

## *Comments*

# **Extending the Barriers of Family: How the Concept of “Nuclear Family” Affects Asian-Americans in Poverty**

By GISELLE GURO\*

### **Introduction**

**T**HE UNITED STATES HAS historically reinforced and promulgated the ideal of the “nuclear family.”<sup>1</sup> This household ideal has resulted in a lack of awareness of the plight of Asian-American families living in poverty. Specifically, the government’s inability to recognize multi-generational households has led to inadequate educational programs, welfare programs, tax programs, and housing. This in turn prevents Asian-American families from taking advantage of government benefits and tax breaks that could bring them out of poverty.

One way to address this problem is for the judiciary to classify extended families as a suspect class that warrants heightened scrutiny. Another way is to lobby Congress to recognize the need for programs tailored to multi-generational households. Either solution would push the government to ensure benefits and aid are tailored more closely to this type of familial structure. Once these tailored programs are introduced, more Asian-American families will theoretically receive the tools necessary to overcome poverty, rather than merely subsisting.

---

\* J.D. Candidate, University of San Francisco School of Law, 2018; B.A. in Sociology, B.A. in Political Science, University of California, Irvine, 2013. The author would like to thank Randolph DeCastro for the many boba and coffee runs during the development of this piece, as well as her friends and her multi-generational family for their support. Special thanks to Professor Julie Nice for her guidance in exploring this topic in family law. Finally, many thanks to Michael Choi and the University of San Francisco Law Review for their assistance.

1. See generally Priya S. Gupta, *Governing the Single-Family House: A (Brief) Legal History*, 37 U. HAW. L. REV. 187, 199 (2015).

## I. History of Family Structures in the United States

### A. Promotion of the “Nuclear Family”

The “nuclear family” initially consisted of only two generations, with the father as the breadwinner and the mother as the homemaker.<sup>2</sup> The U.S. government pushed this autonomous household dynamic during World War II as a way to simultaneously combat Communist principles and stimulate the economy through homeownership following the Great Depression.<sup>3</sup> Since the 1940s, zoning ordinances continue to promote this “nuclear family” ideology, as many residential homes were labeled for “single-family use” and required a “single head of household” if unmarried.<sup>4</sup> The U.S. federal tax system also pushes this ideology by granting tax cuts for homeownership and tax benefits for nuclear families with a stereotypical breadwinner.<sup>5</sup>

### B. Extended Families Previously the Prevailing Norm

The nuclear family is still a relatively new concept. In 1900, the most common household size had seven or more people.<sup>6</sup> This was due to most of the U.S. population living in urban cities and the high fertility rate at the time.<sup>7</sup> By the 1940s, a large group of the population, enticed by the nuclear family ideal, had moved to the suburbs.<sup>8</sup> The two-person household (and ultimately the nuclear family, once the children were born) became the mainstay until the end of the twentieth century.<sup>9</sup>

The extended family structure includes not only parents and children, but also all other relatives such as grandparents, grandchildren, aunts, uncles, and cousins. Members of the extended family need not be blood-related, so in-laws can also be considered part of the extended family. Only in cases such as *Moore v. City of East Cleveland* has

---

2. *Id.* at 212.

3. *Id.* at 211.

4. See Roberta M. Feldman, *Housing Multigenerational Families*, 40 REAL EST. REV. J., no. 2, 2011, art. 5, where the labels default to one family unit as the standard; even when more than one household exists in a house, the house is still separated into nuclear family units.

5. See Mylinh Uy, Comment, *Tax and Race: The Impact on Asian Americans*, 11 ASIAN L.J. 117, 119 (2004).

6. FRANK HOBBS & NICOLE STOOPS, CENSUS 2000 SPECIAL REPORTS: DEMOGRAPHIC TRENDS IN THE 20TH CENTURY 140 (U.S. Census Bureau eds., 2002), <https://www.census.gov/prod/2002pubs/censr-4.pdf> [<https://perma.cc/2CEU-PXG8>].

7. *Id.*

8. *Id.* at 33.

9. *Id.* at 140.

the government acknowledged the importance of other familial structures and how those families must adapt to a society built around the nuclear family.<sup>10</sup>

## II. Historical Legal Treatment of Extended Families and Family Members

### A. Extended Families and Filial Support

The earliest laws pertaining to extended families predate the United States and focus on the parent-child relationship. Under the English Poor Relief Act of 1601, American colonies such as Pennsylvania had early welfare systems that “imposed a duty of support upon ‘the father and grandfather and the mother and grandmother and the children of every poor, old, blind, lame and impotent person.’”<sup>11</sup> These filial responsibility statutes continued when the United States gained independence.<sup>12</sup> By the early twentieth century, most states had some form of a filial responsibility statute requiring children to provide financial support for their indigent parents.<sup>13</sup>

While these laws still exist in the twenty-first century, courts became hesitant to enforce filial responsibility laws in the mid-twentieth century.<sup>14</sup> The Great Depression made children just as indigent as their parents and the creation of state and federal government aid programs in the 1930s through the 1960s substituted the financial care that children previously were required to provide.<sup>15</sup> This rapid growth of aid “reduced financial burdens on children to assist their indigent parents and . . . lessened the perceived need for filial responsibility laws.”<sup>16</sup> Currently, twenty-nine states have some form of a filial responsibility law, but most only impose a duty upon the child if the parent does not have the means to pay for necessities and is also ineligible for government aid.<sup>17</sup> Despite filial responsibility laws being ren-

---

10. *See generally* 431 U.S. 494 (1977).

11. Terrance A. Kline, *A Rational Role for Filial Responsibility Laws in Modern Society?*, 26 *FAM. L.Q.* 195, 197–98 (1992) (quoting Colonial Laws of Pennsylvania 1705–06, ch. CLIV, § II, at 251–52).

12. *Id.* at 198.

13. *Id.*

14. *Id.* at 199–200.

15. *Id.* at 199.

16. *Id.* (enumerating some government programs, including Social Security that provides monthly cash benefits to the elderly, Medicare and Medicaid that helped with medical costs, and other state programs that afforded property tax assistance or relief).

