FORGET IT, FLORIDA. IT'S CHINATOWN: THE RETURN OF IMMIGRANT LAND LAWS IN AMERICA

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"So the story of man runs in a dreary circle, because he is not yet master of the earth that holds him."

— Will Durant [1]

The United States is currently in the midst of a rebirth of what scholars have traditionally dubbed "Alien Land Laws" (hereinafter "Immigrant Land Laws").[2] These laws generally aim to regulate real estate acquisition and transactions by people of certain nationalities. They have a lengthy and distasteful presence in American history, with waves of such legislation enacted shortly after the Civil War and again as the United States entered both World War I and World War II, largely targeting Chinese and Japanese nationals. Today, we are seeing a reemergence of immigrant land laws being enacted across the United States at both the federal and state

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1. WILLIAM DURANT, THE STORY OF PHILOSOPHY 76 (1st ed. 1926).

2. While these laws have been historically dubbed "Alien Land Laws," I will use the term "Immigrant Land Laws" in this Note as the term "alien" emphasizes the assumed foreignness and difference of otherwise honest, law-abiding, and hard-working people living in the United States. Although this problematic language persists in statutes, judicial decisions, and some modern scholarship, the *University of Colorado Law Review* feels strongly its use outside of historical contexts should be retired. While I will not personally use the term "alien," I will also not modify other scholars' work or statutes that do. For the purposes of this Note, I will use the term "immigrant" to refer to persons from countries other than the United States but residing here who have yet to, or are unable to, become citizens—particularly in relation to the class of restrictive land laws targeting noncitizens.

levels.[3] *As in centuries past, sponsors and proponents of immigrant land laws advocate for their passage as a necessary form of protecting "good" Americans. In 1913, it was for their protection against minorities deemed a "menace" by racist legislators.*[4] *In 2023, it was purportedly to protect the progeny of those minorities and legislators in the United States against growing threats to national security.*[5]

Standing as a notable example within this legal landscape is Florida's Interests of Foreign Countries Act (IFCA), passed in 2023.[6] *As explained by both Florida's governor and the bill's sponsor, the Interests of Foreign Countries Act was designed to address concerns over foreign influence and espionage.*[7] *Contrary to its predecessors, which can hardly be defended as serving any purpose beyond restricting land ownership to*

3. *See infra* Part III.

4. *See* STATE BD. OF CONTROL OF CAL., CALIFORNIA AND THE ORIENTAL: JAPANESE, CHINESE, AND HINDUS 10 (1920) (report to Gov. William D. Stephens).

5. For purposes of this Note, I adopt the broad interpretation of "national security" used by federal agencies of the United States—including the Environmental Protection Agency, Department of Justice, and Department of Homeland Security—to mean a national effort focused on "prevent[ing] terrorist attacks . . . reduc[ing] the vulnerability of the United States to terrorism, [and] minimiz[ing]" damage from terrorist attacks that occur. Homeland Security Act of § 101, 6 U.S.C. § 111(b)(1)(A)–(C). The term "encompasses the national defense, foreign intelligence and counterintelligence, international and internal security, and foreign relations." U.S. Dep't of Just., Just. Manual § 9-90.010 (2024); *see, e.g.*, *National Security Defined*, U.S. EPA, https://www.epa.gov/national-security/national-security-defined [https://perma.cc/PXE4-4EHE] (last updated July 2, 2024). For a discussion of the various uses and understandings of the term "national security," see J. Benton Heath, *Making Sense of Security*, 116 AM. J. INT'L L. 289 (2022).

6. FLA. STAT. §§ 692.201–205 (2024).

7. Press Release, Ron DeSantis, Governor, Fla., Governor Ron DeSantis Cracks Down on Foreign Countries of Concern, Launches SecureFlorida for Property Registration (Nov. 13, 2023) [hereinafter Press Release, Nov. 13, 2023], https://www.flgov.com/eog/news/press/2023/governor-ron-desantis-cracks-down-foreign-countries-concern-launches-secureflorida [https://perma.cc/C5JM-WFYN]; Press Release, Ron DeSantis, Governor, Fla., Governor Ron DeSantis Cracks Down on Communist China (May 8, 2023) [hereinafter Press Release, May 8, 2023], https://www.flgov.com/2023/05/08/governor-ron-desantis-cracks-down-on-communist-china [https://perma.cc/K9HC-XZQB]; Jim Turner, *State Senate Seeks to Fast-Track Curbs to China Land Purchases*, LAW.COM (Mar. 16, 2023, 11:34 AM), https://www.law.com/dailybusinessreview/2023/03/16/state-senate-seeks-to-fast-track-curbs-to-china-land-purchases [https://perma.cc/289V-6FQ7]. Although not the only state to recently enact such legislation, the Interests of Foreign Countries Act takes a more expansive approach than most, thereby raising significant questions about its constitutionality.

