special circumstances that give insight into a student's background." *Id.* at 2415-16. The special circumstances may include living in a sing-parent home, speaking another language besides English at home, any significant family responsibilities assumed by the applicant, and the applicant's general socioeconomic status. *Id.* at 2416.

²⁰⁷ See *Fisher*, 133 S. Ct. at 2431.

²⁰⁸ *Id.*

²⁰⁹ *Id.* Justice Thomas further pointed out that blacks and Hispanics are placed in a position where underperformance is inevitable because they are "less academically prepared than the white and Asian students with whom they must compete." *Id.*

²¹⁰ See *Gee*, *supra* note 19, at 622-23.

²¹¹ *Id.*

²¹² See *Liu*, *supra* note 17, at 420-21.

²¹³ *Id.* Author Adrian Liu defines zero-sum game as the assumption that spots for certain minorities must come at the expense of other minorities. *Id.*; see also *Lim*, *supra* note 95.

²¹⁴ Complaint at 3, *Students for Fair Admissions, Inc. v. Presidents and Fellows of Harvard College*, 807 F.3d 472 (1st Cir. 2015).

²¹⁵ *Id.*

against Asian-Americans by holding them to “a far higher standard.”²¹⁶ Petitioner’s complaint sought an “outright prohibition of racial preference in university admissions – period.”²¹⁷ In essence, Petitioner argued that Harvard’s use of racial preference inhibits “[h]igh achieving Asian-American applicants [who] are . . . diverse and eclectic in their abilities and interests” from securing admission.²¹⁸ Interestingly enough, Petitioner purported to represent one Asian-American applicant who applied for and was denied admission to Harvard’s 2014 entering class.²¹⁹

In arguing that Harvard intentionally discriminates Asian-Americans, Petitioner pointed to statistics demonstrating that “Asian-Americans are being admitted to these schools at a far lower rate than the rate at which they apply.”²²⁰ In particular, Petitioner points out that “in 2008, Asian-Americans made up 46% of domestic Harvard score-senders with SAT scores above 2200.”²²¹ In lieu of this, Petitioner argues that Harvard’s enrollment of Asian-Americans has wrongfully reached a plateau from 15% to 18% from 2007 to 2013.²²²

In the eyes of Petitioner, Asian-Americans are disadvantaged in the admissions process.²²³ “Since Asian[-]American populations at many colleges exceed the proportion of Asian[-]Americans to the population of the state or country as a whole” Asian[-]Americans are not an underrepresented minority.²²⁴ On balance, Petitioner recognized the ethnically diverse and heterogeneous nature of the Asian-American category.²²⁵ Accordingly, Petitioner’s claim for relief sought overruling any decision holding that Title VI permits the use of racial preferences to achieve diversity.²²⁶

Petitioner’s complaint exemplifies the rampant internalization of the myth of model minority. Petitioner assumes that the fallacious nature of the myth of model minority attached to Asian-Americans somehow “defeat[s] the rationales for race-conscious” affirmative action policies.²²⁷ Implicitly, the Petitioner’s complaint screams the question: “[Asians have] made it, why can’t you?”²²⁸ Indeed, the complaint recognizes the significant diversity existing in the Asian-American category, but does not reconcile this with the “nuance and disparit[ies]”

²¹⁶ *Id.* at 2. The complaint additionally alleges that Harvard engages in racial balancing, *Id.* Harvard fails to use race merely as a factor for its admissions decisions, and Harvard uses race when race-neutral alternatives can achieve diversity. *Id.* at 3.

²¹⁷ *Id.* at 3.

²¹⁸ *Id.* at 2.

²¹⁹ *Id.* at 4-5. The complaint describes the applicant’s qualifications in detail such as applicant’s ranking, standardized test scores, and the applicant’s numerous extracurricular and volunteer activities. *Id.*

²²⁰ *Id.* at 23.

²²¹ *Id.*

²²² *Id.* at 24.

²²³ *Id.* at 28. The complaint alleges that college counselors and advisors tell Asian-American applicants to “hide their identity.” *Id.*

²²⁴ *Id.*

²²⁵ *Id.* at 43. The complaint alleges that Harvard lumps together Chinese, Japanese, Korean, Vietnamese, Cambodian, Hmong, and Indians under the category of “Asian[-]American.” *Id.*

²²⁶ *Id.* at 49.

²²⁷ See Wu & Wang, *supra* note 51, at 35.

