May it please the Court. Again, my name is Genevieve Bonadies Torres and I represent the Student Amici in this case who are a diverse group of prospective and current students and recent alums who stand together to defend Harvard's right to value race and racial diversity in its admissions system. Our students appreciate the opportunity to share how Harvard's policy has intimately impacted their lives.

As this Court is aware, Plaintiffs bring two separate claims. Students are here to defend one, and show the other is disconnected.

The first challenges Harvard's race-conscious admissions policy which values racial and ethnic diversity.

The second claims that Harvard intentionally discriminates against Asian Americans by giving white applicants a comparative admissions advantage.

The Plaintiffs' evidence may blend these claims but they must be distinguished. The first claim involves race-conscious, holistic review which the Supreme Court has repeatedly upheld because the benefits of diversity are both constitutional and profound. The second involves a white admissions advantage which, if found, does not justify a blanket ban on valuing race in admissions.

I will mainly focus on this first claim which is about Harvard's whole person admissions process and whether Harvard may appreciate an applicant's race or ethnicity. The answer is yes. Our students humanize the reasons why. And there are three:

1) First: Race and racial diversity matter. In present-day America. On Harvard's campus. And in admissions. Ethno-racial identity also matters for many in the Asian American community who vary widely in their cultural backgrounds, comparative disadvantage, standardized test scores, and immigration histories.

***

Our students are living proof. Take Thang. 2,060 out of 2,400. That was Thang's total SAT score. A high score that is impressive for most schools. But not at Harvard. Indeed, Thang's admissions file includes a note that says his SAT score is on "the lower end of Harvard's average".

His file also shows Harvard did not reduce Thang to a number. Harvard looked beyond it. There was not just a "raw score" for academics, but comments about his intellectual curiosity. Not just a raw score for "extracurriculars" but comments on his having a "genuine commitment to social impact and the arts".

Not just a raw "personal score" but comments that his school's letter highlighted his "infectiously happy personality".

And on top of all this -- Thang's application file provides information about his:

- socioeconomic status,

- his parents' occupation,

- his intended concentration and much more

Within the multitude of contextual information about Thang is a single reference to his ethnicity. Even so, the way in which his ethnicity has shaped his identity shines through in his essay, interview, and recommendation. Notes from one of the readers states: "immigrant, Vietnamese identity and pencils as tools". This comment -- "Vietnamese identity and pencils as tools" -- is a reference to Thang's essay for admission where he shared about how his family immigrated from Vietnam in 2006. He struggled with English. He was ridiculed. He was also called racial slurs. For an entire year, he put a pencil between his teeth to read hundreds of books out loud to improve his pronunciation. Thang shared all of this with Harvard. And Harvard listened. While the admission officer's note is short – "Vietnamese identity and pencils as tools" – it reflects how Harvard's whole-person review appreciates how ethnicity may impact both prior achievements and future potential.

And this makes good sense. Thang's "lower end" SAT score of 2060 takes on a different hue after knowing he faced language barriers and racial slurs. It also sheds more light on how he could contribute to discussions on Harvard's campus about race-based hurdles faced by immigrant communities.

Thang is not alone in having his ethno-racial identity play some role in his experiences and contributions. You'll also hear from Itzel Vasquez-Rodriguez, Harvard Class of 2017, whose application highlighted her strengths as an indigenous Mexican-American in California, and whose extracurriculars included Spanish Club, Latino Club and volunteer work on behalf of Native and Latinx students.

The plaintiffs want to erase race from whole person review, when it's an aspect that's deeply personal for many students. The Supreme Court has recognized as much and permitted universities to consider race. As the Supreme Court observed in *Grutter*:

> "[b]y virtue of our Nation's struggle with racial inequality, [underrepresented] students are both likely to have experiences of particular importance to the . . . [s]chool's mission, and less likely to be admitted in meaningful numbers on criteria that ignore those experiences." 539 U.S. at 338.