17. Julie Garber, *Learn How Filial Responsibility is Defined: Find out What the Law Says About Your Parents’ Medical Bills*, *BALANCE* (Aug. 21, 2017), <https://www.thebalance.com/what-is-filial-responsibility-3974828> [<https://perma.cc/MPP7-HGMM>].

dered essentially unnecessary, courts will still enforce filial support. In 2012, the Pennsylvania Superior Court held an adult son liable for his mother's debt at a medical facility regardless of her other potential sources of income.<sup>18</sup>

## B. Extended Families and Adoption

The most common issues concerning extended families relate to adoption statutes and regulations. Because the issues focus around parents or a child, an extended family member's relationship to that parent or child is bound to be an issue for debate. Outside of these statutes, no federal legislation defines "extended family."<sup>19</sup>

### 1. Extended Families in the Indian Child Welfare Act

The Indian Child Welfare Act of 1978 ("ICWA") was created in recognition of "the special relationship between the United States and the Indian tribes and their members and the Federal responsibility to Indian people."<sup>20</sup> Historically, Indian children were taken from their families based on non-Indian standards that deemed the parents unfit to care for their children.<sup>21</sup> To prevent further eradication of Indian culture, the ICWA gives adoption preference to members of the Indian community.<sup>22</sup> When an Indian child is the subject of an adoptive placement, the extended family has the highest priority in terms of placement absent good cause.<sup>23</sup> If there are no extended family members, then other members of the Indian community are considered.<sup>24</sup> In this way, the ICWA takes into consideration the cultural value of maintaining Indian community ties by valuing Indian tribe members over other non-Indian adoption applicants. The ICWA ultimately al-

---

18. Health Care & Ret. Corp. of Am. v. Pittas, 2012 PA Super 96.

19. Individual state definitions of "extended family" or "extended family members" do exist, but usually in the context of custody or adoption. *E.g.*, FLA. STAT. § 751.011(2) (2017),

"Extended family member" means a person who is: (a) A relative of a minor child within the third degree by blood or marriage to the parent; or (b) The stepparent of a minor child if the stepparent is currently married to the parent of the child and is not a party in a pending dissolution, separate maintenance, domestic violence, or other civil or criminal proceeding in any court of competent jurisdiction involving one or both of the child's parents as an adverse party.

20. 25 U.S.C. § 1901 (2018).

21. *Id.*

22. 25 U.S.C. § 1915(a) (2018).

23. *Id.*

24. *Id.*

lows a more culturally appropriate standard for placement, rather than the systematically used white, middle-class standard.

## 2. Extended Family Members in the Public Health and Welfare Code

The 2018 Public Health and Welfare Code also contains language referencing extended family members.<sup>25</sup> For the State to be eligible for federal funding under section 671, “the State shall consider giving preference to an adult relative over a non-related caregiver when determining a placement for a child, provided that the relative caregiver meets all relevant State child protection standards.”<sup>26</sup> Even under this Code, the phrase “extended family” is not used. The Code also may be interpreted as not giving preference to non-related family members, since it emphasizes giving preference to a relative over a “non-related” caregiver. Ultimately, this portion of the Code only requires the State to show that it gave preference to an adult relative for the State to receive federal funding.<sup>27</sup> The Code does not give the adult relative a secured priority or right to argue for the child’s adoptive placement, and the State can forgo this placement preference if it finds it can suffice without federal funds.<sup>28</sup>

### C. Extended Families and Visitation Rights

Outside of indigent parent and adoption-related issues, extended family members do not have the same rights as nuclear family members. *Troxel v. Granville* illustrated the lack of rights that extended family members receive with regard to child visitation.<sup>29</sup> In *Troxel*, the grandparents wanted to maintain a regular relationship with their deceased son’s daughters.<sup>30</sup> The mother limited their visits to once a month.<sup>31</sup> The grandparents then attempted to secure visitation based on Washington’s non-parental visitation statute.<sup>32</sup>

---

25. 42 U.S.C. § 671(a)(19) (2018).

26. *Id.*

27. *See id.*

28. *See id.*

29. *See generally* 530 U.S. 57 (2000).

30. *See id.* at 61.

31. *Id.*

32. *Id.*

The Washington statute,<sup>33</sup> like other states' non-parental visitation statutes,<sup>34</sup> was created to acknowledge grandparents' growing roles in raising their grandchildren.<sup>35</sup> However, the U.S. Supreme Court, in plurality, focused on parents' fundamental right to make decisions concerning the care, custody, and control of their children.<sup>36</sup> The statute was too broad because it allowed any person to petition for forced visitation of a child, the only requirement being that visitation served the best interests of the child.<sup>37</sup> The Court reinforced the notion that the "primary role of the parents in the upbringing of their children is now established beyond debate as an enduring American tradition."<sup>38</sup> Absent evidence of the mother being an unfit parent, the Court held the judiciary had no business deciding what was in the best interests of the children—the grandparents had to comply with the visitation boundaries the mother set.<sup>39</sup>

While the Court did not rule all non-parental visitation statutes are per se in violation of the U.S. Constitution's Due Process Clause, the ruling in *Troxel* caused most states to narrow their grandparent visitation statutes.<sup>40</sup> For instance, the Arizona legislature modified its grandparent visitation statute in 2013, allowing a non-parent to petition for visitation and legal decision-making authority or placement of a child if certain requirements are met.<sup>41</sup> A grandparent may now show that visitation is in the child's best interest if one of the following situations is present: "[o]ne of the legal parents is deceased or has been missing for at least three months, the parents were not married when the child was born or are not married at the time the petition was filed, or the parents have been divorced for at least three months."<sup>42</sup> These modifications allow parental and grandparental input in determining the child's best interests and codify the considerations in *Troxel*. The *Troxel* decision inadvertently caused a step forward

33. WASH. REV. CODE ANN. § 26.10.160(3) (2012), *invalidated by* *Troxel v. Granville*, 530 U.S. 57, 63 (2000).

34. *See, e.g.*, NEB. REV. STAT. § 43-1802 (2017); GA. CODE ANN. §19-7-3 (2016); TENN. CODE ANN. § 36-6-306 (2016).

35. *Troxel*, 530 U.S. at 64.

36. *Id.* at 65.

37. *Id.* at 94.

38. *Id.* at 66 (citing *Quilloin v. Walcott*, 434 U.S. 246, 255 (1978)).

39. *See id.* at 68.

40. Michael K. Goldberg, *Over the River and Through the Woods: Arizona Grandparent Visitation, 1983 to Present Day*, ARIZ. ATT'Y, Sept. 2014 at 16, 20.

41. *Id.* at 22.

42. *Id.*

for extended family rights but still focused on one's relationship to a parent or child in the family.

