

ASIAN AMERICANS AND PACIFIC ISLANDERS AND THE
PRISON INDUSTRIAL COMPLEX

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Abstract

Recent uprisings against racial injustice, sparked by the killings of George Floyd and others, have triggered urgent calls to overhaul the U.S. criminal “justice” system. Yet Asian Americans and Pacific Islanders, the fastest-growing

group in the country, have largely been left out of these conversations. Identifying and addressing this issue, I intercalate AAPIs into powerful, contemporary critiques of the prison industrial complex, including emergent abolitionist legal scholarship. I argue that the model minority myth, an anti-Black racial project, leads to the exclusion of AAPIs in both mainstream and critical studies of crime and carcerality. I begin the intervention by critiquing the lacuna that exists within Asian American Jurisprudence, specifically the erasure of criminalized AAPIs' voices and experiences. I then demonstrate that AAPIs are caught in the carceral web of mass incarceration by highlighting the lived experiences of AAPI youth with the school-to-prison pipeline, in addition to excavating the minimal publicly available data on AAPI prison populations. Adopting multidisciplinary and multimodal methods, I identify and analyze distinct forms of racial profiling and racialized bullying that drive AAPI students out of schools and into prisons. I pay specific attention to the criminalization of various AAPI youth subgroups as whiz kids, gang members, or terrorists. In uncovering previously unexamined dimensions of the criminal system, I stress how the exclusion of AAPIs in critical discourse obscures the actual scale of the carceral state, erases complex intra- and interracial dynamics of power, marginalizes criminalized AAPIs, and concurrently reinforces anti-Blackness and other toxic ideologies. The Article thus reaffirms critical race, intersectional, and abolitionist analyses of race and criminalization. It also directly links Asian American Jurisprudence to on-going abolitionist critiques of the prison industrial complex. I conclude with a proffer of abolitionist-informed solutions to the school-to-prison pipeline such as the implementation of an Ethnic Studies curriculum. Lastly, I issue a call, particularly to AAPI communities, for fiercer and more meaningful coalition-building.

No matter how good we are at studying, studying alone is not going to abolish the prison industrial complex. I think our orientation is more that study is essential to organizing for the abolition of the prison industrial complex. And we need study to organize well.

- Rachel Herzing¹

I. INTRODUCTION: SILENCED STORIES²

Eddy Zheng and his family moved to Oakland's Chinatown in 1982 from southern China.³ For Eddy,⁴ the following years in the U.S.

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¹ *Critical Conversation #1: Abolition as Study and Deconstructing Racial Capitalism* (Transcript), STUDY AND STRUGGLE (Sept. 1, 2019),

<https://static1.squarespace.com/static/5a354481a9db0961249f52ec/t/5f62b6d384a42938956ee474/1600304852253/Critical+Conversation+1+-+FULL+English+Transcript.pdf>.

² The stories documented in this Article are drawn, paraphrased, and/or summarized from sources such as open letters, interviews, or other media. I employ language that sticks as close to the original source as possible in an effort to respect and amplify the voices of the individuals.

³ Bernice Chan, *Jailed for life in California, denied parole 12 times: how Chinese-American found redemption after prison*, SOUTH CHINA MORNING POST (Dec. 3, 2018), <https://www.scmp.com/culture/film-tv/article/2175828/jailed-life-california-denied-parole-12-times-how-chinese-american>; *Breathin' — The Eddy Zheng Story*, ASIA SOCIETY, <https://asiasociety.org/hong-kong/events/breathin-eddy-zheng-story#:~:text=Arrested%20at%2016%20and%20tried,to%20freedom%2C%20rehabilitation%20and%20redemption;Eddy%20Zheng,%20An%20American%20Story%20Of%20Perseverance%20And%20Triumph>, EAST BAY COMMUNITY FOUNDATION (Nov. 16, 2018), <https://www.ebcf.org/eddy-zheng-an-american-story-of-perseverance-and-triumph/> ("Seeking greater opportunities, on November 7th, 1982 – a wiry 12-year-old Eddy and his family immigrated to the United States from China, settling in Oakland's Chinatown.").

⁴ Throughout this Article, I refer to incarcerated, stereotyped, or otherwise marginalized individuals by their first names. This is in attempt to humanize the individuals, especially during instances when they are usually interpersonally and systemically dehumanized (such as simply being referred to as "inmate" or a stereotype). Eddy's story here is primarily drawn

were difficult. He often felt alone as his two older siblings balanced work and school, and he barely saw his parents who were working hard to provide for the entire family. His father worked at Burger King while his mother moved in with another family for a babysitting job. At school, Eddy continually struggled due to his limited English. He eventually started to skip class, choosing to leave school rather than listen to lessons he barely understood. He began to spend time at the local playground. There, he went along with dares from other kids to commit petty crimes like shoplifting since he was “amazed by all the materialistic stuff that other kids had.”⁵

When Eddy was sixteen, he and his friends committed an armed robbery of a family who owned multiple shops in Chinatown. They robbed them at gunpoint and then broke into their stores and stole various items amounting to \$34,000. The group was ultimately caught and arrested. Eddy was charged with sixteen felony counts including kidnap-robbery. Unable to afford an attorney and having a limited understanding of the criminal system,⁶ he and his family thought it best to plead guilty to the charges.

“We had no English and no money to pay a lawyer,” Mrs. Zheng says in Cantonese. “Everyone told us that Eddy should admit to it, and then there would be a lighter sentence. But actually, it was a heavier sentence. It was the

from Bernice Yeung, *Throwing Away the Key*, S.F. WEEKLY (Jun. 5, 2002), <http://archives.sfweekly.com/sanfrancisco/throwing-away-the-key/Content?oid=2145136> [<https://perma.cc/3WWA-UF9J>].

⁵ *Id.*

⁶ I use the term “criminal system” and “carceral system” in interchangeable ways and in lieu of “criminal justice system.” As abolitionists, critical scholars, and other advocates repeatedly underline, referring to our current system as a system of “justice” is inaccurate and oppressive. See, e.g., Joe Watson, *Five Tips for Talking About Criminal Punishment to Help End Mass Incarceration*, AM. FRIENDS SERV. COMM. (May 31, 2018), <https://www.afsc.org/blogs/media-uncovered/five-tips-talking-about-criminal-punishment-to-help-end-mass-incarceration> [<https://perma.cc/3GKW-HGPZ>] (“[W]e talk about the ‘criminal punishment system’ or the ‘criminal legal system’ because the system as it exists is focused on punishment—not justice. Real justice fosters accountability and healing by those who have committed harm, and forgiveness and compassion from survivors. We should be mindful of the language we use around this issue in order to help build alternatives to the punishment-focused system.”). See also Michael J. Coyle & Judah Schept, *Penal Abolition Praxis*, 26 CRITICAL CRIMINOLOGY 319, 319-321 (2018) (critically discussing how “criminal justice” is a politically significant logic and paradigm, especially in studies of crime).

opposite of what we were told.”⁷

Eddy, at sixteen, was tried as an adult. He pled guilty to sixteen felony counts and was sentenced to a term of between seven years to life in prison.

While imprisoned, Eddy struggled with guilt and shame and began to cope by enrolling in numerous self-help programs. He learned English, obtained his college degree, and became an advocate for prison reform and rehabilitation. In 2002 at San Quentin State Prison, Eddy, alongside two other Asian American prisoners, Rico Remeidio and Viêt Mike Ngo, wrote a proposal that advocated for more Ethnic Studies in the curriculum, rejected plans of corporate sponsorship for the rehabilitation programs, and “objected to the local prison policy that prohibited correspondence between prisoners and volunteers.”⁸ After the proposal was handed in, the warden of San Quentin placed the three signees in solitary confinement pending an investigation. Eddy was put in “the hole” for eleven months.⁹ He would continue to become an advocate while in prison, even co-editing the first anthology of work by Asian American and Pacific Islander prisoners while behind bars.¹⁰ In 2005, Eddy was released on parole after eighteen years in prison.

This, however, did not signify freedom for him. Upon release from prison, he became embroiled in a complex legal battle against deportation that would put him in the custody of the Department of Homeland Security for another two years.¹¹ When he was released from immigration detention, his order of deportation remained until Governor Jerry Brown pardoned him in April 2015.¹² Today, Eddy continues to advocate for the incarcerated and deported. He spearheads the New Breath Foundation and collaborates with numerous organizations including the Community Youth

⁷ Yeung, *supra* note 4.

⁸ Viêt Mike Ngo, *Lessons Learned in Prison College*, in *OTHER: AN ASIAN & PACIFIC ISLANDER PRISONERS’ ANTHOLOGY* 73, 74 (Eddy Zheng & Asian Prisoner Support Committee eds., 2007).

⁹ *Id.* See also Kara Platoni, *The Last Stand of Eddy Zheng*, *EAST BAY EXPRESS* (Aug. 10, 2005), <https://eastbayexpress.com/the-last-stand-of-eddy-zheng-1/>.

¹⁰ See generally Eddy Zheng & Asian Prisoner Support Committee, *OTHER: AN ASIAN & PACIFIC ISLANDER PRISONERS’ ANTHOLOGY* (2007).

¹¹ See, e.g., Agnes Constante, *After Facing Life in Prison and Deportation, Reformed Inmate Receives U.S. Citizenship*, *NBC NEWS: ASIAN AMERICA* (Jan. 5, 2017, 10:40 AM), <https://www.nbcnews.com/news/asian-america/after-facing-life-prison-deportation-reformed-inmate-receives-u-s-n703491> (discussing Eddy’s journey after incarceration at San Quentin, up to being pardoned by Gov. Brown).

¹² *Id.*

Center of San Francisco, the San Francisco Reentry Council, and the Asian Prisoners Support Committee.¹³

Eddy's story is just one of the almost seven million¹⁴ lived realities of people who have been entangled with the U.S. criminal system in 2020 alone.¹⁵ His story is a powerful testimony of suffering and struggle, of resilience and empowerment. It is as saddening as it is inspiring, as powerful as it is revealing. Indeed, his story provides critical insights into the different dimensions of the criminal system. It sheds light on the factors that may push one to "commit crime" and the stinging shame and stigma associated with incarceration. Yet as moving and illuminating as it is, his story, along with those of other criminalized¹⁶ Asian Americans and Pacific Islanders to follow, is often unheard and made silent. These stories are never in the news or on the television.¹⁷ In a society where the mainstream media

¹³ *Our Story*, NEW BREATH FOUND., <https://www.new-breath.org/our-story> [<https://perma.cc/Q6RT-A8SB>] (last visited May 13, 2021).

¹⁴ Wendy Sawyer & Peter Wagner, *Mass Incarceration: The Whole Pie*, PRISON POL'Y INITIATIVE (Mar. 24, 2020), <https://www.prisonpolicy.org/reports/pie2020.html> [<https://perma.cc/TB4L-GBQR>]. This number does not include other people related to these individuals—e.g., victims, family members, loved ones—whose lives are also deeply impacted by the criminal system.

¹⁵ Throughout this Article, I integrate the stories of other criminalized Asian Americans and Pacific Islanders. The stories I selected are in no means meant to encompass the stories of all those who have been incarcerated. If nothing else, the stories serve as few examples of the millions of lives silenced by society. Additionally, the stories I included have been incorporated because they have been the most accessible in light of the dearth of available Asian American and Pacific Islander stories. Unfortunately, the grand majority—if not almost all—of the few available stories are mostly of men, reflecting patriarchal sociopolitical orderings that ignore or actively silence the voices of women, the disabled, and/or LGBT people.

¹⁶ I refer to prisoners, offenders, and convicted people as "criminalized" to reject traditional, typically racist assumptions implied by the noun "criminal." As Critical Resistance explains, the term "criminal" does not "just mean someone convicted of a crime, or even someone who harms others. It implies that causing harm is essentially a part of [the] person, maybe even the most meaningful part of their personality." The term also has "race and gender meanings. For example, *criminal* and Black are often code words for each other. . . ." CRITICAL RESISTANCE, THE CR ABOLITION ORGANIZING TOOLKIT 39-40, <http://criticalresistance.org/wp-content/uploads/2012/06/CR-Abolitionist-Toolkit-online.pdf> [<https://perma.cc/MJP5-SGER>]. Additionally, I use the participial form "criminalized" to denote, as critical scholars observe, that crime and punishment are active processes of social construction. This usage also emphasizes the fact that an individual is only rendered a "criminal" when structures, institutions, and societies do so. See, e.g., EILEEN B. LEONARD, CRIME, INEQUALITY, AND POWER 16-34 (2015).

¹⁷ Helen Zia, *Preface*, in OTHER, *supra* note 8, at ix-xi, ix.

peddles headlines like “Asians Make It Big in America,” “The Asian Advantage,” “The Model Minority Is Losing Its Patience,” “Rise of the Tiger Nation,” “How Asian-Americans are Transforming the Face of US wealth,” and “Asian-Americans Lead All Others in Household Income,”¹⁸ the voices and stories of Eddy and others are subsumed under the model minority myth—the stereotypical notion that Asian Americans and Pacific Islanders (APIs)¹⁹ are faring extremely well in society due to their innate

¹⁸ Cass Sunstein, Opinion, *Asians Make It Big in America*, BLOOMBERG (Mar. 2, 2015, 10:50 AM), <https://www.bloomberg.com/opinion/articles/2015-03-02/why-asian-americans-will-soon-be-the-wealthiest-americans> [https://perma.cc/X978-WXEP]; Nicholas Kristof, Opinion, *The Asian Advantage*, N.Y. TIMES (Oct. 10, 2015), <https://www.nytimes.com/2015/10/11/opinion/sunday/the-asian-advantage.html>; *The Model Minority Is Losing Patience*, ECONOMIST (Oct. 3, 2015), <https://www.economist.com/briefing/2015/10/03/the-model-minority-is-losing-patience>; Lee Siegel, *Rise of the Tiger Nation*, WALL ST. J. (Oct. 27, 2012, 9:32 AM), <https://www.wsj.com/articles/SB10001424052970204076204578076613986930932>; Hailey Lee, *How Asian-Americans Are Transforming the Face of US Wealth*, CNBC (Mar. 15, 2015, 3:07 PM), <https://www.cnbc.com/2015/03/15/americans-are-transforming-the-face-of-us-wealth.html> [https://perma.cc/NUN7-2MK5]; Bruce Drake, *Asian-Americans Lead All Others in Household Income*, PEW RSCH. CTR. (Apr. 16, 2013), <https://www.pewresearch.org/fact-tank/2013/04/16/asian-americans-lead-all-others-in-household-income> [https://perma.cc/N9PX-E8HN].

¹⁹ Throughout the entire Article, I use the term “Asian Americans and Pacific Islander,” abbreviated “AAPI,” to refer to the demographics in study. There are multiple other terms that refer to the same groups such as “Asian Pacific American” or “APA;” “Asian Pacific Islander American” or “APIA;” and “Asian Pacific Islander” or “API.” See, e.g., J. Kehaulani Kauanui, *Where are Native Hawaiians and Other Pacific Islanders in Higher Education?*, DIVERSE: ISSUES IN HIGHER EDUCATION: THE ACADEMY SPEAKS (Sept. 8, 2008), <https://diverseeducation.wordpress.com/2008/09/08/where-are-native-hawaiians-and-other-pacific-islanders-in-higher-education/> [https://perma.cc/5NCW-P2XS].

All these terms engage and grapple with multiple complex issues like citizenship and nationality. For instance, significant constitutional, social, and political questions remain as to American Samoans’ status as “U.S. Nationals.” See, e.g., Christina Duffy Ponsa, Opinion, *Are American Samoans American?*, N.Y. TIMES (Jun. 8, 2016), <https://www.nytimes.com/2016/06/08/opinion/are-american-samoans-american.html>. Additionally, all of these labels, including “AAPI,” often begets contention because their all-encompassing and pan-ethnic natures normally lead to the erasure of certain communities—and by extension, significant disparities and issues like poverty impacting Southeast Asians or Pacific Islanders. With regard to Pacific Islanders especially, Professor Kehaulani Kauanui, *supra*, stresses how these labels

not only offer no recognition that Pacific Islanders already constitute a pan-ethnic group that is distinct from Asian Americans, they also efface Pacific political claims based on indigeneity. For example, indigenous Pacific Islanders who have ties to islands that were forcibly incorporated into the

thrift, diligence, intelligence, and law-abiding nature.²⁰

United States (Hawai`I, Guam, American Samoa) have outstanding sovereignty and land claims, based on international principles of self-determination, which get erased by the categorization with Asians. Hence the frameworks for understanding the ills affecting Pacific peoples and their political claims are shaped by imperialism and settler colonialism, not simply civil rights. We need to uncouple “Asian” and “Pacific” in order to examine these concerns, especially in higher education, where the socio-economic profiles of Native Hawaiians and other Pacific Islanders are severely distorted due to the continued problematic lumping with Asian Americans . . . Pacific Islanders as a whole are too easily disappeared in terms of social, cultural and political profiles, not only because of the continued aggregation with Asian Americans, but also because we are too often seen as inconsequential by virtue of our small numbers. . . .”

While these points of contention are enormously profound, I am unable to unpack these issues in this Article. Accordingly, I adopt the term AAPI—Asian Americans and Pacific Islanders—to delineate the communities I examine until a more appropriate alternative is established elsewhere. “Of necessity,” I use and emulate the terminology used by the majority of the sources I consulted for this project. See GREGG BARAK, PAUL LEIGHTON, & JEANNE FLAVIN, CLASS, RACE, GENDER, AND CRIME: THE SOCIAL REALITIES OF JUSTICE IN AMERICA 108-109. (4th ed. 2015). For instance, various governmental agencies, local, state, and national, and numerous advocacy and grassroots groups use the term Asian Americans and Pacific Islanders, or “AAPI.” See, e.g., U.S. DEP’T OF EDUC., U.S. DEP’T OF HEALTH AND HUM. SERVS., U.S. DEP’T OF JUST., & WHITE HOUSE INITIATIVE ON ASIAN AMERICANS AND PACIFIC ISLANDERS, AAPI BULLYING PREVENTION TASK FORCE REPORT: 2014-2016 [hereinafter AAPI BULLYING PREVENTION TASK FORCE], <https://www.stopbullying.gov/sites/default/files/2017-10/AAPI-Bullying-Prevention-Task-Force-Report-2014-2016.pdf> [<https://perma.cc/EDX7-U4YG>].

In light of limited literature and continuing inattention to Pacific Islander and Southeast Asian issues even within critical circles, I have conducted a careful effort to include and incorporate their specific voices and experiences in this Article. Similar motivations inform my inclusion of certain Arab, Muslim, Middle Eastern, South Asian (AMEMSA) demographics in this study, see *infra* Section II.C. See also SARITA AHUJA & ROBERT CHLALA, WIDENING THE LENS ON BOYS AND MEN OF COLOR: CALIFORNIA AAPI & AMEMSA PERSPECTIVES 9 (2013) [hereinafter AHUJA & CHLALA, WIDENING THE LENS], https://aapip.org/sites/default/files/publication/files/aapip_bymoc-final.screen.pdf [<https://perma.cc/7ALZ-VALR>]. I use the term AAPI with hope that it can also inspire collective action and foster solidarities for effecting meaningful change.

²⁰ See generally FRANK H. WU, YELLOW: RACE IN AMERICA BEYOND BLACK AND WHITE (2002); see also Pat K. Chew, *Asian Americans: The “Reticent Minority” and Their Paradoxes*, 36 WM. & MARY L. REV. 1, 24-32 (1994) (“‘Model minority’ conveys the belief that Asian Americans, through their hard work, intelligence, and emphasis on education and achievement have been successful in American society. . . . The model minority label also suggests that Asian Americans, through their achievements, have been accepted as equals by others in American society. As models, the inference is that they

Mainstream media is not alone in erasing the stories of criminalized Asian Americans and Pacific Islanders. Academia also silences and ignores them. A cursory search containing any combination of the keywords “Asian American,” “Pacific Islander” with “crime,” “criminology,” and/or “incarceration” in major social science databases yields few, if any, relevant results.²¹ Legal databases do not fare much better.²² As Federal Public Defender Harvey Gee notes, AAPIs are scantily discussed in criminal law and procedure scholarship, and to the extent that they are, references typically amount to cursory mentions or abstract analyses.²³ In other legal commentaries, discussions of AAPI criminalization or incarceration are limited to issues of immigration, citizenship, gangs, culture, or victimhood.²⁴

Even within critical disciplines and social justice-oriented advocacy, there is little about Asian American and Pacific Islander incarceration. Multiracial and feminist criminologies have denoted that crime and the carceral system are social constructs that reflect and reinforce systems of oppression. They highlight how crime and “crime control” are “inseparable from the changing relations of inequality, hierarchy, and power” in society.²⁵ These fields contribute significantly to analyses and understandings of crime, with multiracial criminology specifically

have risen above historic subordination and societal perceptions of inferiority.”). Throughout this piece, I primarily refer to the model minority myth as a stereotype and public imagination of AAPIs. A more apt term to describe the model minority myth is perhaps “public identity” as defined by Professor Ange-Marie Hancock. See Ange-Marie Hancock, *Contemporary Welfare Reform and the Public Identity of the “Welfare Queen”*, 10 RACE, GENDER & CLASS 31, 33 (2003) (“Public identities represent a constellation of stereotypes and moral judgments of various group identities ascribed to and at times adopted by individuals. They are generally based upon non-group members’ perceptions specifically for the advancement of facially neutral public policy goals. Public identities are contained within issue frames—a product of political culture communicated through the media.”).

²¹ Databases searched included JSTOR, ProQuest (Sociological Abstracts), EbscoHost, and Scopus. Notably, most of the results yielded were regarding AAPI victimization—a pattern that is outside the scope of this work—and AAPI hate crimes and gangs, which is peripherally related but not the focus of this work.

²² See Harvey Gee, *Asian Americans and Criminal Law and Criminal Procedure: A Missing Chapter from the Race Jurisprudence Anthology*, 2 GEO. J. L. & MOD. CRITICAL RACE PERSP. 185, 186 n.5 (2010).

²³ *Id.* at 186.

²⁴ *Id.*

²⁵ See BARAK, ET AL., *supra* note 19, at 1-2.

illustrating how the U.S. criminal system is a white supremacist project²⁶ of “mass incarceration” that disproportionately places people of color behind bars and “redesigns” systems of racial caste.²⁷ But despite emphases on the criminalization of people of color, critical scholars and advocates barely incorporate Asian Americans and Pacific Islanders in the study of mass incarceration.²⁸ It is as if, in the words of Professor Frank Wu:

Even people who are sympathetic to civil rights in general, including other people of color, sometimes resist mentioning civil rights and [A APIs] together in the same sentence. It is as if [A API] civil rights concerns can be ruled out categorically without the need for serious consideration of the facts, because everyone knows that [A APIs] are prospering.²⁹

Professor Wu’s perceived reticence is especially notable today, where demands for justice and calls to abolish policing and prisons have reached new heights.³⁰

²⁶ “[A] racial project is simultaneously an interpretation, representation or explanation of racial dynamics and an effort to reorganize and redistribute resources along particular racial lines.’ . . . [R]acial projects are considered racist when they ‘create or reproduce structures of domination based on essentialist categories of race.’ An essentialist approach to race is one based on stereotypes and generalizations. For example, . . . Asians were restricted from immigrating to the United States because it was Congress’s and the Supreme Court’s view that Asians could not assimilate. Modern essentialist approaches to race are found in the stereotype of a violent, young African American male and the perception that Asian Americans will always be foreigners.” Sheila A. Bedi, *The Constructed Identities of Asian and African Americans: A Story of Two Races and the Criminal Justice System*, 19 HARV. BLACK LETTER L.J. 181, 181–82 (2003) (discussing the definition of a racial project and citing to MICHAEL OMI & HOWARD WINANT, *RACIAL FORMATION IN THE UNITED STATES FROM THE 1960S TO THE 1990S* 56, 71 (1994).

²⁷ See MICHELLE ALEXANDER, *THE NEW JIM CROW: MASS INCARCERATION IN THE AGE OF COLORBLINDNESS* 2 (2012); BARAK, ET AL., *supra* note 19, at 107–08.

²⁸ This is not to imply malintent on the parts of critical scholars and advocates. Indeed, scholars and advocates have perhaps rightfully focused on urgent dimensions of mass incarceration. My point is that while significant contributions result from critical advocates’ work, the criminalization of A API remains under-studied and under-explored.

²⁹ F. WU, *supra* note 20, at 40.

³⁰ See, e.g., *Developments in the Law: Prison Abolition: Introduction* 132 HARV. L. REV. 1568, 1571 (2019) (“[A]s people like Professors Amna Akbar, Dean Spade, and Allegra McLeod have begun to urge the need for abolitionist teachings in law school pedagogy and legal scholarship, abolition has experienced an unmistakable surge in influence.”) (citations omitted).

The study of contemporary AAPI experiences with mass incarceration is also conspicuously absent within Asian American Studies and especially Asian American Jurisprudence—both arguably social, political, and artistic movements.³¹ The fields call for an end to AAPI erasure in scholarship. They critique and disrupt the traditional Black/white dyad or the “white-over-Black” paradigm.³² They constantly identify and challenge racist narratives about AAPIs, including the model minority myth’s supposition that AAPI communities are prospering past racial inequality.³³ They historicize and theorize AAPI experiences of subordination and resistance, analogizing to and distinguishing from the experiences of other racial groups.³⁴ They generate vigorous debate within and beyond AAPI communities.³⁵ They call for the formation of meaningful coalitions within and across various groups.³⁶ They imagine and inspire a socially just world, free of white supremacy and other structures of domination.³⁷ Yet in light of all these contributions, both fields have barely interrogated the simplistic notion that AAPIs are “law-abiding citizens who [keep] their heads down”³⁸ and are uninvolved with the criminal system.

³¹ See Jean Yu-wen Shen Wu & Min Song, *Introduction, in ASIAN AMERICAN STUDIES: A READER* xiii-xxiv (Jean Yu-wen Shen Wu & Min Song eds., 2000). While the names of both Asian American Studies and Asian American Jurisprudence indicates otherwise, the fields are now known to include Pacific Islanders. See, e.g., Neil Gotanda, *New Directions in Asian American Jurisprudence*, 17 *ASIAN AM. L.J.* 5, 9 (2010) [hereinafter Gotanda, *New Directions*] (documenting that Asian American Jurisprudence has extended its discussion to include Pacific issues). *But see* Kehualani Kauanui, *supra* note 19; John Hayakawa Torok, *Asian American Jurisprudence: On Curriculum*, 2005 *MICH. ST. L. REV.* 635, 647 n.78 (“To incorporate the ‘post-colonial,’ and as a gesture to include the history of the colonization of the Pacific Islands, one might rename the enterprise Asian Pacific American Jurisprudence.”).

³² See, e.g., Torok, *supra* note 31, at 643-644 (“Race in the United States is most often understood in terms of white and Black. But the Black/white paradigm, more appropriately known as the white over Black paradigm, has been criticized.”).

³³ See generally Chew, *supra* note 20; Gotanda, *New Directions, supra* note 31.

³⁴ See, e.g., Gotanda, *New Directions, supra* note 31; Torok, *supra* note 31.

³⁵ *Id.*

³⁶ *Id.* See also F. WU, *supra* note 20, at 301-42.

³⁷ This is a crude overview of the two fields, with emphasis on Asian American Jurisprudence’s contributions; see *infra*, Part II.