²²⁸ *Id.* at 37.

of Asian-Americans.²²⁹ By focusing on the “high-achieving” Asian-Americans, the Petitioner’s complaint falls guilty of presenting “sweeping generalizations of Asian-Americans as the [model] minority [concept].”²³⁰ The complaint makes no attempt to disaggregate the data²³¹ that reveals “the inequalities that many Asian-Americans face daily.”²³² Therefore, the complaint largely ignores the differences in achievement among different sub-groups.²³³ In essence, the complaint’s adoption of the myth of model minority has insulated any considerations that affirmative action may actually benefit Asian-Americans.²³⁴

Additionally, the complaint is guilty of essentializing the experience of Asian-Americans.²³⁵ By claiming an overhaul of the affirmative action policies based upon one Asian-American applicant, the complaint exercises that exact nature of essentialism. In other words, the single Asian-American applicant serves as only one pebble from the beach.²³⁶ This applicant should not be asked to represent all of the pebbles on the beach.²³⁷ Contrary to Petitioner’s belief, a recent 2014 poll among Asian-Americans indicates that approximately 69% of Asian-Pacific Islander Americans supports affirmative action programs.²³⁸ This study rightfully recognizes the “complex set of social realities for the individuals who fall within this category”²³⁹ and the need to disaggregate the statistic. Specifically, the data reports that 59.7% of Chinese, 47.1% of Korean, and 73.2% of Vietnamese supports affirmative action.²⁴⁰

Throughout this Comment, I have vigorously argued the dangerous implications of accepting the myth of model minority. Clearly, the myth of model minority simply paints an inaccurate and unjust picture of an alleged monolithic group.²⁴¹ On the contrary, disaggregating the data reveals the opposite. Some Asian-American subcategories face an entirely different reality from those of their Asian-American counterparts. We have seen this phenomenon in three areas: educational attainment,²⁴² employment,²⁴³ and household income.²⁴⁴ By unraveling the aggregated statistics, we reveal the mythological nature of the model minority concept. We realize that not all Asian-Americans can achieve

²²⁹ See Lim, *supra* note 55.

²³⁰ *Id.*

²³¹ See McGowan & Lindgren, *supra* note 11, at 335.

²³² See Lim, *supra* note 95.

²³³ See Liu, *supra* note 17 at 428-29.

²³⁴ See Gee, *supra* note 19, at 641.

²³⁵ See DELGADO & STEFANCIC, *supra* note 1, at 56.

²³⁶ See Grillo, *supra* note 16, at 22.

²³⁷ *Id.*

²³⁸ See Frances K. Wang, *New Study Shows Asian American Support for Affirmative Action*, NBC NEWS, (Oct. 6, 2014), <http://www.nbcnews.com/news/asian-america/new-study-shows-asian-american-support-affirmative-action-n213976>.

²³⁹ See Teranishi et. al., *supra* note 35, at 5.

²⁴⁰ See Wang, *supra* note 237. Professor Karthick Ramakrishnan of University of California Riverside is quoted in the article stating “[t]he survey highlights the critical importance of surveying the Asian-American population.” *Id.*

²⁴¹ See Liu, *supra* note 17, at 428-29.

²⁴² See *supra* notes 104-107.

²⁴³ See *supra* notes 126-128.

²⁴⁴ See *supra* notes 147-149.

success through the modicum of hard work. Instead, programs that open the doors of opportunity become the true blessing for these Asian-American subcategories, whereas the myth of model minority remains a bane.²⁴⁵ The disaggregated data, coupled with the false nature of the myth of model minority, reveals that Asian-Americans are deserving of the benefits offered by modern affirmative action programs. Respectfully, policymakers and academic institutions must “reconsider the[ir] assumptions that Asian-Americans, across the board, do not need affirmative action.”²⁴⁶

Applying the current constitutional analysis on affirmative action conceivably reveals that Asian-Americans deserve to reap the benefits of such programs. Current jurisprudence validates affirmative action policies under diversity.²⁴⁷ Under *Bakke*, diversity “encompasses a far broader array of qualifications and characteristics of which racial or ethnic origin is but a single though important element.”²⁴⁸ These qualities may include a mix of “exceptional personal talents, unique work or service experience, leadership potential, maturity, demonstrated compassion, a history of overcoming disadvantage, or an ability to communicate with the poor.”²⁴⁹ If the courts are truly concerned with seeking a “diverse diversity,”²⁵⁰ the fact that there are substantial numbers of Asian-American students does not mean that these students cannot continue to contribute to a school’s diversity in terms of their economic status, geographic backgrounds, or religious beliefs.²⁵¹