#### D. Extended Families as a Suspect Class

To secure more rights for extended families, the judiciary should go further than simply including extended family rights under familial rights. The "extended family" should be treated as its own suspect class in equal protection claims to ensure that statutes adequately grant appropriate rights. An equal protection claim under the Fifth or Fourteenth Amendment may be brought if an individual liberty is being infringed and/or if the government discriminates between similarly situated individuals or groups.<sup>43</sup> Under an equal protection claim, there are three tiers of scrutiny regarding suspect classes.<sup>44</sup> Rational basis review, the least restrictive test, calls for the means to be rationally related to legitimate ends.<sup>45</sup> As more jurisprudence developed, two other levels were commonly used. Intermediate scrutiny calls for the means to be substantially related with exceedingly persuasive justification to important or significant government interests,<sup>46</sup> and strict scrutiny calls for the means to be necessary and narrowly tailored to a compelling end.<sup>47</sup> In cases involving laws that facially focus on a suspect class, a court will apply strict scrutiny.<sup>48</sup>

Currently, since extended families are not considered a suspect class, any legislation regarding extended families would receive rational basis review. This could lead to laws that negatively impact extended families. If "extended families" were considered a suspect class, the laws would be subject to higher scrutiny to make sure the means are necessary and narrowly tailored to a compelling end.

#### 1. Suspect Class Analysis

To be considered a suspect class, the Supreme Court looks to factors originally articulated in *United States v. Carolene Products Co.*'s famous footnote 4<sup>49</sup> and further developed in *Frontiero v. Richardson*.<sup>50</sup> A suspect class must be (1) discrete (identifiable) and (2) insular (marginalized), and the specific group may have (3) a history of dis-

---

43. See *Clark v. Jeter*, 486 U.S. 456, 461 (1988).

44. See *id.*

45. *Id.*

46. *Id.*

47. See *id.*

48. See *id.*

49. See 304 U.S. 144, 152 n.4 (1938).

50. See generally 411 U.S. 677 (1973).

crimination and (4) political powerlessness (such as being a small numerical minority or underrepresented in the government).<sup>51</sup> The trait itself can be (5) immutable and (6) irrelevant to the individual's ability.<sup>52</sup>

Here, extended family members are not necessarily identifiable unless identified in relation to nuclear families. For example, grandparents may not be recognized as grandparents until they are viewed along with the parents and children. Extended families appear to have been marginalized and can be viewed as having a history of discrimination in that they have been overshadowed by the nuclear family in legislative decision making. The nuclear family is so pervasive that political participants, who may be extended family members themselves, have yet to realize the significance and dynamics of their roles as extended family members. Unless a person is the last living member in their generational line and has no plans to continue the line, a person is likely to be an extended family member to someone else. This makes being an extended family member an immutable trait. However, the label of "extended" as a family member is irrelevant to how well one can contribute as a member of the family. One's degree of relationship to another in the family does not dictate how close those members of the family can be. For example, some cousins may treat their other cousins as if they were siblings. This becomes a main issue when deciding a child's best interests with regard to visitation or adoption. Since the majority of the factors weigh toward recognizing extended family members as a suspect class, it is absolutely possible a court could find them as such.

## 2. Heightened Scrutiny Analysis

To receive heightened scrutiny, the group would also need to demonstrate discriminatory intent for facially neutral laws, following the multi-factor test outlined in *Village of Arlington Heights v. Metropolitan Housing Development Corp.*<sup>53</sup> This means showing disproportionate discriminatory impact upon the group.<sup>54</sup> Once that disparate impact is established, proving the following factors will strengthen the case for showing discriminatory intent: (1) a clear pattern of the law's application that is unexplainable except by the specific suspect class; (2) a historical sequence of events that show possible discriminatory in-

---

51. *Id.*

52. *Id.*

53. 429 U.S. 252, 265–66 (1977).

54. *Id.* at 253.



tent; (3) departures from normal procedural or substantive routines (such as a sudden switch in legislation); and (4) legislative or administrative record of discriminatory intent.<sup>55</sup>

Here, the legislature has a clear pattern of molding housing, adoption, and tax laws to benefit the nuclear family. This is not necessarily an attack on the extended family as a class, but an argument can be made that the focus on nuclear families is an active erasure of the extended family's rights. This clear pattern has been reiterated through the historical sequence of events that shows how nuclear families have become the model family in U.S. society. Yet the legislature has tried to recognize some extended family rights, at least through the grandparent visitation statutes.<sup>56</sup> These statutes are a departure from the practice of placing the parent-child relationship above everything else. Finally, while there are legislative acts such as filial responsibility laws and adoption statutes,<sup>57</sup> there are generally no legislative or administrative records of discriminatory intent that specifically target extended families as a whole with reference to relatives such as cousins, aunts, and uncles. Using this broader group definition, extended family rights appear to have been given little legislative attention.

Since there has been limited focus on extended families in the legislature, it is unlikely that there would be any legislation showing direct discriminatory intent toward extended families as a suspect class.

### E. Disparate Impact on Extended Families

Even if extended families are unlikely to receive heightened scrutiny, laws impacting extended families can still be examined through a disparate impact analysis that proves the law disproportionately discriminates the targeted group.<sup>58</sup> The law would still be subject to rational basis review, but showing strong evidence of disproportional discrimination can help persuade a court that the law's means are not rationally related to its ends. *Moore v. City of East Cleveland* is the key case that advocated for extended family rights.<sup>59</sup>

---

55. *Id.* at 266–68.

56. *See generally* Goldberg, *supra* note 40, at 21.

57. *See generally* Kline, *supra* note 11; *see, e.g.*, 42 U.S.C. § 671(a)(19) (2018).

58. *Vill. of Arlington Heights*, 429 U.S. at 253.

59. *See generally* 431 U.S. 494 (1977).

In *Moore*, East Cleveland's city ordinance section 1341.08<sup>60</sup> expressly deemed certain categories of relatives as family for the purposes of zoning.<sup>61</sup> The ordinance followed a period of mass migration of African Americans from the South.<sup>62</sup> The end of World War II revived industry and created job opportunities in Cleveland.<sup>63</sup> Cleveland's Black population increased from 85,000 in 1940 to 251,000 in 1960.<sup>64</sup> "[B]y the early 1960s, Blacks made up over 30% of the city's population," which spread to Cleveland's suburbs, including East Cleveland.<sup>65</sup> Although neutral on its face, the ordinance was likely created as a response to the influx of African Americans and the City's attempt to control where these families and relatives of existing families could reside and have access to particular schools.<sup>66</sup>

Appellant Inez Moore was living with her son, her grandson, and her grandson from her other child, which violated the ordinance based on the categories of relatives that constitute a "family" in a sin-

---

60. The housing ordinance provides:

'Family' means a number of individuals related to the nominal head of the household or to the spouse of the nominal head of the household living as a single housekeeping unit in a single dwelling unit, but limited to the following:

(a) Husband or wife of the nominal head of the household.

(b) Unmarried children of the nominal head of the household or of the spouse of the nominal head of the household, provided, however, that such unmarried children have no children residing with them.

