



**Testimony of
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for

**Hearing on “Promoting Opportunity: The Need for Targeted Federal
Business Programs to Address Ongoing Racial Discrimination.”**

**United States Senate
Small Business Committee
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I. Introduction

Government programs like the Small Business Administration’s 8(a) program, and those provided by the Minority Business Development Agency (“MBDA”), are essential for remedying past discrimination against racial and ethnic minorities, including Asian Americans, helping the American economy thrive, and reinforcing our democracy. These programs ensure that minority-owned small businesses are able to survive and thrive, benefitting not only the businesses themselves but the communities they serve and the nation as a whole. Only through the inclusion of all sectors of our economy and all segments of the populace can the American economy and democracy flourish.

Unfortunately, like many other racial minorities in the United States, Asian Americans have faced centuries of explicit, government-sponsored discrimination, including racist immigration policies, restrictions on land ownership, efforts to eradicate Asian American small businesses, incarceration of Japanese Americans, and exclusion from government programs. That discrimination has interfered with economic opportunity, excluding Asian Americans from both equal dignity and status in American democracy and from equal participation in the economic life of the nation, to the detriment of all.

The legacy of past discrimination remains with us today in a multitude of forms, including unequal opportunities in the creation of businesses and greater difficulty in maintaining those businesses. Moreover, Asian Americans continue to face explicit government-sponsored discrimination and unequal opportunities to participate in government programs.

The reality of racial discrimination and inequality cannot be remedied by ignoring it. Only by recognizing that reality and consciously addressing it can the federal government begin to repair the harm it has caused to Asian Americans and others, both in the past and the present.

II. Organizational Information

Asian American Advancing Justice | AAJC (“Advancing Justice | AAJC”) submits this written testimony to the Senate Small Business Committee in conjunction with its hearing, **“Promoting Opportunity: The Need for Targeted Federal Business Programs to Address Ongoing Racial Discrimination.”**

Advancing Justice | AAJC is a national 501(c)(3) non-profit organization founded in 1991 dedicated to advancing civil and human rights for Asian Americans, and to promoting a fair and equitable society for all. Advancing Justice | AAJC fights for our civil rights through education, litigation, and public policy advocacy and serves to empower our communities by bringing local and national constituencies together and ensuring that Asian Americans are able to participate fully in our democracy and the economic life of our nation.

We work closely with our Community Partners Network, a national collaboration of over 300 AAPI-serving community-based organizations (CBOs) across 37 states and the District of Columbia to increase regional and local capacity to elevate community voices nationwide.

As a founding member of the Asian Americans Advancing Justice (Advancing Justice) national affiliation, we partner with our affiliates — Advancing Justice | Asian Law Caucus, Advancing Justice | Atlanta, Advancing Justice | Chicago, and Advancing Justice | Southern California — to extend the reach of our programming and enhance the impact of our collective work. Advancing Justice | AAJC is a member of the National Council for Asian Pacific Americans, a coalition of Asian American & Pacific Islander national advocacy organizations. We are also a member of the Leadership Conference on Civil and Human Rights, comprised of over 200 national organizations working together to promote and protect the civil and human rights of all Americans.

III. History of Discrimination Against Asian Americans in the United States

Present-day discrimination against Asian Americans must be understood within the context of the long history of anti-Asian discrimination in the United States. Discrimination against Asian Americans has historically been rooted in the false stereotype of Asian Americans as “outsiders,” “aliens,” and “perpetual foreigners.”¹

¹ See, e.g., Beth Lew-Williams, *THE CHINESE MUST GO: VIOLENCE, EXCLUSION, AND THE MAKING OF THE ALIEN IN AMERICA* (2021); Claire Jean Kim, “*Exclusion/Belonging*” in *ASIAN AMERICANS IN AN ANTI-BLACK WORLD* 17-122 (2023). Racial stereotyping of Asian Americans reinforces an image of Asian Americans as “different,” “foreign,” and the “enemy,” leading to stigmatization of

Based on this perception, Asian Americans were long denied the rights held by U.S. citizens and the ability to participate fully in American democracy and the economic life of the country.

As early as the mid-19th century, Asian Americans faced discrimination. Chinese workers initially migrated to the United States to work in the gold mines, the agricultural and garment industries, and as laborers building railroads on the west coast.² The latter half of the 19th century marked a rise in anti-Chinese sentiment as Chinese immigrants were scapegoated for the lack of economic opportunity.³ Asian immigrants faced significant race-based violence, such as the 1871 massacre of around twenty Chinese residents of Los Angeles.⁴ Yet they often had little recourse, as some states would not allow Asian witnesses to testify against white defendants.⁵

Asian Americans, heightened racial tension, and increased discrimination. Spencer K. Turnbull, Comment, *Wen Ho Lee and the Consequences of Enduring Asian American Stereotypes*, 7 UCLA ASIAN PAC. AM. L.J. 72, 75 (2001); Terri Yuh-lin Chen, Comment, *Hate Violence as Border Patrol: An Asian American Theory of Hate Violence*, 7 ASIAN L.J. 69, 72, 74-75 (2000); Cynthia Kwei Yung Lee, *Beyond Black and White: Racializing Asian Americans in a Society Obsessed with O.J.*, 6 HASTINGS WOMEN'S L.J. 165, 181 (1995); Note, *Racial Violence Against Asian Americans*, 106 HARV. L. REV. 1926, 1930-32 (1993); see also Thierry Devos & Mahzarin R. Banaji, *American = White?*, 88 J. PERSONALITY & SOC. PSYCHOL. 447 (2005) (documenting empirical evidence of implicit beliefs that Asian Americans are not "American").