³⁸ Jeff Guo, *The Real Reasons the U.S. Became Less Racist Toward Asian Americans*, *WASH. POST* (Nov. 29, 2016, 10:24 AM), <https://www.washingtonpost.com/news/wonk/wp/2016/11/29/the-real-reasons-americans-stopped-spitting-on-asian-americans-and-started-praising-them/>.

But as Eddy's story reveals, AAPIs are impacted by mass incarceration. They are in the nation's prisons, categorized by the Bureau of Justice Statistics—the government's primary source for criminal system statistics—and most other informational systems as “Others,”³⁹ a “fitting description for a population that is often overlooked.”⁴⁰ In 2019, there were 167,400 “Others” in the state and federal prison system, comprising about 12 percent of the state and federal prison population.⁴¹ The incarceration rate for “Others” was 1,176 per 100,000 U.S. residents—the second highest for any group.⁴² However, because the “Others” category actually includes American Indians, Alaska Natives, Asians, Native Hawaiians, Pacific Islanders, and people of more than one race, a precise number of AAPI prisoners is difficult to ascertain.⁴³ Nevertheless, scholars estimate that the number of AAPI prisoners “increased by over 250% between 1990 to 2000.”⁴⁴ Between 1999 and 2004, the AAPI prison population surged by 30 percent, climbing from 9,825 to 12,799, while the white prison population only increased by 2.5 percent and the Black prison population during the same time period decreased by 1.9 percent.⁴⁵ Recent data shows that the incarceration rate of AAPIs “quadrupled between 2000 and 2010, and disaggregated data shows that certain subgroups, such as Southeast Asian Americans and Pacific Islanders, are arrested and incarcerated at much

³⁹ E. ANN CARSON, BUREAU OF JUST. STATS., U.S. DEP'T OF JUST., PRISONERS IN 2019, 6 (Oct. 2020), <https://www.bjs.gov/content/pub/pdf/p19.pdf> [<https://perma.cc/NM76-AAGA>].

⁴⁰ PAUL JUNG, GREGORY CENDANA, WILLIAM CHIANG, BEN WANG, EDDY ZHENG, MONICA THAMMARATH, QUYEN DINH & KATRINA DIZON MARIATEGUE, ASIAN AMERICANS & PACIFIC ISLANDERS BEHIND BARS: EXPOSING THE SCHOOL TO PRISON TO DEPORTATION PIPELINE 1 (2015) [hereinafter AAPI BEHIND BARS].

⁴¹ CARSON, *supra* note 39, at 16.

⁴² *Id.* It was 385 per 100,000 for whites, 979 for Hispanics, and 2,203 for Black people.

⁴³ This categorization and racial misclassification evidently contribute to the dearth of data and limited literature on AAPI criminalization.

⁴⁴ Angela E. Oh & Karen Umemoto, *Asian Americans and Pacific Islanders: From Incarceration to Re-Entry*, 31 AMERASIA J. 43, 44 (2005).

⁴⁵ Gregory Cendana, *Asian Americans and Pacific Islanders Celebrate Asian Pacific American Heritage Month by Working to End Mass Incarceration*, HUFF POST (May 30, 2016, 11:49 AM), https://www.huffpost.com/entry/working-to-end-mass-incarceration_b_7475656 [<https://perma.cc/S637-UB47>]; Pia Sarkar, *Inside Men*, HYPHEN: ASIAN AMERICA UNABRIDGED (May 1, 2008), <https://hyphenmagazine.com/magazine/issue-14-spaces-spring-2008/inside-men> [<https://perma.cc/LFS6-45NU>].

higher rates than average.”⁴⁶ Dated data reflects this trend, as well. From 1977 to 1997:

API arrests in the U.S. increased 726 percent between 1977 and 1997. Meanwhile the number of African American arrests decreased by 30% in this same period. This increase far exceeds proportional growth of the overall U.S. API population during this same approximate twenty year period which grew from 3.7 million in 1980 to 10.2 million in 2000, a 276% increase.⁴⁷

In 2004, while arrests of “African American, Native American, and Caucasian youth [] decreased nationally, arrests of Asian and Pacific Islander boys and girls increased by 11.4%.”⁴⁸ In some cities across the country, this troubling trend persisted, especially for certain ethnicities under the diverse AAPI umbrella. In Oakland, California in 2006, Samoan youth had the highest arrest rates of any racial/ethnic group at 140 per 1,000. Other groups under the pan-ethnic AAPI label also had high arrest rates, with juvenile Cambodians at 63 per 1,000 and Vietnamese youth at 28 per 1,000.⁴⁹ In comparison, the arrest rate for Black youth in 2006 Oakland was 116 per 1,000—the second highest for any racial/ethnic group after Samoans.⁵⁰ For white youth, the rate was 13 per 1,000.⁵¹

These numbers, combined with the stories of Eddy and the others to follow, suggest that, while comprising a smaller number of the prison population, Asian Americans and Pacific Islanders are nevertheless mass incarcerated. This reality makes the exclusion of AAPIs in analyses of the prison industrial complex especially troublesome. It erases the lived

⁴⁶ NATSU TAYLOR SAITO, *SETTLER COLONIALISM, RACE, AND THE LAW: WHY STRUCTURAL RACISM PERSISTS* 149 (2020) [hereinafter SAITO, *SETTLER COLONIALISM*] (quotations and citations omitted).

⁴⁷ NAT’L COUNCIL ON CRIME AND DELINQUENCY & JOHN D. AND CATHERINE T. MACARTHUR FOUND. SYMPOSIUM, *ASIAN/PACIFIC ISLANDER COMMUNITIES: AN AGENDA FOR POSITIVE ACTION* 8 (2001), https://www.evidentchange.org/sites/default/files/publication_pdf/asian-pacificislander-communities.pdf [<https://perma.cc/ACP4-RJM4>].

⁴⁸ Zia, *supra* note 17, at x.

⁴⁹ AHUJA & CHLALA, *WIDENING THE LENS*, *supra* note 19, at 18.

⁵⁰ NAT’L COUNCIL ON CRIME AND DELINQUENCY, *UNDER THE MICROSCOPE: ASIAN AND PACIFIC ISLANDER YOUTH IN OAKLAND NEEDS—ISSUES—SOLUTIONS* 56 (2007) [<https://perma.cc/M833-FU5W>].

⁵¹ *Id.*

experiences of criminalized AAPIs, obfuscates the scope of mass incarceration, perpetuates the model minority myth, and hinders collective solutions.

This Article identifies and addresses the invisibility of criminalized AAPIs in critical analyses of crime and carcerality. In particular, I intercalate AAPIs into ongoing, powerful critiques of the prison industrial complex, including developing abolitionist scholarship. I argue that the model minority myth, an anti-Black racial project, leads to the exclusion of AAPIs in both mainstream and critical studies of crime and carcerality. I start this intervention by identifying and critiquing a lacuna within Asian American Jurisprudence, specifically its neglect of criminalized AAPI voices. I demonstrate that AAPIs are mass incarcerated by highlighting the lived experiences of AAPI youth with the school-to-prison pipeline as well as by excavating the minimal amount of publicly available data on AAPI prison populations. Adopting multidisciplinary and multimodal methods, I identify and analyze distinct forms of racial profiling and racialized bullying that drive AAPI students out of schools and into prisons. I pay particular attention to the criminalization of various subgroups under the "AAPI" umbrella as whiz kids, gang members, or terrorists. In uncovering previously unexamined dimensions of the criminal system, I stress how the exclusion of AAPIs in critical discourse obscures the actual scale of the carceral state, erases complex intra- and interracial dynamics of power, marginalizes criminalized AAPIs, and concurrently reinforces anti-Blackness and other toxic ideologies. Accordingly, while this Article nominally transcends the traditional Black/white paradigm, it in fact reaffirms Critical race, intersectional, and abolitionist analyses of Blackness and criminalization. It also directly critiques and links Asian American Jurisprudence to ongoing abolitionist critiques of the prison industrial complex. I conclude the Article with a proffer of abolitionist solutions. I propose Ethnic Studies as a remedy to the school-to-prison pipeline and issue a call, particularly to AAPI communities, to engage in critical coalition-building.

The Article is divided into five parts. Part I is this introduction. Part II provides an overview of AAPI communities and delves into the model minority myth. I analyze the model minority myth as the dominant force shaping the public perception of AAPIs in the United States. Borrowing from scholars of Asian American Studies and Asian American Jurisprudence, I evaluate the myth as an inaccurate and pernicious stereotype that glosses over rampant inequalities and erases certain issues

faced by AAPI communities, such as mass incarceration. I also discuss the myth's role in racial formations⁵² in the United States, particularly its role in perpetuating anti-Blackness and colorblindness. Other related concepts such as “Yellow Peril” and intersectional stereotypes, like the “Dragon Lady” and hypermasculinized, athletic Pacific Islander are also studied.⁵³ Part II also elaborates on the link between Orientalism and the model minority myth, arguing that each perpetuates hypervisibility while concurrently erasing AAPI struggles.

Part III identifies and discusses the conspicuous absence—or lacuna—of criminalized AAPI experiences in Asian American Jurisprudence and beyond. I argue that the field's inattention poses harmful implications that include the reinforcement of the model minority myth, the perpetuation of anti-Blackness, and the obstruction of a fuller critical understanding of the prison industrial complex. Throughout the section, I emphasize the importance of an intersectional, interconnected understanding of the prison industrial complex put forth by abolitionists, critical race theorists, and Black feminist scholars.

Part IV moves toward praxis. Part IV illustrates that AAPIs are indeed criminalized by the prison industrial complex vis-à-vis a critical reexamination of the school-to-prison pipeline. After providing a brief overview, I analyze traditional examinations of the school-to-prison pipeline as inadequate and exclusionary to AAPI youth. I then emphasize the unique forms of racial profiling of AAPI youth as “whiz kids,” “gangsters,” and “terrorists” that lead to criminalization. Part IV also investigates racialized bullying as another factor pushing AAPI youth out of schools and into the criminal system. Throughout Part IV, considerable attention is paid to specific subgroups under the all-encompassing umbrella “AAPI” to expose how reinforcing and even contradictory forms of racialization occur simultaneously to criminalize AAPI youth. Additionally, I map the experiences of criminalized AAPI youth onto the larger context of the prison industrial complex, showing the harms of excluding, and the boons of including, AAPIs in critical analyses of crime.

Part V synthesizes lessons learned from Parts I, II, III, and IV collectively. Applying the lessons from the first four sections, Part V

⁵² See generally MICHAEL OMI & HOWARD WINANT, RACIAL FORMATION IN THE UNITED STATES FROM THE 1960S TO THE 1990S (1994) (exploring, along with the role of race in society, the creation and on-going development of the concepts of race and racism).

⁵³ See *infra*, Part II.C.

outlines the dire material, social, and theoretical impact of erasure. I also propose solutions such as Ethnic Studies to explicitly tackle the distinct forms of discrimination AAPI youth face and further the fight to end the school-to-prison pipeline. Abolitionist principles heavily inform these suggestions. Part V closes the Article with a call for more meaningful coalitions between and among various groups that integrate a truly intersectional, interconnected, “both/and” analysis of race, power, and justice.

II. WHO ARE ASIAN AMERICANS AND PACIFIC ISLANDERS?

AAPIs remain the fastest growing population in the United States.⁵⁴ They total 24.2 million individuals and comprise around six percent of the entire U.S. population.⁵⁵ The U.S. Census Bureau defines “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.”⁵⁶ A Pacific Islander, according to the Census Bureau, is “[a] person having origins in any of the original peoples of Hawaii, Guam, Samoa, or other Pacific Islands.”⁵⁷

In reality, the pan-ethnic label covers over sixty-seven cultural, ethnic, religious, and national communities including Asian Indian, Bangladeshi, Burmese, Chinese, Filipino, Guamanian, Hmong, Indonesian, Iwo Jiman, Japanese, Korean, Lao, Malaysian, Maldivian, Marshallese, Micronesian, Native Hawaiian, Nepalese, Okinawan,

⁵⁴ Karthick Ramakrishnan & Patricia Eng, *AAPI Mapping Tool for #2020Census and Beyond*, AAPI DATA: DATA BITS (Jan. 30, 2020), <http://aapidata.com/blog/aapi-mapping-2020/>; KARTHICK RAMAKRISHNAN & FARAH Z. AHMAD, STATE OF ASIAN AMERICANS AND PACIFIC ISLANDER SERIES: A MULTIFACETED PORTRAIT OF A GROWING POPULATION 1-2 (2014), <http://aapidata.com/wp-content/uploads/2015/10/AAPIData-CAP-report.pdf> [<https://perma.cc/VC7H-64AK>].

⁵⁵ U.S. Census Bureau, *Asian American and Pacific Islander Heritage Month: May 2020* (Apr. 30, 2020), <https://www.census.gov/newsroom/facts-for-features/2020/aian.html> [<https://perma.cc/BR7J-59LV>].

⁵⁶ U.S. Census Bureau, *About Race* (Oct. 16, 2020), <https://www.census.gov/topics/population/race/about.html> [<https://perma.cc/QQ96-HRH2>].

⁵⁷ *Id.*; see also U.S. CENSUS BUREAU, ASIAN AND PACIFIC ISLANDER POPULATION IN THE UNITED STATES (2018), <https://www.census.gov/content/dam/Census/library/visualizations/2018/comm/2018-api.pdf> (noting AAPI population groups).

Pakistani, Palauan, Singaporean, Samoan, Tahitian, Taiwanese, Thai, Tibetan, Vietnamese, and many others.⁵⁸ There are evidently multiple identities and subgroups—e.g., East Asians, Southeast Asians, South Asians, West Asians, Micronesians, Polynesians—under the pan-ethnic “AAPI.” Each of these identities and subgroups have shared and unique histories, patterns of immigration to the United States, and relationships with each other. Some arrive to the United States as refugees (mainly Southeast Asians); some arrive as migrant workers (like early Chinese and Filipino laborers in California).⁵⁹ Some are haunted by the shadow of U.S. colonialism and imperialism (e.g., Filipinos, Guamanians, American Samoans, Native Hawaiians), and some have been in conflict with each other (such as Japanese occupation of the Philippines and Korea at various points).⁶⁰ It is necessary to observe here that some Asian Americans and Pacific Islanders also fall under the AMEMSA label signifying Arab, Middle Eastern, Muslim, South Asian.⁶¹

AAPIs are also diverse in other ways. They are the most religiously and linguistically diverse group in the country.⁶² Around 66 percent of Asian Americans and 16 percent of Pacific Islanders are foreign-born, with AAPIs arriving to the United States as documented and undocumented immigrants, migrant workers, and refugees.⁶³ Nationwide, “there are an estimated 1,532,304 undocumented AAPIs” comprising 13.9 percent of the entire undocumented population in the country.⁶⁴ Despite these evident diversities, Asian Americans and Pacific Islanders are often painted

⁵⁸ See Valerie Ooka Pang, Peggy P. Han & Jennifer M. Pang, *Asian American and Pacific Islander Students: Equity and the Achievement Gap*, 40 EDUC. RESEARCHER 378, 381 (2011); White House Initiative on Asian Americans and Pacific Islanders, *Critical Issues Facing Asian Americans and Pacific Islanders*, [hereinafter WHIAAPI, Critical Issues] <https://obamawhitehouse.archives.gov/administration/eop/aapi/data/critical-issues> [https://perma.cc/K362-HBNY] (last visited May 14, 2022).

⁵⁹ See generally ETHNICITIES: CHILDREN OF IMMIGRANTS IN AMERICA (Rubén G. Rumbaut & Alejandro Portes eds., 2001); see also RAMAKRISHNAN & AHMAD, *supra* note 54; Torok, *supra* note 31, at 675-77.

⁶⁰ See, e.g., Rumbaut & Portes, *supra* note 60; RAMAKRISHNAN & AHMAD, *supra* note 54, at 22; Torok, *supra* note 31, at 675-77.

⁶¹ Extended discussion of the complex racial dynamics of the AMEMSA label and the group’s inclusion is found in Part II, *infra*.

⁶² RAMAKRISHNAN & AHMAD, *supra* note 54, at 19, 34.

⁶³ *Id.* at 23-31.

⁶⁴ TOM K. WONG, CTR. FOR MIGRATION STUD., REACHING UNDOCUMENTED ASIAN AMERICANS AND PACIFIC ISLANDERS IN THE UNITED STATES (2015), <https://doi.org/10.14240/cmsesy070615> [https://perma.cc/G9JR-U5SW].

with a singular, stereotypical stroke and cast as the “model minority.”

A. *The Model Minority Myth*

The designation of “model minority”⁶⁵ suggests that AAPIs are doing extremely well on their own in the United States in spite of being a minority group. Such success is attributed to their own hard work, thriftiness, innate intelligence, and law-abiding nature.⁶⁶ The designation is often supported through statistics citing high educational attainment rates and household incomes contrasted with low poverty and crime rates.⁶⁷ Indeed, aggregated and popularized data like those from the Pew Research Center’s *The Rise of Asian Americans*⁶⁸ report seem to verify the model minority myth. According to the report, 49 percent of Asians over the age of twenty-five have a bachelor’s degree or higher, versus 28 percent of the U.S. population and 31 percent of whites.⁶⁹ The report also indicates that Asian Americans’ median household income is \$66,000, in comparison to \$49,800 for the U.S. population and \$54,000 for whites.⁷⁰

Mainstream media peddles these perceptions, too, with contemporary and tokenizing headlines.⁷¹ Since the 1960s, media coverage has reflected an enduring depiction of AAPIs as the model minority. The term “model minority” originates from sociologist William Petersen’s 1966 article in the *New York Times Magazine* titled “Success Story, Japanese American Style,” which was followed by similar articles like the *U.S. News*

⁶⁵ See *supra* note 20 (providing sources defining the model minority myth).

⁶⁶ *Id.*

⁶⁷ See, e.g., Margaret Simms, “*Model Minority*” Myth Hides the Economic Realities of Many Asian Americans, URB. INST.: URBAN WIRE (May 2, 2017), <https://www.urban.org/urban-wire/model-minority-myth-hides-economic-realities-many-asian-americans> [<https://perma.cc/2E3Q-45BQ>] (“Asian Americans have been referred to as a ‘model minority’ based, in part, on easily available statistics.”).

⁶⁸ PEW RSCH. CTR., THE RISE OF ASIAN AMERICANS (June 19, 2012), <https://www.pewsocialtrends.org/2012/06/19/the-rise-of-asian-americans/> [<https://perma.cc/W9A9-RR6P>] (last updated Apr. 4, 2013). These data sets are specific to Asian Americans, but because the government and other institutions, such as schools and the press, often employ the pan-ethnic label of AAPI, Pacific Islanders become subsumed under the label as well. In short, the aggregated data also becomes associated with Pacific Islanders, a problematic outcome as Pacific Islanders, like certain Southeast Asian communities, suffer high rates of poverty, discussed *infra*.

⁶⁹ *Id.*

⁷⁰ *Id.*

⁷¹ Consider the headlines in *supra* note 18.

& *World Report's* "Success Story of One Minority Group in U.S."⁷² These articles celebrated the success of certain Asian American groups—the Japanese and Chinese, respectively—and posited that they were faring exceptionally well despite facing histories of racial oppression such as Japanese internment and the Chinese Exclusion Act of 1882.⁷³ The articles explicitly opined that Asians were prospering, unlike other "problem minorities" like African Americans, through their own impressive culture, discipline, intelligence, and work ethic.⁷⁴ Notably, these articles came out a year after the Moynihan Report, which "blamed African American culture and family structure for African Americans' socio-economic problems."⁷⁵ Equally important to note is that the 1960s were a time of immense racial justice activism, with Black communities leading the fight to secure civil rights.⁷⁶

Recognizing this historical context suggests that the model minority myth was fabricated to hinder the Civil Rights Movement and pit minority groups against one another.⁷⁷ Indeed, as multiple scholars indicate, at the heart of the model minority myth are principles of colorblindness, post-racialism, and meritocracy—that through hard work, thrift, and discipline, AAPIs transcend racism and attain profound successes.⁷⁸ Under these principles, the struggles of other minority groups

⁷² See TAKASHI FUJITANI, RACE FOR EMPIRE: KOREANS AS JAPANESE AND JAPANESE AS AMERICANS DURING WORLD WAR II 230 (2011); Frances Kai-Hwa Wang, *50 Years Later, Challenging the 'Model Minority Myth' Through #ReModelMinority*, NBC NEWS (Jan. 11, 2016, 8:29 AM), <http://www.nbcnews.com/news/asian-america/50-years-later-challenging-model-minority-myth-through-remodelminority-n493911> [<https://perma.cc/38VJ-7PRA>]. See also William Petersen, *Success Story, Japanese American Style*, N.Y. TIMES MAG. (Jan. 9, 1966); *Success Story of One Minority Group in U.S.*, U.S. NEWS & WORLD REP. (Dec. 26, 1966), [<https://perma.cc/9XMJ-L65S>].

⁷³ See FUJITANI, *supra* note 72; Kai-Hwa Wang, *supra* note 72.

⁷⁴ FUJITANI, *supra* note 72.

⁷⁵ Kai-Hwa Wang, *supra* note 72; STACEY J. LEE, UNRAVELING THE "MODEL MINORITY" STEREOTYPE: LISTENING TO ASIAN AMERICAN YOUTH 6 (2d ed. 2009).

⁷⁶ See generally *Eyes on the Prize* (PBS television broadcast Apr. 4, 2021), <https://www.pbs.org/wgbh/americanexperience/films/eyesontheprize/>.

⁷⁷ See, e.g., Gotanda, *New Directions*, *supra* note 31, at 5 (explaining that the model minority myth's "origins in 1965 inserted Asian Americans into the Civil Rights struggles as an intermediate group between Blacks and Whites.").

⁷⁸ See, e.g., FUJITANI, *supra* note 72; STACEY J. LEE, *supra* note 75, at 6-7; Tamara Nopper, *Asian Americans, Deviance, Crime, and the Model Minority Myth*, in COLOR BEHIND BARS: RACISM IN THE U.S. PRISON SYSTEM, 207-43 (Scott Wm. Bowman ed., 2014); Bic Ngo & Stacey J. Lee, *Complicating the Image of Model Minority Success: A*

are attributed to their own individual failings or characteristics rather than institutional and structural barriers. This “blame game” effectively delegitimizes demands for equality while hindering collective action.⁷⁹ During the Civil Rights Movement, the model minority myth helped cast Black communities as lazy, entitled, and belligerent, a direct contrast to the supposedly quiet, hardworking, and successful AAPIs.⁸⁰ In short, the “positive stereotype” of the myth is a racist, xenophobic, anti-Black white supremacist project.

B. *Historical Perspective: From Subhuman to Superhuman*

The imagining of AAPIs as model minorities stands in stark contrast not only to perceptions of other communities of color, but also to historical depictions of AAPIs themselves. Throughout history, Asian Americans and Pacific Islanders have been cast as the “Yellow Peril”—morally corrupt perpetual aliens who carried hidden agendas of conquest and threatened white racial purity and American democracy.⁸¹ Characterized as “Orientals” who ate vermin and “murder[ed] young girls to drink certain bodily fluids,”⁸² AAPIs were criminalized through various means including anti-miscegenation laws, immigration exclusion acts, and mass internment.⁸³ The Supreme Court itself ascribed to these views, and in some ways, cemented them.⁸⁴

Review of Southeast Asian American Education, 77 REV. EDUC. RSCH. 415 (2007) [hereinafter Ngo & Lee, *Complicating the Image*].

⁷⁹ FUJITANI, *supra* note 72.

⁸⁰ See FUJITANI, *supra* note 72; Kai-Hwa Wang, *supra* note 72; Gotanda, *New Directions*, *supra* note 31, at 5.

⁸¹ Rhoda J. Yen, *Racial Stereotyping of Asians and Asian Americans and Its Effect on Criminal Justice: A Reflection on the Wayne Lo Case*, 7 ASIAN L.J. 1, 6 (2000). See generally Leti Volpp, *Divesting Citizenship: On Asian American History and the Loss of Citizenship Through Marriage*, 53 UCLA L. REV. 405, 411-12 (2005) [hereinafter Volpp, *Divesting Citizenship*]; SUSAN KOSHY, SEXUAL NATURALIZATION: ASIAN AMERICANS AND MISCEGENATION 2 (2004) [hereinafter KOSHY, SEXUAL NATURALIZATION].

⁸² Yen, *supra* note 81, at 27.

⁸³ See, e.g., KOSHY, SEXUAL NATURALIZATION, *supra* note 81, at 1-25; ELAINE LOW, AN UNNOTICED STRUGGLE: A CONCISE HISTORY OF ASIAN AMERICAN CIVIL RIGHTS ISSUES (2008) [<https://perma.cc/THN5-GLWF>].

⁸⁴ See, e.g., Neil Gotanda, “Other Non-Whites” in *American Legal History: A Review of Justice at War*, 85 COLUM. L. REV. 1186, 1190 (1985) (discussing how the majority opinion and dissent in *Wong Kim Ark* embodied the view that the Chinese are unassimilable foreigners who are “of a distinct race and religion, remaining strangers in the land, residing apart by themselves, tenaciously adhering to the customs and usages of their

The shift of AAPI perceptions from subhuman aliens to virtually superhuman model minorities further underlines the link between the model minority myth and white supremacy. The shift specifically reflected changing white supremacist interests. During World War II, for example, Japanese people were depicted as the ultimate embodiment of Yellow Peril—a characterization that informed their mass internment after the bombing of Pearl Harbor.⁸⁵ As Professor Neil Gotanda writes, “[t]he idea that many Japanese would ‘actually’ sympathize with Japan as a matter of ‘human nature’ was a simple extension of [the Yellow Peril stereotype] and was shared by many Americans.”⁸⁶ Yet in the decades after the War, Japanese people underwent a “gendered racial rehabilitation” that transformed them into model minorities in the public imagination.⁸⁷ This timely shift from Yellow Peril—which enabled mass internment—to “model minority” served to quell the Civil Rights Movement domestically.⁸⁸ But the shift in perception also helped justify American intervention in Asia to “save” it from communism and to promote “freedom” and capitalism.⁸⁹ Accordingly, the “miraculous metamorphosis”⁹⁰ from Yellow Peril to model minority not only reinforced racial oppression domestically but also pushed U.S. imperialist policies abroad.

While distinct, the Yellow Peril stereotype and the model minority myth reflect similar processes of Orientalism.⁹¹ Both cast AAPIs as inherent and perpetual foreigners—alien and exotic peoples who stand in opposition

own country, unfamiliar with our institutions, and apparently incapable of assimilating with our people, might endanger good order, and be injurious to the public,” which helped define the racial classification of “Oriental.”)

⁸⁵ *Id.* at 1191

⁸⁶ *Id.* at 1190.

⁸⁷ JODI KIM, ENDS OF EMPIRE: ASIAN AMERICAN CRITIQUE AND THE COLD WAR, 95-142 (2010).

⁸⁸ See, e.g., Gotanda, *New Directions*, *supra* note 77.

⁸⁹ KIM, *supra* note 87, at 102-104.

⁹⁰ See FUJITANI, *supra* note 72, at 231-32.

