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September 9, 2015

Christopher L. Eisgruber, Ph.D.
President
Princeton University
1 Nassau Hall
Princeton, New Jersey 08554

Re: Case No. 02-08-6002
Princeton University

Dear Dr. Eisgruber:

This letter is to inform you of the resolution of the above-referenced compliance review initiated by the U.S. Department of Education (the Department), New York Office for Civil Rights (OCR). The compliance review examined whether Princeton University (the University) discriminated against Asian applicants, on the basis of race or national origin, in its undergraduate admissions.

OCR initiated this review under Title VI of the Civil Rights Act of 1964 (Title VI), as amended, 42 U.S.C. § 2000d *et seq.*, and its implementing regulation at 34 C.F.R. Part 100, which prohibit discrimination on the basis of race, color, or national origin in programs and activities receiving financial assistance from the Department. The University is a recipient of financial assistance from the Department. Therefore, OCR has jurisdictional authority to conduct this compliance review under Title VI.

OCR determined that there was insufficient evidence to substantiate that the University violated Title VI or its implementing regulation with regard to the issue investigated. A summary of the relevant legal standards, investigative approach, and factual basis for OCR's determination is set forth below.

Procedural History

On January 22, 2008, OCR launched a compliance review of the University's consideration of race and national origin in admissions. As part of this review, OCR also considered information

that was provided in two complaints OCR received against the University; both complaints alleged race and national origin discrimination in the University's admissions process.¹

Background

The University is a large, private university located in Princeton, New Jersey, and in the fall of 2014 it had approximately 5,300 undergraduate students and 2,700 graduate students. For the undergraduate Class of 2010, the University received over 17,000 applications. The University offered admission to 1,790 applicants that year (10.2% of the applicants), and placed another 1,216 applicants (6.9%) on the waitlist as of March 2006. Of the balance, 498 applicants (2.8%) withdrew their applications, while 14,060 applicants (80.1%) were denied admission. Because the incoming Class of 2010 was filled by those applicants admitted on or before March 2006, none of the waitlisted applicants were offered admission for the Class of 2010.

The University concedes that it does sometimes consider the race and national origin of applicants for admission, but it states that these are only two of the many factors that the University may consider as it seeks to build broadly diverse and interesting classes of students. The University maintains that it never considers race or national origin in a discriminatory manner, and that it does not seek to exclude or otherwise limit the number of Asian students it admits.

OCR determined that in the course of the University's admissions process, the University weighed multiple factors in assessing applicants, including standardized test scores; transcript and grades; teacher and coach recommendations; feedback from the alumni interview; expressed interest in and demonstrated commitment to a particular field of study or extracurricular activity; exceptional skills and talents; experiences and background; status as a child of an alumnus or a University faculty or staff member; athletic achievement; musical and artistic talents; geographical and socio-economic status; race and national origin; unique circumstances; hardships endured; and what the University identified as "a range of other factors."

OCR determined that University admissions staff reviewed applicants in the context of their secondary school in order to compare their accomplishments, given the resources available, to those of applicants from similar settings. Once the University received all required documents related to an application (such as transcripts, test scores, the application itself and teacher recommendations) a "reader card" was generated, which summarized applicant information and provided space for admissions staff to record comments in evaluating each applicant. The reader

¹ On August 2, 2006, OCR received a complaint against the University in which the complainant (Applicant 1) alleged that the University discriminated against him, on the bases of his race and national origin (Asian and Chinese), by rejecting his application for admission to the undergraduate Class of 2010 (OCR Case No. 02-06-2127). On August 17, 2011, OCR received a second complaint (OCR Case No. 02-11-2169) filed by the parents of an applicant of Indian descent (Applicant 2). The complainants in that case alleged that the University discriminated against Applicant 2, on the bases of his race and national origin, by failing to admit him into the Class of 2015. The complainants in that case also alleged that the University discriminated against Indian Americans, in general, and other Asian Americans, on the bases of race and national origin, during the admissions process for the Class of 2015. On February 10, 2012, the complainants withdrew their individual allegation regarding Applicant 2; however, their class complaint, and the complaint of Applicant 1, remained a part of this compliance review.

card also recorded decisions made on each application throughout the process; such as whether the applicant was rejected, waitlisted, or offered admission.

Admissions staff members were divided into regional teams, led by a regional coordinator, to review applications by geographic region. There were six geographic regions for the U.S., and one for international applicants. Once all required documents such as transcripts and recommendations were submitted, the application file (consisting of its reader card and all application materials) was assigned to the appropriate regional team for initial review. The team coordinators of regional teams assigned academic ratings (based on grades and standardized test scores) and non-academic ratings (based on extra-curricular activities) to an application, with “1” as the highest rating and “5” as the lowest rating. The Dean of Admissions described the academic and non-academic ratings as a “snapshot” designed to give the staff guidance as to the amount of time to spend with the file. The team coordinator also assigned an Institutional Priority to applicants (“high,” “medium,” or “low”) that summarized the overall strength of an application.

Each application was then read twice, once by a team member (“first reader”) and once by one of the team coordinators (“second reader”). The first reader was responsible for documenting the applicant’s family background and reviewing the applicant’s teacher recommendations, extracurricular activities, and other accomplishments. The first reader also summarized the applicant’s achievements on the reader card, and noted a suggested action on the reader card: “Admit,” “Strong Interest,” “Only if Room,” or “Unlikely.” The second reader then reviewed the file; added any new information to the reader card; and recorded his or her own comments, which might endorse or overrule the first reader’s recommendations.

OCR’s investigation showed that the team coordinators selected the most promising applications for consideration by committees that included admissions staff from the several regions as well as the Dean of Admissions or Director of Admissions, who chaired such committee sessions.² The committees reviewed these applications and voted on a preliminary admissions decision. OCR determined that in some years, including the review for the Class of 2010, the initial committee review generally resulted in more potential admits than the University could accommodate; thus a second stage of committee review was necessary to winnow down the pool of (preliminarily) accepted applicants to more closely match the number of available spots.³ In doing this, the committees revisited applicants who had not received unanimous votes in favor of admission. The second stage of committee review was also an opportunity to consider other characteristics of the admission pool, such as the number of admission offers made to prospective engineering students since it is a specialized program, or the requests of the music or athletic departments for students with relevant skills. As is discussed below, the University does not at this stage, or at any stage of the admissions process, assess the race or national origin demographics of the class that it is building.