² See Office of the Historian, *Chinese Immigration and the Chinese Exclusion Acts*, <https://history.state.gov/milestones/1866-1898/chinese-immigration> ("Office of the Historian").

³ Chinese immigrants faced a number of discriminatory laws ranging from foreign miner taxes, directed at Chinese gold miners, to anti-Asian business regulations. See Sucheng Chan, *Asian Americans: An Interpretive History*, TWAYNE'S IMMIGRANT HERITAGE OF AMERICA SERIES 46-47 (1991); Gordon H. Chang, *GHOSTS OF GOLD MOUNTAIN: THE EPIC STORY OF THE CHINESE WHO BUILT THE TRANSCONTINENTAL RAILROAD* 38-54 (2019); George Anthony Peffer, *Forbidden Families: Emigration Experiences of Chinese Women Under the Page Law, 1875-1882*, AM. ETHNIC HIST. J. 28, 28-46 (1986), <https://www.jstor.org/stable/27500484>.

⁴ John Johnson, Jr., *How Los Angeles Covered Up the Massacre of 17 Chinese*, LA WEEKLY (Mar. 10, 2011), available at <https://www.laweekly.com/how-los-angeles-covered-up-the-massacre-of-17-chinese/>. See generally Jean Pfaelzer, *DRIVEN OUT: THE FORGOTTEN WAR AGAINST CHINESE AMERICANS* (2008).

⁵ E.g., *People v. Hall*, 4 Cal. 399, 405 (Cal. 1854) (barring testimony from Asian witnesses on ground that they were "a race of people whom nature has marked as inferior, and who are incapable of progress or intellectual development").

Anti-Asian scapegoating and prejudice resulted in the 1875 Page Act, which barred immigrants deemed as “undesirable” and primarily targeted Asians.⁶ Rooted in anti-Asian sentiment, the bill intended “to stop the flow of the ‘yellow peril’ to American shores.”⁷

Congress then passed the Chinese Exclusion Act and its progeny to deter immigration not only of “undesirables,” but of all new Chinese immigrants. The Chinese Exclusion Act—the first U.S. immigration law to bar a specific ethnic group—effectively prohibited Chinese immigrants from coming to the U.S. for nearly 60 years.⁸ The Act also barred all Chinese immigrants from becoming naturalized citizens.⁹

The Geary Act of 1892 extended the Chinese Exclusion Act of 1882 for another ten years.¹⁰ This bill singled out Chinese individuals, requiring them to obtain “certificates of residence,” and denied them the right to be released on bail upon application for a writ of habeas corpus. Chinese immigrants also could not bear witness in court.¹¹ Instead, only a “credible white witness” could testify for them.¹² Although economic security was touted as a reason for the Chinese Exclusion Act, the Act fit within a larger anti-Chinese movement intended to advance a racist agenda for white purity threatened by Chinese immigration.¹³ Only in 2011 did the Senate introduce and pass a resolution recognizing the discriminatory nature of the Chinese Exclusion Act and other laws against those of Chinese descent in America.¹⁴

The Chinese exclusionary laws paved the way for other laws rooted in anti-Asian sentiment, and the Supreme Court issued harmful precedents by repeatedly upholding challenges to discriminatory laws and its progeny against Asian

⁶ 18 Stat. 477, 43 Cong. Ch. 141.

⁷ See Peffer, *supra* n.3 at 29, 28–46.

⁸ 22 Stat. 58, 47 Cong. Ch. 126.

⁹ *Id.*

¹⁰ Pub. L. No. 52-60, 27 Stat. 25.

¹¹ Maureen Fan, *An Immigrant’s Story: Against a Wall of Exclusion*, S.F. CHRON. (Oct. 4, 2019), <https://www.sfchronicle.com/opinion/article/An-immigrant-s-story-Against-awall-of-14494875.php>.

¹² *Id.*

¹³ Office of the Historian, *supra* n.2.

¹⁴ S. Res. 201, 112th Cong. (2011) (enacted), *available at* <https://www.congress.gov/bill/112th-congress/senate-resolution/201/text>.

immigrants, establishing Congress' plenary power on immigration matters.¹⁵ Later legislation such as the Naturalization Act of 1906,¹⁶ which allowed only “free white persons” and “persons of African nativity or persons of African descent” to naturalize, also survived constitutional challenges from immigrants seeking to overturn discriminatory policies against Asian immigrants. Two key U.S. Supreme Court cases – *Ozawa v. U.S.* (1922) and *U.S. v. Thind* (1923) – held that Asian immigrants were not free white people and therefore, ineligible for naturalized citizenship.¹⁷ The Immigration Act of 1924¹⁸ expanded the reach of the Chinese Exclusion Act to prevent citizens from all Asian nations from immigrating to the United States, and these exclusionary laws remained in effect until they were repealed by the Magnuson Act in 1943.¹⁹ Exclusionary laws changed the face of America. As a result, by 1960, only 877,934 Asian Americans lived in the United States.²⁰ That figure represented a mere half of one percent of the American population.²¹

Relying on these discriminatory federal citizenship laws, and invoking the same racist rationales, states began imposing severe restrictions on the ability of Asian Americans and Asian immigrants to purchase real property, often called “alien land laws.” To clothe these laws with a patina of legitimacy, they did not mention Asian immigrants or residents specifically. Instead, they excluded persons “ineligible for citizenship”—as determined by federal law—from property ownership, which encompassed primarily Asian immigrants, who were excluded from citizenship under the discriminatory federal statutes discussed above.²²

¹⁵ See, e.g., *Chae Chan Ping v. United States*, 130 U.S. 581 (1889).