(c) Father or mother of the nominal head of the household or of the spouse of the nominal head of the household.

(d) Notwithstanding the provisions of subsection (b) hereof, a family may include not more than one dependent married or unmarried child of the nominal head of the household or of the spouse of the nominal head of the household and the spouse and dependent children of such dependent child. For the purpose of this subsection, a dependent person is one who has more than fifty percent of his total support furnished for him by the nominal head of the household and the spouse of the nominal head of the household.

(e) A family may consist of one individual.

*Moore*, 431 U.S. at 532 (quoting EAST CLEVELAND, OHIO, HOUS. CODE § 1341.08 (1966)).

61. *See id.* at 496.

62. *See* Kenneth L. Kusmer, *African Americans*, CASE W. RES U.: ENCYCLOPEDIA CLEVELAND HIST., <https://case.edu/ech/articles/a/african-americans/> [http://perma.cc/4A9Y-YXM7].

63. *Id.*

64. *Id.*

65. *Id.*

66. *Moore*, 431 U.S. at 510 (Brennan, J., concurring) (highlighting the prominence of extended families among ethnic and racial minority groups and by "prohibiting this pattern of family living as a means of achieving its objectives, appellee city has chosen a device that deeply intrudes into family associational rights that historically have been central" to those groups).

gle-family household.<sup>67</sup> The City justified the ordinance as a means of preventing overcrowding, minimizing traffic and parking congestion, and avoiding undue financial burden on the City's school system.<sup>68</sup>

The Court found that the means barely accomplished the City's goals.<sup>69</sup> First, East Cleveland already had another ordinance addressing the issue of overcrowding.<sup>70</sup> Second, just because a family did not fall within section 1341.08's definition of family did not mean the family was contributing to the problems the ordinance was trying to alleviate.<sup>71</sup> For instance, an adult brother and an adult sister could not live together, even if they had no kids to burden the school system or used public transportation to minimize traffic.<sup>72</sup> The Court acknowledged that "[t]he tradition of uncles, aunts, cousins, and especially grandparents sharing a household along with parents and children has roots equally venerable and equally deserving of constitutional recognition."<sup>73</sup> Further, nuclear families making decisions concerning child rearing typically share these decisions with extended family members who occupy the same household.<sup>74</sup> Regardless of the circumstances of how the household came to be, "the choice of relatives in this degree of kinship to live together may not lightly be denied by the State."<sup>75</sup>

The Court distinguished *Moore* from *Village of Belle Terre v. Boraas*, where a similar housing ordinance defining a household was upheld.<sup>76</sup> However, the ordinance in *Boraas* affected only unrelated individuals, while still promoting "family needs" and "family values."<sup>77</sup> In *Moore*, the ordinance regulated occupants based on the very definition of family.<sup>78</sup> By focusing on family, the Court found that the ordinance's basis was enough to trigger heightened scrutiny under substantive due process.<sup>79</sup> Ultimately, the Court legitimized the importance of extended families and held that extended families have some rights with regard to housing.<sup>80</sup>

---

67. *Id.* at 496–97.

68. *Id.* at 499–500.

69. *Id.* at 500.

70. *Id.* n.7.

71. *Id.* at 500.

72. *Id.*

73. *Id.* at 504.

74. *Id.* at 505.

75. *Id.* at 505–06.

76. *Id.* at 498 (distinguishing *Vill. of Belle Terre v. Boraas*, 416 U.S. 1 (1974)).

77. *Vill. of Belle Terre v. Boraas*, 416 U.S. 1, 9 (1974).

78. *Moore*, 431 U.S. at 496.

79. *See id.* at 499.

80. *Id.* at 505–06.

Most discussions regarding extended family rights have continued to focus on grandparental rights in relation to their grandchildren. *Moore* briefly highlighted another issue for extended families—the multi-generational household.

#### F. Lobbying as Another Alternative

Both methods of being classified as a suspect class and proving disparate impact with discriminatory intent are remedies to already-existing legislation. Extended families should also lobby the legislature to create better-tailored benefits as well as new rights, such as allowing extended family members similar rights as parents. This would eliminate the need to challenge these laws in the judiciary.

### III. The Rise of Multi-Generational Households

#### A. “Household” Defined

The definition of “household” can differ depending on its use. The Census Bureau defines a household as “consist[ing] of all the people who occupy a housing unit.”<sup>81</sup> It includes the related family members and all unrelated people, if any, such as lodgers, foster children, wards, or employees who share the housing unit.<sup>82</sup> In contrast, a household with regard to a child’s eligibility to receive a free or reduced lunch is defined as a “family.”<sup>83</sup> In the same code, a “family” is defined as “a group of related or nonrelated individuals, who are not residents of an institution or boarding house, but who are living as one economic unit.”<sup>84</sup> For food stamp eligibility, a household is composed of:

- (1) An individual living alone;
- (2) An individual living with others, but customarily purchasing food and preparing meals for home consumption separate and apart from others; or
- (3) A group of individuals who live together and customarily purchase food and prepare meals together for home consumption.<sup>85</sup>

---

81. *Current Population Survey (CPS)*, U.S. CENSUS BUREAU (Aug. 25, 2015), <https://www.census.gov/programs-surveys/cps/technical-documentation/subject-definitions.html#household> [<https://perma.cc/YEY2-89YY>] (defining “household”).

82. *Id.*

83. 7 C.F.R. § 245.2 (2018).

84. *Id.* § 245.2(2)(v).

85. 7 C.F.R. § 273.1(a) (2018).

For programs such as the Temporary Assistance for Needy Families (“TANF”) or Supplemental Nutritional Assistance Program (“SNAP”), the State may define household or family to fit within its state plan.<sup>86</sup>

For housing assistance, a “family” includes families with children, elderly families, near-elderly families, and disabled families, as well as one or more such persons determined under the public housing agency plan to be essential to their care or well-being.<sup>87</sup> There is no mention in the federal code whether extended families count toward a family,<sup>88</sup> but since all members are considered when applying for housing, extended family members and their income will likely contribute to the overall family income requirement.