² The Dean of Admissions informed OCR that the committee generally discussed only applications highlighted by one of the team coordinators.

³ Admissions staff reported that the University did not retain records of which applicants were reconsidered and rejected at the second stage, nor did it retain records of the vote tallies on applications discussed during either stage of committee review.

Admissions staff members were made expressly aware of applicants' race or national origin only if the applicants chose to identify themselves as such; whether by voluntarily checking a box for racial or national origin identity on the application or otherwise revealing the same, such as in the course of an essay answer. There was also an option for applicants to list, on a voluntary basis, their place of birth; country of citizenship; and any language other than English spoken at home.

Legal Standards

The regulation implementing Title VI, at 34 C.F.R. § 100.3(a), states that no person shall, on the grounds of race, color or national origin, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity receiving federal financial assistance. Section 100.3(b)(1) further states that a recipient may not, on the grounds of race, color or national origin, treat an individual differently from others in determining whether they satisfy any admission, enrollment, quota, eligibility, membership or condition which individuals must meet in order to be provided any service, financial aid, or other benefit provided under the program.

A use of race or national origin in admissions that violates the Equal Protection Clause of the Fourteenth Amendment to the U.S. Constitution also violates Title VI.⁴ Thus, in analyzing the use of race by programs that seek diversity, OCR considers not only Title VI and its implementing regulation, but also case law interpreting the Equal Protection Clause; particularly the U.S. Supreme Court's decisions in Grutter v. Bollinger (Grutter),⁵ Gratz v. Bollinger (Gratz),⁶ and Fisher v. University of Texas at Austin (Fisher).⁷ Under Title VI standards, as interpreted in Grutter, Gratz, and Fisher, a university has a compelling interest in student body diversity "of which racial or ethnic origin is but a single though important element."⁸ Thus, to achieve diversity, a university may consider individual applicants' race and national origin as a factor in admissions decisions so long as that use of race and national origin is narrowly tailored.

In Fisher, the Court, quoting from Justice Powell's opinion 35 years earlier in Bakke v. Regents of the University of California, made it clear that the use of individual race in the context of postsecondary admissions must meet the constitutional requirements of strict scrutiny: "It is therefore irrelevant that a system of racial preferences in admissions may seem benign. Any racial classification must meet strict scrutiny, for when government decisions 'touch upon an individual's race or ethnic background, he is entitled to a judicial determination that the burden he is asked to bear on that basis is precisely tailored to serve a compelling governmental interest.'"⁹

⁴ See Alexander v. Sandoval, 532 U.S. 275, 280-81 (2001) (citing Regents of the University of California v. Bakke, 438 U.S. 265, 287 (1978) (opinion of Powell, J.)).

⁵ 539 U.S. 306 (2003).

⁶ 539 U.S. 244 (2003).

⁷ 133 S.Ct. 2411 (2013).

⁸ Grutter, 539 U.S. at 325 (quoting Bakke, 438 U.S. 265, 315 (1978) (opinion of Powell, J.)).

⁹ Fisher, 133 S.Ct. at 2417.

Fisher cited the core Grutter standards for the determination of whether a use of race in postsecondary admissions meets the requirements of narrow tailoring.¹⁰ Under Grutter, several criteria apply: whether the university considered workable race-neutral alternatives; whether the admissions program provided for flexible and individualized review of applicants; whether it unduly burdened students of any racial group; and whether the consideration of race was limited in time and subject to periodic review.

Summary of Review

OCR conducted strict scrutiny review of the University’s admissions process, which entailed examining whether the University was pursuing a compelling interest in diversity and whether the University’s use of race and national origin was narrowly tailored to meet that interest. As part of this investigation, OCR reviewed the University’s statements regarding its core values (including expressed interests in achieving student body diversity) and the University’s admissions policies, procedures, applicant files, internal memoranda, training materials, and other documents used by admissions staff for the Class of 2010. OCR also interviewed current and former University admissions staff, including the Dean of Admissions and the former Director of Admissions. OCR also reviewed 15 years of admissions data. In addition, OCR conducted file reviews, including a random sample of 597 applicant files and a review of 529 applicant files from select large high schools in the U.S. from which relatively large numbers of both non-Asian and Asian students applied to the University.

Compelling Interest in Diversity

In Gratz and in Grutter, as Justice Powell had said 25 years earlier in Bakke, the Supreme Court said postsecondary institutions have a compelling interest in student body diversity. For example, in Grutter, the Court said: “today we endorse Justice Powell’s view that student body diversity is a compelling state interest that can justify the use of race in university admissions.”¹¹ Ten years after Gratz and Grutter, the Court reaffirmed this interest in Fisher. In Fisher, the Court said, “Grutter made clear that racial ‘classifications are constitutional only if they are narrowly tailored to further compelling governmental interests. And Grutter endorsed Justice Powell’s conclusion in Bakke that ‘the attainment of a diverse student body ... is a constitutionally permissible goal for an institution of higher education.’”¹² The Department and the U.S. Department of Justice, in their jointly issued “Guidance on the Voluntary Use of Race to Achieve Diversity in Postsecondary Education,” (Guidance) also reiterated “the compelling

¹⁰ *Id.*, at 2421: “In Grutter, the Court approved the plan at issue upon concluding that it was not a quota, was sufficiently flexible, was limited in time, and followed ‘serious, good faith consideration of workable race-neutral alternatives.’”

¹¹ Grutter, 539 U.S. at 325.

¹² Fisher, 133 S.Ct. at 2419 (quoting Grutter, 539 U.S. at 326, and citing Bakke, 438 U.S. at 311-312 (separate opinion)).

interest that postsecondary institutions have in obtaining the benefits that flow from achieving a diverse student body.”¹³

The University advised OCR that an essential aspect of its mission is “providing the educational benefits of a diverse student body.” During OCR’s investigation, the University demonstrated how, through its core objectives and educational programs, it sought to realize its interests in diversity in accordance with the standards set forth in Gratz and Grutter.¹⁴ For example, the University pointed to its 1994 “University-wide Regulations,” which includes a Statement on Diversity and Community. It states, in part:

Princeton University is a community devoted to learning. We actively seek students, faculty, and staff of exceptional ability and promise who share in our commitment to excellence in teaching and scholarship, and who will bring a diversity of viewpoints and cultures. By incorporating a broad range of human experiences and a rich variety of human perspectives, we enlarge our capacity for learning, enrich the quality and texture of campus life, and better prepare for life and leadership in a pluralistic society.

