

OLD SCRIPTS, NEW PLATFORMS: DIGITAL “YELLOW PERIL” AND THE TIKTOK BAN

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INTRODUCTION

Ever heard the phrase “it’s giving main character energy”?¹ How about “it’s the [blank] for me,”² or “and I oop?”³ If you are among the 170 million Americans who use TikTok,⁴ chances are you have encountered these phrases. These viral bits are more than just slang; they are proof of TikTok’s massive influence, shaping how we talk, learn, and connect.⁵ Yet despite its popularity, TikTok spent years fighting for survival in the United States. The conflict reached a boiling point in 2024, when Congress passed the Protecting Americans from Foreign Adversary Controlled Applications Act (PAFACA).⁶ Citing national security risks associated with TikTok’s Chinese ownership, the law required TikTok to sever ties with its Beijing-based parent company ByteDance or face a U.S. ban.⁷ Despite a lack of

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1. Main Character Energy, TIKTOK, <https://www.tiktok.com/discover/main-character-energy> (last visited July 8, 2025).

2. It’s the Blank for Me, TIKTOK, <https://www.tiktok.com/discover/its-the-blank-for-me> (last visited July 8, 2025).

3. And I Oop, TIKTOK, <https://www.tiktok.com/discover/and-i-oop?lang=en> (last visited July 8, 2024).

4. TikTok, Inc. v. Garland, 604 U.S. 56, 63 (2025).

5. See, e.g., Anne D’Innocenzio, Halleluwa Hadero & Dee-Ann Durbin, *TikTok Is an Unrivaled Trendsetter. Will Its Influence Last?*, AP (July 3, 2024), <https://apnews.com/projects/tik-tok-influencers-trends-food-fashion> [<https://perma.cc/TK33-HLK3>] (discussing TikTok’s influence on consumer and cultural trends in the United States).

6. Protecting Americans from Foreign Adversary Controlled Applications Act, Pub. L. No. 118-50, Div. H. § 2(g)(6) (2024).

7. *Id.*

verifiable security threats,⁸ the Supreme Court upheld PAFACA in *TikTok, Inc. v. Garland*.⁹ In January 2026, TikTok's U.S. operations were sold to American owners,¹⁰ closing a chapter that began during President Donald J. Trump's first term.¹¹ But the post-sale reality raises new questions about national security.

This essay argues that the U.S. government's crackdown on TikTok reveals a troubling pattern of recycling anti-Asian "perpetual foreigner" narratives under the pretext of national security. Our analysis draws on Professor Natalia Molina's "racial script"¹² theory and Professor Claire Jean Kim's concept of racial triangulation.¹³ Molina's work demonstrates how institutions recycle prejudicial narratives across generations to preserve power structures.¹⁴ Kim's framework explains how Asian Americans in the United States are simultaneously celebrated for their technological expertise yet permanently marked as foreign and unassimilable.¹⁵ Together, these frameworks reveal how century-old anti-Asian narratives have been reactivated against TikTok under supposedly objective national security concerns. Rather than conducting objective assessments of TikTok's actual practices or demonstrable security risks, deep-seated suspicions about Asian intentions superseded evidence-based policy. TikTok's technological success became evidence not of innovation but of potential infiltration.

8. See Ashley Gorski, *Banning TikTok Is Unconstitutional. The Supreme Court Must Step In.*, ACLU (Jan. 15, 2025), <https://www.aclu.org/news/national-security/banning-tiktok-is-unconstitutional-the-supreme-court-must-step-in> [<https://perma.cc/RYX9-5BBN>] (arguing no evidence shows TikTok's connection to ByteDance poses security risks).

9. TikTok, Inc., 604 U.S. at 69 (2025).

10. See David McCabe & Emmett Lindner, *TikTok Strikes Deal for New U.S. Entity, Ending Long Legal Saga*, N.Y. TIMES (Jan. 22, 2026), <https://www.nytimes.com/2026/01/22/technology/tiktok-deal-oracle-bytedance-china-us.html> [on file with the *Columbia Human Rights Law Review*] (noting that ByteDance struck a deal with U.S. investors, including Oracle and Dell, to restructure TikTok's operations to avoid a federal ban).

11. See Clare Duffy, *The Deal to Secure TikTok's Future in the US Has Finally Closed*, CNN (Jan. 23, 2026), <https://www.cnn.com/2026/01/22/tech/tiktok-us-deal-closes> [on file with the *Columbia Human Rights Law Review*] (noting that government efforts to compel TikTok's divestiture began with President Trump's early concerns about the app and ultimately culminated in President Biden's signing of PAFACA).

12. Natalia Molina, *HOW RACE IS MADE IN AMERICA, IMMIGRATION, CITIZENSHIP, AND THE HISTORICAL POWER OF RACIAL SCRIPTS* (2014) (explaining that racial scripts are characterizations of racialized people that are transferred across time).

13. See Claire Jean Kim, *The Racial Triangulation of Asian Americans*, 27 POL. & SOC'Y 105, 106 (1999) (arguing that "Asian Americans specifically have been 'racially triangulated' vis-à-vis Whites and Blacks").

14. MOLINA, *supra* note 12.

15. Kim, *supra* note 13, at 107.

This essay has three parts. Part I briefly traces the historical construction of Asian identity in the United States. It shows how Asian Americans have been consistently framed as perpetual foreigners, “tied to their ancestral homelands no matter how long or for how many generations they have lived in the United States.”¹⁶ Part II explores the campaign to ban TikTok, analyzing how media and government deployed anti-Asian narratives to cast the platform as a national security threat warranting curtailment. This echoes legal scholar Gil Gott’s observation that the rhetoric of “national security”—ostensibly about shielding citizens from “foreign” threats—often enables the state to target non-white communities through racially coded, expansive assertions of power.¹⁷ Finally, Part III examines how the forced sale has created a domestic surveillance infrastructure. By moving data to U.S. servers, the government has empowered agencies like Immigration and Customs Enforcement (ICE) to track communities,¹⁸ with immigrant and minoritized populations bearing the heaviest enforcement burden. This is the latest chapter in a long history of weaponizing Asian identity to justify exclusion and control.