⁹¹ “Edward Said describes Orientalism as a master discourse of European civilization that constructs and polarizes the East and the West. Western representations of the East serve not only to define those who are the objects of the Orientalizing gaze, but also the West, which is defined through its opposition to the East. Thus, for example, the West is defined as modern, democratic, and progressive, through the East being defined as primitive, barbaric, and despotic.” Leti Volpp, *The Citizen and the Terrorist* 49 UCLA L. REV. 1575, 1586 (2002).

to whites and the West.⁹² And while the model minority myth is the dominant perception of AAPIs today, semblances of Yellow Peril persist and interact with the myth. Exaggerated perceptions of AAPI success today foster fear and hate within white communities who perceive AAPIs as social and economic threats.⁹³ This characterization of AAPIs as domestic and global competition mirrors Yellow Peril racial anxieties that have historically cast AAPIs as job-stealing and corrupting immigrants.⁹⁴ This is also the same view that informed lynchings and exclusionary policies like the Chinese Exclusion Act.⁹⁵

Recently, these racial anxieties have not only persisted but evolved. In the age of COVID-19, AAPIs are now considered even greater social, economic, *and* biopolitical threats. AAPIs are blamed for the coronavirus pandemic, which has been repeatedly called the “Kung Flu” and “China Plague” by a previously sitting President of the United States.⁹⁶ Hate crimes and other forms of racist violence against AAPIs, as during other pandemics, have surged in consequence.⁹⁷ Other contemporary examples of the

⁹² *Id.* See also Gotanda, *New Directions*, *supra* note 31, at 41-43.

⁹³ See, e.g., Yen, *supra* note 81 at 5; SAITO, *SETTLER COLONIALISM*, *supra* note 46, at 148-51.

⁹⁴ See, e.g., SAITO, *SETTLER COLONIALISM*, *supra* note 46, at 150-53.

⁹⁵ *Id.*

⁹⁶ Bruce Y. Lee, *Trump Once Again Calls Covid-19 Coronavirus the ‘Kung Flu’*, FORBES (June 24, 2020, 12:20 AM), <https://www.forbes.com/sites/brucelee/2020/06/24/trump-once-again-calls-covid-19-coronavirus-the-kung-flu/?sh=4c48c67a1f59> [https://perma.cc/TQT6-5QSK]; Kimmy Yam, *Donald Trump Touts Racial Equality While Referring to COVID-19 as ‘China plague’*, NBC NEWS (June 5, 2020, 12:55 PM), <https://www.nbcnews.com/news/asian-america/donald-trump-touts-racial-equality-while-referring-covid-19-china-n1226176> [https://perma.cc/VA8F-9BX3].

⁹⁷ Just in the first few months of 2021, an array of horrific hate crimes has targeted Asian elders, who already bear the brunt of the pandemic. See, e.g., Press Release, Nicholas Turton, Stop AAPI Hate, New Data on Anti-Asian Hate Incidents Against Elderly and Total National Incidents in 2020 (Feb. 9, 2021), https://secureservercdn.net/104.238.69.231/a1w.90d.myftpupload.com/wp-content/uploads/2021/02/Press-Statement-re_Bay-Area-Elderly-Incidents-2.9.2021-1.pdf [https://perma.cc/W99P-6FK9] (also noting that over 2,800 violent incidents against AAPIs have been reported from March 2020 to December 2020); *Reports of Anti-Asian Assaults, Harassment and Hate Crimes Rise as Coronavirus Spreads*, ANTI-DEFAMATION LEAGUE: ADL BLOG (June 18, 2020), <https://www.adl.org/blog/reports-of-anti-asian-assaults-harassment-and-hate-crimes-rise-as-coronavirus-spreads> [https://perma.cc/57RY-3SU6] (listing numerous incidents of coronavirus-related hate crimes throughout 2020); Neil G. Ruiz, Juliana Menasce Horowitz & Christine Tamir, *Many Black and Asian Americans Say They Have Experienced Discrimination Amid the COVID-19 Outbreak*, PEW RSCH. CTR. (July 1, 2020),

interplay, perhaps fusion, of the Yellow Peril stereotype and model minority myth include the representation of AAPIs as “bumbling, squint-eyed tourists, shrieking martial artists or opium-sniffing underworld lords,” or as evil geniuses.⁹⁸ These characterizations are more than just interrelated archetypes; they are factors that criminalize AAPIs today.⁹⁹

Beyond its compatibility with widespread white supremacist interests, the enduring nature of the model minority myth is attributable to its own self-sustaining nature. By stressing the innateness of AAPIs’ intelligence and diligence, the myth obscures the actual social, legal, and political mechanisms that uphold it. Few acknowledge the tie between the success of particular AAPI groups, like certain subsets of East and South Asians, to the Immigration and Nationality Act of 1965 (INA). The INA prioritized entry for highly educated and professional immigrants.¹⁰⁰ Thus, many Asian immigrants permitted to come to the United States arrived with high levels of capital including professional degrees and English proficiency—factors that typically forecast “upward” trajectories of immigrants upon arrival.¹⁰¹ The valuable capital brought by these immigrants is perhaps one of the many factors that explain the oft-cited, bloated statistics suggesting extreme success of AAPIs.¹⁰² In other words, it makes sense that AAPI communities may have higher educational levels, for example, because the very immigration policies that allow their entry require such credentials.

Nevertheless, most data highlighting the supposed success of AAPIs as a group can easily be disproven upon interrogation. For

<https://www.pewsocialtrends.org/2020/07/01/many-black-and-asian-americans-say-they-have-experienced-discrimination-amid-the-covid-19-outbreak/>
[<https://perma.cc/AA97-72NA>] (“Asian Americans are more likely than any other group to say they have been subject to slurs or jokes because of their race or ethnicity since the coronavirus outbreak: 31% say this has happened to them, compared with 21% of Black adults, 15% of Hispanic adults and 8% of white adults. About a quarter (26%) of Asian Americans and 20% of Black Americans say they feared someone might threaten or physically attack them, more than the shares of white and Hispanic Americans.”). *See also* Angela R. Gover, Shannon B. Harper & Lynn Langton, *Anti-Asian Hate Crime During the COVID-19 Pandemic: Exploring the Reproduction of Inequality*, 45 AM. J. CRIM. JUST. 647, 1 (2020).

⁹⁸ Yen, *supra* note 81, at 8.

⁹⁹ *See infra*, Part III.

¹⁰⁰ *See, e.g.*, JENNIFER LEE & MIN ZHOU, THE ASIAN AMERICAN ACHIEVEMENT PARADOX 6 (2015); ETHNICITIES, *supra* note 59, at 160-61.

¹⁰¹ *See* LEE & ZHOU, *supra* note 100, at 5-6.

¹⁰² *See infra* Part II.A.

example, when factors such as the number of hours worked and total number of workers per household—typically higher for immigrant communities¹⁰³—are considered, the average household income for AAPIs plummets compared to whites.¹⁰⁴ Similarly, when data about AAPIs is disaggregated, the supposition that they are all prospering crumbles.¹⁰⁵ Poverty rates for certain communities under the label are devastatingly high. From 2006 to 2010, 27 percent of Hmong, 21.1 percent of Bangladeshi, 18.9 percent of Tongan, 18.8 percent of Cambodian, and around 16 percent of Samoan and Pakistani lived in poverty.¹⁰⁶ So did about 14 percent of Korean, Chinese, Thai, Indonesian, and Vietnamese people,

¹⁰³ See, e.g., *Asian Americans More Likely to Have Multigenerational Households*, NBC NEWS (Aug. 25, 2014, 9:48 AM), <https://www.nbcnews.com/news/asian-america/asian-americans-more-likely-have-multigenerational-households-n181191> [<https://perma.cc/X2XG-WS7J>]; *The Return of the Multi-Generational Family Household*, PEW RSCH. CTR. (Mar. 18, 2010), <https://www.pewsocialtrends.org/2010/03/18/the-return-of-the-multi-generational-family-household/> [<https://perma.cc/LH54-YNDQ>] (reporting that AAPIs are 25 percent more likely than whites to live in multigenerational households and that immigration has been a significant factor in the rise of multigenerational households); Andrew J. Fuligni, *Family Obligation Among Children in Immigrant Families*, MIGRATION POL'Y INST.: MIGRATION INFO. SOURCE (Jul. 1, 2006), <https://www.migrationpolicy.org/article/family-obligation-among-children-immigrant-families> [<https://perma.cc/BYW4-C4C2>]. See also Celeste Katz Marston, *Asian Americans Most Likely to Live in Multigenerational Homes. How Covid Has Taken a Toll*, NBC NEWS (Sept. 28, 2020, 6:00 AM), <https://www.nbcnews.com/news/asian-america/asian-americans-most-likely-live-multigenerational-homes-how-covid-has-n1241111> [<https://perma.cc/7HFX-HN64>].

¹⁰⁴ Paul Wong, Chienping Faith Lai, Richard Nagasawa & Tieming Lin, *Asian Americans as a Model Minority: Self-Perceptions and Perceptions by Other Racial Groups*, 41 SOCIO. PERSPS. 95, 97 (1998).

¹⁰⁵ See, e.g., Christian Edlagan & Kavya Vaghul, *How Data Disaggregation Matters for Asian Americans and Pacific Islanders*, WASH. CTR. FOR EQUITABLE GROWTH (Dec. 14, 2016), <https://equitablegrowth.org/how-data-disaggregation-matters-for-asian-americans-and-pacific-islanders/> [<https://perma.cc/6AZ6-UCW5>]; Sefa Aina, *The Significance of Data Disaggregation to the Asian American and Pacific Islander (AAPI) Community*, OBAMA WHITE HOUSE: BLOG (Jul. 27, 2012, 9:48 AM), <https://obamawhitehouse.archives.gov/blog/2012/07/27/significance-data-disaggregation-asian-american-and-pacific-islander-aapi-community> [<https://perma.cc/A398-57QA>].

¹⁰⁶ JOSH ISHIMATSU, SPOTLIGHT ON ASIAN AMERICAN AND PACIFIC ISLANDER POVERTY: A DEMOGRAPHIC PROFILE 9-11 (2013) [<https://perma.cc/5VF9-HVDL>]. Within the AAPI umbrella, “the ethnic groups with the most people in poverty are Chinese (449,356), Asian Indian (246,399), Vietnamese (233,739), Korean (222,097) and Filipino (206,258).” *Id.* at 11.

compared to only 9.6 percent of whites.¹⁰⁷ AAPIs are also one of the fastest growing poverty populations since the Great Recession.¹⁰⁸ Similar troubling trends exist for educational attainment levels. In 2017, 9.1 percent of Asian Americans and 10.7 percent of Pacific Islanders over the age of 25 did not have a high school degree.¹⁰⁹ In comparison, only 5.9 percent of whites over the age of 25 did not.¹¹⁰

These rates reflect the various forms of structural inequality rendered invisible by the “positive” stereotype of the model minority myth. And since “model minorities are purportedly self-reliant, thereby needing little support from the state in terms of social welfare or minority-targeted initiatives,”¹¹¹ struggling AAPIs often suffer in silence. Put alternatively, the myth makes it almost impossible to imagine that problems like AAPI poverty exist in the first place. It not only masks issues plaguing AAPI communities but impedes the creation of necessary supports and services that could address, or even prevent, such issues in the first place. This cycle of silence and suffering is particularly salient for criminalized AAPIs who are often entirely absent from discussion. In this way, the model minority myth obscures the struggles of AAPIs while also rendering AAPIs hypervisible as supposedly successful minorities. “[T]he paradoxical result is that visibility is heightened but our vision is obscured: We see more, but understand less.”¹¹²

By dehumanizing and tokenizing AAPIs as silent and law-abiding superhumans who are highly intelligent and hardworking, the model minority image also creates a host of psychosocial problems for AAPIs.¹¹³ Professor Daya Sandhu explains:

Several mental health concerns and psychological afflictions, such as threats to cultural identity, powerlessness, feelings of marginality, loneliness, hostility and perceived alienation and discrimination remain

¹⁰⁷ *Id.*

¹⁰⁸ *Id.* at 6.

¹⁰⁹ LORELLE L. ESPINOSA, JONATHAN M. TURK, MORGAN TAYLOR & HOLLIE M. CHESSMAN, RACE AND ETHNICITY IN HIGH EDUCATION: A STATUS REPORT 8 (2019) [<https://perma.cc/PKC7-67MR>].

¹¹⁰ *Id.*

¹¹¹ Nopper, *supra* note 78, at 209.

¹¹² Cheryl I. Harris, *Myths of Race and Gender in the Trials of O.J. Simpson and Susan Smith – Spectacles of Our Times*, 35 WASHBURN L.J. 225, 226 (1996).

¹¹³ Yen, *supra* note 81, at 6.

unredressed and hidden under the veneer of the model minority myth. Both social and psychological forces to conform to the model minority stereotype place an inordinate amount of pressure on [AAPIs].¹¹⁴

C. Other Related and Intersectional Perceptions

Although the model minority myth pervades the imaginations of both institutions and individuals today, it is not the sole force shaping the perception and experiences of AAPIs. This is especially true given intersectionality.¹¹⁵ Other distinct, yet related, stereotypes persist. Asian women, for instance, are often fetishized and portrayed as “Lotus Blossoms”—docile, submissive, and even self-sacrificing—or as “Dragon Ladies”—Yellow Peril-informed seductresses who use their “‘Oriental’ femininity, associated with seduction and danger” to take advantage of men.¹¹⁶ Similar racial and gendered views undergird imaginations of AAPI women as “China Dolls,” geishas, and “mail-order brides.”¹¹⁷ All these representations hypersexualize and subject AAPI women to dehumanization and violence.¹¹⁸

¹¹⁴ *Id.*

¹¹⁵ See Jennifer Ng, Yoon Pak & Xavier Hernandez, *Beyond the Perpetual Foreigner and Model Minority Stereotypes: A Critical Examination of How Asian Americans are Framed*, in CONTEMPORARY ASIAN AMERICA: A MULTIDISCIPLINARY READER 576-599 (Min Zhou & Anthony C. Ocampo eds., 2016). See generally Kimberlé Crenshaw, *Mapping the Margins: Intersectionality, Identity Politics, and Violence against Women of Color*, 43 STAN. L. REV. 1241.

¹¹⁶ CELINE PARREÑAS SHIMIZU, *THE HYPERSEXUALITY OF RACE: PERFORMING ASIAN/AMERICAN WOMEN ON SCREEN AND SCENE* 59 (2007).

¹¹⁷ See, e.g., Stewart Chang, *Feminism in Yellowface*, 38 HARV. J.L. & GENDER 235, 244-45, 248-49 (2015) (discussing the immigration and legal history of Asian mail-order brides and their link to “racialized sexual hierarchies of American military domination and control in Asia during the Cold War, which are associated with the Suzie Wong stereotype.”); see also *infra* note 118 (noting recent violence against Asian women).

¹¹⁸ Just in March 2021, a white man with a proclaimed “sex addiction” killed six Asian women in Atlanta spas, reflecting the lethal interplay of racism and sexism faced by AAPI women. See, e.g., Noreen O'Donnell & Zijia Eleanor Song, *'Stereotypes, Fetishes and Fantasies: Asian American Women Link Sexualization and Racism*, NBC: BAY AREA (Mar. 19, 2021), <https://www.nbcbayarea.com/news/national-international/stereotypes-fetishes-and-fantasies-asian-american-women-link-sexualization-and-racism/2497859/> [<https://perma.cc/NKW7-QWXB>] (linking racism and hypersexualization of AAPI women to the killings); Karen Kuo & Karen Leong, *Violence Against Asian Women in the U.S. Has a Long History, YES!* (Mar. 23, 2021), <https://www.yesmagazine.org/social->

There is also the stereotype of the “Tiger Mom,” which refers to extremely involved Asian, usually Chinese, mothers focused on the academic success of their children.¹¹⁹ The Tiger Mom stereotype “revives a cultural anxiety among many Americans regarding Asian economic and resource competition.”¹²⁰ Tiger Moms could be seen as a reconfiguration of the Dragon Lady and the model minority trope, Orientalizing and casting AAPI mothers as “excessively focused on discipline and achievement, an excess that marks them as cultural and gender deviants, i.e., as not proper American mothers.”¹²¹ Meanwhile, when not completely absent or dismissed in the public imagination, Pacific Islander women are exoticized as the “iconic swaying hula girl” or overly “sensual and free-spirited.”¹²²

Unique Orientalizing stereotypes also apply to AAPI men. In contrast to stereotypes of Black hypermasculinity, Asian American men today are typified as asexual, emasculated, and nerdy model minorities.¹²³

justice/2021/03/23/asian-women-violence-united-states-history/
[https://perma.cc/F9P2-TLZ4] (analyzing the Atlanta killings as part of an enduring history of violence towards AAPI women); Kimberly Kay Hoang, *How the History of Spas and Sex Work Fits into the Conversation About the Atlanta Shootings*, VOX (Mar. 18, 2021, 4:30 PM), <https://www.vox.com/first-person/22338462/atlanta-shooting-georgia-spa-asian-american> (critically discussing the Atlanta killings in the context of broader marginalization of AAPI women and sex workers). See also David Vine, *My Body Was Not Mine, but the US Military's*, POLITICO (Nov. 3, 2015, 5:30 AM), <https://www.politico.eu/article/my-body-was-not-mine-but-the-u-s-militarys/> [https://perma.cc/QRW5-9ZPF] (exposing the violent sex industry around America's military bases in Asia).

¹¹⁹ See ASIAN AMERICAN CULTURE: FROM ANIME TO TIGER MOMS 638-39 (Lan Dong ed., 2016). See also OiYan A. Poon, *Ching Chongs and Tiger Moms: The “Asian Invasion” in U.S. Higher Education*, 37 AMERASIA J. 145 (2011).

¹²⁰ Judy Tzu-Chun Wu, *Gender*, in KEYWORDS FOR ASIAN AMERICAN STUDIES 105-109, 109 (Cathy J. Schlund-Vials, Linda Trinh Võ, & K. Scott Wong eds., 2015).

¹²¹ *Id.* Cf. Harris, *supra* note 112, 247-252 (critically discussing how views of motherhood are racialized, often coding “bad motherhood” as oppositional to white motherhood and coding it as specifically Black).

¹²² April K. Henderson, *Fleeting Substantiality: The Samoan Giant in US Popular Discourse*, 23 CONTEMP. PAC. 269, 285, 270 (2011) [hereinafter Henderson, *Samoan Giant*].

¹²³ See, e.g., Frances Johnson, *Asian men have often been misrepresented in television shows*, THE ITHACAN (Dec. 9, 2015), <https://theithacan.org/columns/asian-men-have-often-been-misrepresented-in-television-shows/>; *Where Do Stereotypes About Asian-American Men Come From?*, NBC NEWS: ASIAN AMERICA (Sept. 27, 2016, 8:56 AM), <https://www.nbcnews.com/news/asian-america/where-do-stereotypes-about-asian->

This was not always the case, however.¹²⁴ AAPI men were hypermasculinized and cast as sexual predators in the late 1800s and early 1900s.¹²⁵ Akin to Black men, Filipinos, for instance, were perceived as men with “unbridled sexual passions” who preyed on white women, therefore posing a threat to white American society and triggering nativist and exclusionist backlash.¹²⁶ Contemporarily, Pacific Islanders are likewise hypermasculinized. They are mainly represented as large, athletic, but also slow, lazy, simple-minded islanders.¹²⁷ Pacific Islander men are often especially cast as “larger-than-life personas of both noble chiefs and crazed wildmen” in sports entertainment such as wrestling and football.¹²⁸ They are also stereotyped as obese and violent gang members.¹²⁹

Crucial to AAPI racialization is also the “inconsistent” and multilayered stereotype of South and Southwest Asians as “terrorists.”¹³⁰ As critical race theorists underline, the tragedy of 9/11 and the subsequent War on Terror weaved an additional racial narrative that casts “anyone who looked vaguely ‘Arab’”—which can include peoples from West Asia, South Asia, and the Middle East—as enemies of the nation.¹³¹ This racialization, in part, invokes Orientalist and Yellow Peril anxieties of “Japanese

american-men-come-n650876. See also J. Wu, *supra* note 120, at 109 (discussing the model minority myth’s reinforcement of the emasculation of Asian American men).

¹²⁴ See J. Wu, *supra* note 120, at 109 (noting the characterization of Asian men in the late 19th and 20th centuries as sexual predators and economic competitors).

¹²⁵ *Id.* See also *infra*, Part II.

¹²⁶ LINDA ESPAÑA-MARAM, CREATING MASCULINITY IN LOS ANGELES’S LITTLE MANILA 119 (2006).

¹²⁷ Kehualani Kauanui, *supra* note 19; Gwen Langi, *My Polynesian Pride*, THE MIRROR: PERSPECTIVES (Jan. 16, 2019), <https://vnhsmirror.com/207857/uncategorized/my-polynesian-pride/> [<https://perma.cc/UZ28-SFKD>]; Nona Willis Aronowitz, *How Pacific Islander Students Are Slipping Through the Cracks*, NBC NEWS (July 10, 2014, 10:08 AM) <http://www.nbcnews.com/news/asian-america/how-pacific-islander-students-are-slipping-through-cracks-n144281> [<https://perma.cc/SQA6-SXDL>] (referencing how Pacific Islanders can be “pigeonholed as a dumb athlete”)

¹²⁸ Henderson, *Samoan Giant*, *supra* note 122 at 278.

¹²⁹ *Id.* at 277. Interestingly, these “excesses” in their masculinity are supposedly physically marked by their large “body mass” while those of Black men fixate on the idea of the oversized phallus. *Id.* In contrast, Asian men are caricatured as having small penises. See, e.g., Amy Sun, *4 Lies We Need to Stop Telling About Asian-American Men*, EVERYDAY FEMINISM (Nov. 20, 2014), <https://everydayfeminism.com/2014/11/lies-asian-american-men/>

¹³⁰ Gotanda, *New Directions*, *supra* note 31, at 44.

¹³¹ *Id.* at 8, 26.

saboteurs or Chinese spies.”¹³² However, as Professor Leti Volpp notes:

The category of those who appear “Middle Eastern, Arab, or Muslim,” is socially constructed, like all racial categories, and heterogeneous. Persons of many different races and religions have been attacked as presumably appearing “Middle Eastern, Arab, or Muslim.” South Asians, in particular, along with Arabs and persons of Middle Eastern descent, have been subject to attack, although Latinos and African Americans have also been so identified. The category uses the religious identification, “Muslim,” as a racial signifier. Persons have been attacked since they “appear Muslim,” which, of course, makes no sense, since Muslims can be of any race.¹³³

For example, South Asians who are not Muslim but are of the Sikh faith have nonetheless borne “the brunt of discriminatory national security policies and selective immigration enforcement.”¹³⁴ They have also been the targets of horrific hate crimes since 9/11.¹³⁵ An example is the shooting of two Asian Indians in Olathe, Kansas in February 2017, where the shooter “reportedly yelled ‘get out of my country’ and thought his victims were ‘Middle Eastern.’”¹³⁶

Like the model minority myth that subsumes AAPI perceptions, the above stereotypes are interlocking and widespread. And while their pervasiveness may suggest otherwise, these harmful narratives do not go

¹³² *Id.* at 26.

¹³³ Volpp, *Divesting Citizenship*, *supra* note 81, at 1576.

¹³⁴ AHUJA & CHLALA, *WIDENING THE LENS*, *supra* note 19, at 9.

¹³⁵ *Id.* Louise Cainkar & Sunaina Maira, *Targeting Arab/Muslim/South Asian Americans: Criminalization and Cultural Citizenship*, 31 *AMERASIA J.* 1 (2005) [hereinafter Cainkar & Maira, *Targeting Arab/Muslim/South Asians*]. The complexities of the racialization of AMEMSA populations are evidently myriad. Theories and arguments for their inclusion or exclusion in an examination such as this essay are similarly many. With the caution that AMEMSA populations are not always AAPI, and vice versa, I include the demographics to carve out opportunities for meaningful coalition building between various groups in the fight against mass incarceration. For other examinations, see, *e.g.*, Vinay Harpalani, *Desi Crit: Theorizing the Racial Ambiguity of South Asian Americans*, 69 *N.Y.U. ANN. SURV. AM. L.* 77 (2013); Daryl Li, *A Universal Enemy?: “Foreign Fighters” and Legal Regimes of Exclusion and Exemption Under the “Global War Terror,”* 41 *COLUM. HUM. RTS. L. REV.* 355 (2010).

¹³⁶ SAITO, *SETTLER COLONIALISM*, *supra* note 46, at 139.

unchallenged. Artists, activists, and many others constantly contest these perceptions. In the legal academy, Asian American Jurisprudence scholars strive to boldly assert a collective AAPI identity, generate terrain for paradigm-shifting discourse, and effect racial justice and powerful coalitions.¹³⁷

III. THE CRITICAL LACUNA OF AAPI CRIMINALIZATION

Asian American Jurisprudence is not simply a “discrete doctrine or theory, but a space and locale in legal studies for identity, interrogation, and praxis.”¹³⁸ The field’s focus on identity stems from its “community-based subject position.”¹³⁹ Interrogation, meanwhile, “examines [AAPIs’] multiple histories and creates larger narratives,” and the theme of praxis integrates activism and scholarship.¹⁴⁰

Despite the expansive and powerful depths of the field, American Jurisprudence only contests the prison industrial complex in limited ways.¹⁴¹ This absence of critical analyses of AAPI criminalization is particularly concerning given the discipline’s roots in critical legal studies and critical race theory.¹⁴² Both critical legal studies and critical race theory examine law and liberalism as forces of rampant social stratification and injustice.¹⁴³ Critical race theory, in particular, departs from critical legal studies significantly and stresses the epistemological power—and necessity—of the subjectivity of marginalized peoples as “grassroots philosophers.”¹⁴⁴ As Professor Mari Matsuda writes, those

¹³⁷ See, e.g., Gotanda, *New Directions*, *supra* note 31; Torok, *supra* note 31, at 636–37 (describing the field as a “new outsider jurisprudence” that “analyzes racial hierarchy and other subordination in American law, legal history and culture from an Asian American standpoint”).

¹³⁸ Gotanda, *New Directions*, *supra* note 31, at 11.

¹³⁹ *Id.*

¹⁴⁰ *Id.*

¹⁴¹ I neither mean to suggest that the field’s inattention to these critical issues is deliberate nor to discount the field’s countless contributions. Regardless of intent and despite all of its contributions, however, the silence on these issues is pervasive and consequential. Addressing and analyzing the lacuna are also consistent with the discipline’s vision.

¹⁴² See Torok, *supra* note 31, at 636–37.

¹⁴³ See, e.g., Kimberlé Williams Crenshaw, *Race, Reform, and Retrenchment: Transformation and Legitimation in Antidiscrimination Law*, 101 HARV. L. REV. 1331, 1349–56 (1988) (providing an overview of the “Critical” vision).

¹⁴⁴ Mari J. Matsuda, *Looking to the Bottom: Critical Legal Studies and Reparations*, 22 HARV. C.R.-C.L. L. REV. 323, 324–325 (1987) (referencing Antonio Gramsci).

who have experienced discrimination speak with a special voice to which we should listen. Looking to the bottom—adopting the perspective of those who have seen and felt the falsity of the liberal promise—can assist critical scholars in the task of fathoming the phenomenology of law and defining the elements of justice.¹⁴⁵

Few critical race theorists, if any, would claim that criminalized people, including AAPI prisoners, have little to say about the “falsity of the liberal promise” and racial subordination. Nevertheless, the voices and experiences of criminalized AAPIs, as in other critical spheres, are rarely found in Asian American Jurisprudence.¹⁴⁶ This absence poses several troubling consequences, including rendering critical understandings of the entire carceral system, as well as the very nature of structural inequalities, incomplete.

