

**Opening Statement of Devon Westhill  
President and General Counsel  
Center for Equal Opportunity**

**House Committee on the Judiciary  
Subcommittee on the Constitution, Civil Rights, and Civil Liberties**

**Hearing of March 1, 2022 - Discrimination and the Civil Rights of the Muslim, Arab, and  
South Asian American Communities**

Chair Cohen, Ranking Member Johnson, and distinguished Members of the subcommittee, thank you for the opportunity to provide my testimony on “Discrimination and the Civil Rights of the Muslim, Arab, and South Asian American Communities.”

My name is Devon Westhill and I am the president and general counsel of the Center for Equal Opportunity. CEO is a non-partisan, non-profit research and educational organization that for more than 25 years has conducted studies and produced reports, monitored and advised on government action, and educated the public with the singular goal of promoting colorblind equal opportunity and nondiscrimination in America.

I will begin by commenting on the vicious physical attacks on Asian Americans that have been reported in the media in the last couple of years. I then turn to affirmative discrimination against Asian Americans by educational institutions. I close by appealing to those who desire to address these issues not to do so in a way that focuses on “equity of outcome” at the expense of the principle of equality under law.

## **I. RISE IN VIOLENT PHYSICAL ATTACKS AGAINST ASIAN AMERICANS**

Christina Yuna Lee.

Ms. Lee was an Asian American creative content producer living and working in New York City. In the early morning hours of February 13<sup>th</sup>, just two weeks ago, the 35-year-old was stalked and stabbed to death in her apartment building.

Michelle Alyssa Go.

Ms. Go was an Asian American professional services manager and advocate for those experiencing homelessness. On the morning of January 15<sup>th</sup>, the 40-year-old was murdered when she was shoved from a subway platform into an oncoming train.

Yao Pan Ma.

Last year, Mr. Ma an Asian-immigrant chef experiencing financial hardship during the throes of the COVID-19 pandemic was brutally beaten—his face and head stomped. Mr. Ma later died of the bleeding this attack caused in his brain.

I could go on.

These attacks did not discriminate against Asians of any particular ethnicity or hailing from any particular geographic region of the world. It is no surprise to learn then, as a recent Pew Research Center poll revealed, that 32% of Asian American adults fear being threatened or attacked—a proportion of respondents that surpassed any similar concern by other racial or ethnic groups.<sup>1</sup>

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<sup>1</sup> Khadijah Edwards et al., *One-third of Asian Americans fear threats, physical attacks and most say violence against them is rising*, (April 21, 2021), <https://www.pewresearch.org/fact-tank/2021/04/21/one-third-of-asian-americans-fear-threats-physical-attacks-and-most-say-violence-against-them-is-rising/>.

Because, as a result of their ethnicity, Asian Americans may be at heightened risk to become victims of violent crime, lawmakers and others must establish and maintain a hardline against all crime. A failure to prioritize and fund effective policing and to state publicly and often that crime will be punished swiftly and severely will only lead to more tragedies like the ones I have stated.

## II. OFFICIAL DISCRIMINATION AGAINST ASIAN AMERICANS

The organization that I head, the Center for Equal Opportunity, has participated as amicus curiae in numerous Supreme Court cases regarding disparate treatment on the basis of race or ethnicity including now in the case of *Students for Fair Admissions v. Harvard*—consolidated with a case challenging a similar racial preferences scheme at the University of North Carolina.<sup>2</sup>

In reviewing the evidence in these cases, one is struck by how clearly and shamelessly both schools discriminate in their admissions based on the race or ethnicity of the applicant—particularly, against highly qualified Asian Americans. The evidence presented in the Harvard case indicates that extraordinarily well qualified Asian American applicants are routinely downgraded via character and fitness ratings assigned by admissions officials. This process makes a mockery of merit-based admissions and is a naked pretense for simple racial balancing that intentionally decreases Asian American representation, and that of other applicants, on the basis of their skin color and ethnicity that is reminiscent of 20<sup>th</sup> century efforts by the same institution to limit enrollment of Jewish students.

Notwithstanding this insidious discrimination against Asian Americans, the present administration has not only failed to address it, it has actively worked to preserve it. One of the first actions this administration took in February 2021 was to dismiss a Justice Department lawsuit launched against Yale University during the Trump administration for illegally discriminating against undergraduate applicants based on race and national origin.<sup>3</sup>

When later given the opportunity by the Supreme Court to state its position on the Harvard litigation, the administration once again betrayed the Asian American community by opposing the Supreme Court reviewing the case. Luckily, the Court disregarded the suggestion and will render its judgment.

The discrimination in college admissions is only the tip of the iceberg. Even grade schools such as nearby Thomas Jefferson High School for Science and Technology are implementing efforts plainly targeted at reducing enrollment of disfavored races and ethnicities—specifically, Asian Americans. Just last week the judge in the case challenging this racial balancing wrote a stinging rebuke calling the practice patently unconstitutional.

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<sup>2</sup> See also *Ricci v. DeStefano*, 557 U.S. 557 (2009); *Parents Involved in Cmty. Sch. v. Seattle Sch. Dist. No. 1*, 551 U.S. 701 (2007); *Grutter v. Bollinger*, 539 U.S. 306 (2003).

<sup>3</sup> Devon Westhill, *New Study on Costs of Racial Preferences as DOJ Drops Yale Suit*, Nat. Rev. (Feb. 5, 2021, 5:53 PM), <https://www.nationalreview.com/corner/new-study-on-costs-of-racial-preferences-as-doj-drops-yale-suit/>.

I am relieved that the courts and other institutions appear to be serious about addressing what has become all too common discrimination in American society. Congress can steel these efforts by demanding respect for its civil rights decrees stating plainly that racial discrimination is illegal.

### **III. CONCLUSION**

We ought to carefully and thoughtfully work to eliminate racial discrimination in a country that in so many ways over its history has sanctioned it. Not just for preferred races, but for every single individual.

This is good and serious work and I am both professionally and personally committed to it. I have clearly focused my remarks on Asian American discrimination because that is near and dear to my heart.

My mother-in-law came to this country in the 1960s as a Vietnamese refugee. My wife is part-Vietnamese. My daughter, my son, my brother-in-law, my family is multiracial like so many other families in this beautiful country. I want to remove any impediments any of them may for immutable characteristics such as ethnicity face to equal opportunity. I want that for every other man, woman, and child in this country.

We will never achieve that, however, by focusing on what is euphemistically referred to as “equity.” That concept requires explicit and overt discrimination and a disregard for the Enlightenment and therefore, American fundamental principle of equality under law

The insistence that we must produce equal outcomes among groups defined by skin color, national origin, or gender perverts the American understanding of justice based on individual rights. It is achievable only by substituting totalitarian methods that trample those rights.

That precisely is what has gotten us to a state where the issues I have noted today are a reality.

Again, I thank you for the opportunity to provide my testimony and look forward to your questions.