The jurisprudence also demands that the means of achieving diversity are narrowly tailored.²⁵² This calls for the Court to “carefully examin[e] the importance and the sincerity of the reasons advanced” and keep in mind that “context matters;” generalizations must therefore not be applied out of context in disregard of variant controlling facts.²⁵³ If the courts adhere to a “careful empirical analysis” of the tremendous diversity within the Asian-American category,²⁵⁴ they will clearly conclude that “[n]umbers without context don’t help readers understand what kind of meaning they should place on the information they’re given.”²⁵⁵ Indeed, one can similarly offer the proof accepted in *Grutter* to argue that inclusion of Asian-American subcategories can yield educational benefits for a university or college.²⁵⁶

²⁴⁵ See Wong & Halgin, *supra* note 60, at 47-48.

²⁴⁶ See Wu & Wang, *supra* note 51, at 42.

²⁴⁷ See *Bakke*, 438 U.S. at 314, 317.

²⁴⁸ *Id.* at 315.

²⁴⁹ *Id.* at 317.

²⁵⁰ See Chin, *supra* note 189, at 937.

²⁵¹ See Liu, *supra* note 17, at 417.

²⁵² See *Grutter*, 539 U.S. at 326.

²⁵³ *Id.* at 327 (quoting *Gomillion v. Lightfoot*, 364 U.S. 339, 343-44 (1960)).

²⁵⁴ See Wu & Wang, *supra* note 51, at 42.

²⁵⁵ See Hing, *supra* note 90.

²⁵⁶ In *Grutter*, the university produced testimony supporting the educational benefits received from diversity. See *Grutter*, 539 U.S. at 316-18. In particular, the school presented testimony from the past and current Director of Admissions, the school’s Dean, and two professors. *Id.* at 319-20.

In *Grutter*, the university presented extensive evidence concerning the school's use of race in the admissions process.²⁵⁷ Additionally, the evidence accompanied numerous amicus briefs supporting the educational benefits the university received from seeking diversity.²⁵⁸ Here, a legal argument can conceivably be supported with disaggregating data of Asian-American subcategories in areas such as educational attainment,²⁵⁹ employment,²⁶⁰ and median household income.²⁶¹ Observing the numbers with context may support the argument that the presence of Asian-American students at universities and colleges can similarly yield educational benefits.

IV. "DO WE CARE ABOUT JUSTICE OF JUST US?"

Throughout this Comment, I have consciously advocated against the adoption and internalization of the myth of model minority. This myth does a disservice to the members of the Asian-American category.²⁶² Unfortunately, some Asian-Americans have internalized the myth in its entirety. By internalizing the myth, these Asian-Americans hide the struggles and concerns of Asian-Americans who may need to reap the benefits of affirmative action programs. In an article entitled *The Model Minority is Losing Patience*, The Economist blatantly claims that "Asian-Americans are the United States' most successful minority, but they are complaining ever more vigorously about discrimination, especially in academia."²⁶³ The authors further argue that "[t]o counter affirmative action, [Asian-Americans] have to work harder than everyone else."²⁶⁴

My response to "[o]pponents of affirmative action, including Asian-Americans, [is that they] should be prepared to answer the inquiry of what alternatives to affirmative action they might propose" to address the inequities and concerns of struggling minority groups.²⁶⁵ This response begs the question that must be posed to some Asian-American opponents of affirmative action: "Do we care about justice or just us?"²⁶⁶ Any member of a minority group who enters the larger society must eventually reconcile him or herself to a certain harsh reality: "most of the people they encounter will be members of races other than their own."²⁶⁷

²⁵⁷ See *Grutter*, 539 U.S. at 316.

²⁵⁸ *Id.* at 326.

²⁵⁹ See *supra* notes 104-107.

²⁶⁰ See *supra* notes 126-128.

²⁶¹ See *supra* notes 147-149.

²⁶² See Wu & Wang, *supra* note 51, at 46.

²⁶³ See *The Model Minority Is Losing Patience*, *supra* note 20.

²⁶⁴ *Id.*

²⁶⁵ See Wu & Wang, *supra* note 51, at 46.