¹⁶ 4 Pub. L. 59-338, 34 Stat. 596.

¹⁷ See, e.g., *Ozawa v. United States*, 260 U.S. 178, 198 (1922) (Ozawa, a Japanese immigrant who had lived in the U.S. for over 20 years was “clearly ineligible for citizenship” because he “is clearly of a race which is not Caucasian”); *U.S. v. Thind*, 261 U.S. 204 (1923) (affirming cancellation of Indian national’s U.S. citizenship due to fact he was not “free white person”).

¹⁸ Pub. L. 68-139, 43 Stat. 153.

¹⁹ Pub. L. 78-199, 57 Stat. 600.

²⁰ Asian Americans Advancing Justice, *Inside the Numbers: How Immigration Shapes Asian American and Pacific Islander communities* 20 (2019), https://www.advancingjustice-aaajc.org/sites/default/files/2019-06/1153_AAJC_Immigration_Final_Pages_LR-compressed.pdf.

²¹ *Id.*

²² *In re Admin. Order 2017-05-17*, 217 Cal. Rptr. 3d 730 (Cal. 2017).

California enacted the first such law in 1913, which restricted Asian immigrants from owning or leasing farmland. It then tightened these restrictions further in 1920 and 1923, prohibiting even American-born children of Asian immigrant parents or by corporations controlled by Asian immigrants.²³ As the California Supreme Court recognized in 1952, “the real purpose [of the alien land law] was the elimination of competition by alien Japanese [sic] in farming California land.”²⁴

Many other states followed suit, all of them motivated by anti-Asian animus, including Arizona (1917), Louisiana (1921), New Mexico (1922), Idaho (1923), Montana (1923), Oregon (1923), Kansas (1925), Utah (1943), Wyoming (1943), and Arkansas (1925 and 1943).²⁵ Though Arkansas’ 1925 law restricted ineligible aliens, its 1943 law went even further, barring any “Japanese or a descendent of a Japanese [sic]”—including citizens—from “ever purchas[ing] or hold[ing] title to any lands” in the state.²⁶

In 1925, Florida went so far as to amend its constitution to empower the legislature to exclude “ineligible aliens” from the right to “own[], inherit[], dispos[e] [of], possess[], [or] enjoy[] real estate.” It was explicitly targeted at Asian—and specifically Japanese—immigrants,²⁷ though both legislators and state newspapers acknowledged there was no need for it.²⁸ The provision was “readopted during the 1968 revision of the Florida constitution,”²⁹ and not repealed until 2018, when the Florida Constitution Revision Commission proposed a successful referendum to remove the “discriminatory” language.³⁰

²³ *Id.*

²⁴ *Fujii v. California*, 38 Cal.2d 718, 735 (1952)

²⁵ Dudley O. McGovney, *The Anti-Japanese Land Laws of California and Ten Other States*, 35 CAL. L. REV. 7, 7-8 (1947), available at <https://www.jstor.org/stable/3477374?origin=crossref>.

²⁶ *Id.* at 8-9; see also *Applegate v. Lum Jung Luke*, 173 Ark. 93, 95 (1927) (invalidating 1925 law as inconsistent with state constitution).

²⁷ *Florida to Vote on Alien Land Law*, THE NEW YORK TIMES 3 (Oct. 30, 1926) (“Its sponsors said the proposed amendment is aimed specifically at Japanese subjects.”), available at <https://timesmachine.nytimes.com/timesmachine/1926/10/30/104213831.html?pageNumber=3>.

²⁸ Declaration of Rights Committee, Constitution Revision Commission, *Proposal Analysis 4* (Dec. 20, 2017), available at <https://library.law.fsu.edu/Digital-Collections/CRC/CRC-2018/Proposals/Commissioner/2017/0003/Analyses/2017p0003.dr.pdf>.

²⁹ *Id.*

³⁰ *Detzner v. Anstead*, 256 So. 3d 820, 824 (Fla. 2018).

These alien land laws had a tangible economic impact on Asian immigrants in the United States. In California, for example, Japanese immigrants saw a 47% decrease in total acres farmed in 1922–1924 as compared to 1918–1920, and a 23% decrease in the total number of farms owned by Japanese immigrants living in California during that period.³¹ Though these laws were eventually repealed, history now echoes in a slew of alien land laws sweeping through the country, recently enacted or considered in California, New York, Texas, Louisiana, South Carolina, Alabama, and Florida, among others.³²

At the same time, states and municipalities targeted other Asian-owned businesses. For example, many states excluded “foreign-born persons from practicing law unless they were eligible for citizenship.”³³ As was the case with alien land laws, this restriction disproportionately affected Asian immigrants because federal law barred them from naturalization.

Other efforts were more explicitly racialized. Officials in San Francisco used an 1880 ordinance to shut down Chinese-owned laundry businesses in the city by denying such businesses licenses while granting them to others.³⁴ Around the same time, state and local legislators sought to “eliminate Chinese restaurants from the United States.”³⁵ This “war”—as its proponents described it³⁶—was driven by racism and xenophobia, including moral panics over opium, interracial marriage, and various other “threats” to the morality of white women.³⁷ A variety of states and cities “considered legislation or decrees banning white women from patronizing

³¹ Masao Suzuki, *Important or Impotent? Taking Another Look at the 1920 California Alien Land Law*, 64 J. OF ECONOMIC HISTORY 125, 130-131 (2004), available at <https://www.jstor.org/stable/3874944>.