I. RACIAL SCRIPTS AND THE CONSTRUCTION OF THE PERPETUAL FOREIGNER

The U.S. government’s crackdown on TikTok continues a long tradition of treating Asian Americans as “perpetual foreigners.” This enduring stereotype insists Asian Americans can never truly assimilate, no matter their citizenship status, generational roots, or societal contributions.¹⁹ Historically, this characterization has served as justification to exclude Asian Americans from full civic participation, often under the banner of national security.²⁰ Two theoretical frameworks illuminate this phenomenon: Professor Natalia Molina’s “racial scripts” and Claire Jean Kim’s “racial triangulation.”

16. Vinay Harpalani, *Asian Americans, Racial Stereotypes, and Elite University Admissions*, 102 B.U. L. REV. 233, 240 (2022).

17. Gil Gott, *A Tale of New Precedents: Japanese-American Internment as Foreign Affairs Law*, 19 B.C. THIRD WORLD L.J. 179, 181 (1998).

18. See Logan McMillan, *How TikTok 2.0 Became a Weapon for ICE*, THE NEW REPUBLIC (Feb. 9, 2026), (arguing that ICE could leverage TikTok user data stored on Oracle’s cloud for surveillance).

19. See Harpalani, *supra* note 16, 240 (noting that Asian Americans face stereotypes that cast them as perpetual foreigners).

20. *Id.*

Molina's theory illustrates how racial categories are socially constructed by comparing and othering marginalized groups.²¹ In that process, racial narratives develop by conflating negative connotations associated with each group.²² The resulting racial scripts become versatile tools for dominant groups (typically white Americans) who deploy them in contradictory ways to advance their interests and preserve power.²³ Through what Molina calls a "racial project," these scripts continually reemerge as a "common sense" that shapes policy and law.²⁴ The TikTok case illustrates how racial scripts ascribed to Asians forged both the public's and the government's acceptance of the platform as a security threat.

Kim's racial triangulation theory exposes the dual mechanisms controlling Asian American identity. The first process, relative valorization, promotes Asian Americans as model minorities to obscure systemic racism against other groups.²⁵ Operating simultaneously with the first, the second, civic ostracism, brands Asian Americans as perpetual outsiders.²⁶ This creates an impossible paradox where Asian Americans exist in limbo between being celebrated as exemplary yet distrusted as outsiders.²⁷ Both frameworks illuminate the TikTok controversy. Racial scripting explains how historical anti-Asian narratives have been recycled to frame the platform as inherently threatening, while racial triangulation reveals how lawmakers simultaneously praised TikTok's innovation while questioning its fundamental loyalty to American interests. The following sections trace how the perpetual foreigner stereotypes evolved from 19th-century exclusion laws to modern tech panics, providing crucial context for evaluating the national security claims against TikTok.

21. Natalia Molina, *The Power of Racial Scripts: What the History of Mexican Immigration to the United States Teaches Us about Relational Notions of Race*, 8 *LATINO STUD.* 156, 156–57 (2010).

22. *Id.* at 157 (arguing that White Americans defined Mexicans by comparing them to "other groups who had already been defined and established as non-White, non-normative, and unfit for self-government").

23. *Id.* at 167. For example, the racial script rooted in biological notions that certain groups were naturally suited for agricultural labor portrayed Mexican immigrants as indispensable to America's agricultural expansion, while casting Japanese immigrants as a direct threat to White labor. *Id.*

24. *Id.* at 157 (defining a "racial project" as "a node in a network" where public discourse embeds racial narratives that represent the social meanings assigned to each racialized group).

25. *Id.* The "Model Minority" stereotype portrays Asian Americans as universally successful due to cultural work ethic, suggesting other minority groups should emulate them rather than addressing systemic racism. Harpalani, *supra* note 16, at 233.

26. Molina, *supra* note 21, at 157.

27. *Id.* (conceptualizing the racial positioning of Asian Americans in a form of racial geometry).

A. The Foundation: “Yellow Peril” and Chinese Exclusion (1850s-1920s)

The “perpetual foreigner” stereotype emerged from 19th-century “yellow peril” fears.²⁸ Distinct Asian cultural practices were weaponized as evidence of foreignness and threats to national stability.²⁹ This xenophobia quickly translated into restrictive legislation. The 1882 Chinese Exclusion Act declared Chinese laborers a threat to ‘good order’—a euphemism for white economic and cultural dominance—and banned them from entering the U.S.³⁰ As the first federal law prohibiting entry based on both race and class,³¹ it also severely restricted Chinese laborers already in the U.S. by imposing difficult re-entry requirements and prohibiting citizenship applications in both state and federal courts.³²

The Act marked a drastic change from earlier perceptions of Chinese immigrants. Many Chinese came to the U.S. under immense financial pressure to support families and repay debts.³³ White business elites initially praised Chinese immigrants as cheap, disciplined laborers, yet simultaneously branded them “birds of passage.”³⁴ This characterization allowed capitalists to exploit their labor while denying them political inclusion.³⁵ As one journalist bluntly put it, “while the Chinese were not biologically suited for America’s melting pot, it would be foolish not to exploit their cheap labor before shipping them back to China.”³⁶ This strategic framing solidified white capitalists’ control over the U.S. economy, illustrating how economic interests fueled the perpetual foreigner narrative.

B. Anti-Asian Sentiment During the Jim Crow Era

As economic downturns hit in the late 1800s, Chinese immigrants lost their status as favored laborers.³⁷ Influential publications like the *New*

28. Kim, *supra* note 13, at 110.

29. *Id.*

30. Chinese Exclusion Act, ch. 126, 22 Stat. 58 (1882) <https://www.archives.gov/milestone-documents/chinese-exclusion-act> [<https://perma.cc/FMZ4-DX63>].

31. *See, e.g.*, DERRICK BELL, RACE, RACISM, AND AMERICAN LAW 6 ED. 720 (2008) (describing the effect of the Chinese Exclusion Act on the Chinese in the late 19th century).

32. *Id.*

33. *Id.* at 719.

34. Kim, *supra* note 13, at 109.

35. *Id.* at 115.