### B. “Multi-Generational Household” Defined

A multi-generational household is generally one that consists of at least two adult generations living in the same household.<sup>89</sup> The government does not explicitly codify what a multi-generational household means, and government agencies<sup>90</sup> and research organizations define the term differently.<sup>91</sup> While the Pew Research Center uses the two-adult generation definition,<sup>92</sup> the Census Bureau collects its data based on the multi-generational household as consisting of three or more parent-child generations.<sup>93</sup>

Multi-generational households have become more common since the 1970s.<sup>94</sup> There are various reasons for the growth in these types of

---

86. Searching California’s TANF plan California Work Opportunity and Responsibility to Kids (“CalWORKs”) yielded a PDF version of the approved TANF State Plan 2016 Amendment. Because it was a scan, it is not easily searchable. The only other way to determine eligibility is to apply at [benefitscal.org](http://benefitscal.org). *State Plan for Provision of Public Assistance Under the Personal Responsibility and Work Opportunity Reconciliation Act of 1996*, [http://www.cdss.ca.gov/Portals/9/DSSDB/ACF\\_CertificationLetterAmend16.pdf](http://www.cdss.ca.gov/Portals/9/DSSDB/ACF_CertificationLetterAmend16.pdf) [<https://perma.cc/HZ8A-76QE>] (go to [cdss.ca.gov](http://cdss.ca.gov); search “CalWorks Plan” in website search bar; click “TANF State Plan”; then click “ACF Approved TANF State Plan 2016 Amendment”).

87. 42 U.S.C. § 1437a(b)(3)(B) (2018).

88. *See id.*

89. D’Vera Cohn & Jeffrey S. Passel, *A Record 60.6 Million Americans Live in Multigenerational Households*, PEW RES. CTR. (Aug. 11, 2016), <http://www.pewresearch.org/fact-tank/2016/08/11/a-record-60-6-million-americans-live-in-multigenerational-households/> [<https://perma.cc/VJ3K-VQZD>].

90. Richard Fry & Jeffrey S. Passel, *Appendix B: Notes on Terminology and Methodology*, PEW RES. CTR., (July 17, 2014), <http://www.pewsocialtrends.org/2014/07/17/appendix-b-notes-on-terminology-and-methodology/> [<https://perma.cc/VL4Y-Q58Y>].

91. *Id.*

92. *Id.*

93. *Id.*

94. Feldman, *supra* note 4.

households. Housing costs have increased dramatically,<sup>95</sup> along with the cost of eldercare and childcare.<sup>96</sup> Given the increasing gap between the upper class and the rest of the country, more families are considered low income and therefore live in multi-generational households to reduce the burden of housing costs.<sup>97</sup> Additionally, changing societal norms gives family members easier access to companionship and housing assistance, especially if one comes on hard times or has personal difficulties.<sup>98</sup> Finally, high rates of immigration have brought populations of immigrants whose cultural customs value multi-generational living.<sup>99</sup>

#### **IV. How Treatment of Multi-Generational Households Perpetuates Asian-American Poverty**

##### **A. Multi-Generational Households and Housing Occupancy Restrictions**

Housing occupancy restrictions have existed in the United States since the 1900s.<sup>100</sup> These restrictions sought to moderate the population density in a given area so as not to endanger public health and safety.<sup>101</sup> However, these restrictions impose internal density standards within households that are inconsistent with the family's desired density level.<sup>102</sup> For example, if a family of five desires only a two-bedroom dwelling, but the city requires a three-bedroom dwelling for that family size, the family must pay for the extra bedroom. Compounding the issue is that a lack of higher occupancy housing results in even higher prices of an already more expensive dwelling.<sup>103</sup>

For many Asian-American ethnicities, multi-generational households are a cultural norm.<sup>104</sup> These Asian-American families are thus limited to certain dwelling types, which could lead to racial and economic residential segregation.<sup>105</sup> As a result, "Asian families are dis-

---

95. *Id.*

96. *Id.*

97. *Id.*

98. *Id.*

99. *Id.*

100. Tim Iglesias, *Clarifying the Federal Fair Housing Act's Exemption for Reasonable Occupancy Restrictions*, 31 *FORDHAM URB. L.J.* 1211, 1214 (2004).

101. *Id.* at 1216. Concerns include excessive noise and parking and traffic congestion. *Id.* at 1217.

102. *Id.* at 1217.

103. *Id.*

104. *Id.* at 1218.

105. *Id.*

proportionately and adversely affected by residential occupancy standards because they tend to have larger households . . . as well as stronger preferences for living closely.”<sup>106</sup> Although the Fair Housing Amendments Act of 1988 (“FHAA”) prohibits housing discrimination based on “familial status,”<sup>107</sup> the FHAA contains a specific exemption that limits liability for discrimination claims based upon occupancy restrictions, leaving little room for larger households to seek recourse.<sup>108</sup>

### **B. Is There a Link Between Living in Multi-Generational Households and Poverty?**

The Asian population has the fastest growth rate of any major racial or ethnic group in the United States.<sup>109</sup> Chart 1 illustrates the percentage of each race population living in multi-generation households.<sup>110</sup> Compared to Hispanics, Blacks, Whites, and the national total, Asians are more likely to live in multi-generational households.<sup>111</sup> Within the Asian population, twenty-eight percent live in multi-generational households—the highest of any racial group.<sup>112</sup>

---

106. *Id.*

107. *Id.* at 1222.

108. *Id.* at 1226–27. The exemption states: “Nothing in this title limits the applicability of any reasonable local, State, or Federal restrictions regarding the maximum number of occupants permitted to occupy a dwelling.” *Id.* (quoting 42 U.S.C. § 3607(b)(1) (2004)).

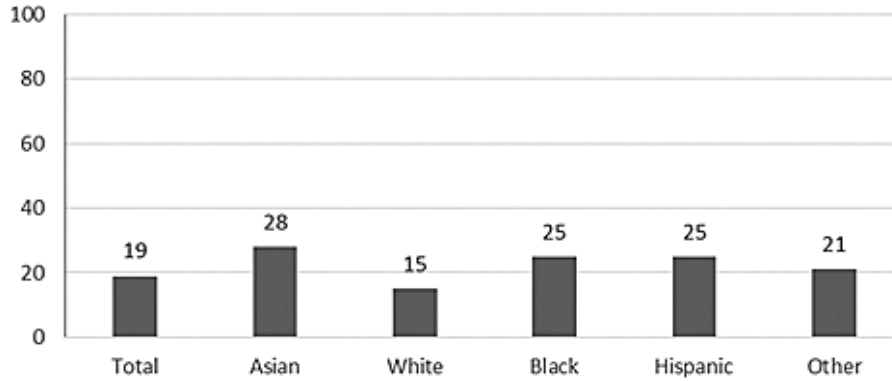
109. Gustavo López, Neil G. Ruiz & Eileen Patten, *Key Facts About Asian Americans, a Diverse and Growing Population*, PEW RES. CTR. (Sept. 8, 2017), <http://www.pewresearch.org/fact-tank/2017/09/08/key-facts-about-asian-americans/> [https://perma.cc/C78Z-FVM7].