³² Edgar Chen, *With New “Alien Land Laws” Asian Immigrants Are Once Again Targeted by Real Estate Bans*, JUST SECURITY (May 26, 2023), <https://www.justsecurity.org/86722/with-new-alien-land-laws-asian-immigrants-are-once-again-targeted-by-real-estate-bans/>.

³³ *In re Admin. Order 2017-05-17*, 217 Cal. Rptr. 3d 730 (Cal. 2017) (citing *Raffaelli v. Committee of Bar Examiners*, 7 Cal.3d 288, 291 (1972)); see also *Large v. State Bar*, 218 Cal. 334, 335 (1933) (rejecting constitutional challenge to rule and collecting cases); *In re Hong Yen Chang*, 84 Cal. 163 (Cal. 1890) (rejecting admission of Asian immigrant to state bar).

³⁴ *Yick Wo v. Hopkins*, 118 U.S. 356, 359 (1886)

³⁵ Gabriel J. Chin & John Ormonde, *The War Against Chinese Restaurants*, 67 DUKE L. J. 681, 683 (2018), available at <https://scholarship.law.duke.edu/dlj/vol67/iss4/1/>.

³⁶ *Id.* at 683.

³⁷ *Id.* at 698-707.

Chinese restaurants or being employed there.”³⁸ Police targeted Chinese restaurants for raids and in some jurisdictions issued decrees barring “young white girls” from entering such establishments.³⁹ And municipal government officials discriminated against Chinese restaurants in licensing, zoning, and other regulatory enforcement.⁴⁰ Not until the mid-20th century approached did the effort to stamp out Chinese restaurants conclude.⁴¹

Amidst rising anti-Japanese hysteria during World War II, President Franklin D. Roosevelt issued Executive Order 9066, which authorized the forcible removal of people of Japanese ancestry from their homes and communities in the interest of “national security.” As a result, approximately 120,000 U.S. residents of Japanese ancestry, half of whom were children, were incarcerated in federal detention. This constituted nearly the entire Japanese populations of California (99%), Oregon (87%), and Washington (88%).⁴² About 2,000 people died in incarceration from a series of causes, including infectious diseases, bad sanitation, or even shooting by guards.⁴³

Though never accused of any offense, and incarcerated without due process, the Supreme Court nevertheless upheld the laws and curfews implementing Executive Order 9066 against U.S. citizens of Japanese descent in a shameful series of opinions. *See, e.g., Korematsu v. United States*, 323 U.S. 214 (1944); *Hirabayashi v. United States*, 320 U.S. 81 (1943); *Yasui v. United States*, 320 U.S. 115 (1943).

Even after incarceration ended, Japanese Americans struggled to recover due to the “very substantial economic losses” they suffered:

Owners and operators of farms and businesses either sold their income-producing assets under distress-sale circumstances on very short notice

³⁸ *Id.* at 707-13.

³⁹ *Id.* at 713-16, 723-26.

⁴⁰ *Id.* at 716-23, 726-30.

⁴¹ *Id.* at 682-83, 733.

⁴² Aimee Chin, *Long-Run Labor Market Effects of Japanese American Internment during World War II on Working-Age Male Internees*, 23 J. OF LABOR ECONOMICS 491, 496 (2005), available at <https://doi.org/10.1086/430285>.

⁴³ Gisela Perez Kusakawa, *The Korematsu Legacy: “Stand up for what is right!”*, AAJC (Jan. 30, 2020), <https://medium.com/advancing-justice-aa jc/the-korematsu-legacy-stand-up-for-what-is-right-4a19c5af491d>.

or attempted, with or without government help, to place their property in the custody of people remaining on the Coast. . . . Homes had to be sold or left without the personal attention that owners would devote to them. Businesses lost their good will, their reputation, their customers. Professionals had their careers disrupted. Not only did many suffer major losses during evacuation, but their economic circumstances deteriorated further while they were in camp. The years of exclusion were frequently punctuated by financial troubles: trying to look after property without being on the scene when difficulties arose; lacking a source of income to meet tax, mortgage, and insurance payments. Goods were lost or stolen. Income and earning capacity were reduced to almost nothing during the long detention in the relocation centers, and after the war life had to be started anew on meager resources.⁴⁴

Small businesses—one of the “major occupations” of those subject to incarceration—were especially affected. Facing incarceration, they were “forced by circumstances to accept low prices or abandon property or . . . to place the property in insecure storage.”⁴⁵

Subsequent research supports the conclusion that incarceration had substantial long-term adverse economic effects. One study concluded that Japanese incarceration “reduced the annual earnings of males by as much as 9%-13% 25 years afterwards.”⁴⁶ Though the federal government eventually—in 1988—paid each survivor of incarceration a modest reparation, the amount provided fell “considerably short of compensating working-age male internees for lifetime earnings losses resulting from the labor market withdrawal induced by the internment [sic].”⁴⁷ Moreover, this did not take into account other financial losses

⁴⁴ Comm’n on Wartime Relocation & Internment of Civilians, *PERSONAL JUSTICE DENIED* 117-18 (1982), available at <https://www.archives.gov/files/research/japanese-americans/justice-denied/chapter-4.pdf>.

⁴⁵ *Id.* at 127-28.