36. STUART CREIGHTON MILLER, THE UNWELCOME IMMIGRANT: THE AMERICAN IMAGE OF THE CHINESE, 1785-1882 159 (1969).

37. Kim, *supra* note 13, at 109.

*York Tribune*³⁸ and political figures such as Senator Aaron Sargent began portraying Chinese immigration as an “economic takeover” threatening white jobs.³⁹ Their status as presumed permanent outsiders made them vulnerable to rising anti-Chinese sentiment. Chinese immigrants struggled to understand the hostility directed at them despite their contributions to American society. In 1874, a group of Chinese community leaders wrote to the government: “We wish now also to ask the American people to remember that the Chinese in this country have been for the most part peaceable and industrious. . . . In view of all these facts we are constrained to ask why this bitter hostility against the few thousand Chinese in America!”⁴⁰

As the drumbeat of “yellow peril” fears grew louder, it propelled the repeated extensions of the Chinese Exclusion Act in 1892, 1902, and 1904.⁴¹ Even Justice John Marshall Harlan’s dissent in *Plessy v. Ferguson*,⁴² renowned for its stand against “separate but equal,”⁴³ simultaneously underscored the legal system’s ingrained anti-Asian bias. In that very opinion, Harlan starkly declared: “There is a race so different from our own that we do not permit those belonging to it to become citizens of the United States. Persons belonging to it are, with few exceptions, absolutely excluded from our country. I allude to the Chinese race.”⁴⁴ This passage reveals how a foundational legal challenge to racial segregation could, in the same breath, reinforce the systemic marginalization and othering of Asian people.

The exclusionary logic initially targeting Chinese immigrants soon broadened into more sweeping anti-Asian measures. In 1917, Congress established the Asiatic barred zone, effectively banning nearly all Asian

38. ROGER DANIELS, ASIAN AMERICA: CHINESE AND JAPANESE IN THE UNITED STATES SINCE 1850 40 (1988) (“The 60,000 or 100,000 Mongolians on our Western coast are the thin edge of the wedge which has for its base the 500,000,000 of Eastern Asia.”).

39. *Id.* (“The Pacific Coast must in time become either American or Mongolian.”).

40. Stephanie Hinnershitz, *The Chinese Exclusion Act*, Bill of Rights Institute, <https://billofrightsinstitute.org/essays/the-chinese-exclusion-act> [<https://perma.cc/CY8Z-UFKK>].

41. Yuning Wu, *Chinese Exclusion Act*, ENCYCLOPEDIA BRITANNICA (Dec. 11, 2025), <https://www.britannica.com/topic/Chinese-Exclusion-Act> [on file with the *Columbia Human Rights Law Review*]. Although the Chinese Exclusionary law was repealed in 1943, it was replaced with a quota limiting Chinese immigration to only 105 individuals annually.

Id.

42. *Plessy v. Ferguson*, 163 U.S. 537, 552–64 (1896) (Harlan, J., dissenting).

43. References to Harlan’s *Plessy* solo opinion referring to it as “imperishable” support the notion that it is renowned. See David Adler, *Justice Harlan’s Imperishable Dissent in Plessy v. Ferguson*, WYOMING HUMANITIES (Mar. 26, 2022), <https://thinkwyo.org/columns/justice-harlans-imperishable-dissent-in-plessy-v-ferguson> [on file with the *Columbia Human Rights Law Review*] (referring to prejudice against Asian Americans).

44. *Plessy*, 163 U.S. at 561 (Harlan, J. dissenting).

immigrants.⁴⁵ As immigration rates rose in the early twentieth century, Congress introduced annual immigration quotas for the first time in U.S. history. The Johnson-Reed Act of 1924⁴⁶ made the quotas permanent and explicitly barred those deemed “ineligible for citizenship,” primarily targeting Asians.⁴⁷ The House Committee on Immigration and Naturalization justified these measures with facially economic arguments. It claimed mass immigration would “upset our balance of population” and “depress our standard of living.”⁴⁸ Congressman Albert Johnson, the architect of the Johnson-Reed Act, was more overt about the Act’s designs. Johnson framed it as a necessary stopgap “to maintain our cherished institutions” from “alien blood.”⁴⁹ The law’s shifting rationales exposed how white nationalism enforced racial exclusion under the guise of national security.

C. Perpetual Foreignness and Tactical Suspicion

The “yellow peril” rhetoric was repackaged in the late 20th century, morphing into a framework of systemic distrust that cast Asian Americans as potential foreign agents. This shift was vividly illustrated during the 1996 campaign finance controversy when President Clinton’s Democratic National Committee hired Asian American fundraisers John Huang and Charlie Yah Lin Trie.⁵⁰ Almost immediately, the two men were accused of being conduits for the Chinese government. Media and politicians framed their involvement as a threat to national security.⁵¹ Senator Fred Thompson, the Republican chairman of the Senate Governmental Affairs Committee, pushed an investigation designed to discredit Democrats and stoke fear about China.⁵² More specifically, the committee wanted to show that the Chinese

45. Immigration Act of 1917, Pub. L. 64-301 (1917).

46. Johnson-Reed Act of 1924, ch. 190, 43 Stat. 153 (1924).

47. Bell, *supra* note 31, at 723.

48. Kevin R. Johnson, *Race, the Immigration Laws, and Domestic Race Relations: A “Magic Mirror” into the Heart of Darkness*, 73 IND. L.J. 1111, 1128 (1998).

49. 159 Cong. Rec. S5950 (daily ed. July 25, 2013), <https://www.govinfo.gov/content/pkg/CREC-2013-07-25/html/CREC-2013-07-25-pt1-PgS5950.htm> [<https://perma.cc/GUC8-QQGQ>].

50. Timothy Lane, *Campaign Finance Scandal in the 1990s*, EBSCO RESEARCH STARTERS, <https://www.ebsco.com/research-starters/law/campaign-finance-scandal-1990s> [<https://perma.cc/447D-5H9E>].

51. Charlie Trie’s Tainted Money, N.Y. TIMES (July 30, 1997), <https://www.nytimes.com/1997/07/30/charlie-trie-s-tainted-money.html> [on file with the Columbia Human Rights Law Review].

52. L. Ling-chi Wang, *Race, Class, Citizenship, and Extraterritoriality: Asian Americans and the 1996 Campaign Finance Scandal*, 33 AMERASIA JOURNAL 167, 170 (2007).

government was laundering money to gain influence in Washington.⁵³ At the same time, they worked to frame Huang and Trie as spies sent by China to subvert the American political system.⁵⁴ No evidence ever linked them to foreign governments,⁵⁵ yet Huang and Trie faced unprecedented scrutiny of their finances, citizenship, and loyalties.⁵⁶ During his congressional testimony, Huang exposed what he surmised was the real agenda: to demonize Asian Americans and chill their political participation.⁵⁷ Even as President Clinton warned against premature judgment,⁵⁸ the damage was done. The episode reinforced a pervasive script of tactical suspicion, one that reduced Asian Americans to perpetual outsiders whose affiliations could be weaponized. This pattern has continued into the 21st century.