Further, the University’s former president, Shirley M. Tilghman, spoke of the University’s interest in broad-based student body diversity in a 2005 speech to a group of newly admitted students, stating, in part:

Princeton also offers you a once-in-a-lifetime opportunity to connect with men and women whose lives have differed dramatically from your own; who view the world from a different vantage point. Never again will you live with a group of peers that was expressly assembled to expand your horizons and open your eyes to the fascinating richness of the human condition....The reason [the Admissions Office] took such care in selecting all of you – weighing your many talents, your academic and extracurricular interests, your diverse histories – was to increase the likelihood that your entire educational experience, inside and outside the classroom, is as mind-expanding as possible. When you graduate you will enter a world that is now truly global in perspective, and in which success will require that you have a cosmopolitan attitude. You must be equipped to live and work in not one culture, but in many cultures.

In 2012, the trustees of the University created a committee on diversity, and this committee ultimately articulated that “diversity is not an end in itself but, rather, a precondition for academic excellence, institutional relevance, and national vitality, and that engagement with this issue is central, not tangential, to Princeton’s mission and to the maintenance of its leadership position in higher education.” The University stated in its 2014-2015 “Profile” document that

¹³ Guidance at p. 1 (November 2011). The Guidance also stated that “Nothing in this guidance should be understood to suggest that race, or racial impact, may be considered in furtherance of an invidious purpose.”

¹⁴ “A court, of course, should ensure that there is a reasoned, principled explanation for the academic decision.” Fisher, 133 S.Ct. at 2419.

“the University provides its students with academic, extracurricular and other resources – in a residential community committed to diversity in its student body, faculty and staff – that prepare them for positions of leadership and lives of service in many fields of human endeavor.”¹⁵

OCR is satisfied based upon its examination of the record that the University sought to achieve a compelling interest in diversity that is consistent with the interest recognized in the Supreme Court’s decisions.

Examination of Narrow Tailoring

Having determined that the University was in pursuit of a compelling interest in diversity, OCR next examined whether the way the University considered race and national origin was narrowly tailored to meet this interest. As stated above, narrow tailoring involves four basic factors: whether the University considered workable race-neutral alternatives; whether the admissions program provided for flexible and individualized review of applicants; whether it unduly burdened students of any racial group; and whether the consideration of race was limited in time and subject to periodic review.

1. Individualized Review

In Grutter, the Court said the provision of individualized consideration in the context of a race-conscious admissions program is “paramount.”¹⁶ The Court defined individualized consideration as, among other things, a university considering race only as a “plus” factor in its admissions process, such that race may, if warranted in individual circumstances, be an additional consideration in favor of admitting an applicant. In doing so, a university’s admissions program must remain flexible enough to ensure that each applicant is evaluated as an individual and not in a way that makes an applicant’s race the defining feature of his or her application. In the context of the University’s admissions process, OCR examined the key factors of individualized consideration as discussed by the Court.

No Grouping of Applicants by Race and No Separate Admissions Tracks by Race

In Grutter, the Court said that in order to “be narrowly tailored, a race-conscious admissions program cannot “insulat[e] each category of applicants with certain desired qualifications from competition with all other applicants.”¹⁷ The Court said universities cannot put different racial groups on separate admissions tracks, nor “can universities insulate applicants who belong to certain racial or ethnic groups from the competition for admission.”¹⁸ Instead, the Court said, all applicants must compete against each other for an offer of admission.

¹⁵ <http://www.princeton.edu/pub/profile/>.

¹⁶ Grutter, 539 U.S. at 337, referring to Bakke, 438 U.S. at 318, n. 52 (opinion of Powell, J.) (identifying the “denial ... of th[e] right to individualized consideration” as the “principal evil” of the medical school’s admissions program).

¹⁷ Grutter, 539 U.S. at 334.

¹⁸ *Ibid.*

In its multi-year investigation of the University’s admissions process, OCR found no grouping of applicants by race. OCR found no evidence that the University used separate admissions processes, reviews, or tracks by race. Asian applicants were not reviewed separately. No racial groups were reviewed separately. Each applicant who was offered admission competed against all other applicants for admission. Additionally, at no point in time during the admissions process were Asian applicants, or applicants of any other racial group, separated out to be compared specifically to other applicants of their same racial group.

At times, the University compares applicants to other applicants from the same high school, in order to assist with putting an applicant’s achievements into context. These comparisons, however, are not done on the basis of race or national origin. Early in the admissions process, the University may also group together international applicants from the same country, for the same purpose of gaining further insight into and context about an applicant. For example, an applicant from Singapore might be compared to other applicants from Singapore in order to better understand the educational opportunities that were available to the applicant and how well he or she made use of those opportunities. Comparing an international applicant to other applicants from his or her country may also assist with putting grades into context because of the grading systems characteristic of some countries. Ultimately, however, even after these initial comparisons are made, each applicant has to compete with all other applicants, from every country, to gain an offer of admission.

OCR’s initial review of 529 randomly selected applicant files indicated that in a few instances, comments on reader cards revealed isolated assumptions about the cultures and educational systems of Asian nations and regions.¹⁹ However, OCR’s file review also found instances of similar assumptions made about the cultures and educational systems of non-Asian nations and regions of the world.²⁰ Additionally, for some Asian applicants, including Asian Americans, OCR found instances in which an admissions officer or alumni interviewer made comments associated with Asian stereotypes, such as noting that an applicant is quiet or shy. However, OCR also found instances in which an admissions officer or alumni interviewer made similar comments about applicants who were not Asian. For example, a Mexican American applicant was described as a “relatively quiet youngster” and a white applicant was described as “Quiet kid but contributes.” Additionally, OCR found that after interviewing an African American

¹⁹ For example, a comment made by a reader of a biracial Asian applicant from Hong Kong stated: “[Applicant] is a bit of a puzzle. He was very likeable when I met him, but very hard to know. *Perhaps HK [Hong Kong] cultural background and family background means he’s a tad guarded*, but there was a quirkiness I found endearing...Not sure he would s.o. [stand out] among the HK crowd. Tough to take over some others at this point.” (Emphasis added.) Another example was a comment made by a reader about an applicant from Singapore: “Well, she’s bright, meticulous, and has been successful at [secondary school]; distinction in ELA and *has more creativity and open mind[edness] than most from Singapore* (from her [school] experience).” (Emphasis added.) A third example involved the following comment made by a reader: “*Even by Singaporean standards of taciturn, I’m not getting the sense that [the applicant] is a favorite @ [secondary school]*. All admire her high music ability & eagerness for learning, but when they call her driven, it almost comes across as a character flaw (or perhaps it’s seen as such bc it’s for an interest in music).” (Emphasis added.)