Harvard's race-conscious, whole person review rightly recognizes and values those experiences. Its positive treatment of race flexibly applies to applicants of all racial groups including many Asian Americans. Sally Chen, who is Chinese American,

will recount that when she viewed her application file she was pleased to find praise for her leadership abilities and academic interests which drew from her Chinese heritage.

Just as race continues to matter, so does racial diversity. Such diversity supports students and it stretches them to grow intellectually and socially. You will hear from Itzel how racial diversity eased her sense of isolation. How she felt more comfortable and confident sharing her opinions in spaces with higher numbers of underrepresented students of color. You'll similarly hear from Sarah Cole that other students of color were her "saving grace" who sustained her when correcting biases felt exhausting and supported her to share her "voice and perspective". You will hear from all of the students how racial diversity on campus resulted in better discussions and learning. As Thang will share: racial diversity in his Public Health class broadened his understanding of race, power and ethics within the scientific community. Three aspects of this diversity make it particularly rewarding.

- First, by seeking diversity across all dimensions, Harvard's race-conscious, whole person review process acknowledges differences within each racial group or intra-racial diversity. This helps breaks down stereotypes.
- Second, the benefits students derive from ethno-racial diversity are distinct from that of socioeconomic diversity. As Itzel will reflect she felt isolated

because of the color or her skin, her name, and her features. Race is visually salient and culturally distinct.

- Third, students will explain how racial diversity on campus was essential for cross-coalitional efforts and interests.

The lawfulness of Harvard's race-conscious admissions is based on these sound facts.

Plaintiffs' evidence cannot disturb these justifications. Plaintiffs' attack primarily relies on statistical analysis of their expert Dr. Arcidiacono. Dr. Arcidiacono concludes that Black and Hispanic applicants receive an unfair advantage at Harvard. There are many problems with Dr. Arcidiacono's approach but one stands out: he fixates on academic scores which are determined almost entirely by test scores and grades. That brings us to the second problem with Plaintiffs' evidence.

- Merit is more than a number. More than an academic score.

Two problems here. First, equating merit with academics overlooks every other strength of an applicant. Second, it ignores that those receiving average academic scores are still academically exceptional. This is because Harvard's applicant pool is highly competitive and high academic credentials are the most common characteristic. Admitting students with more "average" academic scores is not

unfair when such students are more than academically qualified and their other strengths make them stand out.

Take Sarah Cole. Sarah earned a full scholarship to one of the best college prep schools in the Kansas City area. Once there, she earned straight-As with several A+s. Academically, Sarah's school described her as virtually unparalleled. Even with these credentials, Harvard's admissions officer and her interviewer gave Sarah an academic score that was slightly above average – a 3+. Clearly, Sarah's exceptional academic achievements at a top tier school reflect academic qualification.

A narrow focus on academics also overlooks Sarah's other strengths. Such as the fact that she worked part-time while maintaining her grades. Or the fact that she served on Kansas City's EngageKC's Leadership Board.
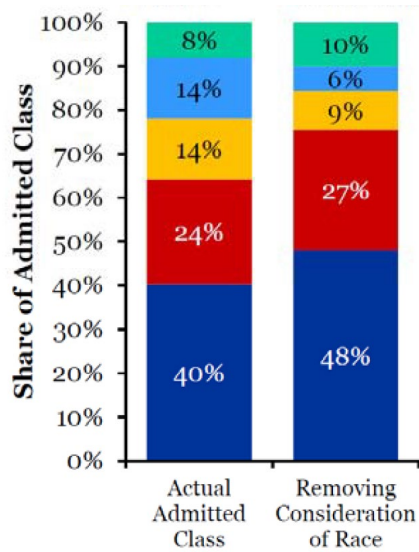
- Kansas City which had the second highest homicide rate in the nation.
- Where Sarah focused her efforts on combatting gun violence among youth after a close acquaintance was murdered.
- She developed a yearlong project to address gun violence in Kansas city and presented 6 recommendations to the mayor.

This background is incredibly compelling on its own. Knowing Sarah is an African American woman adds extra texture. She was combatting gun violence in a city notorious for its own violence against the African American community.