D. Modern Manifestations: The China Initiative and COVID-19 Scapegoating

In November 2018, the Department of Justice launched the China Initiative, purportedly to counter Chinese espionage.⁵⁹ In practice, however, the initiative devolved into a campaign of racial profiling, targeting Asian American researchers based on ethnicity rather than evidence of wrongdoing.⁶⁰ The program was terminated in 2022, but not before it had instilled a deep-seated chill in academic collaboration, deliberately undermining U.S. scientific competitiveness in the process.⁶¹ The COVID-19

53. *Id.*

54. *Id.*

55. *Id.*

56. See Kim, *supra* note 13, at 118 (discussing how Huang and Trie were painted as suspect due to their ethnicity).

57. Richard A. Serrano, *Clinton's Fundraising Scandal Widens*, L.A. TIMES (Dec. 16, 1999), <https://www.latimes.com/archives/la-xpm-1999-dec-16-mn-44503-story.html> [on file with the *Columbia Human Rights Law Review*].

58. David Johnston, *Clinton Gives Few Details on Recommending Huang*, N.Y. TIMES (July 10, 1997), <https://www.nytimes.com/1997/07/10/us/clinton-gives-few-details-on-recommending-huang.html> [on file with the *Columbia Human Rights Law Review*].

59. See Margaret K. Lewis, *Criminalizing China*, 111 J. CRIM. L. & CRIMINOLOGY 145, 146 (2021) [hereinafter Lewis, *Criminalizing China*] (noting reports of “about a thousand investigations” into alleged Chinese economic espionage against the United States).

60. See, e.g., Mike German, *The ‘China Initiative’ Failed U.S. Research and National Security. Don’t Bring it Back*, BRENNAN CENTER FOR JUSTICE (Sept. 23, 2024), <https://www.brennancenter.org/our-work/analysis-opinion/china-initiative-failed-us-research-and-national-security-dont-bring-it> [https://perma.cc/F4AW-UNUN] [hereinafter German, *The China Initiative*] (reporting that the China Initiative primarily targets individuals with ties to China rather than evidence-based espionage investigations).

61. *Id.* The Biden administration ended the China Initiative in 2022 after finding that it created a “harmful perception of bias” and stifled scientific research. *Id.*

pandemic further inflamed this anti-Chinese sentiment. Political leaders like Donald Trump⁶² and Senator John Cornyn⁶³ amplified racist rhetoric, blaming the virus on Chinese people and their culture. Despite scientific consensus, including reports from the World Health Organization confirming a natural origin unrelated to cultural practices,⁶⁴ public discourse fixated on culturally charged explanations.⁶⁵ Long-standing racial tropes casting Asian Americans as perpetual outsiders were weaponized to explain the global health crisis and assign blame for the pandemic.⁶⁶

As Professor Kim highlights, the concept of “culture” is frequently generalized to encompass an entire ethnic group.⁶⁷ This anti-China rhetoric, which depicted Chinese culture as peculiar and dangerous, inevitably fueled widespread anti-Asian animosity.⁶⁸ This period saw a significant rise in hate incidents targeting Asian Americans, often involving verbal assaults referencing cultural stereotypes.⁶⁹ This pattern of cultural stigmatization did not dissipate with the pandemic; instead, we argue, it directly resurfaced in the TikTok controversy. Just as lawmakers in the 19th century exploited

62. Caitlin Oprysko, *McEnany Defends Trump’s ‘Kung Flu’ Comment at Rally*, POLITICO (June 22, 2020), <https://www.politico.com/news/2020/06/22/mcenany-defends-trump-kung-flu-comment-333814> [on file with the *Columbia Human Rights Law Review*].

63. Maureen Groppe, *Sen. John Cornyn Says Chinese “Eating Bats” Spread Virus*, USA TODAY (Mar. 18, 2020), <https://www.usatoday.com/story/news/politics/2020/03/18/coronavirus-sen-john-cornyn-says-chinese-eating-bats-spread-virus/2869342001> [<https://perma.cc/S3UJ-THR7>].

64. World Health Org., *WHO-Convened Global Study of Origins of SARS-CoV-2: China Part – Joint WHO – China Study* (Mar. 30, 2021), https://www.who.int/docs/default-source/coronaviruse/final-joint-report_origins-studies-6-april-201.pdf [<https://perma.cc/4DXC-TN78>].

65. See Sean Darling-Hammond et. al., *After “The China Virus” Went Viral: Facially Charged Coronavirus Coverage and Trends in Bias Against Asian Americans*, 47 HEALTH EDUC. & BEHAV. 870, 877 (2020) (discussing how media outlets’ use of “stigmatizing terms” linking the virus to China increased by 800 percent during the COVID-19 pandemic).

66. See Angela R. Gover, Shannon B. Harper & Lynn Lantong, *Anti-Asian Hate Crime During the COVID-19 Pandemic: Exploring the Reproduction of Inequality*, 45 AM. J. CRIM. JUST. 647, 661 (2020) (observing that public health crises intensify the scapegoating of groups already marked as outsiders).

67. Kim, *supra* note 13, at 107 (“Processes of relative valorization and civic ostracism are linked both analytically and functionally. They are jointed analytically by an essentialized reading of Asian American/Asian culture that commits a double elision among Asian American subgroups, on one hand, and between Asian Americans and Asians, on the other.”).

68. Stop AAPI Hate, *National Report: Through December 31, 2021* (Mar. 4, 2022), <https://stopaapihate.org/2022/03/04/national-report-through-december-31-2021> [<https://perma.cc/K5SZ-PSGY>].

69. *Id.*

labor competition to justify excluding Chinese immigrants, contemporary policymakers invoked data privacy concerns to target TikTok.

II. THE RECYCLING OF ANTI-ASIAN SCRIPTS: TIKTOK AS DIGITAL “YELLOW PERIL”

The campaign against TikTok was not an isolated event; it was a chilling echo of historical anti-Chinese exclusion, revealing familiar patterns. Part II will examine how media, congressional, and judicial institutions systematically constructed TikTok as an existential national security threat—a digital “yellow peril”—by recycling the same racial scripts that have marginalized Asian Americans for over a century.