²⁰ Regarding an applicant from the country of Georgia, the first reader wrote “unfortunately, although he ranks at top of class, not at top of our pool, I worry a lot about his ability to perform very well in complete English curriculum (evidenced in his rambling, frustrating writing and low vocabulary); we’re going to see better, even out of Georgia” and the second reader wrote “Right.”

applicant, an alumni interviewer for the University wrote: “easily the most at ease and friendly minority applicant we have ever interviewed.”²¹

No Evidence of Quotas or Racial Balancing

In Grutter, the Supreme Court said “universities cannot establish quotas for members of certain racial or ethnic groups or put them on separate admissions tracks.”²² The Court said that, properly understood, “a “quota” is a program in which a certain fixed number or proportion of opportunities are “reserved exclusively for certain minority groups.” Richmond v. J.A. Croson Co., *supra*, at 496, 109 S.Ct. 706 (plurality opinion). Quotas “impose a fixed number or percentage which must be attained, or which cannot be exceeded,” Sheet Metal Workers v. EEOC, 478 U.S. 421, 495, 106 S.Ct. 3019, 92 L.Ed.2d 344 (1986) (O'Connor, J., concurring in part and dissenting in part), and “insulate the individual from comparison with all other candidates for the available seats,” Bakke, *supra*, at 317, 98 S.Ct. 2733 (opinion of Powell, J.).²³

Here, in its review of the University’s admissions process, OCR found no evidence that the University tried to cap or otherwise limit the number of applicants who would be admitted from any race or national origin group. OCR also did not find that the University engaged in “patently unconstitutional” racial balancing, which the Supreme Court has defined as an effort “to assure within its student body some specified percentage of a particular group merely because of its race or ethnic origin.”²⁴ Instead, to the contrary, OCR found mostly steady increases in the percentages of Asian students who have been admitted in the past several years, rising from 14.2% of the University’s Class of 2007 to 21.9% of the University’s Class of 2012 and 25.4% (more than one-fourth) of the University’s Class of 2014.²⁵ Such fluctuations are inconsistent with the existence of a quota, as the Supreme Court noted in Grutter.²⁶

Further, OCR found no evidence indicating that University admissions staff monitored how many Asian applicants it was recommending for admission as the admissions season progressed. In Grutter, the Law School’s Director of Admissions testified that “at the height of the admissions season, he would frequently consult the so-called ‘daily reports’ that kept track of the racial and ethnic composition of the class (along with other information such as residency status and gender)....This was done, (he) testified, to ensure that a critical mass of underrepresented minority students would be reached so as to realize the educational benefits of a diverse student body....(He) stressed, however, that he did not seek to admit any particular number or

²¹ The University told OCR that it does not give much weight to the comments of alumni interviewers, as they are not University employees.

²² Grutter, 539 U.S. at 334.

²³ *Id.*, at 335.

²⁴ *Id.*, at 329-330, quoting Bakke, 438 U.S., at 307, 98 S.Ct. 2733 (opinion of Powell, J.).

²⁵ The University maintains that the growth in Asian enrollment is actually underreported. The University only tracks the race of applicants who are citizens of the United States or permanent residents; not included are international applicants who are Asian and other Asians who may attend high school in the U.S., but who are not citizens of the U.S. or permanent residents.

²⁶ Grutter, 539 U.S. at 336.

percentage of underrepresented minority students.”²⁷ Though there was objection to this practice by the dissent, the Supreme Court did not take issue with it and it is thus not unlawful. Nevertheless, OCR found no evidence here that University admissions staff maintained a statistical count of applicants by race or national origin at any point during the admissions decision-making process.

Further, OCR found that admissions officers at the University are trained, at the start of each admissions cycle, as to how to evaluate applicants holistically, considering a wide range of factors that may include race and national origin. The University reported to OCR that these “trainings come in several forms, including meetings among admission staff members, where senior admission staff members provide feedback on application review and preparation for committee deliberations, and office meetings prior to the reading and committee processes to discuss our holistic review process. The admissions staff also receives annual training from the Office of the General Counsel regarding the applicable legal requirements for taking race into account in the admission program.” In Grutter, the Court noted how the Law School’s former Director of Admissions had testified in the trial leading to Grutter that he “did not direct his staff to admit a particular percentage or number of minority students, but rather to consider an applicant’s race along with all other factors.”²⁸ OCR found similar principles at work at the University.

Flexible Use of Race

In Grutter, the Court, in reflection upon Bakke, said “truly individualized consideration demands that race be used in a flexible, nonmechanical way” and that universities may consider race only as a “plus” factor in the context of the individualized consideration that must be provided to each and every applicant.²⁹ The Court further explained that when “using race as a ‘plus’ factor in university admissions, a university’s admissions program must remain flexible enough to ensure that each applicant is evaluated as an individual and not in a way that makes an applicant’s race or ethnicity the defining feature of his or her application.” This was a key failing of the admissions process reviewed by the Supreme Court in Gratz, a system that the Court said was impermissible because it had “the effect of making ‘the factor of race ... decisive’ for virtually every minimally qualified underrepresented minority applicant.”³⁰

Here, OCR found that during the University’s admissions process, an applicant’s race and national origin – if he or she offered that information — may or may not be considered, depending upon whether that information provides further context about an individual applicant. For example, an admissions officer might consider how race may have figured in the context of where a person was born, where a person grew up, and where he or she had gone to school. Race and national origin may also be considered if an applicant brings up those subjects in his or her essay. However, OCR found no evidence of the University giving an automatic “plus” for identifying as a particular race or national origin; nor did OCR find evidence of applicants given

²⁷ *Id.*, at 318.

²⁸ *Ibid.*

²⁹ Grutter, 539 U.S. at 334, referring to Bakke, 438 U.S. at 315–316, 98 S.Ct. 2733 (opinion of Powell, J.)

³⁰ Gratz, 539 U.S. at 272 (quoting Bakke, 438 U.S. at 317 (opinion of Powell, J.)).

an automatic “minus” for belonging to a particular race or national origin. OCR also found no evidence of the University using a fixed formula to weigh an applicant’s race or national origin.