A. *The Pitfalls of Erasure*

Asian American Jurisprudence’s silence surrounding the experiences of criminalized AAPIs inadvertently reinforces the model minority myth itself. Because the model minority myth is so capacious and pervasive, even the unintentional neglect of AAPI criminalization can be weaponized as additional evidence that AAPIs are indeed prosperous, law-abiding model minorities who are not impacted by the engines of mass

¹⁴⁵ *Id.* See also PAULO FREIRE, PEDAGOGY OF THE OPPRESSED 45 (Bloomsbury 2018) (2000) (“As individuals or as peoples, by fighting for the restoration of their humanity [the oppressed] will be attempting the restoration of true generosity. Who are better prepared than the oppressed to understand the terrible significance of an oppressive society? Who suffer the effects of oppression more than the oppressed? Who can better understand the necessity of liberation? They will not gain this liberation by chance but through the praxis of their quest for it, through their recognition of the necessity to fight for it. And this fight, because of the purpose given it by the oppressed, will actually constitute an act of love opposing the lovelessness which lies at the heart of the oppressors’ violence, lovelessness even when clothed in false generosity.”). Cf. PATRICIA HILL COLLINS, BLACK FEMINIST THOUGHT: KNOWLEDGE, CONSCIOUSNESS, AND POLITICS OF EMPOWERMENT 10 (2000) [hereinafter COLLINS, BLACK FEMINIST THOUGHT] (describing how Black women’s lived experiences construct and reconstruct “oppositional knowledge” used to resist subjugation).

¹⁴⁶ Again, to the extent that the criminalization of AAPIs is discussed, analysis is often limited to issues of immigration, gangs, culture, or victimhood, with limited reference to the prison industrial complex. See e.g., Gee, *supra* note 22.

incarceration.¹⁴⁷ The silence surrounding the topic also perpetuates the invisibility or erasure of AAPIs in broader scholarship and social justice advocacy. Additionally, the specific erasure of criminalized AAPIs is especially troubling given that they are often already at the margins of society, being, for instance, poor and of liminal legal status.¹⁴⁸

Relatedly, the lack of focus on criminalized AAPIs implies an aversion to discussing issues of criminality or “wrongdoing” within the communities. This absence of critical analyses of AAPI criminalization reflects a potential internalization¹⁴⁹ of the model minority myth—a problematic desire to be the “good,” law-abiding minority.¹⁵⁰ The inevitable and damaging conclusion of such a distinction is that there are “bad” minority groups—namely Hispanic and, especially, Black

¹⁴⁷ As discussed *supra*, Part II, the model minority myth is widespread and expansive. It can easily attribute different types of success—e.g., economic, social, and intellectual—to supposedly innate AAPI traits. Absent deliberate effort to combat it, the myth can thus operate in the background and reify itself while erasing AAPI struggles.

¹⁴⁸ Consider Eddy’s struggles with poverty, racism, and immigration, *supra*, Part I. See also Dorothy E. Roberts, *Abolition Constitutionalism*, 133 HARV. L. REV. 1, 13 (2019) (“Most people sentenced to prison in the United States today are from politically marginalized groups — poor, black, and brown. . . .”) [hereinafter Roberts, *Abolition*]; Cecilia Menjivar, *Liminal Legality: Salvadoran and Guatemalan Immigrants’ Lives in the United States*, 111 AM. J. SOCIOLOGY 999 (2006) (coining “liminal legality,” a status reflecting the gray area between documented and undocumented status that greatly impact the experiences of many immigrants).

¹⁴⁹ See, e.g., FREIRE, *supra* note 145, at 45–47 (“But almost always, during the initial stage of the struggle, the oppressed, instead of striving for liberation, tend themselves to become oppressors, or ‘sub-oppressors.’ The very structure of their thought has been conditioned by the contradictions of the concrete, existential situation by which they were shaped. . . . The oppressed, having internalized the image of the oppressor and adopted his guidelines, are fearful of freedom.”).

¹⁵⁰ See Sora Y. Han, *The Politics of Race in Asian American Jurisprudence*, 11 UCLA ASIAN PAC. AM. L.J. 1, 12 n.47 (2006) (citing BELL HOOKS, *KILLING RAGE: ENDING RACISM* 200) (“bell hooks has an excellent discussion of how non-black people of color imagine that such black power exists in order to obscure the fact that non-black people of color dissociate themselves from blackness in order to move closer to whiteness. ‘Working within the system of white supremacy, non-black people of color often feel as though they must compete with black folks to receive white attention. Some are even angry at what they wrongly perceive as a greater concern on the part of the dominant culture for the pain of black people. Rather than seeing the attention black people receive as linked to the gravity of our situation and the intensity of our resistance, they want to make it a sign of white generosity and concern. Such thinking is absurd.’”) [hereinafter Han, *Politics of Race*].

communities.¹⁵¹

The anti-Black repercussions stemming from the absence of critical analyses of AAPI carcerality do not end there. In an attempt to “transcend the Black/white paradigm,” alongside its suggestion that AAPIs are not part of the criminal system except as “illegal” immigrants or gang members, Asian American Jurisprudence incidentally casts and (dis)engages mass incarceration as a separate racial justice issue—namely, a “Black issue.” This view problematically reinforces the equation of crime with Blackness. It also reflects the model minoritarian desire to be in closer proximity to whiteness and, particularly, to be “expediently non-Black.”¹⁵²

Viewing mass incarceration as solely a Black issue obscures the intra- and interracial dynamics of the prison industrial complex. It exempts from critical examination the role of AAPI identities, peoples, experiences, and histories in maintaining—as well as resisting—mass incarceration. The Jurisprudence’s disengagement of mass incarceration leaves critical questions unanswered—and unasked. To what extent are AAPIs implicated in the criminal system? How are AAPIs complicit in the prison industrial complex? How and why does their criminalization differ or mirror the criminalization of Black people and other communities of color? In eluding these interrogations, Asian American Jurisprudence’s repeated calls for coalitions can thus ring hollow as the discipline neglects to address how AAPIs themselves have “undermined interracial cooperation,” such as through their own investment in anti-Blackness.¹⁵³ Recent examples include the silence and complicity of AAPI communities in the killings of Akai Gurley and George Floyd—both of which involved the actions of AAPI police officers.¹⁵⁴

¹⁵¹ Undoubtedly, complex, critical dynamics exist between various types of oppression including anti-AAPI, anti-Latinx, antisemitic, anti-Indigenous, and anti-Black oppressions. See, e.g., *infra* Part III.B; *infra* note 162. Given the explicit connection between the model minority myth and anti-Blackness, however, I focus in this essay on the dynamics of anti-Blackness and criminalization as they pertain to AAPIs.

¹⁵² Han, *Politics of Race*, *supra* note 150, at 8 (discussing how Asian American Jurisprudence views Blackness as an “uncontestable social fact, a constant local condition of danger, a certainty requiring not even judicial notice”). This issue of viewing mass incarceration as an exclusively “Black issue” is not exclusive to Asian American Jurisprudence. Critical scholars and advocates incidentally reaffirm such a view by neglecting criminalized AAPIs.

¹⁵³ Han, *Politics of Race*, *supra* note 150, at 1, 8, 12.

¹⁵⁴ See, e.g., Harvey Gee, *Review Essay: “What’s Going On?”*, 23 UCLA ASIAN PAC. AM. L.J. 19, 29-32 (critically discussing the “massive” mobilization of AAPI communities to support Peter Liang, the police who shot Akai Gurley); Hansi Lo Wang, *‘Awoken’ by*

To view mass incarceration as simply a “Black issue” also divorces Asian American Jurisprudence from critical race theory’s paradigmatic imperative of intersectionality. Intersectionality, coined by pioneering critical race theorist Professor Kimberlé Crenshaw, commonly “refers to particular forms of intersecting oppressions, for example, intersections of race and gender, or of sexuality and nation.”¹⁵⁵ And while some have reduced intersectionality to a static, identitarian, and additive double jeopardy theory,¹⁵⁶ intersectionality persists as “a lens through which you

N.Y. Cop Shooting, Asian-American Activists Chart Way Forward, NPR: CODESWITCH (Apr. 23, 2016, 7:30 PM), <https://www.npr.org/sections/codeswitch/2016/04/23/475369524/awoken-by-n-y-cop-shooting-asian-american-activists-chart-way-forward> [<https://perma.cc/4H32-HL7B>] (reporting on the dual protests of AAPI and Black Lives Matter activists in response to Liang’s prosecution). This is not to suggest or minimize the vibrant history of Black-AAPI solidarity historically modeled by the likes of Yuri Kochiyama and Grace Lee Boggs and more contemporarily by Asians4BlackLives. See, e.g., *Yellow Peril Supports Black Power: A Reflection on Asian-Black Solidarity*, SEATTLE PUB. LIBR., <https://www.spl.org/programs-and-services/learning/student-success/exploration-guides/yellow-peril-supports-black-power-a-reflection-on-asian-black-solidarity> [<https://perma.cc/L993-JWTF>] (last visited May 16, 2021); ASIANS 4 BLACK LIVES, <https://a4bl.wordpress.com/> [<https://perma.cc/ZHK8-SL9C>] (last visited May 16, 2021); *Asians 4 Black Lives*, ASIAN AMERICAN ACTIVISM: THE CONTINUING STRUGGLE, <https://blogs.brown.edu/ethn-1890v-s01-fall-2016/asians-for-black-lives/> [<https://perma.cc/5XL9-SLYK>] (last visited May 16, 2021); Viet Thanh Nguyen, *Asian Americans Are Still Caught in the Trap of the ‘Model Minority’ Stereotype. And It Creates Inequality for All*, TIME (June 26, 2020, 6:55 PM), https://time.com/5859206/anti-asian-racism-america/?fbclid=IwAR2WpakuBJh15_2PCLuIya6WPtXj9mRPQ-hQFATsq9zjzgv6MUo3qXKpempg [<https://perma.cc/8F4A-ME3Y>] (critically reflecting on the complicity of Hmong-American police officer Tou Thao in the killing of George Floyd); Cady Lang, *The Asian American Response to Black Lives Matter Is Part of a Long, Complicated History*, TIME (June 26, 2020, 2:49 PM), <https://time.com/5851792/asian-americans-black-solidarity-history/> [<https://perma.cc/3JN9-V9XL>].

¹⁵⁵ See Kimberlé Crenshaw, *Demarginalizing the Intersection of Race and Sex: A Black Feminist Critique of Antidiscrimination Doctrine, Feminist Theory and Antiracist Politics*, 1989 U. CHI. LEGAL F. 139 (1989); COLLINS, BLACK FEMINIST THOUGHT, *supra* note 145, at 18.

¹⁵⁶ Devon W. Carbado, *Colorblind Intersectionality*, 38 SIGNS: J. WOMEN IN CULTURE & SOC’Y 811, 812-13 (2013). As Professor Carbado explains, scholars often “conflate intersectionality with a particular line of argument in the ‘double jeopardy’ theory. Roughly, this argument forwards the idea that the greater the number of marginal categories to which one belongs, the greater the number of disadvantages one will experience. Women of color and Black women in particular figure prominently in this scholarly domain based on the view that, at the very least, they experience the double

can see where power comes and collides, where it interlocks and intersects.”¹⁵⁷ Intersectionality reveals that oppressions and identities are dynamic and “contextually constituted.”¹⁵⁸

Accordingly, an intersectional framework necessitates the cognizance that AAPI and Black public identities¹⁵⁹ are interconnected. It reframes static dichotomous understandings of oppression—e.g., that AAPIs are diligent and Black people lazy—as dynamic, dialogic processes. In short, the model minority myth informs and furthers anti-Blackness, just as anti-Blackness shapes and reinforces the model minority myth—though each operate and effectuate harm in fundamentally distinct ways in different contexts. It follows that the criminalization of AAPIs (or the supposed lack thereof) is similarly interlocked with the hypercriminalization of Black communities, just as constructs like race, gender, class, sexuality, and disability also all simultaneously shape processes and ideas of criminality.¹⁶⁰ In this light, the lacuna left by Asian American Jurisprudence’s neglect of criminalized AAPIs impedes a critical intervention of oppression, obstructing how intersecting oppressions are actually organized and how power operates distinctly on “structural, disciplinary, hegemonic, and

jeopardy of racism and sexism. Notwithstanding that intersectionality grows out of and builds upon the double-jeopardy literature, intersectionality is not a positive theory about double jeopardy. The theory does not posit, for example, that Black lesbians (because they occupy three marginal categories—they are Black, female, and lesbian) will in every context be more disadvantaged than, for example, Black heterosexual men (because they occupy one marginal category—they are Black). Mapping fixed hierarchies onto particular identities obscures that both power and social categories are contextually constituted.”)

¹⁵⁷ Kimberlé Crenshaw on Intersectionality, *More than Two Decades Later*, COLUM. L. SCH. NEWS (June 8, 2017), <https://www.law.columbia.edu/news/archive/kimberle-crenshaw-intersectionality-more-two-decades-later> [<https://perma.cc/NQ2W-WT2E>].

¹⁵⁸ Other theorists, including prominent scholars of Asian American Jurisprudence, suggest that this lesson is not drawn from an intersectional perspective but rather of distinct yet interrelated theories such as “cosynthesis,” “multidimensionality,” and “assemblages.” See Carbado, *supra* note 156, at 811. I share Professor Carbado’s view, however, that implicit in these alternative frameworks is a circumscription of the “theoretical reach of intersectionality as a predicate to staging their own intervention. That is, they constitute and define the parameters of the very thing they purport only to describe—intersectionality.” Carbado, *supra* note 156, at 816.

¹⁵⁹ See Hancock, *supra* note 20.

¹⁶⁰ See, e.g., LEONARD, *supra* note 16, at 16-35; DANA M. BRITTON, *THE GENDER OF CRIME* (2011).

interpersonal” levels.¹⁶¹

B. *Intersectionality and the Prison Industrial Complex*

More specifically, the lack of intersectional critique renders the interconnectedness of mass incarceration with other systems invisible.¹⁶² As abolitionists such as Professors Angela Davis and Dorothy Roberts have repeatedly stressed, mass incarceration is not merely about criminal punishment but also of unequal economic, social, and political systems, all of which form the “prison industrial complex.”¹⁶³ Contemporarily, these systems include institutions and practices like “the wage system, animal and earth exploitation, [and] racialized, gendered, and sexualized violence.”¹⁶⁴ For example, the “prison-building boom” in California during the 1980s to the 2000s, despite falling crime rates, was a “response to surpluses of capital, land, labor, and state capacity.”¹⁶⁵ The rush to build prisons in California embodied the convergence of pressures from agricultural markets, austerity measures, police unions, and other social forces—each of which implicated its own set of intersectional issues.¹⁶⁶ Additionally, the prison industrial complex interlocks with other public institutions such as schools to expand the carceral state:

¹⁶¹ Or put specifically in Professor Collins’s terms, the absence of critical analysis of AAPI criminalization ignores the “matrix of domination.” COLLINS, BLACK FEMINIST THOUGHT, *supra* note 145, at 18.

¹⁶² For more on the interconnectedness of oppression, see Patricia Hill Collins, *Toward a New Vision: Race, Class, and Gender as Categories of Analysis and Connection*, 1 RACE, SEX & CLASS 25, 30 (1993) (calling for an epistemic paradigm of viewing systems of oppression as interconnected and providing the example of how slavery was not merely a racist institution but also a gendered and classed one where wealthy white women played critical roles) [hereinafter Collins, *Toward a New Vision*].

¹⁶³ See Roberts, *Abolition*, *supra* note 148, at 7. See also ANGELA Y. DAVIS, ARE PRISONS OBSOLETE? 84–104 (2003) (critically discussing the term “prison industrial complex”) [hereinafter DAVIS, ARE PRISONS OBSOLETE?].

¹⁶⁴ See Roberts, *Abolition*, *supra* note 148, at 7.

¹⁶⁵ DAVIS, ARE PRISONS OBSOLETE?, *supra* note 163, at 12–13, 14, 85 (quoting Professor Ruth Wilson Gilmore’s explanation of how “California’s new prisons are sited on devalued rural land, most, in fact on formerly irrigated agricultural acres . . . The State bought land sold by big landowners. And the State assured the small, depressed towns now shadowed by prisons that the new, recession-proof, non-polluting industry would jump-start local redevelopment.”).

¹⁶⁶ See Rachel Kushner, *Is Prison Necessary? Ruth Wilson Gilmore Might Change Your Mind*, N.Y. TIMES MAG. (Apr. 17, 2019) <http://nytimes.com/2019/04/17/magazine/prison-abolition-ruth-wilson-gilmore.html>.

Government agencies don't make profits; instead, they need revenue. State agencies must compete for this revenue Under austerity, the social-welfare function shrinks; the agencies that receive the money are the police, firefighters and corrections. So other agencies start to copy what the police do: The education department, for instance, learns that it can receive money for metal detectors much more easily than it can for other kinds of facility upgrades. And prisons can access funds that traditionally went elsewhere — for example, money goes to county jails and state prisons for “mental health services” rather than into public health generally.¹⁶⁷

Thus, the prison industrial complex today is a “logic and method of dominance [that] is not reducible to the particular institutional form of jails, prisons, detention centers, and other such brick-and-mortar incarcerating facilities.”¹⁶⁸ Undoubtedly, this was also true historically. As Black feminist abolitionists emphasize, for example, the American criminal punishment system has roots in various legal, physical, and cultural aspects of “racialized chattel slavery.”¹⁶⁹ Anti-Black racism is evidently at the core of what animated—and animates—the mechanisms of the U.S. criminal system.

Nevertheless, as an intersectional framework dictates, there are other ideologies and systems that interlock and consequently inform the prison industrial complex. In the words of Professor Davis, while “the prison reveals congealed forms of antiblack racism that operate in clandestine ways,” it is clear that

¹⁶⁷ *Id.*

¹⁶⁸ Roberts, *Abolition*, *supra* note 148, at 19 (citations omitted).

¹⁶⁹ *Id.* (“The pillars of the U.S. criminal punishment system — police, prisons, and capital punishment — all have roots in racialized chattel slavery. After Emancipation, criminal control functioned as a means of legally restricting the freedoms of black people and preserving whites’ dominant status. Through these institutions, law enforcement continued to implement the logic of slavery — which regarded black people as inherently enslavable with no claim to legal rights — to keep them in their place in the racial capitalist hierarchy.”); DAVIS, ARE PRISONS OBSOLETE?, *supra* note 163, at 27–28 (explaining how the earliest prisons subjected people to unpaid hard labor—already foundational to the condition of enslavement).

there are other racialized histories that have affected the development of the U.S. punishment system as well—the histories of Latinos, Native Americans, and [AAPIs]. These racisms congeal and combine in the prison. Because we are so accustomed to talking about race in terms of black and white, we often fail to recognize and contest expressions of racism that target people of color who are not black.¹⁷⁰

In this light, Asian American Jurisprudence’s inattention to AAPI criminalization erases the communities’ experience of oppression, which, ironically, is exactly the field’s critique of the Black/white paradigm. Its inattention also mirrors the continued erasure of criminalized AAPIs in other critical fields such as multiracial and feminist criminologies. The resulting lacuna excludes from analysis historical and contemporary anti-AAPI forces interconnected with criminalization. Otherwise stated, the erasure of criminalized AAPIs limits our understanding—and perhaps prevents us from even posing the question—of precisely how anti-AAPI oppression has shaped and continues to shape criminalization. And this, in turn, obfuscates the actual scope, history, and impact of the criminal system while erasing important intersectional dynamics between and among various groups.

To illustrate, consider the relative silence surrounding the criminalization of AAPI migrants in California during the twentieth century. In the early 1900s South Asian men who congregated together in poor neighborhoods and shared resources with each other were stereotyped as “Hindu Sodomites” corrupting notions of “normative American masculinity.”¹⁷¹ They were consequently subjected to surveillance and criminalization under vagrancy, sodomy, and male prostitution laws.¹⁷² Similarly, police also subjected Filipino farmworkers who frequented taxi dance halls in the 1920s and 1930s to scrutiny and violence.¹⁷³ These farmworkers flocked to the dance halls after laboring in dehumanizing

¹⁷⁰ DAVIS, ARE PRISONS OBSOLETE?, *supra* note 163, at 25–26.

¹⁷¹ Nayan Shah, *Between “Oriental Depravity” and “Natural Degenerates”*: *Spatial Borderlands and the Making of Ordinary Americans*, 57 AM. Q. 703, 704–05, 715 (2005). See also SAITO, SETTLER COLONIALISM, *supra* note 46, at 136 (discussing how the gender imbalance of Chinese migration in the 1900s led to the perception of Chinese men as sexual predators and Chinese women as lustful prostitutes threatening the purity of American society).

¹⁷² Shah, *supra* note 171, at 712–16.

¹⁷³ See, e.g., ESPAÑA-MARAM, *supra* note 126, at 105–06.

conditions all day “in search of the proverbial wine, women, and song.”¹⁷⁴ At the halls, they used their meager wages to dance with working-class white women.¹⁷⁵ These interactions ultimately led to mass protest and police raids.¹⁷⁶ They also led to local efforts to establish “exclusionist policies based on the so-called unbridled sexual passions of Filipinos,”¹⁷⁷ even though Filipinos themselves were American nationals at the time as a result of U.S. colonization.¹⁷⁸

Manifest in these histories is the interconnectedness of criminalization with immigration, capitalism, and colonialism, as well as the interplay of race, class, gender, and sexuality. What thus follows from the scholarly silence surrounding these histories is the erasure of these connections and cognizance of precisely how these systems have specifically targeted and impacted AAPIs. The silence also inhibits analysis drawing connections between the very imagination of AAPIs as predatory deviants with other racialized perceptions, such as ones informed by anti-Blackness. Indeed, the silence misses how many “racial qualities previously assigned to blacks quickly became” AAPI characteristics in the early twentieth century,¹⁷⁹ such as Filipino masculinity’s being deemed a similar threat to white racial purity as Black masculinity was¹⁸⁰ or how other AAPIs like the Chinese were caricatured in minstrel shows as having dark skin, thick lips, and an inhuman capacity to work.¹⁸¹

Today, the inattention to the criminalization of AAPIs leads to similar types of erasure. It silences the stories of Eddy and other criminalized AAPIs, including those currently incarcerated. It also exempts from examination the ways in which the prison industrial complex specifically targets and impacts AAPIs today—just as it continues to effectuate harm on various other communities in different ways. Critically, because this inattention leaves the anti-AAPI dimensions of the prison industrial complex unexamined, it also leaves the specific issues causing AAPI’s criminalization unaddressed. Typical solutions offered by both mainstream

¹⁷⁴ ESPAÑA-MARAM, *supra* note 126, at 111.

¹⁷⁵ *Id.* at 106.

¹⁷⁶ *Id.* at 105-06, 119.

¹⁷⁷ *Id.* at 119.

¹⁷⁸ See e.g., Volpp, *Divesting Citizenship*, *supra* note 81, at 414-15 n.39.

¹⁷⁹ SAITO, *SETTLER COLONIALISM*, *supra* note 46, at 135.

¹⁸⁰ See also *id.* (connecting the depiction of Filipinos to anti-Black imaginations of criminality and anti-Indigenous notions of savagery and civility).

¹⁸¹ *Id.*

and critical advocates, while likely beneficial overall, are thus limited in scope.¹⁸² They do not address the unique factors that criminalize AAPIs.

IV. THE CRIMINALIZATION OF AAPI YOUTH

The resulting inability to address the unique factors criminalizing AAPIs is especially problematic in the context of schools, often examined as powerful sites of socialization and criminalization.¹⁸³ For most AAPI youth, particularly those with immigrant backgrounds, schools are loci for learning and interacting with dominant American norms.¹⁸⁴ They are also sites of contestation where identities play significantly central roles.¹⁸⁵ To criminalized AAPIs like Eddy, schools were also sites of discrimination and criminalization. Yet the experiences of AAPIs are scantily discussed in the robust scholarship and advocacy around schooling and criminalization, including critical works on the “school-to-prison pipeline.”¹⁸⁶

A. *The School-to-Prison Pipeline and Zero Tolerance Policies*

The school-to-prison pipeline drives out students from schools and pushes them into prison, emphasizing a focus on incarceration over education.¹⁸⁷ Due to the pipeline’s nefarious scope, many have rightfully examined and attempted to disrupt it.¹⁸⁸ Today, the pipeline is generally understood as disproportionately criminalizing students from marginalized backgrounds, typically of poor, disabled, Black, and/or Latinx identities—with girls increasingly impacted.¹⁸⁹ The schools these students attend are typically *de facto* segregated, heavily underfunded, and characterized by

¹⁸² See *infra* Part V.A.

¹⁸³ See generally James Collins, *Social Reproduction in Classrooms and Schools*, 38 ANN. REV. ANTHROPOLOGY 33; Paul J. Hirschfield & Katarzyna Celinska, *Beyond Fear: Sociological Perspectives on the Criminalization of School Discipline*, 5 SOCIO. COMPASS 1 (2011).

¹⁸⁴ See, e.g., GRACE KAO, ELIZABETH VAQUERA & KIMBERLY A. GOYETTE, EDUCATION AND IMMIGRATION 19-20 (2013).

¹⁸⁵ *Id.*

¹⁸⁶ See, e.g., Nancy A. Heitzeg, “*Education or Incarceration: Zero Tolerance Policies and the School to Prison Pipeline*,” F. ON PUB. POL’Y, no. 2, 2009, [hereinafter Heitzeg, *Education or Incarceration*]; CATHERINE Y. KIM, DANIEL J. LOSEN & DAMON T. HEWITT, THE SCHOOL-TO-PRISON PIPELINE: STRUCTURING LEGAL REFORM 1 (2010).

¹⁸⁷ Heitzeg, *Education or Incarceration*, *supra* note 186, at 16.

¹⁸⁸ See, e.g., *id.*

¹⁸⁹ See Heitzeg, *Education or Incarceration*, *supra* note 186, at 6.

“overcrowded classrooms . . . , a lack of effective teachers and school leaders, and insufficient funds for ‘extras’ such as counselors, special education services and even textbooks” which create hostile environments for learning and worsen a myriad of criminalizing factors.¹⁹⁰ These factors include zero-tolerance and punitive policies, increased police presence, racial profiling, and emphases on high-stakes testing.¹⁹¹

Zero tolerance policies often “provide the direct mechanism by which students are removed from school by suspension/expulsion, pushed toward dropping out, charged in juvenile court, and routed into the prison pipeline.”¹⁹² The term refers to how “a harsh predefined mandatory consequence is applied to a violation of school rules without regard to the seriousness of the behavior, mitigating circumstances, or the situational context.”¹⁹³ Zero tolerance policies have resulted in exorbitantly high rates of suspensions and arrests in schools, with some states’ number of suspensions exceeding 10 percent of the enrolled student population.¹⁹⁴ Combined with increased police presence at schools, these policies have also led to extreme punishments: a kindergartener arrested for throwing a tantrum, a student arrested for a flawed science project, and another for playing a song aloud from a cellphone.¹⁹⁵

Beyond their application to disciplinary behavior, zero tolerance policies also intertwine with academic disengagement or “failure.”¹⁹⁶

¹⁹⁰ KIM ET AL., *supra* note 186, at 1.