A. Construction of the Digital “Yellow Peril”

By 2019, media and politicians had recast TikTok as a geopolitical risk. *The Washington Post*, for example, started characterizing its Chinese ownership as a surefire security threat.⁷⁰ Through repetition, these speculative claims became accepted wisdom, directly influencing policymakers like Senator Marco Rubio, who cited such reports in official correspondence.⁷¹ In August 2020, the Trump administration weaponized these narratives, issuing executive orders threatening to ban TikTok unless ByteDance divested.⁷² Officials declared the potential for Chinese Communist Party access to American user data an unacceptable risk, yet provided no concrete evidence of such access or how the alleged risks would materialize.⁷³ Trump’s (typically) unguarded moments revealed the true motivations behind the crackdown. When asked about TikTok in an

70. Drew Harwell & Tony Romm, *TikTok’s Beijing Roots Fuel Censorship Suspicion as It Builds Huge U.S. Audience*, WASH. POST (Sept. 15, 2019), <https://www.washingtonpost.com/technology/2019/09/15/tiktoks-beijing-roots-fuel-censorship-suspicion-it-builds-huge-us-audience> [on file with the *Columbia Human Rights Law Review*] (“[T]he app could also prove to be one of China’s most effective weapons in the global information war, bringing Chinese-style censorship to mainstream U.S. audiences and shaping how they understand real-world events.”).

71. Letter from Sen. Marco Rubio to Steven T. Mnuchin, Sec’y, U.S. Dep’t of the Treasury (Oct. 9, 2019), http://cdn.vox-cdn.com/uploads/chorus_asset/file/19273614/20191009_Letter_to_Secretary_Mnuchin_re_TikTok.pdf [<https://perma.cc/9W2K-W82H>].

72. Exec. Order No. 13,942, 85 Fed. Reg. 48,637 (Aug. 6, 2020).

73. See, e.g., Brian Fung, *Lawmakers Say TikTok Is a National Security Threat, But Evidence Remains Unclear*, CNN (Mar. 21, 2023), <https://www.cnn.com/2023/03/21/tech/tiktok-national-security-concerns> [on file with the *Columbia Human Rights Law Review*] (noting that TikTok-related national security concerns are rooted in hypothetical risk, as “no public evidence the Chinese government has actually spied on people through TikTok” has surfaced).

interview, he revealingly connected it to his broader grievances against China, saying “what happened with China with this virus, what they’ve done to this country and to the entire world is disgraceful.”⁷⁴ This laid bare how TikTok had become a proxy for anti-Chinese sentiment rather than a subject of legitimate, evidence-based scrutiny. The resulting congressional hearings operated on a presumption of guilt, demanding TikTok prove its innocence rather than requiring critics to substantiate their allegations. What began as media speculation had, through political amplification, become entrenched as conventional wisdom, exemplifying how narratives harden into policy without an evidentiary basis.

B. Congress Against TikTok

President Biden signed PAFACA into law in April 2024, requiring ByteDance to sell TikTok to U.S. owners or face a ban.⁷⁵ The mandate was fulfilled in January 2026 through a deal that created a new U.S.-based joint venture.⁷⁶ This entity is now controlled by a group of investors led by Oracle—a major cloud computing and data management firm.⁷⁷ Under this deal, the app’s code is retrained using American data while Oracle oversees security.⁷⁸ However, as explained below, this new arrangement has already faced significant criticism, reigniting concerns about the stated motivation for the sale.⁷⁹ To understand why these concerns persist, it helps to examine how lawmakers built the case for forcing this sale in the first place.

The legislative hearings preceding the ban revealed a systematic pattern of unsubstantiated alarmism. Lawmakers grounded their concern in China’s 2017 National Intelligence Law, which “requires Chinese companies

74. Charles Duncan, *Why Does the US Want to Ban TikTok? Trump Says It’s to Punish China for Coronavirus*, MCLATCHYDC (July 8, 2020), <https://www.mcclatchydc.com/news/politics-government/article244077987.html> [<https://perma.cc/D27X-N9V8>].

75. H.R. 7521, 118th Cong. (2024). The Act also prohibits providing “internet hosting services to enable distribution, maintenance, and updating the “foreign adversary-controlled application,” and imposes civil penalties of \$5,000 for every violation. *Id.*

76. See Bobby Allen, *Researchers Say No Evidence of TikTok Censorship, But They Remain Wary*, NPR (Feb. 4, 2026), <https://www.npr.org/2026/02/04/nx-s1-5701409/tiktok-censorship-report-epstein> [<https://perma.cc/QUC3-N39W>] (noting that the joint venture was established as a mechanism for compliance with federal legislation requiring TikTok to divest its U.S. operations).

77. *Id.*

78. *Id.*

79. See McMillan, *supra* note 18 (arguing that the restructuring is at odds with the purported objective of protecting U.S. user data).

to assist in intelligence gathering” on the PRC’s request.⁸⁰ Congressman Bob Latta declared TikTok “a clear and present danger to U.S. national security,⁸¹ while Representative Ashley Hinson branded it the Communist Party’s “spyware.”⁸² Representative Josh Gottheimer warned that user data represented “an enormous asset” to “a known adversary.”⁸³ Yet despite this inflammatory rhetoric, lawmakers provided no tangible evidence of how China would exploit TikTok for espionage or surveillance.⁸⁴ They reasoned that since they could not predict China’s actions,⁸⁵ banning TikTok was “common-sense,” as Representative Mike Gallagher argued.⁸⁶

TikTok attempted to address these concerns through “Project Texas,” a \$1.5 billion initiative designed to protect U.S. user data from Chinese government access and insulate content decisions from Beijing influence.⁸⁷ Cybersecurity experts evaluated this as a credible mitigation strategy,⁸⁸ yet

80. Madison Minges, *National Security and the TikTok Ban*, AMERICAN UNIVERSITY (Jan. 23, 2025), <https://www.american.edu/sis/news/20250123-national-security-and-the-tik-tok-ban.cfm> [on file with the *Columbia Human Rights Law Review*].

81. Press Release, Latta, Bipartisan Coalition Introduce Legislation to Protect Americans from Foreign Adversary Controlled Applications, Including TikTok (Mar. 5, 2024), <https://latta.house.gov/news/documentsingle.aspx?documentid=404296&utm> [<https://perma.cc/6D34-FTKG>].