110. Cohn & Passel, *supra* note 89 (data collected from graph titled “Whites less likely than other racial and ethnic groups to live in multigenerational households”).

111. Cohn & Passel, *supra* note 89.

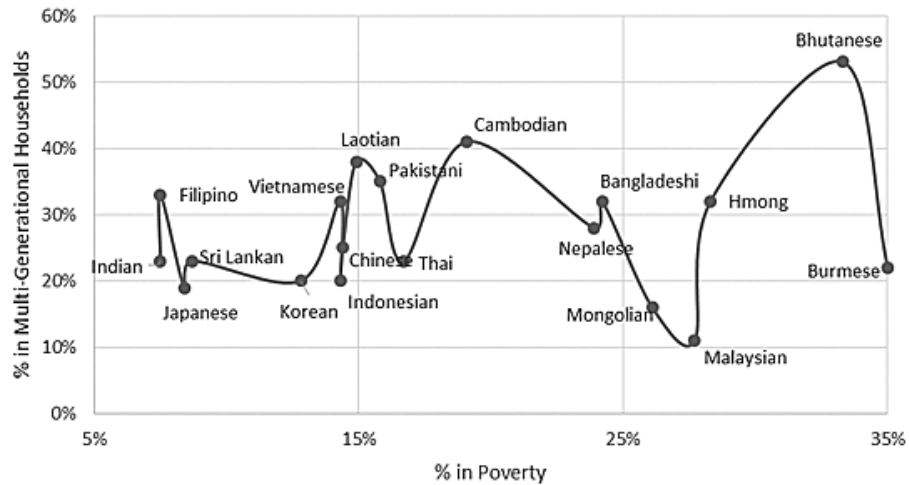
112. *Id.*

**Chart 1:**  
**% of race population living in multi-generational households (2014)**



When breaking down each Asian ethnicity and examining the relationship of each ethnicity in poverty to the percentage living in multi-generational households, a direct correlation is unclear.<sup>113</sup> Chart 2 illustrates that high percentages of multi-generational households exist across ethnicities and vary across poverty percentages.<sup>114</sup>

**Chart 2:**  
**% in Poverty relationship to % in MGHs (2015)**



113. López, Ruiz & Patten, *supra* note 109. The chart was created using data provided by the interactive chart on the webpage.

114. *Id.*



The limited data in Chart 2 does not distinguish how many foreign-born Asians are living in poverty versus how many American-born Asians are living in poverty.<sup>115</sup> For example, the Burmese population has increased from around 17,000 to 168,000 only within the last seventeen years.<sup>116</sup> Compared to the Filipino population, which was at 2.3 million in 2000,<sup>117</sup> the Burmese only recently started to immigrate exponentially to the United States.<sup>118</sup> Because of their relatively recent immigration compared to Filipinos, the Burmese may lack the families, organizations, and cultural centers that provide newly immigrated Filipinos with support, potentially causing the higher rate of poverty in the Burmese population.

Additionally, cultural norms still vary among different Asian ethnicities and across different generations, such that second- or third-generation Asian Americans may prioritize independence over their first-generation parents and may not be as willing to live in multi-generational households.

Finally, the percentage of Asian Americans living in poverty could be higher than reported “because Asian-American families have more workers per household than do white families, their median family income is on average higher.”<sup>119</sup> Yet, even though “the greater number of relatives . . . enhances their potential working pool, the contribution to Asian family income from this source is dominated by the increased burden their family income must support.”<sup>120</sup>

For Asian American families, accurate data analysis is hindered by the pervasiveness of the “model minority myth” outside of Asian American discourse.<sup>121</sup> The myth posits that most Asians have become successful U.S. citizens by following the rules, working hard, and get-

---

115. *Id.*

116. Gustavo López, Anthony Cilluffo & Eileen Patten, *Burmese in the U.S. Fact Sheet*, PEW RES. CTR. (Sept. 8, 2017), <http://www.pewsocialtrends.org/fact-sheet/asian-americans-burmese-in-the-u-s/> [<https://perma.cc/K8DA-ZZ3N>].

117. Gustavo López, Anthony Cilluffo & Eileen Patten, *Filipinos in the U.S. Fact Sheet*, PEW RES. CTR. (Sept. 8, 2017), <http://www.pewsocialtrends.org/fact-sheet/asian-americans-filipinos-in-the-u-s/> [<https://perma.cc/6FYW-P3SS>].

118. López, Cilluffo & Patten, *supra* note 116.

119. Uy, *supra* note 5, at 132.

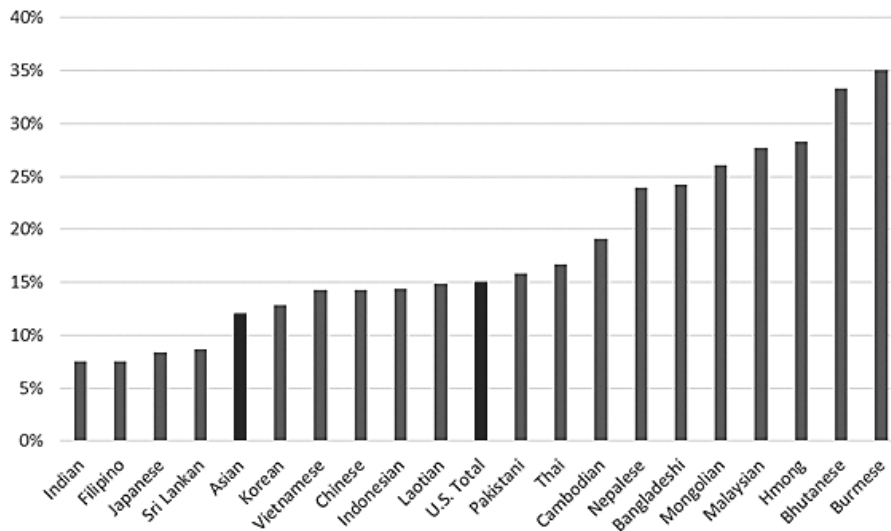
120. *Id.*

121. The lack of data on Asian Americans is a problem itself—so much so that a White House Initiative on Asian Americans and Pacific Islanders (AAPI) exists solely to address this problem. “AAPIs remain one of the most understudied racial groups in the country” and “[g]reater access to disaggregated data will promote better policies that reflect trends, contributions, realities, and diverse needs in the AAPI community.” *Data*, WHITE HOUSE INITIATIVE ON ASIAN AM. & PAC. ISLANDERS, <https://sites.ed.gov/aapi/data/> [<https://perma.cc/QDK4-UBVW>].

ting a good education.<sup>122</sup> The myth does not consider the great disparity amongst Asian American ethnic groups.<sup>123</sup> The myth has influenced not only special notions of Asians, but also the government with government officials having “sometimes denied funding for social service programs designed to help Asian Americans learn English and find employment.”<sup>124</sup>

Chart 3 breaks down percentages of poverty by Asian ethnicity and illustrates that the average percentage for Asians is not a true representation.<sup>125</sup> More than three-quarters of Asian ethnicities fall above the Asian poverty line, and a little more than half of the Asian ethnicities fall above the national poverty line.<sup>126</sup> These realities should be more widely known and addressed by not only the Asian community but also by the government.