¹⁹¹ See ACLU, *School-to-Prison Pipeline*, <http://aclu.org/issues/juvenile-justice/school-prison-pipeline?redirect=fact-sheet%2Fwhat-school-prison-pipeline> [<https://perma.cc/P52D-64NB>] (last visited May 16, 2021); Heitzig, *Education or Incarceration*, *supra* note 186, at 8; Carla Amurao, *Fact Sheet: How Bad Is The School-to-Prison Pipeline?*, PBS: TRAVIS SMILEY REPORTS (Mar. 28, 2013, 11:40 PM), <http://www.pbs.org/wnet/tavissmiley/tsr/education-under-arrest/school-to-prison-pipeline-fact-sheet/>.

¹⁹² Heitzig, *Education or Incarceration*, *supra* note 186, at 8.

¹⁹³ *Id.*; RUSSELL SKIBA, CECIL R. REYNOLDS, SANDRA GRAHAM, PETER SHERAS, JANE CLOSE CONOLEY & ENEDINA GARCIA-VAZQUEZ, AM. PSYCH. ASS’N, ARE ZERO TOLERANCE POLICIES EFFECTIVE IN THE SCHOOLS? AN EVIDENTIARY REVIEW AND RECOMMENDATIONS 2 (2006), <https://www.apa.org/pubs/info/reports/zero-tolerance-report.pdf> [<https://perma.cc/S4YP-MD43>].

¹⁹⁴ KIM ET AL., *supra* note 186, at 2-3.

¹⁹⁵ ADVANCEMENT PROJECT, SCHOOL-TO-PRISON PIPELINE (2013) [hereinafter ADVANCEMENT PROJECT], https://advancementproject.org/wp-content/uploads/2017/11/03721750a0812a95bd_6im6ih8ns.pdf [<https://perma.cc/GEK4-9F6V>].

¹⁹⁶ See, e.g., KIM ET AL., *supra* note 186, at 3; Deborah Gordon Klehr, *Addressing the Unintended Consequences of No Child Left Behind and Zero Tolerance: Better*

Research shows that academic performance is a powerful predictor for behavior and vice versa.¹⁹⁷ Struggling students can “act out,” which can trigger zero tolerance policies, while suspensions and expulsions exacerbate poor academic performance by disrupting education.¹⁹⁸ Further, the dominant emphasis on standardization and “test-driven accountability regimes” provide perverse pressures and “incentives for schools to push out low-performing students.”¹⁹⁹ “[I]f a student acts up in class, it is no longer in educators’ self-interest to address it by assessing the student’s unmet needs or treating the incident as a ‘teachable moment.’”²⁰⁰ It becomes “much easier and more ‘efficient’ to simply remove the child from class through punitive disciplinary measures and focus on the remaining students. As a result, the practice of pushing struggling students out of school to boost test scores has become quite common.”²⁰¹ Accordingly, while schools may not directly expel students due to poor academic performance, zero tolerance allows them to expel students for misbehavior stemming from academic struggles that are often caused by myriad external factors.²⁰²

The rise of zero tolerance policies stems from racialized conceptions of crime during the War on Drugs that depicted Black Americans as supposedly bulletproof super predators.²⁰³ Together with concerns arising from popularized coverage of the Columbine shooting, schools militarized, deploying law enforcement officers, security cameras, and metal detectors on campus.²⁰⁴ Data reflects the devastating results of the policies.²⁰⁵ The U.S. Department of Education Office for Civil Rights

Strategies for Safe Schools and Successful Students, 16 GEO. J. POVERTY L. & POL’Y 585, 589 (2009).

¹⁹⁷ Klehr, *supra* note 196.

¹⁹⁸ See, e.g., Klehr, *supra* note 196; KIM ET AL., *supra* note 186.

¹⁹⁹ KIM ET AL., *supra* note 186, at 1-2. See also Klehr, *supra* note 196.

²⁰⁰ Emily Bloomenthal, *Inadequate Discipline: Challenging Zero Tolerance Policies as Violating State Constitution Education Clauses*, 35 N.Y.U. REV. L. & SOC. CHANGE 303, 342 (2011).

²⁰¹ *Id.*

²⁰² See e.g., Bloomenthal, *supra* note 200, at 321-22. See also Jeremy Thompson, *Eliminating Zero Tolerance Policies in Schools: Miami-Dade County Public Schools’ Approach*, 2016 BYU EDUC. & L. J. 325, 331-334 (2016).

²⁰³ BRITTON, *supra* note 160, at 7; Heitzig, *Education or Incarceration*, *supra* note 186, at 8.

²⁰⁴ Heitzig, *Education or Incarceration*, *supra* note 186, at 8.

²⁰⁵ U.S. DEP’T OF EDUC. OFF. FOR C.R., DATA SNAPSHOT: SCHOOL DISCIPLINE (2014), <https://ocrdata.ed.gov/assets/downloads/CRDC-School-Discipline-Snapshot.pdf> [<https://perma.cc/ZN3J-5Y75>].

found that Black students are “suspended and expelled at a rate three times greater than white students.”²⁰⁶ “American Indian and Native-Alaskan students are also disproportionately suspended and expelled, representing less than 1 percent of the student population but 2 percent of out-of-school suspensions and 3 percent of expulsions.”²⁰⁷ Meanwhile, Black girls are suspended at a rate higher than any other racial group and most boys, and students with disabilities are twice as likely to be suspended from school, with one out of four boys of color with disabilities and nearly one in five girls of color with disabilities receiving out of school suspensions.²⁰⁸ Additionally, 70 percent of students referred to law enforcement in schools are Black or Latinx, and both groups are “twice as likely to not graduate high school as whites.”²⁰⁹ Notably, there is little to no reference to AAPI students, reflecting their pervasive erasure in informational systems and advocacy.²¹⁰

Considered with the reality that even one out-of-school suspension can double a student’s risk of dropping out,²¹¹ that drop-outs are three and a half times more likely to be arrested than high school graduates, and that 68 percent of incarcerated men across the country are without a diploma,²¹² these statistics reveal the serious scope and impact of the school-to-prison pipeline on individuals and communities physically, emotionally, economically, and socially. Summarily put, the pipeline hurts us all:

We all lose out in multiple ways. We lose out economically because people who are poorly educated earn less, pay less in taxes and need more services. They will also more likely end up in prison. But we lose out in other ways that are not obvious. We can’t help but think

²⁰⁶ *Id.*

²⁰⁷ *Id.*

²⁰⁸ *Id.*

²⁰⁹ CMTY. COALITION, ARE OUR CHILDREN BEING PUSHED INTO PRISON? (2012) [hereinafter COMMUNITY COALITION], <https://cocosouthla.org/inforgraphics/prisonpipelinegraphic/> [https://perma.cc/ZFB2-P2S2].

²¹⁰ *See supra* Part I.

²¹¹ ADVANCEMENT PROJECT, *supra* note 195.

²¹² Kathryn Hanson & Deborah Stipek, *Schools v. Prisons: Education’s the Way to Cut Prison Population*, MERCURY NEWS (May 15, 2014, 9:26 AM), <https://www.mercurynews.com/2014/05/15/schools-v-prisons-educations-the-way-to-cut-prison-population/>.

of the art that is not created, the entrepreneurial ideas that may never reach the drawing board, the classrooms these Americans will never lead, the discoveries they'll never make. Our failure to educate some groups [of] children as well as others tear at the moral fabric of the nation.²¹³

B. *Complicating the Metaphor and “Reframing” the Pipeline*

While the school-to-prison pipeline metaphor is helpful in many respects, it improperly implies that the process of criminalizing students is unidirectional or linear.²¹⁴ It implies that there is a specific origin point—schools—and a terminal location—prison—when instead the reality is that a complex “system or web” of “policies and social practices, in and out of schools, punitive and non punitive in nature” all work in tandem to criminalize youth.²¹⁵ For example, Professor Alicia Pantoja, in criticizing the Black/white emphasis on the pipeline, observes that the pipeline functions more as a web for other youth, such as Latinx students.²¹⁶ She notes that “the intersection and multiplicity of oppressive immigration, mass incarceration and schooling systems, among other factors, shape the process and outcomes of Latino@s’ criminalization.”²¹⁷ In other words, there are many other points or “stops” on the pipeline or web: immigration detention centers, deportation, poverty, mental health issues, abuse, and others.

The criminalization of AAPI students likewise involved these factors.²¹⁸ Intersections of immigration, language access, mental health care,

²¹³ Casey Quinlan, *New Data Shows the School-to-Prison Pipeline Starts as Early as Preschool*, THINKPROGRESS (June 7, 2016, 1:50 PM), <https://thinkprogress.org/new-data-shows-the-school-to-prison-pipeline-starts-as-early-as-preschool-80fc1c3e85be> [<https://perma.cc/CQ7Y-WLMS>] (quoting previous Secretary of Education John King).

²¹⁴ See Alicia Pantoja, *Reframing the School-to-Prison Pipeline: The Experiences of Latin@ Youth and Families*, 7 J. ASS’N MEXICAN AM. EDUCATORS 17, 18 (2013).

²¹⁵ *Id.* at 17.

²¹⁶ *Id.* at 18.

²¹⁷ *Id.*

²¹⁸ I nevertheless use the term and metaphor of the pipeline in this essay to add to the expansive school-to-prison pipeline literature that already exists. It is my hope to integrate AAPIs within that body of scholarship, given its silence on the topic. Nevertheless, the employment of the pipeline terminology is not meant to indicate that the process of incarceration and criminalization of students is linear. In fact, whenever the term is used, Professor Pantoja’s, *supra* note 214, reframing of the pipeline as a complex web beyond

poverty, and educational issues, to name a few, converge to criminalize AAPI youth. Yet the serious nature of each of these issues, as well as their interconnectedness, is not enough to bring to light the struggles of criminalized AAPI youth. Even critical scholars like Professor Pantoja who criticize the “Black/white dyad”—akin to scholars of Asian American Jurisprudence—pay little heed to the plight of criminalized AAPIs. But as Eddy’s story and data shows, AAPIs are subjected to criminalization.²¹⁹ And despite data on criminalized AAPIs being scarce, with data on criminalized AAPI youth being scarcer and more dated, what is available does underline that AAPIs are impacted by the prison industrial complex.

C. *Locating AAPI Youth on the School-to-Prison Pipeline*

In 2004, while the arrests of white, Black, and Native American youths decreased nationwide, the arrests of young AAPIs increased by 11.4 percent.²²⁰ In California, where high percentages of AAPIs reside and subsequently where more data is available, the incarceration of young AAPIs is notable. Reports conducted by the National Center on Crime and Delinquency (NCCD) in 2001 and 2006 found that in San Francisco County, “Samoan and Vietnamese youth have some of the highest rates of arrest of any ethnic group.”²²¹ In 2006 Oakland, Samoan youth had the highest arrest rates of any racial/ethnic group in the city at 140 per 1,000.²²² Juvenile Southeast Asians also suffered disproportional arrest rates in Oakland: Cambodian youth at 63 per 1,000, Laotian youth at 52 per 1,000, and Vietnamese juveniles at 28 per 1,000.²²³ Meanwhile, the arrest rate of white youth in Oakland in 2006 was only 13 per 1,000.²²⁴ Additionally, in Oakland, from 1990 to 2006, “Laotian youth had among the greatest increases in arrest rates, at times jumping almost 50% in one year (1997 to 1998).”²²⁵ Moreover, “Laotian youth represented almost half of AAPI arrests in Oakland, yet only 22% of the entire AAPI population.”²²⁶

the dichotomy of Black and white, and as an intricate web of overlapping, compounding issues, is meant to be incorporated and emphasized.

²¹⁹ See *supra*, Part I.

²²⁰ See Zia, *supra* note 17, at x.

²²¹ AHUJA & CHLALA, WIDENING THE LENS, *supra* note 19, at 18.

²²² *Id.*

²²³ *Id.*

²²⁴ NAT’L COUNCIL ON CRIME AND DELINQUENCY, *supra* note 50, at 56.

²²⁵ AHUJA & CHLALA, WIDENING THE LENS, *supra* note 19, at 19.

²²⁶ *Id.*

AAPI youth also face disproportionate and distinct forms of criminalization. In Alameda County in California, for instance, Southeast Asians have high rates of recidivism, with 40 percent of Southeast Asians arrested in Oakland “committing crimes of ‘greater seriousness’ within two years.”²²⁷ Among criminalized youth who have adjudication hearings, AAPIs were the most likely to “undergo institutional placement.”²²⁸ AAPIs are also harshly criminalized in immigration contexts:

Closely tied to the rise of mass incarceration is the growth of immigration detention and deportation. Deportations have increased for AAPIs overall, and Southeast Asian Americans in particular. Since 1998, at least 15,000 Southeast Asian Americans from Cambodia, Laos, and Vietnam have received final orders of deportation, despite many arriving to the United States with refugee status and obtaining a green card. Furthermore, more than 12,000 of the final orders of deportation were based on old criminal records rather than current offenses. Due to stringent immigration policies enacted in 1996, Southeast Asian American communities are three to four times more likely to be deported for old convictions, compared to other immigrant communities.²²⁹

Like the lacuna found in Asian American Jurisprudence, the limited data on AAPI youth and the school-to-prison pipeline highlight important sociopolitical points. It reflects the adherence of institutions, advocates, and scholars to the model minority myth as well as a tendency to overlook smaller populations. Both this adherence and tendency have dire consequences that include maintaining the myth itself and erasing urgent needs of the communities. And even though criminalized AAPI youth do

²²⁷ *Id.*

²²⁸ NAT'L COUNCIL ON CRIME AND DELINQUENCY, *supra* note 50, at 122.

²²⁹ See AAPI BEHIND BARS, *supra* note 40, at 1. While immigration enforcement is a critical part of the prison industrial complex, I focus here on the processes of criminalization that drive students out of schools and into the criminal system, which include detention centers or deportation. For critical discussion of the topic, including the “school-to-deportation pipeline,” see, e.g., SaunJuhi Verma, Patricia Maloney & Duke W. Austin, *The School to Deportation Pipeline: The Perspectives of Immigrant Students and Their Teachers on Profiling and Surveillance Within the School System*, 673 ANNALS AM. ACAD. POL. & SOC. SCI. 209 (2017).

occupy a much smaller place on the pipeline (and are invisible in analyses), their experiences, struggles, and needs are nevertheless valid, existent, and evidence of the evils of the prison industrial complex. Consequently, inclusion and investigation of their experiences illuminate unaddressed and unidentified elements of the pipeline. They also reveal the specific ways that the pipeline subjugates young AAPIs and provide a more nuanced image of the interlocking nature of criminalization.

Critically, the inclusion of AAPIs in studies of the pipeline (and criminalization more broadly) here, and hopefully elsewhere, should not detract from the significant contributions to current understandings and critiques of the pipeline—and carcerality. Nor should their inclusion decenter the experiences of Latinx and especially Black youth, whose subjugation to the pipeline remains of the utmost “saliency.”²³⁰ Rather, the goal of including the experiences of AAPI youths is to expand existing important yet limited analyses of the pipeline. To do so is to shy away from unintersectional, “additive frameworks” of conceptualizing systemic oppression.²³¹ Because intersectionality enables a complex “both/and” analysis, rather than simply an “either/or” one,²³² analysis of the prison industrial complex as anti-AAPI should therefore not preclude analysis that it is also intrinsically anti-Black. In other words, the prison industrial complex is anti-AAPI *and* still fundamentally anti-Black. Put another way, just as the model minority myth and anti-Blackness “congeal” and mutually reinforce each other, so do the distinct forms of criminalization targeting AAPIs and Black communities.²³³ Analysis of how AAPI youth are particularly impacted by the pipeline therefore furthers a more complete and intersectional understanding of the prison industrial complex as well as oppression more generally.

²³⁰ As Collins, *Toward a New Vision*, *supra* note 162, at 28–29, 26 cautions, we must not “confuse” the issue of “saliency”—e.g., who are most impacted by the pipeline—with the importance of the “theoretical stance positing the interlocking nature of oppression.” She warns us not to fall into “additive analyses” that center dichotomous conceptualization of oppression and therefore masks the relationships between various inequalities. *Id.* at 27–28. Indeed, incorporating AAPIs in analyses should not be perceived as detracting from the existent significant critiques of the school-to-prison pipeline that center Black and Latinx voices. Instead, it should be noted how the inclusion of AAPIs will actually reveal how the criminalization of AAPI youth at schools are connected to broader white supremacist agendas such as those manifest in anti-Blackness.

²³¹ *Id.* See also *supra*, Part II.A.

²³² Collins, *Toward a New Vision*, *supra* note 162, at 27–28.

²³³ See DAVIS, ARE PRISONS OBSOLETE?, *supra* note 163, at 24–25. See also *supra*, Part IV.A.

D. *The Racial Profiling and Criminalization of AAPI Youth*

Typical factors that criminalize students include zero tolerance policies, militarization and police presence in schools, racial profiling, and high-stakes testing and academic disengagement.²³⁴ However, given the absence of AAPI youth in critical examinations of the pipeline, these factors are only understood in relation to Black and Latinx youth. The result is the occlusion of the factors' specific impact on AAPI youth and consequently potential ways to address them.

Take racial profiling in schools. Numerous advocates establish that Black and Latinx students are often racially profiled as deviant and criminal and are therefore disciplined more harshly.²³⁵ Research shows that 70 percent of students referred to law enforcement in schools are Black or Latinx.²³⁶ In particular, Black students are subjected to extremely disproportionate discipline. In North Carolina, for example, "Black students were suspended eight times higher for cell phone use, six times higher for dress code violations, two times higher for disruptive behavior and 10 times higher for displays of affection" than white students.²³⁷

²³⁴ See *supra*, Part IV.A.

²³⁵ See generally ERICA R. MEINERS, *RIGHT TO BE HOSTILE: SCHOOLS, PRISONS, AND THE MAKING OF PUBLIC ENEMIES* (2007); NISHAUN T. BATTLE, *BLACK GIRLHOOD, PUNISHMENT, AND RESISTANCE: REIMAGINING JUSTICE FOR BLACK GIRLS IN VIRGINIA* (2020); Jennifer Castillo, *Tolerance in Schools for Latino Students: Dismantling the School-to-Prison Pipeline*, 26 HARV. J. HISPANIC POL'Y 43 (2014); Calvin Rashaud Zimmermann, *Before Black Boys Are Criminalized?: Race, Boyhood, and School Discipline in Early Childhood* (2018) (Ph.D. Dissertation, University of Pennsylvania), repository.upenn.edu/cgi/viewcontent.cgi?article=4862&context=edissertations [https://perma.cc/5ZCF-49Y2] MARCOS PIZARRO, *CHICANAS AND CHICANOS IN SCHOOL: RACIAL PROFILING, IDENTITY BATTLES, AND EMPOWERMENT* (2005); MARTHA R. BIREDA, *ELIMINATING RACIAL PROFILING IN SCHOOL DISCIPLINE: CULTURES IN CONFLICT* (2002); A.A. Akom, *Racial Profiling at School: The Politics of Race and Discipline at Berkeley High*, in *ZERO TOLERANCE: RESISTING THE DRIVE FOR PUNISHMENT IN OUR SCHOOLS* 51-63 (William Ayers, Bernadine Dohrn & Rick Ayers eds., 2001); German Lopez, *Black Kids Are Way More Likely to Be Punished in School Than White Kids, Study Finds*, VOX (Apr. 5, 2018, 8:00 AM), https://www.vox.com/identities/2018/4/5/17199810/school-discipline-race-racism-gao.

²³⁶ See COMMUNITY COALITION, *supra* note 209.

²³⁷ Caitlin Curley, *How Profiling in Schools Feeds the School-to-Prison Pipeline*, GENBIZ (Aug. 8, 2016), https://genbiz.com/profiling-schools-feeds-school-prison-pipeline [https://perma.cc/TB9W-L4FE].

Racial profiling is a relatively well-documented contributing factor to the incarceration of numerous Black and Latinx children.²³⁸ However, the racial profiling of AAPI students is rarely studied, which is particularly problematic given that AAPI students are also profiled—in unique ways, in fact. These varying forms of racial profiling trigger or exacerbate academic disengagement, mental health issues, and cultural alienation. In conjunction with zero tolerance policies and overpolicing, these forms of racial profiling all ultimately drive students into the criminal system.

1. Racial Profiling of AAPI Students as “Whiz Kids” and Academic Disengagement.

One potential factor pushing AAPI youths toward the criminal system is their depiction as “whiz kids,” a stereotype developed from the model minority myth.²³⁹ In Professor Guofang Li’s words, AAPI students, specifically East and South Asian youth are frequently

described as intelligent, industrious, enduring, obedient, and highly successful, and have been constructed as “academic nerds,” “high achievers” who are “joyfully” initiated into North American life and English literacy practices. These model minority images are based on reports of Asian students’ high test scores in mathematics and SAT, and higher grade point average in high school in comparison with other minority groups such as African and Hispanic students in the U.S., and Aboriginal students in Canada. In recent years, there are also reports that Asians are outdoing whites in test scores, educational attainment, and family income. These images are further reinforced by

²³⁸ See generally, *id.*; *supra* note 235 (outlining various scholarship on racial profiling); TAMMY JOHNSON, JENNIFER EMIKO BOYDEN & WILLIAM J. PITZ, RACIAL PROFILING AND PUNISHMENT IN U.S. PUBLIC SCHOOLS: HOW ZERO TOLERANCE POLICIES AND HIGH STAKES TESTING SUBVERT ACADEMIC EXCELLENCE AND RACIAL EQUITY (2001).

²³⁹ See, e.g., Sarah-Soonling Blackburn, *What Is the Model Minority Myth?*, LEARNING FOR JUST. (Mar. 21, 2019), <https://www.learningforjustice.org/magazine/what-is-the-model-minority-myth> [<https://perma.cc/7NYY-9EMA>] (explaining that the myth “perpetuates a narrative in which Asian American children are whiz kids or musical geniuses. . . . Tiger Moms force children to work harder and be better . . . while nerdy, effeminate dads hold prestigious—but not leadership—positions in STEM industries like medicine and accounting.”).

reports of only success stories in research literature and in the media.²⁴⁰

Like the model minority myth itself, the stereotype of the “whiz kid” dates back from media representations and persists today.²⁴¹ These include TIME’s August 31, 1987 issue cover captioned “Those²⁴² Asian-American Whiz Kids” to a New York Times Sunday Review column in October 2015 entitled “The Asian Advantage,” which proclaimed how “It’s no secret that Asian-Americans are disproportionately stars in American schools, and even in American society as a whole.”²⁴³ The representations perpetuate the profiling of AAPI students as geniuses. In the classroom, these stereotypes have led teachers to have higher expectations for AAPI students in comparison to other groups of students.²⁴⁴

Not only is the hegemonic perception of AAPI students as whiz kids inaccurate—for example, a national educational assessment report card for eight graders from 1998 to 2003 specified that for some “states such as Hawaii and Minnesota, the percentage of Asian American/Pacific Islanders at or above basic level in reading can be as low as 45% to 55%” and “in terms of mathematics, in some states (e.g., Hawaii), the percentage of Asian Pacific Islander students who are below basic level can be as high as 46%”²⁴⁵—but it is also harmful for AAPI students, specifically struggling ones and/or those who have limited proficiency in English. For example, “although 73% Asian Pacific eighth graders were language minorities, only 27% were recognized as such by their teachers.”²⁴⁶ Consequently, countless students did not receive adequate—or, in many cases, any—support to succeed academically.²⁴⁷ Considered in light of the fact that one in four AAPI students have limited proficiency in English and/or live in a

²⁴⁰ Guofang Li, *Other People’s Success: Impact of the “Model Minority” Myth on Underachieving Asian Students in North America*, 2 KEDI J. EDUC. POL’Y 69, 70 (2005) (internal citations omitted) [hereinafter Li, *Other People’s Success*].

²⁴¹ *Id.* at 71.

²⁴² Notice the use of the word “those,” a distal and distancing demonstrative pronoun which further implies foreignness and difference.

²⁴³ See Kristof, *supra* note 18.

²⁴⁴ Sumie Okazaki & Noriel E. Lim, *Academic and Educational Achievement Among Asian American Children and Youth*, in ASIAN AMERICAN AND PACIFIC ISLANDER CHILDREN AND MENTAL HEALTH 143, 155 (Frederick T.L. Leong, Linda Juang, Desiree Baolian Qin & Hiram E. Fitzgerald eds., 2011).

²⁴⁵ See Li, *Other People’s Success*, *supra* note 240, at 73.

²⁴⁶ *Id.* at 75.

²⁴⁷ *Id.* at 74–75.

linguistically isolated household,²⁴⁸ the whiz kid stereotype impedes the educational experiences of numerous AAPI students.

Similarly to how the model minority masks the struggles of AAPIs, the needs of struggling AAPI students often become neglected since teachers believe that AAPI students are naturally smart.²⁴⁹ In other words, teachers' beliefs grounded in the whiz kid stereotype keep them from "recognizing the instructional needs and the psychological and emotional concerns of many underachieving [AAPI] students."²⁵⁰ As a result, these students do not receive the support they require to succeed, leading to poor academic performance and academic disengagement, which can be fatal under zero tolerance regimes. They can fail or drop out, increasing the probability of entanglement with the criminal system. Likewise, academic disengagement can also cause truancy and delinquency.²⁵¹ Poor academic performance, for example, "strongly predicted physical fighting" in schools for Southeast Asian students.²⁵²

Academic disengagement because of limited support was certainly a factor for students like Eddy from the Introduction. Eddy struggled in school and felt bored, unable to connect to class material primarily due to a language barrier.²⁵³ Uninterested in and pessimistic about school, he began to skip class and spent time at the local playground instead.²⁵⁴ There, he met other truant students like Dennis Chan.²⁵⁵ Dennis eventually dared Eddy to commit crimes such as petty theft, which began to entangle Eddy in the criminal system.²⁵⁶ Dennis also became a codefendant in the kidnapping-robbery that eventually landed Eddy life in prison.²⁵⁷

While the whiz kid perception predominantly impacts East Asians, like Eddy, and other light-skinned AAPIs, the stereotype nevertheless

²⁴⁸ See WHIAAPI, Critical Issues, *supra* note 58.

²⁴⁹ Li, *Other People's Success*, *supra* note 240, at 75.

²⁵⁰ *Id.*

²⁵¹ See Klehr, *supra* note 196.

²⁵² Laura Bui, *Examining the Academic Achievement-Delinquency Relationship Among Southeast Asian Americans*, 62 INT'L J. OFFENDER THERAPY & COMPAR. CRIMINOLOGY 1556, 1567 (2018).

²⁵³ Yeung, *supra* note 4.

²⁵⁴ *Id.*

²⁵⁵ *Id.*

²⁵⁶ *Id.*

²⁵⁷ *Id.* Eddy's story, similar to other AAPI students with limited English proficiency, illustrates the interconnectedness of the school-to-prison pipeline with other issues of immigration, language access, educational inequality, poverty, etcetera, just as Professor Pantoja, *supra* note 214, observed in Latinx students.

impacts everyone under the AAPI umbrella. This is because on a macro level, schools, policymakers and other stakeholders all group AAPIs together, which blankets the inequalities and struggles of other AAPI students. For instance, Teli Hafoka, daughter to two Tongan working class immigrant parents, stated that school officials “left her completely alone” because they assumed she was Asian and therefore did not require assistance or support in school.²⁵⁸ They also did not provide her with “any information about college or scholarships Hafoka didn’t take the SAT—no one told her to—and she made it one year in junior college before she dropped out. That was better than some of her siblings, who had seriously struggled in high school. One brother was in jail.”²⁵⁹ To school officials, Teli was essentially Asian and therefore a whiz kid who did not need help.