OCR’s review of more than 1,000 application files for the Class of 2010 showed that sometimes the race or national origin of an applicant garnered positive attention (as indicated by comments made by admissions staff on the reader cards); sometimes it did not. For example, for an applicant attending high school in the U.S., admissions staff commented that “Polish heritage is neat but not a hook”; and based on other information in the record, the applicant was not offered admission. On the other hand, admissions staff noted that for a Mexican applicant attending high school in the U.S., the individual was a “cultural add as well”; and based on other information in the record, the applicant was waitlisted (but ultimately not admitted, as there were no available spaces). However, for another applicant of Hispanic national origin also attending high school in the U.S., admissions staff wrote that there was “No cultural flavor” in the application; and based on other information in the record, the applicant was not even waitlisted. For another applicant who was waitlisted, admissions staff wrote that the applicant was a “true American Native . . . One to do;” however, despite receiving a plus for national origin, this applicant was not ultimately admitted as there were no available spaces for anyone on the waiting list that year.

Similarly, OCR found that the University sometimes considered race and national origin as a “plus” for an Asian applicant, and sometimes the University appeared to give no significance at all to these factors for Asian applicants. For example, OCR in its file review found Asian American applicants who were admitted even though there was no indication in their files that their race or national origin was considered. OCR also found examples of Asian applicants who were given a “plus” for their race or national origin. For example, the reader card for a Pakistani American applicant from a less privileged section of a Southern state stated that the applicant was “remarkable,” “defies the stereotypes, thinks and feels deeply, and is a gloriously achieving student” who had done “beautiful academic work” at an elite private school despite not being comfortable as a “poster [child] for diversity” in that setting. This applicant was waitlisted (but not ultimately admitted). For a Korean student who was also waitlisted, the reader card stated “It’s amazing for a non-native speaker to not only do this well in English-based curriculum, but, too, to skip over 2 full levels of Chinese language w/ zero background.” The University also admitted a Korean applicant who, according to the reader card, had previously faced “green card trouble” and whose parents have limited English proficiency.

Additionally, even when applicants were given a “plus” for their race or national origin, OCR found that this did not guarantee admission. For example, the Native American applicant who had been remarked upon as being a “true American Native . . . One to do” was waitlisted and ultimately not admitted. For another Native American applicant, admissions staff wrote, “Not sure I’ve seen a stronger Native profile with these creds and [extracurricular] accomplishments;” this applicant also was not admitted. Neither was another Native American applicant of whom admissions staff stated, “Aren’t many Native Americans in the country w/ SAT scores like this.” The Mexican student attending high school in the U.S., described above as receiving a plus for being a “cultural add as well,” was waitlisted but ultimately not admitted. These findings are consistent with both Gratz and Grutter. As the Court stated in Grutter, approving of the Law School admissions policy that was at issue in that case, “There is no policy, either *de jure* or *de facto*, of automatic acceptance or rejection based on any single “soft” variable. Unlike the

program at issue in *Gratz v. Bollinger, post*, 539 U.S. 244, 123 S.Ct. 2411, the Law School awards no mechanical, predetermined diversity “bonuses” based on race or ethnicity. See *post*, 539 U.S., at 271–272, 123 S.Ct. 2411, 2003 WL 21434002 (distinguishing a race-conscious admissions program that automatically awards 20 points based on race from the Harvard plan, which considered race but ‘did not contemplate that any single characteristic automatically ensured a specific and identifiable contribution to a university’s diversity’).”³¹

Pursuit of a Broad Definition of Diversity

In *Grutter*, the Supreme Court noted that the Law School gave “substantial weight” to diversity factors besides race and said the Law School did not “limit in any way the broad range of qualities and experiences that may be considered valuable contributions to student body diversity. To the contrary, the 1992 policy makes clear ‘[t]here are many possible bases for diversity admissions,’ and provides examples of admittees who have lived or traveled widely abroad, are fluent in several languages, have overcome personal adversity and family hardship, have exceptional records of extensive community service, and have had successful careers in other fields. *Id.*, at 118–119. The Law School seriously considers each ‘applicant’s promise of making a notable contribution to the class by way of a particular strength, attainment, or characteristic—*e.g.*, an unusual intellectual achievement, employment experience, nonacademic performance, or personal background.’ *Id.*, at 83–84. All applicants have the opportunity to highlight their own potential diversity contributions through the submission of a personal statement, letters of recommendation, and an essay describing the ways in which the applicant will contribute to the life and diversity of the Law School.”³²

Here, OCR found that the University pursued a broad definition of diversity, for which race and national origin were among many other factors that were considered in the University’s effort to assemble broadly diverse classes of students. Applicants of all races and national origins are able to state, in their applications, how they would contribute to such broad-based campus diversity. Applications for admission asked applicants about extracurricular activities, employment, summer experiences, family background, artistic and musical talents, athletic abilities and activities, geographic residency, and whether the applicant is the first in his or her immediate family to attend college or if he or she has overcome any significant hardships in life. Applicants also have the option of answering, in their applications, the open-ended question posed by the University of “What Else Would You Like Us to Know?” Additionally, as part of its effort to garner more socioeconomic diversity amongst its students, the University became, it maintains, the first major postsecondary institution in the country to adopt a “no loans” policy that allows students to graduate without student debt because financial aid is provided only in the form of grants and salaries from on-campus jobs.

Attracting more students from a variety of countries on campus has also become part of the University’s diversity goals. While University admissions officers maintained that the University does not desire applications from one region of the world over another, there are regions that submit more applications to the University than others – largely due to familiarity with English, access to the Internet, educational opportunities, and proximity to the U.S. OCR in

³¹ *Grutter*, 539 U.S. at 337.

³² *Id.*, at 338.

its file review found multiple Asian countries that had applicants receiving offers of admission at rates that were higher than in parts of Europe and Africa. For example, for the Class of 2010, applicants from Hong Kong were admitted at a rate of 8.9% and applicants from China were admitted at a rate of 7.5%, while applicants from Romania were admitted at a rate of 9%, applicants from Bulgaria were admitted at a rate of 4%, and applicants from Nigeria were admitted at a rate of 1%. There was no clear pattern with regard to applicants from Asian countries versus applicants from other regions of the world.