White persons,[8] *the IFCA and laws like it introduce new complexities. While the history of immigrant land laws is an essential component to examining the IFCA and its potential for discriminatory effects, to stop the analysis there would be as shortsighted as ignoring this history altogether. Rather, to understand the IFCA and its impact on civil liberties and national security, it is necessary to critically examine both the history of immigrant land laws in the United States as well as the legitimate national security threats facing the United States in the twenty-first century.*

This Note, therefore, seeks to weigh these competing concerns, balancing the real need to address national security threats while protecting the civil liberties of all people living in America from indiscriminate attack. As part of this exercise, we must also weigh the possibility, or even likelihood, that laws like the IFCA may actually weaken the very thing it purportedly seeks to strengthen: national security.

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INTRODUCTION

On May 8, 2023, the state of Florida passed one of the most restrictive immigrant land laws[9] seen in the United States since the 1920s. Known as the Interests of Foreign Countries Act (IFCA), the law grounds its purpose in national security concerns, targeting certain non-U.S. citizens from China,[10] Russia, Iran, North Korea, Venezuela, and Syria.[11] The law

9. *See* discussion *infra* Part III.

10. For purposes of this Note, I will refer to the People's Republic of China as "China." While I understand the People's Republic of China "refers to the country as a geographic and political entity," I have largely opted to use "China" throughout this Note for consistency and simplicity. *See Style Guide: PRC, China, CCP or Chinese?*, ASIA MEDIA CTR. (Aug. 6, 2024), https://www.asiamediacentre.org.nz/news/style-guide-prc-china-ccp-or-chinese [https://perma.cc/FZZ5-PZUL].

11. §§ 692.201–.205.

restricts such individuals from owning, whether via purchase or other means, land in and around specific areas of concern, such as military bases.[12] Section 204 places further limitations on certain parties with ties to China, barring them from owning land *anywhere* in the state.[13]

While China undoubtedly poses a valid national security threat to the United States,[14] the IFCA and laws like it oversimplify the complexities of this highly intricate and multifaceted challenge by focusing primarily on immigration status. In doing so, the IFCA fails to recognize and account for potentially devastating ramifications. Namely, as it currently stands, the IFCA is likely to perpetuate the marginalization of and discrimination against immigrants and the Asian American community as a whole, advancing xenophobia and racism across the country.[15] Such consequences risk deepening social divisions at a time when the United States is exceedingly polarized on issues of politics, immigration, and its future. Beyond the psychological toll on the psyche of its citizens that such a society takes, an increasingly divided and polarized society also presents a weakened nation more susceptible to national security threats. Thus, the IFCA has the potential to undermine the very thing it purports to protect: national security,[16] thereby extending its reach beyond just noncitizens living in Florida to all Americans.

While some of the IFCA's opponents have sought to achieve its demise through the courts by challenging it as unconstitutional, such a strategy is unlikely to succeed. Even if challengers succeed in invalidating the IFCA on legal grounds, there remains the problem of adequately addressing the national security concerns that motivated the rebirth of immigrant land laws while avoiding the detrimental effects that their forebears had in the twentieth century.

This Note, therefore, seeks to explore that problem and propose solutions. It begins with the historical background of

12. *Id.*; Press Release, May 8, 2023, *supra* note 7; A.G. Gancarski, *China Crackdown Bills Keep Moving in Senate, House*, FLA. POL. (Apr. 12, 2023), https://floridapolitics.com/archives/602752-china-crackdown-bills-keep-moving-in-senate-house [https://perma.cc/EW7D-LGQJ].

13. § 692.204.

14. *See* discussion *infra* Section II.A.

15. For a discussion on how the IFCA may perpetuate discrimination, see discussion *infra* Section III.C.

16. The impact of a highly divided and polarized society on national security are explained further below. *See* discussion *infra* Section II.A.

immigrant land laws in the United States in Part I, highlighting the motivations behind the enactment of such laws in the twentieth century. Part II then shifts to the contemporary legal and societal factors that have contributed to the resurgence of immigrant land laws in America. Section A focuses on the recent rise in anti-Asian discrimination and sentiment in the United States, with particular attention paid to the role of the COVID-19 pandemic. Section B investigates China's growing influence on world affairs and, in turn, its role within the current U.S. national security landscape. Together, these developments offer insight into Florida's decision to pass the IFCA and provide context for understanding how it may impede civil liberties and fuel racial tensions.