The very profiling of AAPI youth as whiz kids also contributes to the pernicious cycle of suffering in silence, by themselves. Because they are perceived as the smart model minorities, AAPI youths feel pressure to “live up” to the heightened expectations of their teachers—who also apply additional pressure—and therefore hesitate to ask for help.²⁶⁰ Furthermore, the perception of AAPI youth as whiz kids and good students can cause teachers to assume that they have adequate parental support at home.²⁶¹ This presumption often results in teachers and school officials not even contacting parents regarding students’ needs.²⁶² In fact, “compared to Black and Latino parents, teachers were less likely to contact immigrant Asian parents about academic and behavioral struggles.”²⁶³ Additionally, “only 5 percent of math teachers and 9 percent of English teachers communicated with parents of first- and second-generation Asian students about

²⁵⁸ Aronowitz, *supra* note 127.

²⁵⁹ *Id.*

²⁶⁰ See Li, *Other People’s Success*, *supra* note 240, at 76; KAO ET AL., *supra* note 184, at 138.

²⁶¹ Cf. Melinda D. Anderson, *How Discrimination Shapes Parent-Teacher Communication*, ATLANTIC (Nov. 15, 2016), <https://www.theatlantic.com/education/archive/2016/11/which-parents-are-teachers-most-likely-to-contact/507755/> [<https://perma.cc/VXZ9-Q8YA>] (observing that race can influence whether teachers communicate with parents regarding students).

²⁶² Cf. *Id.* (“When you have an Asian American student who is not high-achieving, who doesn’t do their homework, and is disruptive in class, the rates of that teacher reaching out to those parents are actually quite low, much lower than for third-generation white parents.”)

²⁶³ *Id.*

misbehavior.²⁶⁴ And less than 5 percent of English teachers contacted parents of first-generation Asian students who rarely do homework.”²⁶⁵

This low and disproportionate rate of parental contact may be because students are assumed to be doing well. It may also be because teachers assume that students’ parents are smart and educated—a result of the model minority myth—or that the parents are actively, even overly involved and invested in students’ education, an assumption also rooted in the model minority myth and manifest in the “Tiger Mom” trope.²⁶⁶ Regardless, these heightened expectations and discriminating assumptions all reinforce the suffering of struggling AAPI students and augment the prospects of academic disengagement, which can lead to students leaving school and getting involved with the criminal system.²⁶⁷ Teachers, viewing struggling AAPI students as deviating from the “norm” of the whiz kid, may also subject them to discipline and harsher punishment.²⁶⁸

The racial profiling of AAPI youth as whiz kids is evidently absent in critiques and understandings of racial profiling or the school-to-prison pipeline in general. As a result, it is a factor often missed in discussions of solutions to the pipeline. Examining how AAPI youth are racially profiled as whiz kids reveals the need to focus on academic disengagement as a factor driving students out of schools. It also reveals how racial profiling, a convenient and pervasive tool of white supremacy, manifests itself differently to oppress another nonwhite group to the same end: the incarceration and subjugation of communities of color.

The racial profiling of AAPIs as whiz kids is ideologically toxic. The implication that lies beneath the assumption that AAPI students are innately intelligent suggests that other minority children are not, just as the model minority myth presents AAPIs as the “good,” model minorities in contrast to Black and Latinx peoples. At schools, while AAPIs are assumed to be smart, Black children are often academically underestimated and perceived to be more belligerent and “in need of special education services.”²⁶⁹ In contrast to AAPI students, teachers expect less of Latinx

²⁶⁴ *Id.*

²⁶⁵ *Id.*

²⁶⁶ See Part II.C.

²⁶⁷ See, e.g., ADVANCEMENT PROJECT, *supra* note 195; see generally Bui, *supra* note 252.

²⁶⁸ See, e.g., Li, *Other People’s Success*, *supra* note 240, at 79.

²⁶⁹ See TOM RUDD, KIRWAN INST. FOR THE STUDY OF RACE AND ETHNICITY, RACIAL DISPROPORTIONALITY IN SCHOOL DISCIPLINE: IMPLICIT BIAS IS HEAVILY IMPLICATED 3 (2014), <http://kirwaninstitute.osu.edu/wp-content/uploads/2014/02/racial-disproportionality-schools-02.pdf> [<https://perma.cc/E9CP-M72U>].

students, too, with one study showing that teachers think Latinx students are up to 42 percent less likely to graduate than other groups.²⁷⁰ Evident, then, is how different minority groups are profiled at school differently, yet all concurrently subjected to racist stereotypes that hamper their educational experiences. In fact, even the seemingly positive stereotype of AAPI students is actually an insidious stereotype that limits their success and divides students of color.

2. Racial Profiling of AAPI Students as “Thugs” and “Gangsters” and Actual Gang Membership.

While the profiling of AAPI students as whiz kids in schools predominantly impact East Asians or those perceived as such,²⁷¹ other AAPI students, especially those of Southeast Asian and Pacific Islander descent and/or those with darker complexions, are also racially profiled. Critically, however, their racialization differs from that of the “whiz kid” and is more akin to the racial profiling of Black and Latinx students. Southeast Asians and Pacific Islanders, though at times subsumed under the whiz kid stereotype, are often “depicted as low-achieving high school dropouts involved in gangs.”²⁷² This stereotype informs the overpolicing of Southeast Asian and Pacific Islander communities, as reflected by the disproportionate arrest rates of Samoan, Vietnamese, Laotian, and Cambodian youth noted earlier.²⁷³

In communities with larger concentrations of Pacific Islander and Southeast Asian youth, young men and boys are routinely stopped and searched by police in their cars and on foot, and questioned in public places. [They] are often assumed to be gang members even if they are not.

²⁷⁰ Corinne Segal, *Teachers Expect Less from Black and Hispanic Students*, *Study Shows*, PBS NEWSHOUR (Oct. 7, 2014, 2:20 PM), <http://www.pbs.org/newshour/rundown/teachers-expect-less-students-color-study-shows/> [https://perma.cc/R475-NC5D].

²⁷¹ To repeat, this is not to say that other AAPIs are not subsumed under the stereotype of the whiz kid. On an institutional level (where AAPIs are subsumed by the umbrella label), schools, policymakers, and others all assume that AAPIs are one and the same, the model minority.

²⁷² See, e.g., Ngo & Lee, *Complicating the Image*, *supra* note 78, at 415; Henderson, *Samoan Giant*, *supra* note 122, at 277.

²⁷³ See Part IV.C.

Gang databases were identified as a problem particularly for Southeast Asian boys and young men, [resulting in] serious consequences including enhanced criminal charges for minor offenses.²⁷⁴

A Vietnamese adolescent in Little Saigon in Orange County in California echoes similar experiences: “Sometimes when I drive a fixed-up car, they [police] stop us for nothing. Just because we’re young and Vietnamese. We’re driving normally, like everybody else is, but they just pull us over. They be searching us, search the car, and we don’t have anything. They treated us like shit.”²⁷⁵

This type of profiling permeates into schools as well, where Southeast Asians and Pacific Islanders are often perceived by teachers, school officials, and others as delinquent students involved with crime.²⁷⁶ While disaggregated data on suspension and expulsion rates for Southeast Asians and Pacific Islanders are extremely scarce, certain localized studies indicate that they are disproportionately disciplined in schools. A 2012 study found that in Hawaii, “Native Hawaiian and Pacific Islanders comprised 34.7 percent of enrolled students but 51.5 percent of all suspensions; white students represented 17.5 percent of students and 12.1 percent of suspensions.”²⁷⁷ Likewise, in the school year 2013-2014, “Tongan, Micronesian and Native Hawaiian students were suspended at four times the rate of their Japanese peers and were twice as likely to be suspended as white and Filipino students.”²⁷⁸ During the 2013-2014 and

²⁷⁴ AHUJA & CHLALA, WIDENING THE LENS, *supra* note 19, at 18. *See also* Hong H. Tieu, *Picturing the Asian Gang Member Among Us*, 11 UCLA ASIAN PAC. AM. L.J. 41, 44-45 (2006) (critically discussing “CalGang” photo database replete with racial profiling practices).

²⁷⁵ James Diego Vigil, James Diego, Steve C. Yun & Jesse Cheng, *A Shortcut to the American Dream?: Vietnamese Youth Gangs in Little Saigon*, in ASIAN AMERICAN YOUTH: CULTURE, IDENTITY, AND ETHNICITY 207, 213 (Jennifer Lee & Min Zhou eds., 2004) [hereinafter Vigil et al., *Shortcut*].

²⁷⁶ *See* Ngo & Lee, *Complicating the Image*, *supra* note 78, at 415; BARRY A. KRISBERG, JUVENILE JUSTICE AND DELINQUENCY 83 (2018); Aronowitz, *supra* note 127.

²⁷⁷ Jessica Terrell, *Hawaii School Suspensions: Are They Fair? Can They Be Reduced?*, HONOLULU CIV. BEAT (June 18, 2015), <https://www.civilbeat.org/2015/06/hawaii-school-suspensions-are-they-fair-can-they-be-reduced/> [https://perma.cc/S4C5-287Z].

²⁷⁸ Jessica Terrell, *Tongan, Micronesian, Hawaiian Students Most Likely to Be Suspended*, HONOLULU CIV. BEAT (July 15, 2015), <https://www.civilbeat.org/2015/07/tongan-micronesian-hawaiian-students-most-likely-to-be-suspended/> [https://perma.cc/9XKN-

2014–2015 school years in California, Pacific Islanders comprised a higher percentage of statewide suspensions than their total enrollment percentage.²⁷⁹

Given that even one out-of-school suspension can double a student's risk of dropping out,²⁸⁰ it is not surprising that large numbers of Southeast Asians do not have a high school degree. In California, 42 percent Hmong, 41 percent Laotian, and 40 percent of Cambodian people lack a high school degree or GED certificate compared to only 7 percent of non-Hispanic whites, a trend that is also reflected nationally.²⁸¹ Combined with data suggesting that drop-outs are three and a half times more likely to be arrested than high school graduates, and that 68 percent of incarcerated men across the country are without a diploma,²⁸² it becomes clear that Southeast Asians, like Pacific Islanders, are being systematically driven out of schools and into the criminal system.

The perception that Southeast Asians and Pacific Islanders are “thugs” and gangsters also lead to lowered academic expectations, which can doom students to fail. For instance, research shows that “Hmong students have been held to low expectations by teachers and tracked into lower level courses.”²⁸³ Similarly, Sefa Aina, a Samoan community advocate states that “authority figures often track Pacific Islander students into easier classes, tap them to play sports instead of [joining] the math club.”²⁸⁴ In essence, teachers may fail to help students because they believe the students do not have a bright future ahead of them, especially if they are considered to be gangsters or, as simple-minded, easy-going islanders.²⁸⁵ Teacher perception of Southeast Asian and Pacific Islander students as gangsters may also trigger fear and discomfort, further discouraging them from supporting

TWUQ]. This statistic is particularly illuminating as it reveals what was noted in Part II, that wide disparities can exist between subgroups even within the AAPI pan-ethnic label.

²⁷⁹ Press Release, Cal. Dep't of Educ., State Schools Chief Tom Torlakson Announces Decline in Suspensions and Expulsions for Third Year in a Row (Jan. 13, 2016), <http://www.cde.ca.gov/nr/ne/yr16/yr16rel5.asp> [<https://perma.cc/QS5J-2U6P>].

²⁸⁰ ADVANCEMENT PROJECT, *supra* note 195.

²⁸¹ See AHUJA & CHLALA, WIDENING THE LENS, *supra* note 19, at 13; ASIAN AMERICAN CENTER FOR ADVANCING JUSTICE, A COMMUNITY OF CONTRASTS: ASIAN AMERICANS IN THE UNITED STATES: 2011, at 31 (2011) [<https://perma.cc/X4JJ-EFJG>].

²⁸² Hanson & Stipek, *supra* note 212.

²⁸³ See Ngo & Lee, *Complicating the Image*, *supra* note 78, at 430.

²⁸⁴ Aronowitz, *supra* note 127.

²⁸⁵ See *supra*, Part II.C (discussing intersectional, anti-AAPI stereotypes)

students and instead encouraging them to discipline the students harshly, paving the path towards criminalization.

The profiling of these AAPI students as thugs and gangsters is no doubt grounded in white supremacist ideologies and anti-Blackness, as well as historical Yellow Peril and other xenophobic perceptions. It is not an accident that the AAPI populations most affected by this specific type of racial profiling are those with darker phenotypes, mirroring colorist and anti-Black imaginations that associate darker skin with criminality.²⁸⁶ Black and brown bodies in essence are viewed as inherently criminal, a perception that can be reinforced by other identities such as gender and sexual orientation. A visually presenting nonbinary student of color, for instance, can be perceived as especially “disruptive” and “rowdy” for not conforming to heteronormative standards of dress.²⁸⁷ Similarly, a young AAPI girl who “acts out of turn” may be perceived as especially troublesome because she is expected to be a silent “Lotus Blossom” and therefore disciplined more intensely.²⁸⁸ Or conversely, she could be perceived as a “Dragon Lady” and thus must be in need of discipline, nonetheless putting them at risk of being funneled into the pipeline.²⁸⁹

Moreover, the struggles of many Southeast Asians and Pacific Islanders, often arriving to the United States with limited social, economic, and cultural capital and therefore falling into poverty²⁹⁰ have “been associated with problems that traditionally plagued inner-city Black neighborhoods.”²⁹¹ Southeast Asians and Pacific Islanders are thus

²⁸⁶ See, e.g., KHALIL GIBRAN MUHAMMAD, *THE CONDEMNATION OF BLACKNESS: RACE, CRIME, AND THE MAKING OF MODERN URBAN AMERICA* (2019); Ellis P. Monk, *The Color of Punishment: African Americans, Skin Tone, and the Criminal Justice System*, 42 *ETHNIC & RACIAL STUD.* 1593 (2019); CHERYL STAATS, KELLY CAPATOSTO, ROBIN A. WRIGHT & DANYA CONTRACTOR, *KIRWAN INST. FOR THE STUDY OF RACE AND ETHNICITY, STATE OF THE SCIENCE: IMPLICIT BIAS REVIEW 2015*, at 32-37 (2015). See also Roberts, *Abolition*, *supra* note 148, at 16 (explaining the racialization of crime that render innocuous activities criminal).

²⁸⁷ AHUJA & CHLALA, *WIDENING THE LENS*, *supra* note 19, at 27.

²⁸⁸ See *supra* Part II.C.

²⁸⁹ Due to the dearth of information and literature regarding the involvement of AAPI girls and women with this particular type of racial profiling or with gangs, I am unable to explore further. This reflects the need to address intersectional erasure by patriarchal forces in academia.

²⁹⁰ See *supra*, Part II.C.

²⁹¹ Vigil et al., *Shortcut*, *supra* note 275, at 210. Sociologists of immigration have repeatedly identified how low capital immigrants are often perceived as assimilating in “segmented” or “downward” ways that are often imagined in relation to the “American

constructed in relation to dehumanizing, racist, and classist ideations of Blackness. At the same time, the Yellow Peril stereotype, depicting AAPIs as animalistic predatory deviants, bleeds into the perception of AAPIs as gang members and thugs. Professor Krisberg elucidates:

[AAPI] youths also suffer from a range of racist stereotypes in their encounters with justice system officials. Contemporary law enforcement officials are fond of promulgating the images of the evil Chinese gangs that originate in Hong Kong, Taiwan, or China and victimize American citizens. These images are as old as those presented to the gullible public in the late 19th and early 20th centuries by the Hearst and McClatchy newspaper chains that showered cartoons of sinister Asian men luring attractive white women into opium dens²⁹²

Among these contemporary police tactics is the establishment of “Gang Task Forces” in the 1990s in Southern California.²⁹³ These task forces harassed and stored nonconsensual mug shots of AAPI youth on a possible gang member database.²⁹⁴ Police “justified these actions by claiming that it was very hard to differentiate and distinguish between Asians.”²⁹⁵

Akin to the absence of racial profiling of AAPIs as whiz kids in examinations of the pipeline, the racial profiling of AAPI students as gangsters is also largely ignored. This is a disheartening, missed opportunity for advocates as this type of racial profiling is already repeatedly identified

Black under-class,” a problematic and essentializing phenomenon that is engrained in the political imagination. For more information, see Min Zhou, *Straddling Different Worlds: The Acculturation of Vietnamese Refugee Children* and Philip Kasinitz, Juan Battle & Inés Miyares, *Fade to Black: The Children of West Indian Immigrants in Southern Florida*, in *ETHNICITIES*, *supra* note 59, at 187-228, 267-300.

²⁹² KRISBERG, *supra* note 276, at 84.

²⁹³ C.N. Le, *Asian Gangs*, ASIAN-NATION: THE LANDSCAPE OF ASIAN AMERICA, www.asian-nation.org/gangs.shtml [<https://perma.cc/ML4F-DX2H>] (last visited Apr. 11, 2021).

²⁹⁴ *Id.*

²⁹⁵ *Id.* See also Morgan Ome, *Confronting Microaggressions as an Asian American*, JOHN HOPKINS NEWS-LETTER (Apr. 11, 2019), <https://www.jhunewsletter.com/article/2019/04/eecuibgca6kboni> [<https://perma.cc/TA6D-JA43>] (critically reflecting on the validation of psychology’s “other-race” effect stating that neurologically people of other races all look alike).

as a contributing factor to the pipeline. The resultant inattention therefore not only leaves vulnerable AAPI students to persistent profiling and criminalization, but it also conceals shared struggle and shared stakes with other youths of color, hindering effective coalition-building.

3. The Harsh Reality of Gang Involvement.²⁹⁶

Although AAPI students are unjustly profiled and assumed to be gang members, there are AAPI youth, particularly Southeast Asians, who do in fact join gangs for a variety of reasons. For several Southeast Asian immigrant youths, school can be an alienating and challenging place where they experience bullying and receive limited support to succeed academically, particularly when there are language barriers.²⁹⁷ Hieu Nguyen, a current “lifer” at San Quentin State Prison details how he felt alone at school:

For the first time I came to school in America, I still remember, I went to Milpitas High School, right. Everything’s so new. I was shocked, like, Wow, everything is so crowded, people walk everywhere. I could, I was lost. I just, I just see so many stuff, and I don’t understand, I don’t know anything! So the first day I just sit, honestly I just sit there like, “hm.” This is how school went. I feel like weird, you know what I’m saying? It’s like a new environment, I feel like, I feel like a . . . like a outcast.²⁹⁸

²⁹⁶ There is a more robust amount of scholarship discussing AAPI gangs; see, e.g., Vigil et al., *Shortcut*, *supra* note 275; Mary H. Lai, *Asian/Pacific Islander Youth Violence Prevention Center: Community Mobilization Efforts to Reduce and Prevent Youth Violence*, 34 AM. J. PREVENTIVE MEDICINE (Supplement) S48 (2008). The following section is not meant to be comprehensive and instead attempts to contextualize the issue of AAPI youth criminality briefly. Again, much is missed in this discussion such as AAPI girls’ experiences with gangs due to lack of literature.

²⁹⁷ See, e.g., Vigil et al., *Shortcut*, *supra* note 275, at 214-215.

²⁹⁸ Hieu shared his story in the first episode of the ROOTS Podcast, which was entirely recorded, edited, and produced by currently incarcerated people in the San Quentin Prison Report and the San Quentin ROOTS program. Hieu fled to the U.S. after facing extreme hunger and violence in Vietnam. The ROOTS Podcast, *Episode #1: The Migration to School to Prison Pipeline*, ASIAN PRISONER SUPPORT COMMITTEE (Aug. 24, 2017) (downloaded through Apple Podcasts).

Hieu was also bullied; students made fun of his English and for wearing budget Payless Shoes while all the other kids wore Nike.²⁹⁹ Hieu felt alienated in this environment, feeling “low” and unwelcome at school. He eventually sought refuge in gangs, which provided him with the “recognition and a sense of self-esteem that youth desperately seek.”³⁰⁰

When I start go hang around with other Vietnamese and join the gang, I don't let people do that [racialized harassment and bullying] to me no more. I put my — after I got into the gang, I put myself to a higher standard now. So everywhere I go, I build my reputation. I build my respect. So if people try to come at me that way, I will put them down. If I have to use force, if I have to use violence, I will put them down, so I want them to know — acknowledge — that I am somebody. That they will no longer put me to the shame, that person again. I will no longer want to be that victim again.

Hieu's experience is not unique. Many other Vietnamese youth also join gangs because, along with harassment and academic disengagement, they experience familial and cultural struggles.³⁰¹ Many of them are “second-wave refugees whose families were disrupted by the migration experience to the United States and, as a consequence, turned to gangs as an alternative source of social and psychological support.”³⁰² In short, gangs have provided a haven from racism and bullying. In activist Sarath Suong's words, AAPI gangs have in fact been among the “original community defenders” who walked kids to school and even raised money for funerals.³⁰³

Other Southeast Asian youth, like Cambodians and Laotians, also join gangs because of extremely limited opportunities outside of school due to poverty.³⁰⁴ The poverty and struggles these youths experience already

²⁹⁹ *Id.*

³⁰⁰ Vigil et al., *Shortcut*, *supra* note 275, at 213.

³⁰¹ *Id.* at 210-13.

³⁰² *Id.* at 210.

³⁰³ Haymarket Books, *Asians 4 Abolition*, YOUTUBE (Aug. 11, 2020), <https://www.youtube.com/watch?v=GL2ZbqJJRQI&feature=youtu.be>.

³⁰⁴ See generally Jason H. Lee, *Dislocated and Deprived: A Normative Evaluation of Southeast Asian Criminal Responsibility and the Implications of Societal Fault*, 11 MICH. J. RACE & L. 671 (2006). See also Vigil et al., *Shortcut*, *supra* note 275, at 215-17.

expose them to heightened risk of engaging in criminalized activity.³⁰⁵ The risk is compounded when they are pushed out of school, which itself limits their opportunities even further and potentially traps them in a vicious cycle.³⁰⁶

AAPI gangs also expose AAPI youths to harsher criminalization and violence. This is because AAPI gangs tend to be “more involved in criminal-gain activities such as extortion, burglary, and narcotics selling”³⁰⁷ along with home invasions and kidnapping-robberies, all of which carry harsher punishments such as mandatory minimums.³⁰⁸ This specific trend is a result of how AAPI gangs prefer to target their own communities because they know that they “are the least likely to report violent crimes committed against themselves to the police” due to various reasons such as lack of culturally and linguistically competent policing, fears of deportation, and cultural stigma.³⁰⁹ This phenomenon is important to consider because underreporting potentially fuels stereotypical notions that AAPIs are not criminalized, a notion that is emphasized by the model minority myth.³¹⁰

4. Racial and Religious Profiling of AAPI/AMEMSA³¹¹ Students as “Terrorists.”

After the September 11, 2001 attacks, another form of racial profiling targeting AAPI/AMEMSA population surged and contributed to the school-to-prison pipeline. It also continues today with the rise of Islamophobic and xenophobic rhetoric and policies:

³⁰⁵ J. Lee, *supra* note 304, at 682 (noting that Southeast Asians commit crimes and join gangs “not because of any unique cultural or individual factors that predispose them to such action, but as a consequence of their very low socioeconomic statuses and difficult lives of deprivation”).

³⁰⁶ *See id.* at 680–82.

³⁰⁷ IRVING A. SPERGEL, *THE YOUTH GANG PROBLEM: A COMMUNITY APPROACH* 68 (1995). *See also* Lee, *supra* note 300, at 671–72.

³⁰⁸ *See* Lee, *supra* note 293. *See also* Tieu, *supra* note 274, at 41–42.

³⁰⁹ Tieu, *supra* note 274, at 42.

³¹⁰ *See supra*, Part II.A.

³¹¹ As discussed *supra* in Part II.C, AMEMSA stands for Arab, Middle Eastern, Muslim, and South Asian people. They are included in this study given the significant overlap (and tensions) between the AAPI and AMEMSA experiences. *See also supra* note 19 (reflecting on AAPI terminology and incorporation of AMEMSA in this Article).

[Arabs, Muslims, and South Asians] have been subjected to extensive “security” measures since the attacks, their rights undermined if not revoked by new policies, hastily passed legislation, and selective law enforcement. They have been portrayed in the mainstream media and by a number of U.S. government officials as citizen-suspects who lie outside American cultural norms, and as communities that harbor “sleeping” terrorists, posing a threat to the nation’s security.³¹²

Additionally, “[y]oung men and boys in AMEMSA communities have faced particular scrutiny, stereotyped as at risk for ‘radicalization’ and treated as perpetual threat within U.S borders. Federal and state policies following 9/11 have targeted immigrant AMEMSA young men age sixteen to 16–35 in particular.”³¹³

These imaginations of AMEMSA people, or those perceived as such, as terrorists infiltrate schools.³¹⁴ Many have marked AMEMSA students as terrorists and subjected them to unjust disciplinary practices in the name of “national security.”³¹⁵ This type of profiling becomes even more precarious when combined with racialized perceptions of the “whiz kid” discussed earlier. For instance, on September 14, 2015, fourteen-year-old Ahmed Mohamed was arrested at school for bringing in a self-made clock that his English teacher and school officials mistook for a bomb.³¹⁶

³¹² Cainkar & Maira, *Targeting Arab/Muslim/South Asians*, *supra* note 135, at 1.

³¹³ AHUJA & CHLALA, *WIDENING THE LENS*, *supra* note 19, at 22.

³¹⁴ See, e.g., Shabana Mir & Loukia K. Sarroub, *Islamophobia in US Education*, in *THE ROUTLEDGE INTERNATIONAL HANDBOOK OF ISLAMOPHOBIA* 298–309 (Irene Zempi & Imran Awan eds., 2019); Harpalani, *supra* note 135, at 81 (reflecting on South Asian student being called Saddam). See generally THE SIKH COALITION, “GO HOME TERRORIST:” A REPORT ON BULLYING AGAINST SIKH AMERICAN SCHOOL CHILDREN (2014), <https://www.sikhcoalition.org/documents/pdf/go-home-terrorist.pdf> [<https://perma.cc/96N5-AD6S>].

³¹⁵ See, e.g., Deepa Iyer, *The Criminalization of Muslim Students Must End*, ALJAZEERA AM. (Sept. 17, 2015, 11:30 AM), america.aljazeera.com/opinions/2015/9/the-criminalization-of-muslim-students-must-end.html [<https://perma.cc/PR7P-K5JQ>].