⁴⁶ Aimee Chin, *Long-Run Labor Market Effects of Japanese American Internment during World War II on Working-Age Male Internees*, 23 *J. of Labor Economics* 491, 512-515 (2005), available at <https://doi.org/10.1086/430285>.

⁴⁷ *Id.*

incurred. Though the total value of economic losses is hard to quantify 80 years later, it is almost certainly staggering.

While the United States government incarcerated Japanese immigrants and Japanese Americans, it also excluded most Asians in the United States from the benefits of many New Deal programs. For example, most work-relief jobs under the New Deal required U.S. citizenship; yet at the time, Asian immigrants were unable to naturalize and as a result could not participate.⁴⁸ Likewise, the Home Owners' Loan Corporation ("HOLC")—a New Deal entity created to refinance home mortgages, promote home purchases, and limit foreclosures—subjected Asian Americans to the discriminatory practice of redlining, along with Black and Latinx Americans.⁴⁹ "Redlining" involved "grad[ing] neighborhoods based on their perceived mortgage-lending risk"⁵⁰—if someone lived in a neighborhood designated as "high risk," they could not obtain a mortgage loan, even if they were otherwise qualified.⁵¹ The risk assessments were driven in significant part by the racial composition of neighborhoods.⁵² In California, for example, HOLC appraisers marked down neighborhoods with large numbers of Asian Americans, classifying them as "subversive racial elements."⁵³

Asian Americans and Asian American-owned businesses continued to face overt, government-sponsored discrimination well into the late 20th century. For example, a 1970 study by the United States Commission on Civil Rights described the "negative and sometimes hostile attitudes" of government contracting specialists toward minority-owned businesses—including Asian-owned businesses: that they were "inefficient, sloppy, lacking in business acumen and knowledge of government

⁴⁸ Judy Yung, *UNBOUND FEET: A SOCIAL HISTORY OF CHINESE WOMEN IN SAN FRANCISCO* 185 (1995).

⁴⁹ See generally Richard Rothstein, *THE COLOR OF LAW: A FORGOTTEN HISTORY OF HOW OUR GOVERNMENT SEGREGATED AMERICA* (2017).

⁵⁰ Ryan Best & Elena Mejia, *The Lasting Legacy of Redlining*, *FiveThirtyEight* (Feb. 9, 2022), <https://projects.fivethirtyeight.com/redlining/>.

⁵¹ See Candace Jackson, *What Is Redlining?*, *THE NEW YORK TIMES* (Aug. 17, 2021), <https://www.nytimes.com/2021/08/17/realestate/what-is-redlining.html>.

⁵² *Id.*

⁵³ Ryan Best & Elena Mejia, *The Lasting Legacy of Redlining*, *FIVETHIRTYEIGHT* (Feb. 9, 2022), <https://projects.fivethirtyeight.com/redlining/>.

processes, or [were] ‘just a lot of extra bother.’”⁵⁴ One procurement officer even referred to “minority firms” as “leeches.”⁵⁵

IV. Contemporary Anti-Asian Discrimination in Business and Economic Opportunity

Unfortunately, anti-Asian discrimination is still with us today, including specifically in the arena of business and economic opportunity. For example, Asian Americans are less able to obtain business loans, and, when they are able to obtain a loan, it tends to be on less favorable terms than firms owned by white business-owners.⁵⁶ As a result, Asian American business owners are substantially more likely than white business owners to rely on “personal funds as the primary funding source for their businesses.”⁵⁷

Government Contracting

As a 2022 Department of Justice report observed, “discrimination hinders the ability of minority- and women-owned businesses to compete equitably for government contracts,” such as through “(1) discrimination by procurement agencies and prime contractors, (2) exclusion from business networks, and (3) discrimination by bonding companies and suppliers.”⁵⁸

This conclusion finds support not only in numerous studies and reports,⁵⁹ but in the lived experiences of Asian American small business owners. A Korean immigrant business owner, for example, reported that his business had difficulty obtaining government contracts because “[c]ompared to the majority of white Americans who have had relatives and friends in the government sector and professional fields, we

⁵⁴ U.S. Comm’n on Civil Rights, *Minorities and Women as Government Contractors* (“The Commission Report”), 20 (1975), available at https://books.google.com/books?id=c8V-h3gRrfkC&pg=RA1-PA111&source=gbs_toc_r&cad=2#v=onepage&q&f=false.

⁵⁵ *Id.* at 20-21.

⁵⁶ U.S. Dep’t of Justice, *THE COMPELLING INTEREST TO REMEDY THE EFFECTS OF DISCRIMINATION IN FEDERAL CONTRACTING: A SURVEY OF RECENT EVIDENCE* 30-34 (2022), available at <https://www.justice.gov/crt/page/file/1463921/dl>

⁵⁷ *Id.* at 33-34.

⁵⁸ *Id.* at 21.

⁵⁹ *Id.* at 21-26 (discussing quantitative research).