**Chart 3:  
% in Poverty (2015)**



122. See FRANK H. WU, *YELLOW: RACE IN AMERICA BEYOND BLACK AND WHITE* 54 (Basic Books 2002); Natsu Taylor Saito, *Model Minority, Yellow Peril: Functions of “Foreignness” in the Construction of Asian American Legal Identity*, 4 *ASIAN AM. L.J.* 71, 90 (1997).

123. Saito, *supra* note 122, at 90.

124. Robert S. Chang, *Toward an Asian American Legal Scholarship: Critical Race Theory, Post-Structuralism, and Narrative Space*, 81 *CAL. L. REV.* 1241, 1261 (1993) (quoting RONALD TAKAKI, *STRANGERS FROM A DIFFERENT SHORE: A HISTORY OF ASIAN AMERICANS* 9 (1989)).

125. López, Ruiz & Patten, *supra* note 109 (showing Asian and national poverty percentages). The chart was created using data provided by the interactive chart on the webpage.

126. *Id.*

This type of skewed data, coupled with the lack of disaggregated data on various Asian ethnicities, makes it difficult to know whether these Asian ethnicities live in multi-generational households out of necessity, due to their cultural norms, or both.

### **C. Navigating the Welfare System as a Multi-Generational Household**

Regardless of the data, simply living in a multi-generational household can perpetuate a cycle of poverty. With the definition of “family” and “household” differing from program to program, extended families may have a hard time knowing their eligibility for certain programs. Separate nuclear families living in the same multi-generational household may be able to receive separate welfare benefits, but the determination lies in the definitions within the specific welfare programs they are trying to obtain. Two separate nuclear families with children may qualify as separate households for free and reduced lunches, but not for housing assistance because they all live in the same housing unit.

### **D. Navigating the Tax System as a Multi-Generational Household**

Asian American families are navigating a tax system not built to adapt to Asian American family dynamics. The federal income tax scheme has “turned into a system that perpetuates and exacerbates the gap between the rich and the poor.”<sup>127</sup> Critical tax theorists have already identified provisions of the tax code that disparately affect Blacks, such as employer’s payments in employment discrimination cases,<sup>128</sup> the home mortgage interest deduction,<sup>129</sup> and the marriage penalty and marriage bonus.<sup>130</sup> These provisions also disparately affect Asian Americans.<sup>131</sup>

Regarding the home mortgage interest deduction in particular, having a multi-generational household can be detrimental to each individual family in that household. While Asian American houses have a high average value, many of these homes are in areas with a high cost of living such as Hawaii or California.<sup>132</sup> Thus, it is more likely that extended families that live together all contribute to the mort-

---

127. Uy, *supra* note 5, at 119.

128. *Id.* at 123.

129. *Id.* at 124.

130. *Id.* at 127.

131. *Id.* at 129.

132. *Id.* at 137.

gage.<sup>133</sup> Unfortunately, only one of the household members can take advantage of the home mortgage interest deduction, property tax deduction, or gains if the house is sold.<sup>134</sup>

If the household includes dependent household members who cannot work, the tax system likely does not account for those families.<sup>135</sup> Some extended family members may not even fit the definition of a dependent, “further eliminating potential deductions.”<sup>136</sup>

The tax system also overwhelmingly favors nuclear families in which one spouse earns significantly more income than the other spouse.<sup>137</sup> All married couples are eligible to receive a marriage bonus, which decreases taxes for those filing a joint tax return.<sup>138</sup> However, the “bonus is highest when only one person earns the entire household income.”<sup>139</sup> When both spouses earn the household income equally, the spouses receive a marriage penalty.<sup>140</sup> This further perpetuates the “breadwinner” narrative, and commonly favors white upper-class households.<sup>141</sup> In Asian American households, both spouses typically contribute financially to the household, so they are more likely to suffer from the marriage penalty, rather than benefit from the marriage bonus.<sup>142</sup>

Filling out a tax return can also lead to confusion when applied to Asian cultural norms. Tax returns can be filed jointly between spouses<sup>143</sup> or as a “head of household”<sup>144</sup> if unmarried.<sup>145</sup> Although there are incentives to file jointly, such as the marriage bonus, there are situations where filing as head of household may be more appropriate.<sup>146</sup> A typical head of household is unmarried, contributes more than half the cost of maintaining their home, and has qualifying dependents.<sup>147</sup> If the person’s spouse has not lived with them within the

---

133. *Id.*

134. *Id.* at 138.

135. *Id.*

136. *Id.*

137. *Id.* at 127.

138. *Id.*

139. *Id.*

140. *Id.*

141. *Id.*

142. *Id.* at 138.

143. 26 U.S.C. § 6013(a) (2018).

144. 26 U.S.C. § 2(b)–(c) (2018).

145. 26 U.S.C. § 6012(a)(1)(A)(i)–(ii) (2018).

146. *See* 26 U.S.C. § 2(c) (2018).

147. *Id.* § 2(b).

last six months of the year, that person may be eligible for head of household status and the benefits that come with the status.<sup>148</sup>

For new immigrants, determining which system would be more beneficial can be confusing. A reality for many immigrants is that one spouse will come to the United States with the children, while the other spouse either stays in the home country or constantly travels back and forth between the home country and the United States. The non-traveling spouse may not realize their eligibility as “head of household” and their potential to gain more tax benefits. If the spouse is staying with extended family, the household distinctions become more unclear.

To establish that two separate households exist at the same address, taxpayers need to prove they “conduct themselves as separate households or one household” and “act[ ] independently of each other in matters not related to the house.”<sup>149</sup> Again, this uses the nuclear family ideal and questions are based off that model. Some factors to determine whether two separate households exist include the following:

Are there separate telephone lines for each family? Separate utility bills?

Do the taxpayers maintain separate finances and separate bank accounts? Or do they have a joint account or commingle funds?

Does one family contribute to the financial support to the other?

Do the adult taxpayers have separate bedrooms?

Do the children have separate bedrooms?