³¹⁶ Kristina Rizga, *The Chilling Rise of Islamophobia in Our Schools*, MOTHER JONES (Jan. 26, 2016), <https://www.motherjones.com/politics/2016/01/bullying-islamophobia-in-american-schools/> [<https://perma.cc/HB9V-C6WN>]. The proceeding detailing of Ahmed’s criminalization is drawn primarily from Liz Dwyer, *Ahmed Isn’t the Only One: Teen Clock Maker Just the Latest Face of Schools’ Race Problems*, TAKEPART (Sept. 16,

Ahmed brought the clock to school because he wanted to show it to his engineering teacher. It was inside his backpack when it beeped during his English class. His English teacher ultimately confiscated the invention, accusing Ahmed of bringing a bomb to school. Ahmed was consequently removed from class, interrogated by school administrators and police, and then “threatened with expulsion and pressured to admit he had designed a bomb.”³¹⁷ Police officers eventually arrested and handcuffed him in front of his peers. Their investigation later cleared the device and found no evidence of any ill intent on Ahmed’s part.³¹⁸ Ahmed was also suspended.³¹⁹

When news of what transpired made national headlines, many quickly and appropriately identified how Ahmed’s arrest was prejudiced and an evident example of profiling.³²⁰ Some noted racialized “double-standards” as tied to innovation.³²¹ “Given the national emphasis on STEM, Ahmed’s teachers could have assumed that the teen was following in the footsteps of Steve Jobs or Mark Zuckerberg, who both tinkered as teenagers.” That they didn’t is proof of how “if you’re a student of color, experimenting and tinkering is seen as dangerous; for white students, it means you’re a genius.”³²² In the case of Ahmed, his invention became conflated with basically a weapon of mass destruction, and he, a terrorist.

What happened to Ahmed is not an isolated incident. Across the country, students—kids—are profiled at schools as perpetrators of terror, paralleling the presidency of Donald Trump which publicly instigated and inspired anti-AMEMSA rhetoric and policies.³²³ In California, “20 percent of Muslim students say they have experienced discrimination by a school staff member, the very people charged with protecting them from this type

2015), www.takepart.com/article/2015/09/16/ahmed-mohamad-just-latest-face-schools-race-problems [<https://perma.cc/U2XB-HHW3>].

³¹⁷ Dwyer, *supra* note 316.

³¹⁸ *Id.*

³¹⁹ Associated Press, *Ahmed Mohamed Withdraws from Texas School that Suspended Him over Clock*, *GUARDIAN* (Sept. 21, 2015, 11:35 PM), <https://www.theguardian.com/us-news/2015/sep/22/ahmed-mohamed-withdraws-from-texas-school-that-suspended-him-over-clock> [<https://perma.cc/4NWH-CYAX>].

³²⁰ See, e.g., Dwyer, *supra* note 316.

³²¹ Dwyer, *supra* note 316.

³²² *Id.*

³²³ *Id.*; Rizga, *supra* note 316; Dean Obeidallah, *Anti-Muslim School Bullying: Sometimes, It’s Even the Teachers Doing It*, *DAILY BEAST* (May 18, 2016, 1:00 AM), <http://www.thedailybeast.com/articles/2016/05/18/anti-muslim-school-bullying-sometimes-it-s-even-the-teachers-doing-it.html> [<https://perma.cc/V7G9-VGVE>].

of hate.”³²⁴ In Fort Bend County, Texas, “12-year-old Waleed Abushaaban” was told by his teacher that ““we all think you’re a terrorist;”” other students eventually joined in and accused him of carrying bombs.³²⁵ Similarly, in 2015, a teacher asked a female Muslim student in Georgia if she had a bomb in her backpack; the same year, another teacher in Texas assigned homework to a class that claimed that Muslims seek to kill Americans.³²⁶ In New York, a South Asian student named Akbar reported that his teacher began ignoring him after she discovered that he had skipped class to attend Mosque.³²⁷

This form of profiling has acute practical implications. For one, the profiling of students as terrorists magnifies their subjection to discriminatory disciplinary practices that can propel them to the pipeline. Such profiling also fosters hostile educational environments that can impel students to not only feel demeaned and suffer mental health issues but also be academically disengaged—e.g., truancy, failure. These in themselves increase the chances of AMEMSA youth to get entangled with the criminal system, as well as encourage other students to bully or harass them.³²⁸

Overlooking AMEMSA-specific profiling also occludes the connections between the criminalization of AMEMSA people in the United States with the country’s imperialist global history and agenda:

[T]he U.S. government has targeted these groups both before and after 9/11 because of its particular political interests in the regions from which these communities originate. The criminalization of these groups is linked to the rise of the U.S. as a global power and to silencing dissent of its foreign policy objectives. Since 9/11, they have provided an internal and external scapegoat for the nation’s foreign policy failures, the perceived sense of vulnerability of its inhabitants, and its inability to protect its citizens. Excluding [AMEMSA communities] from cultural citizenship and criminalizing their communities is the ideological and practical work that builds popular

³²⁴ Obeidallah, *supra* note 323.

³²⁵ *Id.*

³²⁶ *Id.*

³²⁷ SOUTH ASIAN YOUTH ACTION, NEW YORK CITY SOUTH ASIAN YOUTH: CRITICAL MASS, URGENT NEEDS 13 (2013) [<https://perma.cc/N6UQ-5FJU>].

³²⁸ See *infra* Part IV.E.

support for sacrificing their civil rights for the presumed sense of safety of the majority, links them to “enemy” nations and combatants, and delegitimizes their dissent. Isolated as potentially disloyal, in part using notions of essential cultural difference that are diffused through the mainstream media and in popular culture representations, the profiling and criminalization of these groups by the state is tolerated by the public. Arabs, Muslims, South Asian Americans become accepted as cultural outsiders, so that what happens to them is (falsely) seen as not affecting anyone else. In the process, the state whittles away one democratic right after another, so that prolonged and secret detentions, detention without charge, and even torture of detainees become acceptable state practices in the name of “national security.”³²⁹

This exclusion of AMEMSA communities from “cultural citizenship” and their casting as inherently “other” are reminiscent of the same Orientalist mechanisms that has historically and contemporarily dehumanized larger AAPI communities. Both the model minority and Yellow Peril stereotypes have cast these communities as “perpetual others,” entirely culturally alien people, who endanger the white social and political status quo of the United States.³³⁰ In essence, AAPIs, including AMEMSA people are “Orientals” and portrayed as “them:” exotic, barbaric, totalitarian, and corrupt, as opposed to the people of the “Occident,” who are “us,”³³¹ modern, democratic, rational, and pure.³³²

Contemporary manifestations of Orientalist criminalization outside school include “mass arrests, secret and indefinite detentions, prolonged detention of ‘material witnesses,’ closed hearings, secret evidence, eavesdropping on attorney-client conversations, FBI home and work visits, wiretapping, property seizures, selective removals of aliens with technical visa violations, and mandatory Special Registration.”³³³ Over 100,000

³²⁹ Cainkar & Maira, *Targeting Arab/Muslim/South Asians*, *supra* note 135, at 4.

³³⁰ KOSHY, *SEXUAL NATURALIZATION*, *supra* note 81, at 1-2.

³³¹ Or alternatively, the “U.S.”

³³² See SILKE SCHMIDT, (RE-)FRAMING THE ARAB/MUSLIM: MEDIATING ORIENTALISM IN CONTEMPORARY ARAB AMERICAN LIFE WRITING 147 (2014); Cainkar & Maira, *Targeting Arab/Muslim/South Asians*, *supra* note 135, at 4; Sylvia Shin Huey Chong, *Orientalism*, in *KEYWORDS FOR ASIAN AMERICAN STUDIES*, *supra* note 120, at 182.

³³³ Cainkar & Maira, *Targeting Arab/Muslim/South Asians*, *supra* note 135, at 6.

AMEMSA community members have been personally affected by any one of these measures, and “at least 1,200 immigrant men were held in detention centers across the United States immediately following 9/11.”³³⁴ Donald Trump’s various executive orders in early 2017 banning travel from “Muslim nations” are more recent examples.³³⁵ So, too, are the “Yellow Peril”-informed arrests of various Asian American professors and researchers like Xiaoxing Xi, Sherry Chen, and Guoqing Caoare for espionage.³³⁶

In summary, the omission of this type of racial profiling in critiques of the school-to-prison pipeline and mass incarceration leaves U.S. imperialism as a criminalizing force unchallenged. Shared histories of systemic oppression, which can carve spaces for meaningful coalition building, also become hidden, as do the lessons such histories impart.³³⁷ Accordingly, integrating the racial profiling of AMEMSA, as with the inclusion of other AAPI youth experiences, sheds further light on processes of criminalization. It highlights that that these processes are imperial and global and that they come in varying, even conflicting, degrees and forms

³³⁴ *Id.* at 6; AHUJA & CHLALA, WIDENING THE LENS, *supra* note 19, at 22.

³³⁵ See generally Trump v. Hawaii, 138 S.Ct. 2392 (2018); Priyam Madhukar & Harsha Panduranga, *Fighting the Muslim Ban: Three Years and Counting*, BRENNAN CTR. FOR JUST. (Jan. 23, 2020), www.brennancenter.org/our-work/analysis-opinion/fighting-muslim-ban-three-years-and-counting [<https://perma.cc/JLG2-KE26>].

³³⁶ The charges attached to these arrests were ultimately dropped due to lack of evidence. See Avi Asher-Schapiro, *Why Does the FBI Keep Arresting Asian-American Scientists?*, VICE NEWS (Nov. 19, 2015, 6:05 AM), <https://www.vice.com/en/article/59eybd/why-does-the-fbi-keep-arresting-asian-american-scientists> [<https://perma.cc/2S7N-673Y>].

Historically, Yellow Peril-informed methods of criminalization are embedded in unconstitutional and discriminatory legislation such as the Page Law of 1875 (which barred “Oriental” women from immigrating to the United States because they were considered prostitutes and morally corrupt), the Chinese Exclusion Act, and Japanese internment. See Volpp, *Divesting Citizenship*, *supra* note 81, at 46; Cainkar & Maira, *Targeting Arab/Muslim/South Asians*, *supra* note 135, at 6.

³³⁷ Cainkar & Maira, *Targeting Arab/Muslim/South Asians*, *supra* note 135, at 20 (“It is important to show links between the social positioning of Arab and South Asian Americans to uncover the ‘ways in which racial formation in the U.S. conjoins issues of material privilege, legal regulation, and state power. There are important alliances that need to be forged between these and other communities that would go beyond the confines of multiculturalist difference’ and build connections based on an analysis of political and material processes. For example, South Asian, Arab, and Muslim Americans who now have heightened concerns about issues of detention have much to learn from African Americans, Latinos, and Native Americans who have long fought against racism—especially that of the prison-industrial complex, and advocated for the rights of political prisoners.”).

(e.g., AAPIs can be simultaneously profiled as whiz kids, gangsters, and terrorists) all in service of white supremacy abroad and domestically. Critically, their experiences should instigate and inform a search for solutions to tackle the problem of their criminalization head-on.

E. *Racialized Bullying and Harassment of AAPI Youth*³³⁸

In addition to various forms of racial profiling, bullying and harassment of AAPI youths at schools also contribute to their criminalization. However, their experiences of racialized bullying are conspicuously absent from critiques of the school-to-prison pipeline. Indeed, while racial profiling, at least of Black and Latinx youth,³³⁹ are incorporated in discussions, bullying, much less anti-AAPI bullying, is excluded from examination. This omission disregards the whole context of school as a sites of disparate power dynamics. For AAPI youth in particular, this omission poses dire consequences as racialized bullying creates or exacerbates risk factors that can lead to criminalization.³⁴⁰

Critically, while necessarily interpersonal in nature, bullying mirrors systemic disparities and dynamics of power.³⁴¹ It “both builds on existing embodied, classed, raced, gendered and sexualized social inequalities and simultaneously prepares young people to accept such inequalities as a ‘normal’ part of living in the world.”³⁴² For example,

³³⁸ The following section focuses primarily on racialized forms of harassment and bullying due to the limited nature of literature available. Evidently, AAPI students are bullied not solely due to their race but also due to their other intersecting identities or their combination.

³³⁹ See Part IV.A-C.

³⁴⁰ See, e.g., Deidre McPhillips, *The Hidden Harms of Racial Bullying*, U.S. NEWS WORLD REP. (May 23, 2019, 5:00 AM), <https://www.usnews.com/news/healthiest-communities/articles/2019-05-23/bullying-victims-more-likely-to-use-drugs-alcohol-analysis-shows>; Justin W. Patchin, *Bullying and Cyberbullying: The Connection to Delinquency*, CYBERBULLYING RSCH. CTR., <https://cyberbullying.org/bullying-cyberbullying-delinquency> [<https://perma.cc/GA29-6WKK>] (last visited Apr. 12, 2021); NELS ERICSON, OFF. OF JUV. JUST. & DELINQ. PREVENTION, ADDRESSING THE PROBLEM OF JUVENILE BULLYING (2001), <https://www.ojp.gov/pdffiles1/ojdp/fs200127.pdf> [<https://perma.cc/L8U8-6SB4>].

³⁴¹ CJ Pascoe, *Bullying as Social Inequality*, THE ENEMY, vol. 1, no. 1 (2015), <http://theenemyreader.org/bullying-as-social-inequality/> [<https://perma.cc/86Q2-R9L6>]. See generally Anthony A. Peguero, *Schools, Bullying, and Inequality: Intersecting Factors and Complexities with the Stratification of Youth Victimization at School*, 6 SOCIO. COMPASS 402 (2012).

³⁴² Pascoe, *supra* note 341.

students may feel empowered to racially harass others given their teachers' own display of racial animus,³⁴³ dehumanizing media representations,³⁴⁴ rampant societal violence,³⁴⁵ or racist political discourse.³⁴⁶ In other words, bullying is informed by, and should not be divorced from, larger social, political, and cultural contexts.³⁴⁷

Racialized bullying of AAPI youths at schools is a profound issue. According to a task force assembled by the federal government, “[o]f all students who reported being bullied at school during the 2012–2013 school year, Asians reported the highest rate of bullying occurring in a classroom, hallway, or stairwell compared to all other racial groups.”³⁴⁸ Likewise, nationally, 54 percent of bullying that AAPI students experienced transpired inside the classroom.³⁴⁹ In localities with concentrations of AAPI youth, bullying is especially prevalent. For example, a 2012 survey indicated that half of AAPI participants from New York City public schools experienced “bias-based harassment.”³⁵⁰ In California, AAPI LGBTQ youths “reported the highest instances of racial harassment amongst LGBTQ students of color,” with transgender and gender nonconforming AAPI youth being easy targets for ridicule and discriminatory discipline.³⁵¹ In the COVID-19 era, a recent national study showed that one out of four AAPI youths experienced racist bullying.³⁵²

Racialized bullying of AAPI students take various forms, including verbally such as insults, taunts, racial slurs, and cyberbullying; physically, such as assault, vandalism, and theft; or socially, such as gossiping, spreading rumors, or public shaming.³⁵³ These forms of bullying typically exacerbate

³⁴³ See Obeidallah, *supra* note 323.

³⁴⁴ See *e.g.*, *supra* Parts II.B, C.

³⁴⁵ See, *e.g.*, *supra*, Part II.B; note 97 (describing the surge of hate crimes against AAPIs).

³⁴⁶ See *supra* note 335 (providing examples of racist political discourse and policy).

³⁴⁷ See Pascoe, *supra* note 341.

³⁴⁸ AAPI BULLYING PREVENTION TASK FORCE, *supra* note 19, at 13.

³⁴⁹ NELLIE TRAN, ASIAN AM. PSYCH. ASS'N LEADERSHIP FELLOWS PROGRAM, BULLYING & VICTIMIZATION AND ASIAN AMERICAN STUDENTS 1 (2012) [<https://perma.cc/AL5Y-YACX>].

³⁵⁰ AAPI BULLYING PREVENTION TASK FORCE, *supra* note 19, at 13.

³⁵¹ AHUJA & CHLALA, WIDENING THE LENS, *supra* note 19, at 26–27.

³⁵² Claire Wang, *You Have Chinese Virus!': 1 in 4 Asian American Youths Experience Racist Bullying, Report Says*, NBC NEWS (Sept. 17, 2020, 7:30 PM), <https://www.nbcnews.com/news/asian-america/25-percent-asian-american-youths-racist-bullying-n1240380> [<https://perma.cc/SKD4-GHP2>].

³⁵³ AAPI BULLYING PREVENTION TASK FORCE, *supra* note 19, at 6; TRAN, *supra* note 349, at 2.

academic disengagement, truancy, behavioral problems, and mental health issues—all of which can lead to disciplinary practices and criminalization under zero tolerance regimes.³⁵⁴

Similar to the distinct types of racial profiling targeting AAPI youth, these forms of bullying are grounded in dehumanizing stereotypes. AAPI students are bullied for their immigration status, limited English proficiency, perceived religion, and appearance.³⁵⁵ AAPI students are often told to “go back to their own country,” mocked for their “ethnic” lunches, and harassed for the way they look—e.g., their facial features, the shape of their eyes, or their skin color.³⁵⁶ During the COVID-19 pandemic, students have been bullied and scapegoated as virus-carriers.³⁵⁷ South Asians, particularly those of the Sikh faith, are also called terrorists by other students, similar to how school officials profile AMEMSA youth.³⁵⁸ For instance, a California survey examining Sikh children found that over 65 percent of Sikh boys in middle school with or without turbans faced harassment, with the percentage jumping to 74 percent for those with turbans.³⁵⁹ Similarly, Muslim youth have been targets of racialized harassment at schools. Localized surveys such as one from California found that 55 percent of Muslim students experienced bullying or discrimination in the form of nonconsensual touching or hijab-grabbing.³⁶⁰

Personal anecdotes also echo the stark reality of bullying. One Muslim student reflects accordingly:

People who are new to the environment are bullied a lot. I got bullied in second grade because I was new to the country and couldn't speak English. I also got bullied in sixth grade because I'm Muslim and that it was so severe that I had to move schools. However, it didn't help

³⁵⁴ See, e.g., *supra*, Part III.A.

³⁵⁵ AAPI BULLYING PREVENTION TASK FORCE, *supra* note 19, at 14–16.

³⁵⁶ *Id.* at 16.

³⁵⁷ See, e.g., C. Wang, *supra* note 352 (“A 14-year-old student in Dallas was followed home by a group of high school boys who pretended to cough on him and shouted, ‘Ching chong! You have Chinese virus!’ A 17-year-old was told over social media that their ‘insides are full of ‘f---ing bats’ and that they should kill themselves because they are a ‘dirty f---ing dog eater.’”).

³⁵⁸ See *supra*, Part IV.D (discussing the criminalization of AMEMSA youth as terrorists).

³⁵⁹ AHUJA & CHLALA, WIDENING THE LENS, *supra* note 19, at 6.

³⁶⁰ Obeidallah, *supra* note 323.

because I was still bullied throughout middle school
because I was Muslim.³⁶¹

In another instance, “17-year-old California high school student Bayan Zehlif, a hijab-wearing Muslim, was identified in her yearbook not by her name but as ‘Isis Phillips,’”³⁶² associating her with the terrorist organization Daesh, commonly referred to as “ISIS.”³⁶³ Bayan felt “extremely saddened, disgusted, hurt, and embarrassed”³⁶⁴ especially in light of past discrimination by teachers who stated in class that “‘the people who caused 9/11 shouldn’t be here today.’”³⁶⁵ Emotionally and psychologically scarred, Bayan committed to not returning to school until the issue was addressed.³⁶⁶

Bayan’s refusal to return to school is typical for many bullied AAPI and AMEMSA students. Finding school as alienating and hostile, these students are scared to attend class, especially on the anniversaries or aftermath of terrorist attacks.³⁶⁷ This reluctance to attend class reflects the trend that bullied students are five to six times more likely to miss school, exacerbating risks of academic disengagement and truancy.³⁶⁸ And under zero tolerance policies, these consequences often lead to suspensions and expulsions which funnel students into the school-to-prison pipeline.

This was the reality for Kamsan Suon, a Cambodian refugee and a “lifer” at San Quentin State Prison.³⁶⁹ In Cambodia, Kamsan struggled

³⁶¹ AAPI BULLYING PREVENTION TASK FORCE, *supra* note 19, at 15.

³⁶² Obeidallah, *supra* note 323; Zahira Torres, *High School Yearbook Misidentifies Muslim Student as ‘Isis Phillips’*, L.A. TIMES (May 8, 2016, 5:15 PM), <https://www.latimes.com/local/lanow/la-me-ln-high-school-yearbook-misidentifies-muslim-student-as-isis-phillips-20160508-story.html>.

³⁶³ See also Zeba Khan, Opinion, *Call it Daesh, not ISIL (or ISIS)*, CNN (Oct. 7, 2016, 1:55 PM), <https://www.cnn.com/2016/10/05/opinions/daesh-not-isil-or-islamic-state-khan/index.html> [<https://perma.cc/T5EJ-FBBT>].

³⁶⁴ Torres, *supra* note 362.

³⁶⁵ Obeidallah, *supra* note 323.

³⁶⁶ Torres, *supra* note 362.

³⁶⁷ See, e.g., Donna St. George, *During a School Year of Terrorist Attacks, Muslim Students Report Bullying*, WASH. POST (June 14, 2016), https://www.washingtonpost.com/local/education/during-a-school-year-of-terrorist-attacks-muslim-students-report-bullying/2016/06/14/1b066a44-3220-11e6-8758-d58e76e11b12_story.html.

³⁶⁸ *About*, ACT TO CHANGE, <https://acttochange.org/about> [<https://perma.cc/7KBH-A3YB>] (last visited Apr. 12, 2021).

³⁶⁹ Kamsan’s story is drawn from his conversation with Hieu Nguyen from the ROOTS Podcast. See *supra* note 298. Hieu, whose story is featured earlier, is a fellow lifer at San

under the Khmer Rouge's violent rule. He constantly crossed fields with landmines to collect leftovers from soldiers to feed himself. He escaped to America, hopeful. Yet he soon found a new set of issues in the United States. Like Hieu Nguyen, Kamsan faced harassment at school for having poor English and for being "different." He recalls:

In the fourth grade, I remember we was walking, I mean, we were waiting in line to go back into the class, right, 'cause it was recess, all of a sudden — I'm just minding my own business — all of a sudden, the kid he comes up and he says, "Hey, Kamsan," and he said, "Look at this," and you know, he held a soda can in his hand, and he threw it on the ground and he said, "The sound of the can as it roll and bounce" — he said, "that's how your name sounds like," You know, I got really upset about that, and whole bunch of other kids laughed. . . . I remember um, walking home from school, you know, I still wasn't able to communicate. And this white kid, he keep on harassing me, you know, I don't know how to communicate, so I just spoke to him in my language, in Cambodian . . . I says, "Stop pushing me!" You know . . . And he laughs at me because I spoke in my language. He laughs at me and he mimics my language, you know, saying 'Ching chong chang' . . . stuff like that, you know what I mean³⁷⁰

Kamsan was one of numerous AAPI kids who are bullied because of their limited English and perceived perpetual foreignness. Left feeling isolated and jaded by harassment, many of these youths—like Kamsan, as well as Eddy and Hieu—then engage in criminalized activities such as joining gangs and bringing weapons to school.³⁷¹ In Orange County, California, for example, several Vietnamese youths, often targets of violence and scorn "because of their smaller physical stature and obvious racial characteristics," carried weapons to school for protection.³⁷² These actions not only make schools more unsafe, but they also directly expose

Quentin State prison who fled Vietnam and found solace in gangs in the United States after facing persisting alienation and harassment at school.

³⁷⁰ *Id.*

³⁷¹ ROOTS Podcast, *see supra* note 298; Vigil et al., *Shortcut*, *supra* note 275, at 212.

³⁷² Vigil et al., *Shortcut*, *supra* note 275, at 212.

youths to the pipeline. Apart from joining gangs and bringing weapons to school, other AAPI students resort to fighting and violence to cope with bullying, likewise paving the path toward prison. This was the case with Masa, a mixed Asian student from Hawaii. In his own words:

Yeah, I used to get teased a lot that's why I became violent. In sixth grade I just got fed up with it, with other people. So, I just turned around and one day I just punched a kid back, and it felt good. And he never bothered me again. So, I was like, "It works." It got to a point when I was fighting all the time. Like I don't take anything, like I was crazy and stuff. I was just doing whatever I wanted. . . .³⁷³

Masa was eventually removed from school, arrested, incarcerated for assault, and sent to a juvenile prison.³⁷⁴ Plainly manifested, then, is the school-to-prison pipeline.

1. Issues of Mental Health

Among the host of pernicious effects of racialized bullying and harassment is the harm done to the mental health of AAPI students. As a result of the indignities and isolation caused by bullying, many AAPI youths experience depression and suicidal ideation.³⁷⁵ Suicide is indeed a leading cause of death for AAPIs.³⁷⁶ For Asian Americans aged fifteen to twenty-four, suicide was the second most common cause of death nationally.³⁷⁷ Limited data also suggest that "among high school youth, a higher percentage of Native Hawaiian or Other Pacific Islander youth report

³⁷³ KATHERINE IRWIN & KAREN UMEMOTO, JACKED UP AND UNJUST: PACIFIC ISLANDER TEENS CONFRONT VIOLENCE LEGACIES 132 (2016).

³⁷⁴ *Id.* at 133.

³⁷⁵ See, e.g., McPhillips, *supra* note 340; Laura C Wyatt, Tien Ung, Rebecca Park, Simona C Kwon & Chau Trinh-Shevrin, *Risk Factors of Suicide and Depression Among Asian American, Native Hawaiian, and Pacific Islander Youth: A Systematic Literature Review*, 26 J. HEALTH CARE POOR UNDERSERVED 191 (2015).

³⁷⁶ SHIHOKO HIJIOKA, ASIAN AM. PSYCH. ASS'N LEADERSHIP FELLOWS PROGRAM, SUICIDE AMONG ASIAN AMERICANS (2012), [<https://perma.cc/U4D2-JUS9>] ("Suicide was the 8th leading cause of death for Asian Americans, whereas it was the 11th leading cause of death for all racial groups combined.").

³⁷⁷ *Id.*

seriously considering attempting suicide or making a suicide plan in the past year than in the overall U.S. population.”³⁷⁸

Rates are even direr when it comes to AAPIs of certain identities, reflecting intersectional forms of oppression. Among young women of all ethnicities, Asian Americans have the second highest suicide rate.³⁷⁹ Additionally, “the rate of completed suicide among the 15-to-25 age group of Asian American women is rising rapidly, increasing by 96.3 percent from 2000 to 2009.”³⁸⁰ Meanwhile, 15 percent of AAPI LGBTQ youth reported a past-year suicide attempt, with 28 percent of transgender or nonbinary AAPI youth reporting a past-year suicide attempt.³⁸¹

Moreover, struggles with mental health can be especially challenging for certain Southeast Asians such as Vietnamese, Cambodian, and Laotian youth—many of whom inherit trauma and carry the legacy of war:

AAPI refugees are more likely than other immigrants to have had traumatic experiences and subsequent mental health problems. Numerous researchers have demonstrated a strong response connection between exposure to violence and post-traumatic stress disorder (PTSD) in AAPI youth, particularly in Southeast and Central Asian refugee communities. Migrants coming from experiences of war and massive social upheaval are at particular risk for PTSD. While many of the younger generation have not directly experienced the same trauma as their parents and extended family members, the PTSD in the family may affect the home environment and create tensions.³⁸²

³⁷⁸ *Asian, Native Hawaiian, and Other Pacific Islander Populations*, SUICIDE PREVENTION RESOURCE CTR., <https://www.sprc.org/scope/racial-ethnic-disparities/asian-native-hawaiian-other-pacific-islander-populations> [https://perma.cc/5XRX-5F3T].