Getting an offer of admission from the University is difficult; as the University told OCR, perfect grades and SAT scores do not guarantee admission to the University, as admissions decisions are based on more than just academic criteria. Additionally, the University annually receives many thousands more applications than it can accept, so the University regularly must reject the applications of students who are the valedictorians of their high school graduating classes and who also often have perfect SAT test scores. The University told OCR that 82% of the valedictorians in the applicant pool for the Class of 2010 were not admitted, and over 50% of applicants with perfect SAT I scores of 2,400 were not admitted. The University added that for the Class of 2010 -- for which the University admitted only 1,790 students -- there were more than 6,300 applicants who had SAT scores of 750 or higher on the math portion of the test, and there were more than 4,800 applicants that year who scored 750 or higher on the verbal portion of the SAT. More than 5,600 applicants for the Class of 2010 alone had GPAs of 4.0 or higher.

The University also reported, and OCR's file review confirmed, that less than stellar grades or test scores do not mean that an applicant is automatically foreclosed from admission. OCR in its file review found examples of applicants who did not have the highest quantifiable qualifications, such as grades and test scores, who were nonetheless admitted by the University based on other qualities and the overall strength of their applications. Some of these applicants were Asian. The University reported to OCR that the University "frequently accepted to the Class of 2010 applicants from Asian backgrounds with grades and test scores lower than rejected non-Asian applicants."³³ The University gave OCR specific examples of Asian American applicants for the Class of 2010 whose grades and SAT scores were not near the top of the range usually seen by the University's admissions officers, but who nonetheless were offered admission. These included an Asian American applicant who had "only" a 3.45 GPA in high school, but who was a nationally recognized athlete; and two other Asian American applicants with relatively low GPAs and SAT scores who were notable for other distinctions such as community service, overcoming impoverished backgrounds, and working in a family business. As the University told OCR, regarding the Class of 2010, the University "denied admission to literally hundreds of non-Asian applicants for the Class of 2010 who were valedictorians, and over three-thousand non-Asian applicants with a 4.0 GPA. These non-Asian applicants were not admitted despite the fact that many Asian students who did not have these academic credentials were admitted."

³³ In Grutter, 539 U.S. at 339, the Court noted that "The Law School frequently accepts nonminority applicants with grades and test scores lower than underrepresented minority applicants (and other nonminority applicants) who are rejected."

In sum, OCR found that the University treated each applicant as an individual, without making an applicant's race or national origin a defining characteristic. Accordingly, OCR found no evidence of the different treatment of Asian applicants. Further, as described above, each of the more than 17,000 applications received for the Class of 2010 was read by multiple admissions staff members. Final selections for offers of admission were usually made by a committee of admissions staff, which generally consisted of at least five staff members. There was not an individual staff member making the final recommendation for admission. In its interviews with members of the admissions staff, OCR found no evidence of anti-Asian animus. There was also, as stated above, no evidence that Asian applicants were treated as a group.

2. Effect on Other Students

In Grutter, the Supreme Court said the Law School did not unduly burden applicants of other races because the Law School allowed each applicant to compete with every other applicant for every available opening, and made decisions based on individualized consideration of “all pertinent elements of diversity.”³⁴ The Court referred to Justice Powell's opinion in Bakke to add that “so long as a race-conscious admissions program uses race as a ‘plus’ factor in the context of individualized consideration, a rejected applicant ‘will not have been foreclosed from all consideration for that seat simply because he was not the right color or had the wrong surname....His qualifications would have been weighed fairly and competitively, and he would have no basis to complain of unequal treatment under the Fourteenth Amendment.’”³⁵

As stated above, OCR found that the University engaged in a holistic review process that considered each applicant as an individual. Asian applicants were not competing against only Asian applicants for admission; instead, each applicant competed against all other applicants for a coveted seat at the University. Further, applications were not sorted, read, or processed according to the race of the applicant. There were no quotas for any racial or national origin category of applicant. Applicants of different races and national origins were not judged by different criteria. OCR also found that the University used a broad definition of diversity, which in accordance with Grutter and Bakke, considered race as a “single though important element” of such diversity.³⁶ All applicants were given the opportunity to state how they believed they might contribute to diversity on campus; and the University actively pursued a broad, multi-faceted diversity in admissions.

3. Race-Neutral Alternatives

In Grutter, the Supreme Court held that before using race as a factor in individualized admissions decisions, a postsecondary institution must conduct a serious, good faith review of workable race-neutral alternatives to achieve the diversity that it seeks.³⁷ An institution may deem unworkable a race-neutral alternative that would be ineffective or would require it to sacrifice

³⁴ Grutter, 539 U.S. at 334, 337, and 341 (citing Bakke, 438 U.S. at 319 (opinion of Powell, J.)).

³⁵ Grutter, 539 U.S. at 341, quoting from Bakke, 438 U.S. at 318 (opinion of Powell, J.).

³⁶ Grutter, 539 U.S. at 325, quoting from Bakke, 438 U.S. at 315 (opinion of Powell, J.).

³⁷ Grutter, 539 U.S. at 339.

another component of its educational mission.³⁸ Applying this standard, the Court found that the Law School “adequately considered race-neutral alternatives currently capable of producing a critical mass without forcing the Law School to abandon the academic selectivity that is the cornerstone of its educational mission.”³⁹ In Fisher, the Court noted its prior discussion of race-neutral alternatives in Grutter and stated: “Although ‘[n]arrow tailoring does not require exhaustion of every *conceivable* race-neutral alternative,’ strict scrutiny does require a court to examine with care, and not defer to, a university’s ‘serious, good faith consideration of workable race-neutral alternatives.’ Consideration by the university is of course necessary, but it is not sufficient to satisfy strict scrutiny: The reviewing court must ultimately be satisfied that no workable race-neutral alternatives would produce the educational benefits of diversity. If ‘a nonracial approach...could promote the substantial interest about as well and at tolerable administrative expense,’ then the university may not consider race.”⁴⁰

Here, OCR examined the University’s assessment of whether race-neutral alternatives were sufficient to achieve its diversity goals, of which race was a single though important element. In determining whether an institution has conducted a serious, good-faith review of race-neutral alternatives, and in satisfying itself that these alternatives are not sufficient to achieve the educational benefits of diversity as sought by a university, OCR will examine the review process used by the university, including the information considered by the institution; the expertise of its participants; and the nature of their deliberations. OCR will also examine the educational objectives of the institution and satisfy itself that, in OCR’s view, there were no race-neutral alternatives that would have worked about as well.⁴¹

OCR found that the University does not rely solely upon the consideration of race in admissions to enhance student body diversity. The University has long pursued a variety of race-neutral means to enhance student body diversity and the University continues to use many of these. Among them are the following:

Developmental Programs. The University participates in a variety of programs designed to develop promising potential applicants. These include the Princeton University Preparatory Program (PUPP), an academic and cultural enrichment program that supports local high-achieving, socioeconomically disadvantaged students. According to the program’s website, it is a multi-year, tuition-free program that “prepares participants for admission to and ongoing success within selective colleges and universities.”⁴² Selection for the program is “contingent upon a student’s academic record, state exam scores (New Jersey Ask 8), a writing sample, house-hold income, their performance in a small group interview, leadership potential, and

³⁸ *Ibid.*

³⁹ Grutter, 539 U.S. at 340.