[Asian Americans] don't have those kinds of relationships.”⁶⁰ He added “language barriers and cultural differences” also make fostering those kinds of relationships more difficult for him.⁶¹ Others have encountered discrimination from prime contractors,⁶² language and cultural discrimination,⁶³ and double standards.⁶⁴

It is hardly a surprise, then, that Asian American-owned small businesses have long been underrepresented among recipients of government contracts. In 1997, an Urban Institute report concluded that Asian American-owned businesses, like other minority population groups, “receive a substantially lower proportion of government contracting dollars than would be expected, given their availability.”⁶⁵ Little has changed since. A 2016 meta-analysis by the MBDA observed that minority business enterprises (MBEs) “typically secure a lower number and dollar amount of contracts in proportion to the number of available MBEs in a relevant market.”⁶⁶ Other research, including reports by the Department of Justice, studies conducted by states and municipalities, and other subsequent findings, supports these conclusions.⁶⁷

Another way that government-sponsored discrimination against Asian Americans manifests in contracting and grants is under the guise of “national security.” For example, the Department of Justice’s now-defunct “China Initiative” spurred federal authorities to profile Chinese American and immigrant scientists and researchers. In February 2020, FBI Director Christopher Wray called for a “whole-of-society” response to Chinese economic espionage and the threat of so-called “non-traditional collectors” (a euphemism for “spies”) to encompass individuals of Chinese descent,

⁶⁰ Asian American Institute & Asian American Justice Center, OVERLOOKED: THE ASIAN AMERICAN CONTRACTOR EXPERIENCE 12 (2012).

⁶¹ *Id.* at 13.

⁶² *Id.* at 17-18.

⁶³ *Id.* at 3.

⁶⁴ *Id.* at 25.

⁶⁵ Maria E. Enchautegui et al., The Urban Institute, DO MINORITY-OWNED BUSINESSES GET A FAIR SHARE OF GOVERNMENT CONTRACTS? x, xi, 14 (1997), available at <https://www.urban.org/sites/default/files/publication/67046/307416-Do-Minority-Owned-Businesses-Get-a-Fair-Share-of-Government-Contracts-.PDF>.

⁶⁶ Minority Business Development Agency, CONTRACTING BARRIERS AND FACTORS AFFECTING MINORITY BUSINESS ENTERPRISES: A REVIEW OF EXISTING DISPARITY STUDIES iii (Dec. 2016).

⁶⁷ U.S. Dep’t of Justice, *supra* n.56 at 16-19.

but more specifically, graduate students and researchers.⁶⁸ In a Senate Intelligence Committee hearing on world threats, Chinese students and academics, in particular, were painted as national security threats regardless of any wrongdoing.⁶⁹ This rhetoric, and the fixation on “non-traditional collectors” has the effect of focusing on people of Chinese descent, rather than on those actually committing state-sponsored acts of espionage.⁷⁰ Indeed, economic espionage or trade secret theft prosecutions have declined⁷¹ and one in five people of Asian or Chinese descent charged are never convicted of any crime,⁷² lending credence to concerns of “pretextual prosecutions” based on weak evidence and stereotypes that Asians are spies.⁷³

According to a recent study of over a dozen former federal investigators, “distrust of people of Chinese heritage [too often] drives decision-making at the FBI and other U.S. security agencies.”⁷⁴ In fact, the now-dissolved Investigations and Threat

⁶⁸ Dir. Christopher Wray, Federal Bureau of Investigation, *Responding Effectively to the Chinese Economic Espionage Threat, Remarks at the Department of Justice China Initiative Conference* (Feb. 6, 2020), <https://www.fbi.gov/news/speeches/responding-effectively-to-the-chinese-economic-espionage-threat> (testifying that “I would just say that the use of nontraditional collectors, especially in the academic setting, whether it’s professors, scientists, students, we see in almost every field office that the FBI has around the country... So one of the things we’re trying to do is view the China threat as not just a whole-of-government threat but a whole-of-society threat on their end.”).

⁶⁹ Elizabeth Redden, *The Chinese Student Threat?*, INSIDE HIGHER ED (Feb. 15, 2019), <https://www.insidehighered.com/news/2018/02/15/fbi-director-testifies-chinese-students-and-intelligence-threats>.

⁷⁰ George Koo, *Fear of Chinese ‘non-traditional collectors’ strikes again*, ASIA TIMES (Feb. 15, 2019), <https://asiatimes.com/2018/02/fear-chinese-non-traditional-collectors-strikes/>.

⁷¹ Eileen Guo, *In a further blow to the China Initiative, prosecutors move to dismiss a high-profile case*, MIT TECH. REV. (Jan. 15, 2022), <https://www.technologyreview.com/2022/01/15/1043319/china-initiative-gang-chen-mit/>.

⁷² *Id.*

⁷³ See Andrew Chongseh Kim, *Prosecuting Chinese “Spies”: An Empirical Analysis of the Economic Espionage Act*, 40 CARDOZO L. REV. 749, 755 (2018); see also *Testimony of John C. Yang for Hearing on “Exposing the Dangers of the Influence of Foreign Adversaries on College Campuses,”* U.S. House of Representatives Committee on Education & the Workforce (July 13, 2023), [available at https://edworkforce.house.gov/uploadedfiles/john_yang_testimony_for_house_subcommittee_on_higher_education_and_workforce_development.pdf](https://edworkforce.house.gov/uploadedfiles/john_yang_testimony_for_house_subcommittee_on_higher_education_and_workforce_development.pdf).

⁷⁴ Kim, *supra* n.73 at 755.