Do the family members give Christmas and birthday presents together or separately?<sup>150</sup>

Unfortunately, answering yes or no to these questions does not necessarily distinguish separate households in a multi-generational household. It is logical for an extended family to pool its resources and funds together. Having the same telephone line or having cousins share a bedroom is a smart economical decision but may cause the two separate families to be ineligible for tax benefits as separate households. Without clear instructions or new tax structures created for multi-generational households, many extended families are likely not taking advantage of tax benefits. These benefits could be the extra help that brings these families out of poverty.

---

148. 26 U.S.C. § 7703(b)(1) (2018).

149. William Perez, *Can Two People Claim Head of Household at Same Address?*, BALANCE (July 2, 2017), <https://www.thebalance.com/two-heads-of-household-3193038> [<https://perma.cc/VTL4-ZCQE>].

150. *Id.*

## E. Navigating the Physical Barriers of a Multi-Generational Household

The legal treatment of multi-generational households is not the only obstacle keeping Asian Americans in poverty. The push for nuclear families and single-family dwellings in suburban areas has resulted in a lack of adequate multi-generational housing.<sup>151</sup>

The most common housing option is to have an accessory dwelling unit located inside, attached to, or detached from a primary dwelling.<sup>152</sup> This allows single-family dwellings to adapt more easily to having multiple generations in the household. Other options include adjacent apartments, different floors of the same building, dwellings on the same block, and even larger buildings specifically intended for extended families.<sup>153</sup>

Although larger homes in the United States theoretically accommodate multiple generations, the space may be insufficient for more than one nuclear family—a “lack of privacy and a place to retreat for the grandparents, especially who may have previously lived alone, can cause undue stress.”<sup>154</sup> This “overcrowding” can cause safety concerns, psychological stress, excessive noise, and parking congestion.<sup>155</sup> To combat overcrowding, the government sets occupancy restrictions, but these restrictions disproportionately segregate Asian families into specific jurisdictions and neighborhoods that allow larger households.<sup>156</sup>

## V. Implications of Classifying Extended Families as a Suspect Class

### A. Recognizing the Realities of Multi-Generational Living

If extended families are recognized as a suspect class, then the legislature would be pressured to reform the tax code and welfare programs with extended families and multi-generational households in

---

151. While multi-generational housing typically focuses on more bedrooms and bigger spaces to accommodate higher occupancy rates, a multi-family dwelling could have a separate kitchen or common areas but allow the extended family to still live in close proximity. *The Difference Between a Multigenerational and Multi-Family House Plan*, MASCORD, <https://houseplans.co/articles/multigenerational-multi-family-house-plans/> [https://perma.cc/E4BN-UGUV]. Despite this distinction, multi-generational housing includes multi-family dwellings as a primary option for housing. See Feldman, *supra* note 4.

152. Feldman, *supra* note 4.

153. *Id.*

154. *Id.*

155. Iglesias, *supra* note 100, at 1213.

156. *Id.* at 1218.

mind. A uniform definition of family and household could give multiple nuclear families living in the same household more welfare and tax benefits. For example, if the legislature modified the tax system to consider multi-generational households that contribute wholly to the entire household in familial ways yet allow each nuclear family to be eligible for welfare benefits as separate households, then each nuclear family within that household would not need to manipulate the system or seek additional help to establish solid economic foundations.

Additionally, recognizing multi-generational households as a growing trend could create more opportunities to build affordable multi-generational housing. Adequate housing with enough space for all generations in the household would promote privacy, reduce stress, and lead to a harmonious household. For example, San Francisco has addressed the need for more Accessory Dwelling Units for extended families.<sup>157</sup> These are freestanding secondary structures to the main dwelling unit.<sup>158</sup> Companies such as the Lennar Corporation are already capitalizing on the multi-generational housing market by creating “NextGen” houses advertised as “Two homes. Under one roof.”<sup>159</sup> Still, the market is developing, so prices are competitive.<sup>160</sup> Affordable multi-generational housing is unlikely to come without putting pressure on all levels of government.

## B. Potential for Slippery Slope Toward Overextending Rights

As extended family members gain more rights and multi-generational households become the norm, extended family members are getting closer to obtaining familial rights only designated for nuclear family members. Will grandparents be guaranteed visitation rights in the future, invalidating the holding in *Troxel*? There is also the possibility of these rights extending to other family members such as aunts or cousins. To prevent abuse of these familial rights, new legislation

---

157. See S.F. Planning Dep’t, *Housing for Families with Children* 29 (Jan. 17, 2017), [http://default.sfplanning.org/publications\\_reports/Family\\_Friendly\\_Briefing\\_01-17-17\\_FINAL.pdf](http://default.sfplanning.org/publications_reports/Family_Friendly_Briefing_01-17-17_FINAL.pdf) [<https://perma.cc/PC73-NHV9>].

158. *Id.*

159. *NextGen Housing*, LENNAR, <https://www.lennar.com/nextgen> (last visited Mar. 17, 2017) [<https://perma.cc/JQ4Z-JV8W>].

160. A look at the Lennar’s website for available NextGen housing in the San Francisco Bay Area turned up one house in Vallejo, starting at \$640,880. Search Query for Multi-Generational Housing in the San Francisco/Bay Area, LENNAR, <https://www.lennar.com/> [<https://perma.cc/HX76-CFEN>] (scroll to “Find your new Lennar home” and press “Start”; then select “California”; then select “San Francisco/Bay Area”; then refine your search with “No Preferences”; scroll the Vallejo house, “Trovero”).

would need to consider the context of requests for visitation, adoption, or legal control in relation to children or other relatives.

With more rights and benefits comes the risk of individuals abusing the system. However, with the lack of uniform definitions of family and household, as well as the lack of any inclusion of laws tailored to multi-generational households, there are probably families that are falling through the cracks of the system as it is now. The focus should be on ensuring that those who need the help find a way to obtain it. Any potential abuses in future programs and systems can be corrected as they arise.

### **Conclusion**

The legislative and judicial discussion surrounding extended family rights and multi-generational housing is still in its infancy. The growing population of extended families living in multi-generational households will eventually cause the government to recognize the need for reform. As a large portion of Americans that live with extended families and are in need of multi-generational housing, Asian Americans should push Congress for better welfare benefits and bring cases to the judicial system asserting their familial rights. At the very least, there is a need for educational programs specifically tailored to the tax benefits that can apply to multi-generational households.

The data is not representative of reality—that a larger number of Asian Americans live in poverty than what society is led to believe. Restructuring government welfare programs could lead to more Asian American families rising above the poverty line. Asian Americans will continue to live in multi-generational households, and the reason should not be out of economic necessity, but one of choice and cultural diversity.