⁴⁰ Fisher, 133 S.Ct. 2411, 2420.

⁴¹ “Narrow tailoring also requires that the reviewing court verify that it is ‘necessary’ for a university to use race to achieve the educational benefits of diversity. This involves a careful judicial inquiry into whether a university could achieve sufficient diversity without using racial classifications,” Fisher, 133 S.Ct. at 2420 (quoting Bakke, 438 U.S. at 305).

⁴² <http://www.princeton.edu/pupp/>.

commitment to pursuing higher education.”⁴³ Further, “Scholars complete three, intensive six-and-a-half week summer institutes at Princeton University and take part in school-year programming, including weekly after school academic enrichment sessions and a series of cultural excursions. PUPP works directly with students and their parents during their senior year of high school to provide guidance and support during the college admissions and financial aid process. PUPP alumni receive support with their transition to college and guidance throughout their collegiate career.”⁴⁴ Some PUPP students eventually matriculate at the University.

The University also hosts a Summer Journalism Program for low-income high school students interested in careers in journalism. Further, the University annually hosts the W.E.B. DuBois Scholars Institute summer residential program for promising high school students who have a demonstrated commitment to improving minority communities. The University also offers “The Princeton Prize in Race Relations,” an annual awards program for high school students involved in an activity that is helping to improve race relations in their schools or community.⁴⁵ In addition, the University participates in other nationally organized developmental programs. For example, the University has participated in “QuestBridge,” which helps low-income students apply to and ultimately attend college. The University also participates in the Leadership Enterprise for a Diverse America (LEDA), which also assists low-income students with college application and attendance; many have attended the University. Further, the University has participated in “Expanding College Opportunities,” a research project with similar goals. In 2013, the University also began using a new tool offered by the College Board Student Selection Service that aims to assist high-achieving, low-income students with the college application process.

Extensive Outreach and Recruitment. The University reported that recruitment and outreach strategies are part of its approach to achieving student body diversity. For example, the University has targeted outreach efforts, including in-person visits by admissions staff to geographic regions and schools that have not consistently sent students to the University. Seven years ago, the University began making a point of visiting West Virginia every year, because the University had traditionally received few applications from the state. The University also has reached out to the Rio Grande Valley area of Texas and the Central Valley area of California for similar reasons, including a desire to reach more low-income potential applicants. The University reported to OCR that in 2014, using data from the College Board that seeks to identify students who may be low-income, its “Admissions Office reached out to approximately 35,000 students in the United States and sent them a hard copy collateral about Princeton and the Princeton financial aid process.”

For just the Class of 2010, the University made in-person recruitment visits to more than 400 high schools located in the U.S. and Canada, and it gave a presentation at 60 evening informational sessions in the U.S. Annually, during recruitment season, the University’s admissions staff makes a point of visiting every week one to three high schools that the University has not previously visited. The University also has its admissions staff participate in

⁴³ <http://www.princeton.edu/pupp/about/>.

⁴⁴ *Ibid.*

⁴⁵ <http://www.princeton.edu/pprize/>.

multiple community-sponsored events that are aimed at diverse populations of high school students, including low-income students, who may not have otherwise considered applying to the University. This has included the participation of University staff in a Teach for America Alumni Conference in Detroit, Michigan; the Tiger Woods Learning Center’s biennial Private College Symposium in Anaheim, California; and the Making Waves Academy in Richmond, California. In all, the University reports that it works with more than 300 community-based organizations to assist with recruitment.

The University also engages with more than 30 regional and national organizations -- including QuestBridge, College Match, Jack Kent Cooke Foundation Scholars, and the Private College and Universities Multicultural College Guide -- to assist in expanding its applicant pool by identifying high school students from diverse, socioeconomically disadvantaged and first generation college-bound backgrounds. These students are invited to attend an annual multicultural open house (open to all) that is held at the University each fall. The University also invites to this event all prospective applicants who live within driving distance, have previously contacted the University, and who have self-identified as students of color (including Asian Americans). The University also actively recruits high school students who appear to be promising based on their performance on the SAT, ACT and Advanced Placement (AP) exams. The University reported to OCR that based “on those students who self-identify by race on the SAT, ACT, and AP tests, the largest racial and ethnic group with whom we communicate in their junior/senior years is Asian Americans and Pacific Islanders.”

The University also reported that in order to foster a broad and diverse applicant pool, it has conducted extensive international outreach (including visits to Japan, China, South Korea, Hong Kong, Singapore, Thailand, India, and Pakistan, in addition to countries in Europe and Latin America). Further, as stated above, the University has taken a range of measures aimed at attracting, and enrolling, a more socioeconomically diverse student body. In addition to expanding its recruitment efforts that are specifically aimed at reaching more low-income applicants, the University changed the structure of its financial aid program such that no students are required to take out loans to finance their University education. According to the University, its “no-loan financial aid plan has made enrollment possible for more than twice as many students from socioeconomically disadvantaged families in recent years than in 2001, when the plan was implemented, while also easing the financial burden on middle-income families.”

In sum, OCR finds that the University conducted a serious, good faith review of workable race-neutral alternatives to including race and national origin among the many factors it considers in its admissions process. The evidence shows that the University uses a multi-faceted deliberative process to evaluate whether race-neutral alternatives are working to produce the diversity it seeks. OCR, in its review, is satisfied that the University “adequately considered race-neutral alternatives currently capable of producing a critical mass without forcing [the University] to abandon the academic selectivity that is the cornerstone of its educational mission.”⁴⁶ The University was not required to consider every “conceivable” race-neutral alternative.⁴⁷ The University did, however, consider a wide range of race-neutral alternatives, including those

⁴⁶ Grutter, 539 U.S. at 340.