Management Service of the Department of Commerce even engaged in investigations without proper authorization and with little oversight, disproportionately targeting Chinese or Southeast Asian individuals.⁷⁵ And Chinese scientists who work as federal employees and contractors appear to receive disproportionate scrutiny, and innocent familial or financial ties to China result in more denials of security clearances than is the case with respect to ties to any other country.⁷⁶

These investigations have deprived scientists of Chinese descent of funding opportunities by casting a pall of suspicion over them. For example, Dr. Xiaoxing Xi, a Chinese American physics professor wrongfully accused of being a spy due to the FBI's failure to understand the technology on which he was working,⁷⁷ lost federal grants because he was under investigation. Prior to his improper arrest and prosecution, Dr. Xi had received nine federal grants—afterwards, in 2019, he had only two.⁷⁸ This is the reality for many Chinese scientists who are forced to tread carefully, wary of the government's broad scrutiny and easy conclusions of culpability.⁷⁹

These policies demonstrate that anti-Asian racism still permeates government decision-making and result in ongoing discrimination in contracting decisions and awarding federal grants.

Discrimination in Government Responses to COVID-19

The federal government's response to the COVID-19 pandemic exacerbated matters for Asian American-owned small businesses. Asian American small business owners not only had to face the exigencies of the pandemic itself, but did so in the face of preexisting inequities, anti-Asian prejudice and disinformation, and barriers to

⁷⁵ Daniella Diaz, *Report Finds Little-Known Security Unit in Commerce Abused and Investigated Employees of Chinese or Southeast Asian Ancestry for Years*, CNN (July 17, 2021), <https://www.cnn.com/2021/07/17/politics/commerce-department-senate-report/index.html>.

⁷⁶ *Id.*

⁷⁷ Matt Apuzzo, *U.S. Drops Charges That Professor Shared Technology with China*, N.Y. Times (Sept. 11, 2015), <https://www.nytimes.com/2015/09/12/us/politics/us-drops-charges-that-professor-shared-technology-with-china.html>.

⁷⁸ Bloomberg Markets & Finance, *How the U.S. is Purging Chinese Americans from Cancer Research* (Jul. 12, 2019), <https://www.youtube.com/watch?v=SBTroGMs-2w>.

⁷⁹ *Id.*

accessing government assistance. These difficulties led to the failure of many Asian American-owned businesses: Within the first three months of the pandemic, the number of Asian American business owners dropped by 26%—higher than the national average of 22%.⁸⁰

At the start of the pandemic, Asian American-owned small businesses were especially precarious, and therefore in particular need of government assistance.⁸¹ As a Brookings Institution report in April 2020 observed, businesses owned by people of color—including by Asian Americans—were far more likely to face “immediate risk” from the pandemic, as opposed to “near term” or “long term” risk.⁸²

Compounding these difficulties was the rise in anti-Asian hate, driven in substantial part by federal officials, including the President of the United States. These officials promoted the conspiracy theory that China intentionally released the virus and that Chinese Americans—and by extension Asian Americans more generally—were responsible for the pandemic. Over the course of months, then-President Donald Trump repeatedly referred to COVID-19—the World Health Organization’s official designation—as the “Chinese virus,” “China virus,” or “Kung Flu,” both on social media and at White House press conferences.⁸³ Other federal officials soon joined in. Senator John Cornyn, for example, assigned “blame” to China because it is home to a “culture where people eat bats and snakes and dogs and things like that.”⁸⁴

⁸⁰ U.S. Dep’t of Justice, *supra* n.56 at 34-35 (citing Robert Fairlie, *The impact of COVID-19 on small business owners: Evidence from the first three months after widespread social-distancing restrictions*, 29 J. ECON. MANAG. STRATEGY 727 (2020), available at <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC7461311/>).

⁸¹ Sifan Liu & Joseph Parilla, *Businesses owned by women and minorities have grown. Will COVID-19 undo that?*, BROOKINGS INSTITUTION (Apr. 2020), <https://www.brookings.edu/articles/businesses-owned-by-women-and-minorities-have-grown-will-covid-19-undo-that/>; see also U.S. Dep’t of Justice, *supra* n.56 at 26-27 (noting that “minority- and women-owned businesses are . . . less profitable” than “businesses owned by White men,” and that “Asian-American owned firm[s]” specifically were generally less profitable than “a White-owned firm”).

⁸² Liu & Parilla, *supra* n.81.

⁸³ Angela R. Gover, et al., *Anti-Asian Hate Crime During the COVID-19 Pandemic: Exploring the Reproduction of Inequality*, 45 AM. J. OF CRIMINAL JUSTICE 647 (2020), available at <https://link.springer.com/article/10.1007/s12103-020-09545-1>.

⁸⁴ *Id.*

Statements like these created—according to one paper—“an atmosphere where it [was] socially acceptable to express and act on anti-Asian sentiment.”⁸⁵

As federal officials stoked anti-Asian attitudes, Asian Americans continued to face discrimination in virtually every area of life. A Pew Research Center report published in July 2020 revealed that a majority of Asian adults (58%) felt it was more common for people to express racist or racially insensitive views about people who are Asian than it had been before the COVID-19 outbreak.⁸⁶ And a June 2021 survey found that around 40% of Asian American and Pacific Islander⁸⁷ small business owners had been “blamed for the COVID-19 pandemic.”⁸⁸

Anti-Asian attitudes contributed to economic losses for Asian American-owned small businesses. According to a 2021 survey, 60% of Asian American small business owners expressed worry about “anti-Asian bias or hate crime happening to them, their business establishment or their staff.”⁸⁹ Another study concluded that in 2020, “Asian restaurants experienced an 18.4% decrease in traffic (estimated US\$7.42 billion lost revenue . . .) relative to comparable non-Asian restaurants[.]”⁹⁰

Despite the urgent need for government assistance, access to it remained out of reach for many Asian American-owned small businesses.⁹¹ One barrier, identified in a study of the greater New York City region, was the lack of available information

⁸⁵ Nathan Kar Ming Chan, et al., *COVID-19 and Asian Americans: How Elite Messaging and Social Exclusion Shape Partisan Attitudes*, 20 PERSPECTIVES ON POLITICS 618 (2022).