82. Stuart Dredge, *US Politicians Launch Bill to Force ByteDance to Sell TikTok*, MUSIC ALLY (Mar. 6, 2024), <https://musically.com/2024/03/06/us-politicians-launch-bill-to-force-bytedance-to-sell-tiktok> [<https://perma.cc/R2PE-JLAX>].

83. Press Release, Gottheimer Announces Federal Action Against Chinese-owned TikTok (Mar. 6, 2023), <https://gottheimer.house.gov/posts/release-gottheimer-announces-federal-action-against-chinese-owned-tiktok?utm> [<https://perma.cc/35YC-DUPS>].

84. See supra note 73.

85. Nathan J. Robinson, *The Plan to Ban TikTok is Outright Xenophobia*, CURRENT AFFAIRS (Mar. 14, 2024), <https://www.currentaffairs.org/news/2024/03/the-plan-to-ban-tiktok-is-outright-xenophobia> [<https://perma.cc/4UGE-C5WF>] (arguing that in the United States, “paranoia about nonexistent threats” and the portrayal of different groups, including Asian Americans, as “sinister, menacing, conniving, and dangerous” are both common).

86. Sapna Maheshwari, David McCabe, and Annie Karni, *House Passes Bill to Force TikTok Sale from Chinese Owner or Ban the App*, N.Y. TIMES (March 13, 2024), <https://www.nytimes.com/2024/03/13/technology/tiktok-ban-house-vote.html> [on file with the *Columbia Human Rights Law Review*].

87. See, e.g., Matt Perault, *What Happened to TikTok’s Project Texas*, LAWFARE (Mar. 20, 2024), <https://www.lawfaremedia.org/article/what-happened-to-tiktok-s-project-texas> [<https://perma.cc/Z82U-Y79Y>] (documenting Project Texas’s proposal to place U.S. user data under the control of a U.S.-based entity accountable to the Committee on Foreign Investment in the United States (CFISU) through formal oversight and auditing mechanisms).

88. See, e.g., Cecilia Kang, Sapna Maheshwari & David McCabe, *TikTok’s New Defense in Washington: Going on the Offense*, N.Y. TIMES (Jan. 26, 2023), <https://www.nytimes.com/2023/01/26/technology/tiktok-bytedance-data->

lawmakers dismissed it as a “marketing scheme” without considering its merits.⁸⁹ This summary dismissal suggests an entrenched presumption of guilt that no security measures could overcome. Tellingly, U.S. companies that have actually complied with Chinese data demands face no comparable scrutiny. Apple stored Chinese user data on state-controlled servers under what *The New York Times* characterized as “censorship” and “surveillance” conditions;⁹⁰ Facebook maintained data-sharing partnerships with Chinese electronics manufacturers;⁹¹ LinkedIn openly complied with Chinese censorship demands.⁹² Zoom blocked activist accounts at Beijing’s request.⁹³ While Zoom disciplined a single executive,⁹⁴ no American company confronted the shutdown demanded of TikTok. This creates a problematic double standard where documented compliance with Chinese data demands received leniency while TikTok faced elimination of its U.S. operations over hypothetical risks.

Given U.S.-China tensions,⁹⁵ targeting TikTok may well have seemed like caution rather than alarmism. Scholars have documented legitimate concerns that could justify such wariness. Professor Maggie Lewis, for example, notes that “[p]eople and entities with connections to the PRC’s governing party-state structure have engaged in trade secret theft and other crimes under U.S. law.⁹⁶ Although ByteDance is a private Chinese company

security.html [on file with the *Columbia Human Rights Law Review*] (reporting that an expert brief on Project Texas described it as a “serious effort”).

89. Perault, *supra* note 87.

90. Jack Nicas, Raymond Zhong & Daisuke Wakabayashi, *Censorship, Surveillance and Profits: A Hard Bargain for Apple in China*, N.Y. TIMES (May 17, 2021), <https://www.nytimes.com/2021/05/17/technology/apple-china-censorship-data.html> [on file with the *Columbia Human Rights Law Review*].

91. Michael LaForgia & Gabriel J.X. Dance, *Facebook Gave Data Access to Chinese Firm Flagged by U.S. Intelligence*, N.Y. TIMES (June 5, 2018), <https://www.nytimes.com/2018/06/05/technology/facebook-device-partnerships-china.html> [on file with the *Columbia Human Rights Law Review*].

92. Paul Mozur, *LinkedIn to Shut Down Service in China, Citing ‘Challenging’ Environment*, N.Y. TIMES (Oct. 14, 2024), <https://www.nytimes.com/2021/10/14/technology/linkedin-china-microsoft.html> [on file with the *Columbia Human Rights Law Review*].

93. Emily Feng, *Zoom Acknowledges It Suspended Activists’ Accounts at China’s Request*, NPR (June 12, 2020), <https://www.npr.org/2020/06/12/876351501/zoom-acknowledges-it-suspended-activists-accounts-at-china-s-request> [https://perma.cc/3KDN-VRMV].

94. *Id.*

95. Lewis, *Criminalizing China*, *supra* note 59, at 215–16 (describing U.S.-PRC relationships as contentious).

96. *Id.*

and not government-affiliated,⁹⁷ the broader geopolitical tensions might be cited to justify such uneven enforcement. Yet this suspicion extends even to non-Chinese Asian firms, revealing an elastic definition of national security threats that treats any Asian-affiliated company as inherently suspect.

The Committee on Foreign Investment's first blocked merger targeted Singapore-based Broadcom (Singapore is a U.S. ally),⁹⁸ with Trump citing prevention of "the potential exploitation of U.S. personal data" by "China" despite no direct Chinese ties.⁹⁹ Commentators noted this reflected an expanding definition of "China risk" that could encompass any Asian company.¹⁰⁰ President Biden continued this trend in 2025 by blocking Japan's Nippon Steel from acquiring

U.S. Steel on national security grounds.¹⁰¹ (Japan is also a U.S. ally.)¹⁰² Such cases illustrate a broader trend: Asian technological advancement, regardless of national origin or demonstrable risk, is increasingly framed as potential infiltration rather than fair competition. This escalation of suspicion reflects the enduring influence of "yellow peril" narratives, where Asian innovation is met not with admiration but with reflexive distrust.