⁴⁷ Grutter, 539 U.S. at 339. *See also*, Fisher, 133 S.Ct. at 2420.

aimed at developing strong future applicants to the University. It also expanded opportunities for applicants from low socioeconomic backgrounds. OCR – consistent with Grutter and Fisher – is satisfied in its review that the University’s consideration of race-neutral alternatives meets legal requirements and that no workable race-neutral alternatives are currently capable of producing, at the University, the educational benefits of diversity that it seeks.

4. **Limited in Time and Subject to Periodic Review**

In Grutter, the Supreme Court said “race-conscious admissions policies must be limited in time,” and that in “the context of higher education, the durational requirement can be met by sunset provisions in race-conscious admissions policies and periodic reviews to determine whether racial preferences are still necessary to achieve student body diversity.”⁴⁸ The Court added that “We take the Law School at its word that it would ‘like nothing better than to find a race-neutral admissions formula’ and will terminate its race-conscious admissions program as soon as practicable.”⁴⁹

Every year, the University reviews the prior year’s admissions cycle to determine where it might need to make adjustments, including to the University’s use of race and national origin. Participants in the annual review include the University’s Dean of the College, the Dean of Admission, and the Committee on Undergraduate Admission and Financial Aid (which includes members of the faculty, students and administrators). Their annual review has resulted in some changes to the University’s admissions process. For example, after determining that the University needed to admit more students from low socioeconomic backgrounds, admissions staff worked with the University’s financial aid staff to identify applicants who would be eligible for Pell Grants. Admissions staff used this information to better inform the University’s admissions committee of the challenges an applicant has had to overcome to achieve academic success. For similar reasons, the University also began giving additional consideration to an applicant’s employment history and significant family responsibilities. Additionally, as a result of annual reviews of the admissions program, the University began allowing students who applied for special early admission decisions to delay committing to attend the University until they had been admitted to other colleges and universities and were able to compare offers for financial aid. The University told OCR that it “will no longer consider race in admissions decisions at such time as such consideration is not needed to acquit its compelling interest in diversity consistent with applicable legal standards.” Based on the above, OCR is satisfied that the University’s consideration of race is subject to periodic review so that it can be limited in time.

Conclusion as to Narrow Tailoring

OCR’s review found that the University’s use of race and national origin in admissions is consistent with the strict scrutiny standards established by the Supreme Court. The University sometimes considers race and national origin as factors in admissions, but OCR found no evidence that the University does so in a discriminatory manner. Instead, OCR found that the University pursues a compelling interest in student body diversity; and that the University, if it

⁴⁸ Grutter, 539 U.S. at 341-42.

⁴⁹ *Id.*, at 343.

considers race or national origin in admissions, does so in a narrowly tailored manner in pursuit of that interest. OCR found insufficient evidence of discrimination against Asian applicants.

Applicant 1's Allegation

OCR reviewed the files of the 12 applicants from Applicant 1's high school who sought admission to the University's Class of 2010, including Applicant 1. Applicant 1 was not offered admission, but was waitlisted. A review of the reader card for Applicant 1 did not reveal any information suggesting race or national origin discrimination.

The University reported to OCR that it uses a multi-stage system to review applications, and that the University's practice of assigning academic and nonacademic ratings to applicants is only part of its initial assessment of applicants; essentially a system used to help organize thousands of applications. After this initial sorting, the University provides a more individualized and contextualized assessment of applicants. Here, the assignment of ratings, even as an initial sorting instrument, is illustrative. Two other applicants from Applicant 1's high school, one Asian American student (Applicant 3) and one white student (Applicant 4) were offered admission. Applicants 3 and 4 both received an academic rating of 1, and a non-academic rating of 3. No other applicant from Applicant 1's high school received an academic and non-academic rating pairing as high as Applicants 3 and 4. Applicant 1 received an academic rating of 1, and a non-academic rating of 4. Therefore, he received a lower non-academic rating than the two admitted applicants. This lower rating was consistent with OCR's review of his non-academic credentials, which in OCR's view were weaker than Applicants 3 and 4's non-academic credentials. Even so, Applicant 1 fared the best out of all of the applicants from Applicant 1's high school who received an academic rating of 1 and a non-academic rating of 4; he was waitlisted while all of the other applicants who received those ratings were rejected, including one white student and four Asian American students. The ratings given to these other applicants were also supported by the record.

In sum, there was no evidence indicating race or national origin discrimination with reference to the admissions review of Applicant 1. OCR therefore concluded that there was insufficient evidence to substantiate the claim that the University discriminated against Applicant 1, on the basis of race or national origin, in considering his application for admission to the University.

Class of 2015 Class-Wide Allegation

The parents of Applicant 2 alleged race and national origin discrimination in the admissions process for the University's Class of 2015; however, they provided no further information to support this allegation. As stated previously, OCR reviewed 15 years' worth of admission data and found insufficient evidence that the University discriminated against Asian applicants, on the basis of race or national origin, in its undergraduate admissions process in the years reviewed.

Conclusion

Based on the evidence gathered in the course of OCR's investigation, OCR determined that there was insufficient evidence that the University discriminated against Asian applicants, on the basis

of race or national origin, in the University's undergraduate admissions processes in the years reviewed. Therefore, OCR is closing this compliance review as of the date of this letter.

This letter sets forth OCR's determination in an individual OCR case. This letter is not a formal statement of OCR policy and should not be relied upon, cited, or construed as such. OCR's formal policy statements are approved by a duly authorized OCR official and made available to the public.

Under the Freedom of Information Act, it may be necessary to release this letter and related correspondence and records upon request. In the event that OCR receives such a request, it will seek to protect, to the extent provided by law, personally identifiable information that if released could constitute an unwarranted invasion of personal privacy. The complainants may have a right to file a suit in federal court whether or not OCR finds a violation.

Please be advised that the University may not harass, coerce, intimidate, or discriminate against any individual because he or she has filed a complaint or participated in the complaint resolution process. If this happens, the individual may file a complaint alleging such treatment.

If you have questions about OCR's determination or wish to discuss it further, please call (646) 428-3800.

Sincerely,

/s/

Timothy C.J. Blanchard

cc: Sankar Suryanarayan, Esq.