²⁶⁶ Jeff Yang, *Harvard Lawsuit is Not What It Seems*, CNN (Nov. 24, 2014), <http://www.cnn.com/2014/11/24/opinion/yang-harvard-lawsuit/> (arguing against the Students for Fair Admission's lawsuit against Harvard claiming that the lawsuit really "derail[s] an apparatus that has given [minorities] a means to climb out of circumstance defined by our society's historical racism").

²⁶⁷ See Chin, *supra* note 189, at 923.

“The fight for . . . justice must continue with more [members] of the Asian-American [category] speaking their truths, rather than allow[ing] others to co-opt our narratives.”²⁶⁸ However, “simply refashioning the public perception of Asian-Americans will not be sufficient to challenge the existing social order.”²⁶⁹ Indeed, more Asian-Americans “must reject a self-congratulatory embrace . . . and policies justified only by the narrowest self-concern.”²⁷⁰ By rejecting this embrace, policymakers and academic institutions may begin to see that the work for the Asian-American community has yet to be finished. They will begin to focus their attention on the underrepresentation of Asian-Americans in employment settings, such as the field of law.²⁷¹

Asian-Americans who are fortunate enough to achieve success without affirmative action programs and policies should provide the following response to complaints of “preferential treatment”²⁷²:

As a racial minority, I continue to suffer from various forms of racial discrimination. I have personal stories as well as statistical documentation to prove it. And in that sense, I am disadvantaged compared to you, simply because of the color of my skin. Nevertheless, I am willing to bear the same burden that you bear caused by affirmative action. I am willing to share this burden to help us get beyond racism, to reach a fairer society. I am willing to go beyond my self-interest in order to strive for a community of justice. Are you?

V. CONCLUSION

Following in the footsteps of a fellow Asian-American legal scholar, Robert Chang, I end this note by “rais[ing] my voice.”²⁷³

Dear Reader,

I write this memorandum in disbelief upon realizing the amount of blessings I have experienced thus far. I am the oldest child of four siblings, born among the first-generation of my entire family in the United States. In order to pursue my aspirations of attaining higher-education, I have had to singlehandedly maneuver the

²⁶⁸ See Nguyen, *supra* note 91.

²⁶⁹ See Jennifer Pan, *Beyond the Model Minority Myth*, JACOBIN, (July 14, 2015), <https://www.jacobinmag.com/2015/07/chua-changelab-nakagawa-model-minority>.

²⁷⁰ See Chin, et. al., *supra* note 21, at 162.

²⁷¹ See Harvey Gee, *supra* note 19, 651 (1997) (observing that Asian-Americans are “still seriously under-represented in the legal profession”); see also William C Kidder, *Negative Action Versus Affirmative Action: Asian Pacific Americans are Still Caught in the Crossfire*, 11 MICH. J. RACE & L. 605, 623-24 (2006) (arguing that affirmative action helps to ensure fairness towards Asian-Americans in a variety of employment settings).

²⁷² See Chin, et. al., *supra* note 21, at 160.

²⁷³ See Chang, *supra* note 50, at 1245.

intricacies of college applications and standardized tests. I remember my mother asking me in my third-year of high school about my post-graduate plans. She suggested that I should either pursue the military or find a job. The subject of college was never considered. As I continue to climb the rungs of the higher-education system, first in college then in law school, I am reminded that education is a privilege. My path could have easily strayed towards the two options my mother provided. Upon applying for college, I remember never being exposed to the SATs. When I took the tests, I remember being extremely disappointed to see my considerably low scores. I could not reconcile such score with my grade point average. These scores followed me as I applied to college. I recall being asked to interview with my alma mater, the University of San Diego, before being accepted. Typically, the school did not interview students. In my case, however, my low scores suggested that I may not be successful in college. After a successful interview, I was thankfully admitted. Once I received admission into my alma mater, I immediately entered my first-year with the goal of proving myself on my merits. By the end of my first year, my goals were met. After hours and hours of studying, attending office hours, and utilizing tutoring, I received exceptional grades. In fact, I received recognitions by the Dean for academic excellence. As I continue to succeed in law school, I will always remember the chance and the opportunities I was given to prove myself at the University of San Diego. Based upon my experiences, I can wholeheartedly conclude that I was a proud recipient of affirmative action. I firmly believe the program's positive aspects give people like me a fighting chance, one opportunity to seize everything I ever wanted. Now, I continue to break the post-graduate education ceiling by pursuing law school. I could not have received this opportunity if it were not for programs such as affirmative action.