C. Judicial Endorsement: Constitutional Cover for Exclusion

TikTok and ByteDance challenged PAFACA as unconstitutional, arguing it violated their First Amendment rights and Equal Protection by

97. See, e.g., Laure He, *Wait, Is TikTok Really Chinese?*, CNN (Mar. 28, 2024), <https://www.cnn.com/2024/03/18/tech/tiktok-bytedance-china-ownership-intl-hnk> [on file with the *Columbia Human Rights Law Review*] (noting that ByteDance is a "Chinese-founded private company" whose ownership structure is nonetheless dominated by global institutional investors).

98. Ministry of Foreign Affairs, *About Singapore-US Relations*, <https://www.mfa.gov.sg/Overseas-Mission/Washington/About-Singapore-US-Relations> [<https://perma.cc/8HU5-K364>].

99. John F. Coyle, *Broadcom's Blocked Acquisition of Qualcomm*, HARV. L. SCH. F. ON CORP. GOVERNANCE (Apr. 3, 2018), <https://corpgov.law.harvard.edu/2018/04/03/broadcoms-blocked-acquisition-of-qualcomm> [<https://perma.cc/7GB8-82TZ>].

100. *Id.*

101. Antonia I. Tzinova, Robert A. Friedman & Caroline Grace Howard, *Biden Administration's Blocking Order Sparks Legal Battles*, HOLLAND & KNIGHT (Jan. 17, 2025), <https://www.hklaw.com/en/insights/publications/2025/01/biden-administrations-blocking-order-sparks-legal-battles> [<https://perma.cc/QV8Y-W69Y>].

102. See, e.g., Association for Asian Studies, *The US-Japan Alliance: A Brief Strategic History*, <https://www.asianstudies.org/publications/eaa/archives/the-us-japan-alliance-a-brief-strategic-history> [on file with the *Columbia Human Rights Law Review*] (noting that Japan has maintained its status as a U.S. ally since the 1951 U.S.-Japan Security Treaty).

“singling out TikTok for disfavored treatment.”¹⁰³ On December 6, 2024, the D.C. Circuit Court held the legislation as “facially content neutral.”¹⁰⁴ The court ruled PAFACA targeted only “control by a foreign adversary” rather than speech content.¹⁰⁵ In *TikTok, Inc. v. Garland*, the Supreme Court sided with the government.¹⁰⁶ The Court applied intermediate scrutiny rather than the strict scrutiny standard required for content-based restrictions.¹⁰⁷ Strict scrutiny requires a compelling government interest, narrow tailoring, and least restrictive means.¹⁰⁸ Instead, the Court accepted the weaker standard which dictates that the restriction must only be substantially related to “important government interests.”¹⁰⁹ This allowed the government to justify restrictions based on hypothetical claims that TikTok data will inevitably end up in the hands of the Chinese government.¹¹⁰ Yet, as detailed above, numerous U.S. companies have actually complied with Chinese data requests while receiving leniency.

The Court’s decision continues a troubling historical pattern, from the Chinese Exclusion Act to *Korematsu*,¹¹¹ of national security claims used to justify Asian exclusion without evidence. This tradition was starkly illustrated when President Franklin D. Roosevelt issued Executive Order 9066.¹¹² Issued on February 19, 1942, the order authorized the military to intern more than 100,000 Japanese Americans as a prophylaxis “against espionage and against sabotage to national defense.”¹¹³ In *Korematsu v. United States*,¹¹⁴ the Supreme Court upheld the constitutionality of this incarceration by embracing the unfounded fears of espionage and sabotage.¹¹⁵ Justice Robert H. Jackson’s *Korematsu* dissent warned that such

103. Brief for Petitioners, *TikTok Inc. v. Garland*, No. 24-1113 (D.C. Cir. Aug. 2, 2024).

104. *TikTok Inc. v. Garland*, 122 F.4th 930, 950 (D.C. Cir. 2024), *aff’d*, 604 U.S. 56 (2025).

105. *Id.* at 953.

106. *TikTok Inc. v. Garland*, 604 U.S. 56, 76 (2025) (holding that “the Act is sufficiently tailored to address the Government’s interest in preventing a foreign adversary from collecting vast swaths of sensitive data about the 170 million U.S. persons who use TikTok”).

107. Harvard Law Review, *Two Models of the Right to Not Speak*, 133 HARV. L. REV. 2359, 2364 (“All content-based laws are subject to strict scrutiny.”).

108. Richard H. J. Fallon, *Strict Judicial Scrutiny*, 54 UCLA L. REV. 1267, 1271 (2007).

109. *TikTok, Inc.*, 604 U.S. at 73.

110. *Id.* at 76.

111. *Korematsu v. United States*, 323 U.S. 214 (1944).

112. Exec. Order No. 9066, 7 Fed. Reg. 1407 (Feb. 19, 1942).

113. *Id.*

114. *Korematsu*, 323 U.S. at 217–18 (1944).

115. *Id.* at 236 (Murphy, J., dissenting) (“[N]o reliable evidence is cited to show that such individuals were generally disloyal, or . . . a special menace to defense installations . . . furnish[ing] reasonable ground for their exclusion as a group.”).

uncritical acceptance created a “loaded weapon” for future discrimination.¹¹⁶ The *TikTok* ruling has now reloaded that weapon for the digital age, punishing an Asian-affiliated platform for hypothetical risks while excusing actual compliance by American firms.

III. FROM FOREIGN THREAT TO DOMESTIC SURVEILLANCE

The Supreme Court justified the forced TikTok sale as necessary to protect Americans from hypothetical foreign threats. What has emerged since the January 2026 sale suggests those justifications were pretextual, as the sale has created concrete domestic threats. Legal scholar Gil Gott observed that national security rhetoric often does not protect citizens from foreign dangers so much as empower the state to police nonwhite communities at home.¹¹⁷ The TikTok sale fits this pattern. Under U.S. ownership, TikTok’s data operations have moved to servers owned by Oracle,¹¹⁸ which is co-founded by Larry Ellison, a close ally of President Donald Trump.¹¹⁹ Trump has demonstrated a pattern of wielding executive power to benefit allies and target adversaries,¹²⁰ raising questions about whose interests this arrangement really serves. The concern deepens, given that Ellison has openly embraced mass surveillance, even suggesting that AI will create an era where “citizens are on their best behavior” due to constant monitoring.¹²¹

This vision is now becoming reality through TikTok’s infrastructure. TikTok continues collecting information such as location and citizenship status.¹²² The difference now is that federal agencies like Immigration and Customs Enforcement (ICE) can purchase this data through commercial transactions that bypass warrant requirements.¹²³ The result is a

116. *Id.* at 246 (Jackson, J., dissenting).