³⁷⁹ Susan Seligson & Bill Politis, “*Model Minority*” Pressures Take Mental Health Toll, B.U. TODAY (Feb. 9, 2015), <https://www.bu.edu/articles/2015/model-minority-pressures-take-mental-health-toll> [https://perma.cc/5VSD-TB3N]. The disproportionate rates of suicide by Asian American women reflects intersectional pressures informed by, among others, cultural and patriarchal forces found in both mainstream American society and within AAPI communities. See generally *id.*

³⁸⁰ *Id.*

³⁸¹ THE TREVOR PROJ., SUICIDE ATTEMPTS AMONG LGBTQ YOUTH OF COLOR (2019), <https://www.thetrevorproject.org/wp-content/uploads/2019/11/Youth-of-Color-Research-Brief-Nov-2019-2.pdf> [https://perma.cc/JC4Z-BZ3W].

³⁸² AHUJA & CHLALA, WIDENING THE LENS, *supra* note 19, at 15.

Students carry these experiences into school, as was the case for Ryan Hem, a refugee haunted by the horrific violence he witnessed in Cambodia when the Khmer Rouge took over:

Even though I was little, I remembered most of what was going on. I saw the Khmer Rouge torture and kill people. There was one frightening torture I witnessed which I can never forget. As I was walking back to our campground, I came across young man that was hung upside-down from a tree branch. His hands were tied behind his back and he was screaming for his life. For young Khmer Rouge soldiers stood around him laughing, as one soldier slit the man's throat with a machete.³⁸³

Bullying worsened the mental health issues Ryan experienced due to such trauma. On the way to school, bullies frequently mocked and beat him up.³⁸⁴ They also stole his bike and threw away his books.³⁸⁵ Ryan consequently struggled and became disinterested in school. He dropped out and got entangled in criminal activity that ultimately landed him in prison. He was later deported to Cambodia, the very place he fled from.³⁸⁶

Cultural, financial, and linguistic barriers³⁸⁷ to support services compound the struggles of AAPI youth with mental health. Just as the model minority myth masks the struggles of larger AAPI communities, so too does it render them invisible at schools. As a result, AAPI students suffer in silence; both students and their guardians may not be aware of available resources at school or beyond. By the same token, schools may not have accessible or culturally relevant resources to begin with.³⁸⁸ Furthermore, AAPI students typically hesitate to notify their parents of their suffering at schools due to possible generational gaps and because many of them worry about burdening their parents whom they perceive as already having sacrificed immensely for them.³⁸⁹

³⁸³ Ryan Hem, *From Cambodia with Peace*, in OTHER, *supra* note 8, at 3-4.

³⁸⁴ *Id.* at 4.

³⁸⁵ *Id.*

³⁸⁶ *Id.* at 3-4, 6.

³⁸⁷ See *supra* Part II.B. (critically discussing examples of how AAPI struggles are erased).

³⁸⁸ AAPI BULLYING PREVENTION TASK FORCE, *supra* note 19, at 17-19.

³⁸⁹ *Id.* at 18. Personally, I relate to these sociological trends, too. During my undergraduate career, I was targeted by white supremacists for advocating for AAPI issues.

Critiques of the school-to-prison pipeline fail to include bullying as a risk factor driving students into the criminal legal system. Similar to the inclusion of the specificities of AAPIs' racial profiling, the incorporation of AAPI youths' experiences with bullying sheds further light on the complex operations of the school-to-prison pipeline. In addition, examining the racialized bullying of AAPIs exposes a crucial force that both causes and intensifies academic disengagement, behavioral problems, and mental health issues—all of which are risk factors in pushing students out of school.

V. ABOLITIONIST PRAXIS

A. *Lessons Learned*

The exclusion of AAPI youths in critical examinations of the school-to-prison pipeline leaves the larger issue of AAPI criminalization unnamed and unaddressed. This poses alarming consequences for the demographic. On one hand, their exclusion signifies that most advocates and reformers fail to recognize that the problem even exists. Advocates and reformers neglect the reality that an entire other racial group is being funneled into the prison industrial complex.³⁹⁰ The solutions they offer, while necessary in many respects, therefore do little to alleviate the distinct forms of AAPI criminalization. In regard to the school-to-prison pipeline, the neglect of AAPI youths renders the unique forms of racial profiling and bullying that target them unchecked. Put crudely, AAPI kids will still end up in our nation's cages even if reformers succeed in implementing their proffered solutions to the school-to-prison pipeline.

Consider frequently suggested solutions, which encompass the demilitarization and elimination of police presence at schools, perhaps accomplished through impact litigation.³⁹¹ While such efforts are

I was sent anonymous death threats, horrid slurs, and images of the bombing of Hiroshima and Nagasaki. While this experience was harrowing, I never shared them with my family until years after I graduated. After all, why would I want to worry my mother, who already has enough on her plate, worrying about making ends meet each month?

³⁹⁰ This glaring omission encompasses neglect of the “insurmountable” burdens that the carceral web perpetrates and includes the “stigma of conviction, imposition of fines and fees, and exclusion from public benefits inflict.” See Roberts, *Abolition*, *supra* note 148, at 37-38.

³⁹¹ See KIM ET AL., *supra* note 186, at 145-46. Even approaches to address bullying fall far short and even intensifies criminalization at schools by adopting zero tolerance approaches to it. See, e.g., Evie Blad, *Criminalizing Bullying Discourages Reporting*, *Groups Say*,

incontrovertibly critical to restrain the rampant criminalization of students, particularly Black and Latinx, they provide little redress for the academic disengagement and bullying that drive AAPI youths into the criminal system. Indeed, elimination of police at schools does not thwart the racist, consequential expectations of AAPI students as whiz kids, gang members, and terrorists. It also does little to deter the racialized harassment of AAPI youths by both students and officials at schools. In short, mainstream advocates' proposals for reform provide little protection for AAPI youths.

Nor is the result more promising when it comes to more attentive critics of the prison industrial complex. Multiracial criminologists, Asian American Jurisprudence scholars, and other critical scholars neglect the impact of the prison industrial complex on AAPIs. Although they generally expose and contest the white supremacist foundations of the carceral state, some disregard the role of the model minority myth—a myth that paints AAPIs in close proximity to whiteness while upholding anti-Black ideations of criminality. The absence of criminalized AAPIs in their advocacy consequently renders the model minority myth free to perpetrate harm and obfuscate the expansive scope of the prison industrial complex. More specifically, the lacuna within critical circles conceals the divide-and-conquer tactics of white supremacy; maintains noxious ideologies of anti-Blackness, colorblindness, and post-racialism; discounts the role of external structures like imperialism and xenophobia in the prison industrial complex; and erases the existence of criminalized AAPIs. It is in this sense that the exclusion of AAPIs in analyses amplifies the “disappearing” power of prisons—how prisons “do not disappear social problems” but rather “disappear human beings.”³⁹² Without their voices in analyses, prisons disappear both AAPI prisoners and the very ideologies and mechanisms that pushed them into prisons in the first place.

EDUC. WK. (July 7, 2014), <https://www.edweek.org/leadership/criminalizing-bullying-discourages-reporting-groups-say/2014/07> [<https://perma.cc/G779-DVC4>]; Molly Pennington, *Zero Tolerance Bullying Policies Aren't Working: Here's a Better Solution*, Noodle (Nov. 20, 2014), <https://www.noodle.com/articles/zero-tolerance-bullying-policies-arent-working-heres-a-better-solution#:~:text=Zero%20tolerance%20bullying%20policies%20became,harsh%20punishment%20to%20deter%20bullying.&text=The%20same%20punishment%2C%20usually%20suspension,and%20even%20wearing%20banned%20clothing> [<https://perma.cc/7P7F-7LJV>].

³⁹² Angela Davis, *Masked Racism: Reflections on the Prison Industrial Complex*, COLORLINES (Sept. 10, 1998, 12:00 PM), <https://www.colorlines.com/articles/masked-racism-reflections-prison-industrial-complex> [<https://perma.cc/3ZX6-TMWN>].

Conversely, the *inclusion* of AAPI experiences with criminalization, like the integration of the stories of AAPI youths with the pipeline, yields significant fruit. First, it generates space for powerful, meaningful coalition-building. Not only does the inclusion of AAPIs in analyses reveal shared legacies of systemic criminalization and oppression between communities of color, but it also unveils shared stakes among them. Cognizance of these shared stakes—that each group’s experiences interlocks with another’s—serves as a powerful catalyst for fiercer coalitions.³⁹³ For example, recognition that the model minority myth harms AAPI communities and concurrently reinforces anti-Blackness can foster empathy and strengthen solidarity between the two communities by moving beyond sole recognition of a common enemy (e.g., white supremacy) or common problem (e.g., the school-to-prison pipeline).³⁹⁴ Otherwise stated, AAPIs and Black communities can, and should, unite against systemic injustice not only because they both experience racism but also because, for instance, each group’s stereotypes, like the Asian whiz kid and lazy Black kid, are mutually reinforcing.³⁹⁵

The inclusion of AAPI experiences in studies of criminalization also heeds and honors the voices of Eddy and other criminalized AAPIs—the very grassroots philosophers who acutely feel the “falsity”³⁹⁶ and violence of the criminal “justice” system and thus better understand the nature of oppression and “necessity of liberation.”³⁹⁷ Their insights unravel the inherent contradictions of oppression, specifically the fragility and fictitiousness of racialized stereotypes. The experiences of criminalized poor migrant AAPIs like Eddy—as one example—directly contravene the suppositions of the model minority myth. So do the experiences of AAPI youths who may, in various contexts, all be stereotyped as a whiz kid, terrorist, or gang member. These contradictions reveal the fragility of white supremacist logics, including those of supposed superiority and

³⁹³ Collins, *Toward a New Vision*, *supra* note 162, at 40 (noting how politically expedient coalitions are fragile and how stronger coalitions are those built not by only transcending difference but by recognizing and emphasizing with difference itself).

³⁹⁴ Recall, for example, the model minority myth’s implication that AAPIs have transcended racism and achieved profound success due to their own innate intelligence, diligence, and law-abiding nature while Black communities are to blame for their marginalization. *See supra* Part II.

³⁹⁵ *See supra*, Part III; Part IV.D.

³⁹⁶ *See Matsuda, supra* note 144.

³⁹⁷ *See FREIRE, supra* note 145.

inferiority.³⁹⁸ Further, they highlight how stereotypes and oppression in general are not destiny but are impermanent, socially constructed, shifting—and therefore can be disrupted.³⁹⁹ Recognition that “oppression is full of such contradictions” opens up new points of attack to ultimately disrupt and dismantle it.⁴⁰⁰

Moreover, the inclusion of criminalized AAPIs’ perspectives deepens existing critical conceptions of crime and the prison industrial complex. They contest the common-sense understanding that criminality is solely a product of “committing a crime.” They reveal that criminalization is a process formed by a constellation of individual, interpersonal, institutional, and ideological forces. That AAPI youths are pushed into the school-to-prison pipeline by various forces—academic, disciplinary, social, legal—epitomizes this reality. This reaffirms that criminalization is not simply about the criminal system but also various other institutions and practices, including schools and discipline, that are colored by an imperialist, white supremacist, heteropatriarchal, classist, and ableist structure.⁴⁰¹

These lessons are crucial ones. In addition to exposing the confines of common solutions to the pipeline, which largely focus on the legal and disciplinary systems alone, the inclusion of AAPIs in analyses casts light on neglected dimensions of the prison industrial complex. This, in turn, should expand our understanding and imagination of solutions. For example, even the imperative eradication of zero tolerance policies—often the direct mechanism that pushes students into prison—does little to prevent the

³⁹⁸ “The incoherence of race, races, racism and of culture does not mean that [AAPIs] have the luxury of abandoning race consciousness and anti-subordination work. Many social actors, including the government, perceive these concepts to be real. Conceptual or categorical incoherence does not preclude actions or policy. For instance, racial profiling, racist killing or law-making occur based upon racial categories.” Torok, *supra* note 31, at 673.

³⁹⁹ See LEONARD *supra* note 16, at 16–17; ALLAN G. JOHNSON, PRIVILEGE, POWER, AND DIFFERENCE 125–30 (2001) (emphasizing the possibility of disrupting oppression and how mentalities of “It’s always been this way and it always will” are myth).

⁴⁰⁰ Collins, *Toward a New Vision*, *supra* note 162, at 25. These contradictions also highlight that oppression is interlocking, depending on the subjugation and cooperation of various forces—cognizance of which can in turn instigate strong bonds and coalitions among different groups. *Id.* at 36.

⁴⁰¹ See bell hooks & George Yancy, Opinion, *bell hooks: Buddhism, the Beats and Loving Blackness*, N.Y. TIMES: THE STONE (Dec. 10, 2015, 3:35 AM), <https://opinionator.blogs.nytimes.com/author/bell-hooks/> (explaining the importance of a terminology explicitly tying various structures of domination).

presumptions of AAPI criminality (e.g., gang and terrorist stereotypes) or exceptionality (e.g., whiz kid trope) that help drive AAPI youths into the criminal system. Nor does the proscription of zero tolerance policies alleviate the mental health issues stemming from bullying or inherited trauma caused by imperialist wars. In short, the integration of criminalized AAPI experiences provides and necessitates a more comprehensive approach to addressing the criminal system. It compels solutions that do not solely home in on the dimensions of the criminal system, but on other institutions, practices, and actors.⁴⁰² The question thus becomes: What is to be done?

B. *Searching for Solutions*

In addition to the need for advocates and scholars to listen and heed the voices of the overlooked, several answers lie in the abolitionist vision. Guided by the lodestar of a world without the need for prisons,⁴⁰³ abolitionists call for a comprehensive “transformation of our political, social, and economic lives,” which effectuates justice through a “holistic engagement with the structural conditions that give rise to suffering, as well as the interpersonal dynamics involved in violence.”⁴⁰⁴

Justice in abolitionist terms involves at once exposing the violence, hypocrisy, and dissembling entrenched in existing legal practices, while attempting to achieve peace, make amends, and distribute resources more equitably. Justice for abolitionists is an integrated endeavor to prevent harm, intervene in harm, obtain reparations, and transform the conditions in which we live. This conception of justice works, for example, to eliminate the criminalization of poverty and survival while addressing the criminality of a global social order in which the eight wealthiest men own the same amount of wealth as fifty percent of all people on earth. To approach justice in these terms requires . . .

⁴⁰² See also Angela P. Harris, *The Jurisprudence of Reconstruction*, 82 CAL. L. REV. 741, 756 (1994) (explaining that outsider legal storytelling interrupts “the familiar lull of normative legal narrative: instead of moving smoothly from problem to norm to solution, they discomfit the reader and call into question the assumption that every problem raised in the law has a legal solution.”).

⁴⁰³ Roberts, *Abolition*, *supra* note 148, at 44.

⁴⁰⁴ See Allegra M. McLeod, *Envisioning Abolition Democracy*, 132 HARV. L. REV. 1613, 1616.

collective resistance and revolution at the scene of “crime”
itself.⁴⁰⁵

Abolitionists develop nonpunitive measures to hold people accountable, address harm, and cultivate new conditions that prevent harm in the first place.⁴⁰⁶ They advocate for the “creation of an array of social institutions that would begin to solve the social problems that set people on the track to prison, thereby helping to render the prison obsolete.”⁴⁰⁷ Prevalent approaches include decriminalization, mutual aid systems, and transformative justice alternative practices like “circles.”⁴⁰⁸ In proposing solutions, abolitionists resolve to only further “nonreformist reforms,” reforms that, at bottom, push for true emancipation and freedom and a world without a need for prisons.⁴⁰⁹ “By engaging in nonreformist reforms, abolitionists strive to make transformative changes in carceral systems with the objective of demolishing those systems rather than fixing them. They recognize that these reforms alone are inadequate; indeed, achieving these piecemeal changes in the prison industrial complex reveals the necessity of

⁴⁰⁵ *Id.* at 1615 (quotations and citations omitted). McLeod expounds: “Abolitionists have also begun to broadly reconceptualize what actually constitutes criminal wrongdoing and to advocate for a democratization of local political economies as a means of reducing harm and ensuring collective well-being. For abolitionists, much of the conduct that is the focus of criminal law enforcement should not be understood as criminal at all. The vast majority of police stops, arrests, and prosecutions in the United States involve low-level quality-of-life offenses and other trivial infractions. Abolitionists work to eliminate much of this low-level criminal enforcement altogether.” *Id.* at 1633. See also Roberts, *Abolition*, *supra* note 148, at 44 (“Understanding that prisons are not primarily designed to protect people from crime, but rather to address human needs and social problems with punitive measures, opens the possibility that we can eradicate prisons by addressing these needs and problems in radically different ways.”).

⁴⁰⁶ Roberts, *Abolition*, *supra* note 148, at 44.

⁴⁰⁷ ANGELA Y. DAVIS, *ABOLITION DEMOCRACY: BEYOND EMPIRE, PRISONS, AND TORTURE* 96 (2005).

⁴⁰⁸ See, e.g., Roberts, *Abolition*, *supra* note 148, at 44–49 (outlining concrete practices that root out harm through mutual aid and transformative justice principles); McLeod, *supra* note 404, at 1622–33 (critically discussing various successful abolitionist approaches to justice in Chicago and beyond); CRITICAL RESISTANCE, *supra* note 16, at 51–54 (providing examples of alternative practices and featuring the success of various “circles”—community-based, aboriginal approaches to addressing harms ranging from manslaughter to sexual assault).

⁴⁰⁹ Roberts, *Abolition*, *supra* note 148, at 114

its total eradication.”⁴¹⁰ Quintessentially, “reforming prisons is diametrically opposed to abolishing them.”⁴¹¹

These abolitionist principles provide a powerful framework to combat the school-to-prison pipeline, specifically as it subordinates AAPI youth. First, they call for addressing the root conditions that criminalize AAPI youth, such as academic disengagement, truancy, and mental health issues caused by racism. They expose and address the limitations of commonly proposed remedies like zero tolerance approaches to bullying, demilitarization, and reforms of disciplinary practices, which all provide limited redress to AAPI-specific criminalization.⁴¹² Applying abolitionist principles to the criminalization of AAPI youth thus calls for practices that improve the physical, social, emotional, and educational conditions at schools and beyond—changes that do not merely focus on dimensions of discipline and policing. At school, these can range from the implementation of restorative and transformative justice approaches to “discipline” as well as transformative justice-trained educators and staff.⁴¹³

A novel, perhaps abolitionist antidote to the criminalization of AAPI youth may be the implementation of critical curricula such as Ethnic Studies. Ethnic Studies is a set of “units of study, courses, or programs that are centered on the knowledge and perspectives of an ethnic or racial group, reflecting narratives and points of view rooted in that group’s lived experiences and intellectual scholarship.”⁴¹⁴ Ethnic Studies addresses the failures of mainstream curricula which alienate, erase, and even falsify

⁴¹⁰ *Id.* See also Mariame Kaba, Opinion, *Police “Reforms” You Should Always Oppose*, TRUTHOUT (Dec. 7, 2014), <https://truthout.org/articles/police-reforms-you-should-always-oppose>.

⁴¹¹ Roberts, *Abolition*, *supra* note 148, at 114.

⁴¹² Again, this is not to discount the crucial nature of demilitarizing schools and eliminating zero tolerance policies. Indeed, schools must divest from practices and logics of policing and move toward transformative justice practices. The point here is that these approaches, while critical, may do little to stop the criminalization of AAPI students. See *supra* Part V.A.

⁴¹³ See, e.g., Maria Hantzopoulos, *The Fairness Committee: Restorative Justice in a Small Urban Public High School*, 20 PREVENTION RESEARCHER 7 (2013) [<https://perma.cc/LJ6C-XD7T>]; U.C. DAVIS TRANSFORMATIVE JUST. IN EDUC. CTR., TOWARD A TRANSFORMATIVE JUSTICE TEACHER EDUCATION FRAMEWORK (2018), https://tje.ucdavis.edu/sites/g/files/dgvnsk1141/files/files/page/TJTE%20Framework_3.pdf [<https://perma.cc/3RWR-SLEW>];

⁴¹⁴ CHRISTINE E. SLEETER, NAT’L EDUC. ASS’N, THE ACADEMIC AND SOCIAL VALUE OF ETHNIC STUDIES A RESEARCH REVIEW vii (2011) [<https://perma.cc/77MC-SY76>].

marginalized groups' experiences and history.⁴¹⁵ Hallmarks of Ethnic Studies include the centering of counter-narratives from the perspectives of people of color, criticality, reclamation of cultural identities, intersectionality and multiplicity, community engagement, culturally responsive and mediated pedagogy, and the view that students are intellectuals themselves.⁴¹⁶ Above all, Ethnic Studies is a critical, unfinished decolonizing political project that seeks to “rehumanize experiences, challenge problematic Euro-centric narratives, and build community solidarity across difference.”⁴¹⁷

Ethnic Studies—unlike typical solutions to the pipeline that narrowly focus on dimensions of discipline—therefore seeks to cultivate critical consciousness among the student body and reach the unchecked factors of academic disengagement, truancy, and mental health issues caused by anti-AAPI racism at schools. It aims to trigger critical consciousness in students, to decolonize their minds by offering students “narratives, analytical frameworks, and epistemologies that speak to the central concerns of their lives.”⁴¹⁸ This process enables all students, including others of color and white students, to learn more about themselves and each other.⁴¹⁹ It also fosters empathy and betters campus climate, deterring risk factors like racialized bullying and harassment in schools. For AAPI students in particular, Ethnic Studies can inspire them to unlearn the model minority myth, especially beneficial for those who internalize anti-Blackness and blame themselves for their own struggles at school. Long-term, Ethnic Studies has also been shown to make more culturally conscious, democratically-minded citizens.⁴²⁰

Ethnic Studies also lead to improvements in attendance, academic performance, graduation rates, self-esteem levels, and critical thinking of students.⁴²¹ A recent study by Stanford University, for example, found that

⁴¹⁵ *Id.*

⁴¹⁶ See CHRISTINE E. SLEETER & MIGUEL ZAVALA, TRANSFORMATIVE ETHNIC STUDIES IN SCHOOLS: CURRICULUM, PEDAGOGY, AND RESEARCH 7-18 (2020). See generally FREIRE, *supra* note 145; Dean Braa & Peter Callero, *Critical Pedagogy and Classroom Praxis*, 34 TEACHING SOCIO. 359 (2006).

⁴¹⁷ SLEETER & ZAVALA, *supra* note 416, at 4.

⁴¹⁸ SLEETER & ZAVALA, *supra* note 416, at 38.

⁴¹⁹ See, e.g., SLEETER, *supra* note 414, at 16-17; SLEETER & ZAVALA, *supra* note 416, at 62-69.

⁴²⁰ See, e.g., SLEETER & ZAVALA, *supra* note 416, at 65-67.

⁴²¹ Brooke Donald, *Stanford Study Suggests Academic Benefits to Ethnic Studies Courses*, STANFORD: NEWS (Jan. 12, 2016), <https://news.stanford.edu/2016/01/12/ethnic-studies->

in San Francisco high schools, Ethnic Studies improved attendance “by 21 percentage points, GPA by 1.4 grade points and credits earned by 23.”⁴²² In other words, Ethnic Studies directly tackles the risk factors of academic disengagement and truancy caused by the model minority myth and other anti-AAPI forces that criminalize AAPI youth.

By no means is Ethnic Studies a pristine panacea to the criminalization of AAPI youth or even the school-to-prison itself. It does not stop, among others, the flood of suspensions and expulsions, the violence of police, and discriminatory forms of discipline at schools. Nor does it fund or desegregate schools or address external mechanisms like poverty and inhumane immigration policies that inform the criminalization of so many students. Nor can its proposal be a panacea—in Rachel Herzing’s words, as quoted in the opening, “study is not enough.” And additionally, as abolitionists repeatedly stress, justice requires profound reimagination and restructuring of every segment of society. But the implementation of Ethnic Studies does not, and should not, preclude other non-reformist reforms. Ethnic Studies is merely offered here as both a supplement and complement to non-reformist reforms because Ethnic Studies does take us one step toward the abolitionist vision. It specifically addresses the factors that criminalize AAPIs, factors that are left untouched by commonly proposed reforms for schooling and discipline. Its implementation calls for a radical reimagination of schooling, education, and epistemology itself—of knowledge, of thinking, of teaching, of acting. It dignifies and humanizes history and the lived experiences of marginalized communities. Indeed, these are precisely the reasons why Eddy Zheng and his fellow prisoners fought for Ethnic Studies while in prison.⁴²³

By no means is this Article also meant to be a panacea for the erasure of AAPI criminalization. Due to the dearth of material on the subject, the Article falls far short of providing a comprehensive picture of AAPI criminalization.⁴²⁴ Nor is this the goal to begin with. Indeed, the

benefits-011216/ [https://perma.cc/ZGD9-LAVW]; SLEETER, *supra* note 414. Key to note is that these metrics are also social constructions, not immune from systems of oppression. Nevertheless, the focus here is on how Ethnic Studies targets the specific factors that push AAPI students to prison: academic failure, disengagement, truancy, and racialized bullying.

⁴²² See, e.g., Donald, *supra* note 421.

⁴²³ See Part I.

⁴²⁴ There are significant limitations to this work. For instance, despite efforts to incorporate intersectionality throughout the Article, I faced significant challenges in discussing the experiences of AAPI girls and women in my discussion of gangs. Most of

Article only aims to begin highlighting and addressing the conspicuous absence of AAPI criminalization in academia, media, and advocacy. It argues that the model minority myth concurrently tokenizes and erases AAPIs while informing and perpetuating their criminalization. The examination of AAPI youth experiences with the school-to-prison pipeline particularly illustrates how AAPIs, similar to other minority groups, are harmed by the prison industrial complex. In so doing, the Article disrupts the notion that AAPIs are “model minorities” and argues that the exclusion of AAPIs in formal and informal discussions of crime has several dire practical and theoretical implications. These dangerous consequences include failing to address the unique factors expelling AAPI students out of schools and into prison, therefore maintaining systems of mass incarceration; investing in toxic, structurally violent ideologies such as anti-Blackness; neglecting long, shared histories and legacies of oppression; and hindering possibilities for collective and creative strategies for meaningful social change. By supplementing as well as identifying limitations of powerful, salient evaluations of the criminal system, the Article uncovers a more complete and nuanced understanding of the nature of various structural inequalities.

And if nothing else, the Article invites further investigation of the topic at hand, calling us to listen to overlooked populations and focus on unexamined dimensions of oppression to inspire new approaches to liberation. The vision of a world without prisons requires fundamental change not only in our criminal system but in all our interactions, institutions, and ideas. Only when we embody that profound problems require profound, multidimensional, and collective solutions can we transform into a humane, just society with no prisons. Only then can we achieve the “true focus of revolutionary change,” which is “never merely the oppressive situations which we seek to escape, but that piece of the

the voices amplified here are accordingly of men. These deficiencies are primarily the result of the dearth of materials available, where even the few sources on AAPI criminalization neglected the stories of women, queer, and/or disabled AAPIs. The Article also only provides a limited analysis of issues of immigration and incarceration, the conditions of incarceration for AAPI prisoners, and police brutality. *See, e.g.*, Rachel Ramirez, *Angelo Quinto’s family says he died after police pinned him by his neck. Police deny they did anything wrong.*, Vox (March 3, 2021, 6:20 PM), <https://www.vox.com/2021/3/3/22311360/angelo-quinto-police-asian-violence>.

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oppressor which is planted deep within each of us, and which knows only
the oppressors' tactics, the oppressors' relationships."⁴²⁵

⁴²⁵ AUDRE LORDE, *SISTER OUTSIDER: ESSAYS AND SPEECHES* 123 (2007).