Sarah reminds us that merit is more than a raw 3+ score, and a 3+ score is more than academically qualified.

This brings us to the third problem with Plaintiffs' evidence: the impact of eliminating race in admissions.

Harvard's expert calculated this impact and captured it in the following table:

Three things jump out:

1. First, white students will benefit the most from removing the consideration of race, not Asian Americans.

2. Second, eliminating the consideration of race will have a drastic negative impact on the number of African American, Hispanic, and other minority students on Harvard's campus. Their numbers will drop by 50%.

3. Third, the proportion of Asian Americans changes slightly from 24-27%. But importantly, this has a minimal impact on the likelihood of admission

for any single Asian American applicant. It's shown in the data. While number admitted rises slightly, the number of Asian Americans applying is still over 7,800 applicants. As such, the actual admissions rate hardly changes at – only moving from 5.1% to 5.8%. Less than one percentage point.

And recall, there's a substantial impact on the numbers of black, Hispanic and other ethno-racial minorities on Harvard's campus. This is a reduction among students who already feel a heightened sense of isolation. They also lead many of the efforts which improve the campus racial climate for all students of color, including Asian Americans. The result is substantial harm to the racial climate.

Plaintiffs' experts try to claim that race-neutral alternatives can achieve the same levels of diversity. But here too the Plaintiffs' evidence falls short. Students testimony will focus on two.

- First, the modeling misses that there's a material risk Harvard's applicant pool would change. Fewer ethno-racial minority students would apply. As Itzel will attest, she would be less likely to apply to Harvard if they did not consider her race. She wanted a college that would value her ethno-racial experience and diversity.

- Second, even Plaintiffs' best simulation would cause the proportion of African American students to decline by nearly 30%, dropping from 14% to 10%. For the reasons discussed, this is not a workable alternative.

**

Now, turning briefly to Plaintiff's second claim of a white admissions advantage. Again, students are here to show it's disconnected from a policy that appreciates ethno-racial identity to promote diversity.

This disconnect is shown by the Table which shows that a white admissions advantage would be helped – not eliminated – if Harvard ended it's race-conscious policy.

But this disconnect is also shown by the data which suggests any white admissions advantage is due to Harvard's preferences for "ALDC applicants" which are:

- athletes,

- legacy applicants,

- those on the dean or director's list, and

- children of faculty/staff.

These preferences are substantial. And at least two pieces of evidence powerfully suggest that these preferences – not race-conscious admissions - explain white admissions advantage:

1) First, Harvard's own internal report made a similar observation, noting: "athletes and legacies explain the difference in raw admit rates for Asian and White applicants." (Dkt. 421, Ex. 145 at 3).

2) Second, the raw numbers: A table in Plaintiffs' expert report provides the following breakdown of admitted students over 6 years.

It shows the total admits broken down by race.

It also shows the admits receiving special ALDC preferences by race.

It's immediately apparent that the number of white students receiving such preferences dwarfs those of all other racial groups.

	White (admits)	Asian American (admits)	Black (admits)	Hispanic (admits)	Total (admits)
Athlete	817	101	124	54	1179
Legacy	1080	163	67	90	1541
Faculty child	33	13	0	2	60
Staff child	47	26	2	6	89
Dean / Director's List	701	133	29	59	1034
Total Admits	5,020	2,459	1,400	1,293	11,068

Adding them up makes this even clearer. A total of 2,678 white admittees are associated with ALDC preferences. To give a sense of the size, that's roughly equal to all the Asian Americans admitted in total. And roughly equal to all the Hispanic and Black students admitted combined.

These numbers indicate that if Asian Americans are being displaced is more attributable to preferences for legacy preferences or other special preferences.

Since any white admissions advantage is not due to race-conscious admissions, an appropriate remedy would not ban it. But address the policy at issue whether that be ALDC preferences or otherwise.

**

Now we all know that this case has national significance. But it also has personal significance to our students and the countless other prospective, current, and former students of Harvard. Race-consciousness is critical for campus diversity. And for viewing the whole person. Sarah Cole states it directly "to not see my race, is to not see me at all."