117. Gott, *supra* note 17, at 179.

118. *Id.*

119. See Victor Tangermann, *TikTok Refuses to Confirm or Deny That It’s Providing User Data to ICE*, FUTURISM (Feb. 10, 2026), <https://futurism.com/future-society/tiktok-ice-cbp> [<https://perma.cc/BCV8-SE93>] (identifying Oracle cofounder Larry Ellison as “an extremely close ally to President Donald Trump”).

120. See Eric Petry, *Uncovering Conflicts of Interest and Self-Dealing in the Executive Branch*, BRENNAN CENTER (Feb. 19, 2025), <https://www.brennancenter.org/our-work/research-reports/uncovering-conflicts-interest-and-self-dealing-executive-branch> [<https://perma.cc/3VBX-R5ZJ>] (observing that Trump has openly wielded the power of his office to reward allies and punish adversaries).

121. Tangermann, *supra* note 119.

122. See McMillan, *supra* note 18 (noting that TikTok’s Privacy Policy permits tracking of users’ location and citizenship status).

123. *Id.* (“The Fourth Amendment nominally requires a warrant and probable cause to search your person or effects. But in the age of surveillance capitalism, the

surveillance state and a genuine national security threat to Americans. ICE now has access to TikTok user data, yet this is the same agency that has demonstrated a pattern of lawless violence, including recent killings of U.S. citizens in Minneapolis.¹²⁴ Reports indicate ICE buys data from TikTok to target enforcement actions and monitor “community sentiment” for signs of political resistance.¹²⁵ Empowering an agency that operates with authoritarian impunity¹²⁶ with enhanced surveillance capabilities represents precisely the kind of threat to American safety and liberty that national security protections should prevent.

This surveillance infrastructure has raised additional concerns about content control. Days after TikTok ownership changed hands, several high-profile users reported that videos critical of ICE—including those discussing recent raids in Minneapolis—failed to upload or remained stuck in review.¹²⁷ TikTok attributed the problems to a power outage at a U.S. data center causing delays.¹²⁸ The company stated the technical issues were unrelated to the change in ownership or political events.¹²⁹ However, many

Department of Homeland Security has discovered a loophole: Why bother with a judge when you can just buy the data from a private broker?”). “This is the spending-around strategy. By leveraging data originating from TikTok and similar platforms, ICE no longer needs to infiltrate communities. They simply tap into the flow of data already being harvested by private entities, allowing them to target both the undocumented and the political opposition.” *Id.*

124. See Rashawn Ray & Gabriel R. Sanchez, *ICE Expansion Has Outpaced Accountability. What Are the Remedies?*, BROOKINGS (Jan. 28, 2026), <https://www.brookings.edu/articles/ice-expansion-has-outpaced-accountability-what-are-the-remedies> [https://perma.cc/EFM6-V4RP] (documenting ICE’s excessive enforcement practices, including the fatal shooting of U.S. citizens in Minneapolis).

125. See McMillan, *supra* note 18 (observing that ICE can exploit data originating from TikTok to locate targets and track “political opposition”).

126. See Noah Feldman, *If ICE Can Kill With Impunity, the Rule of Law Is Already Gone*, BLOOMBERG (Jan. 27, 2026), <https://www.bloomberg.com/opinion/articles/2026-01-27/ice-officers-do-not-have-immunity-from-prosecution-under-the-rule-of-law?embedded-checkout=true> [on file with the *Columbia Human Rights Law Review*] (discussing the significant challenges states face in conducting independent investigations of ICE in the face of federal obstruction).

127. See Scottie Andrew, *TikTok Users Say They Can’t Upload Anti-ICE Videos. The Company Blames Tech Issues*, CNN (Jan. 27, 2026), <https://www.cnn.com/2026/01/26/tech/tiktok-ice-censorship-glitch-cec> [on file with the *Columbia Human Rights Law Review*] (observing that TikTok users alleged the platform was actively censoring anti-ICE content, even as the company denied intentional suppression).

128. *Id.*

129. *Id.*

users remain skeptical of this explanation, viewing the timing and pattern of suppressed content as more than coincidental.¹³⁰

CONCLUSION

This essay argues that the U.S. government used national security as cover for forcing TikTok to divest from its Chinese parent company ByteDance. In doing so, officials recycled centuries-old “yellow peril” scripts—racist narratives portraying people of Asian descent as permanent outsiders and threats to American society.¹³¹ Despite domestic incorporation,¹³² extensive security measures,¹³³ and massive restructuring efforts, TikTok could not overcome suspicion rooted in its Chinese ownership. Under the threat of a shutdown in the United States, the company sold its U.S. operations to American owners.¹³⁴ The early fallout under new ownership corroborates the notion that the original security concerns were pretextual. The speculative threat of foreign influence has been traded for a very real domestic one.

Through its new infrastructure, which is capable of massive surveillance, TikTok now helps Immigration and Customs Enforcement target and violate people’s rights within our own borders.¹³⁵ Minoritized communities bear the heaviest burden of this surveillance apparatus, now wielded by an agency that operates with authoritarian impunity.¹³⁶ This outcome validates legal scholar Gil Gott’s warning that national security rhetoric is often used to give the state power to target nonwhite people without much oversight.¹³⁷ We are now living in a surveillance state where “security” actually means more control over Americans, particularly the most vulnerable. We need a new path forward. Future national security reviews should require specific evidence of actual threats, narrowly tailored remedies, and comparable treatment regardless of origin. Without such safeguards, “national security” will continue providing constitutional cover for exclusion, undermining both genuine security and equality.

130. *Id.*

131. *See supra* notes 31–35 and accompanying text.

132. *He, supra* note 97.

133. *Perault, supra* note 87.

134. *See supra* notes 79–80 and accompanying text.

135. *See supra* notes 127–28 and accompanying text.

136. *See supra* note 131 and accompanying text.

137. *See supra* note 20 and accompanying text.