⁸⁶ Pew Research Center, *Many Black and Asian Americans Say They Have Experienced Discrimination Amid the COVID19 Outbreak* (July 1, 2020), <https://www.pewresearch.org/social-trends/2020/07/01/many-black-and-asian-americans-say-they-have-experienced-discrimination-amid-the-covid-19-outbreak/>.

⁸⁷ We refer to Asian Americans and Pacific Islanders collectively here in the context of data that do not disaggregate these communities, though recognize the myriad diversities among them.

⁸⁸ Asian/Pacific Islander American Chamber of Commerce and Entrepreneurship, *BACK TO BUSINESS: ARE AAPI SMALL BUSINESSES REBOUNDING FROM COVID-19?* (Jun. 2021), available at <https://www.nationalace.org/2021survey>.

⁸⁹ Ahyoung Kim, et al., Asian American Federation, *SMALL BUSINESS, BIG LOSSES* 17 (2021), available at https://www.aafederation.org/wp-content/uploads/2021/05/Small_Biz_Survey.pdf.

⁹⁰ Justin T. Huang et al., *The cost of anti-Asian racism during the COVID-19 pandemic*, 7 NATURE HUMAN BEHAVIOUR 682 (2023), available at <https://www.nature.com/articles/s41562-022-01493-6>.

⁹¹ Kim et al., *supra* n.89 at 10.

about government programs in the business owner’s primary language.⁹² Even beyond the New York City region, in-language information is essential for Asian Americans, many of whom have limited English proficiency (“LEP”): as of 2019, over 30% of Asian American adults were LEP, compared to only 1.4% of white adults.⁹³ The same study of the greater New York City region found LEP is even more common among Asian American small business owners, such as those self-employed in “taxi and ridesharing, food services, laundry services, nail and beauty salons,” among whom LEP rates range between 66% (taxi and ridesharing) and 79% (laundry services).⁹⁴ The result was that nearly two-thirds (64%) of Asian American small business owners reported that “they did not have enough information about COVID-19 in a language they could understand.”⁹⁵

Government outreach also fell short because its reliance on “traditional communication chains such as Business Improvement Districts or Chambers of Commerce” failed to reach many Asian American business owners. According to one survey, 93% of Asian American small business owners “were not members of either a BID or Chamber of Commerce.”⁹⁶ For example, in Philadelphia, one Cambodian restaurant owner said that “[i]nformation that is needed for survival, or information that is needed for economic stability, comes to our community too late.”⁹⁷

As a result, Asian American small businesses were significantly underrepresented among those receiving federal assistance, including via the Paycheck Protection Program (“PPP”). One analysis of PPP data found that “businesses located in majority-Asian American neighborhoods were less likely to receive PPP loans”: in

⁹² *Id.* at 11.

⁹³ Jennifer M. Haley, et al., Urban Institute, MANY ASIAN AMERICANS AND NATIVE HAWAIIAN/PACIFIC ISLANDER ADULTS MAY FACE HEALTH CARE ACCESS CHALLENGES RELATED TO LIMITED ENGLISH PROFICIENCY 1 (Dec. 2022), *available at* <https://www.urban.org/sites/default/files/2022-12/Many%20AANHPI%20Adults%20May%20Face%20Health%20Care%20Access%20Challenges%20Related%20to%20Limited%20English%20Proficiency.pdf>.

⁹⁴ Kim et al., *supra* n.89.

⁹⁵ *Id.* at 11.

⁹⁶ *Id.*

⁹⁷ Jack Tomczuk, *How PPP loans missed the mark with Philly’s Southeast Asian business owners*, METRO PHILADELPHIA (Oct. 27, 2022), <https://metrophiladelphia.com/ppp-loans-philadelphia-southeast-asian-business-owners/>.

ZIP codes with “40 percent or more Asian American residents,” around 57% of businesses received PPP loans; in ZIP codes with 40 percent or fewer Asian American residents, 68% of businesses received PPP loans.⁹⁸ Another analysis observed that in New York City, the ZIP codes where Asians constituted the largest share of the population received fewer PPP loans in 2020 than did other parts of the city; those same ZIP codes also saw relatively little assistance from the second round of PPP loans in 2021.⁹⁹ Moreover, “businesses in heavily-Asian zip codes—such as taxi services, restaurants, and beauty salons—tended to get less money” from PPP as compared to other areas.¹⁰⁰

V. Conclusion

American democracy and the American economy work best when all can participate, both legally and practically. Unfortunately, Asian Americans have faced two centuries of exclusion from these pillars of American life. The severity of that discrimination has ameliorated over time, but nevertheless continues to this day, as do the effects of the harm already done.

To properly remedy past harms and to ensure an end to present discrimination, there must be a full accounting of, and conscious effort to address, both. The Small Business Administration’s 8(a) program and the services provided through the Minority Business Development Agency are important steps to that end, providing essential assistance to Asian American and other minority-owned businesses.

⁹⁸ Kim et al., *supra* n.89.

⁹⁹ Amy Yee et al., *New York’s Once-Thriving Asian Businesses Struggle to Recover from 4,000% Unemployment Spike*, Bloomberg (Oct. 28, 2021), <https://www.bloomberg.com/graphics/2021-nyc-asian-american-recovery/>.

¹⁰⁰ *Id.*