Part III follows, exploring the Interests of Foreign Countries Act itself, including what it covers, its goal, and its practical effects. It also considers similar pieces of legislation proposed and passed in the United States, analyzing how they differ from Florida's law. Part IV outlines the most viable legal challenges to the IFCA, explaining why each will likely fail to invalidate the IFCA. It incorporates a look at existing legal challenges to the law and probable outcomes of those claims. Part V proposes the most realistic solution to addressing the IFCA's discriminatory outcomes while balancing national security concerns, thereby promoting a more just and inclusive society. This solution entails a combination of federal authority and the expansion of agencies, particularly through modifications to existing regulations and the extension of the federal government's authority over real estate transactions financed by foreign actors. It concludes by proposing solutions to combatting the deteriorating effects the IFCA may have on civil rights while bolstering the necessary tools to maintain national security. Acknowledging and explaining the challenges the judiciary faces when solving the problematic effects on civil liberties the IFCA promises, it proposes a combination of congressional and agency action.

I. HISTORY OF IMMIGRANT LAND LAWS IN AMERICA AND RELEVANT LEGAL AUTHORITY

Laws targeting specific ethnic demographics in response to perceived fears or societal frustrations are, unfortunately, commonplace in U.S. history. Such laws ran the gambit: from directly and indirectly restricting the number of immigrants

from countries with non-White populations [17] to regulating their behavior upon arrival. [18]

This Part provides relevant background information to understand the history and legality of immigrant land laws. As noted above, immigrant land laws focus on restricting certain immigrant populations—for example, Japanese and Chinese—from acquiring any interest in land. [19] The first two Sections discuss the legislative history and policies underlying immigrant land laws by highlighting a few key examples. Section I.A.3 discusses judicial interpretation of such laws, providing background for the governing legal standards that Florida's IFCA will likely be subjected to in legal challenges.

A. Mid-Twentieth Century Wave of Land Laws

Throughout the nineteenth and twentieth centuries, the United States passed a wave of anti-immigrant legislation primarily targeting Chinese and Japanese individuals. Such sentiment can be traced back to the construction of the transcontinental railroad in the 1860s, drawing large numbers of Chinese immigrants to the United States to work for considerably lower wages than their White counterparts. [20] Once the railroad was finished, however, many of these immigrants

17. *See, e.g.*, Page Act of 1875, 18 Stat. 477, 477–78 (repealed 1974) (prohibiting immigration of people from "China, Japan, or any Oriental country" for "immoral purposes," effectively discouraging Asian women from immigrating); Scott Act of 1888, 25 Stat. 504 (repealed 1942) (barring Chinese laborers previously excluded from the Chinese Exclusion Act from returning to the United States); *see also* discussion *infra* Section I.A.1.

18. For example, by dictating who they could marry. CAL. CIV. CODE §§ 60, 69 (1872) (prohibiting interracial marriage between "a [W]hite person with a [N]egro, [M]ulatto, or Mongolian"), *invalidated by* Perez v. Sharp, 198 P.2d 17 (Cal. 1948).

19. *See, e.g.*, S.H.S., *The Constitutionality and Scope of the Alien Land Laws*, 72 U. PA. L. REV. 148, 149 (1924) (defining "alien land laws" as "prohibiting aliens ineligible to citizenship from acquiring any interest in land"); Karen Leonard, *Punjabi Farmers and California's Alien Land Law*, 59 AGRIC. HIST. 549, 550 (1985) (defining California's "alien land laws" as being "devised to prevent the rapid Japanese progress in agriculture by prohibiting the leasing and owning of agricultural land by noncitizens"); Masao Suzuki, *Important or Impotent? Taking Another Look at the 1920 California Alien Land Law*, 64 J. ECON. HIST. 125, 125 (2004) (defining "alien land laws" as those barring "Japanese immigrant farmers from buying or leasing farmland").

20. *See Completion of the Transcontinental Railroad*, LIBR. OF CONG., https://guides.loc.gov/this-month-in-business-history/may/completion-transcontinental-railroad [https://perma.cc/TBR5-X989].

migrated to urban areas.[21] Their presence in cities brought them to the forefront of public consciousness, serving as the target of White city dwellers' wrath toward their cheap labor and "otherness."[22] Such wrath spurred an influx of legislation targeting Asian immigrants.[23]

In 1870, for instance, Congress passed the Naturalization Act, outlining which immigrants were eligible for U.S. citizenship and which were not. "Aliens being free [W]hite persons," were deemed eligible to apply for citizenship, along with "aliens of African nativity and . . . persons of African descent."[24] Immigrants who did not fit into either category were presumed ineligible. The law laid the groundwork for a long history of race-based immigration policy in the United States, allowing "[W]hite" persons from anywhere in the world to naturalize as well as those with "African" heritage—that is, Black persons.[25] Because Asian immigrants were considered neither "[W]hite" nor "African," they were largely excluded from applying for U.S. citizenship.[26]

Congress built on the Naturalization Act in 1882 when it passed one of its most sweeping federal laws targeting a specific demographic: the Chinese Exclusion Act.[27] The Act imposed a ten-year ban on the immigration of Chinese laborers to the United States, with a handful of narrow exceptions for specific

21. Keith Aoki, *No Right to Own?: The Early Twentieth-Century "Alien Land Laws" as a Prelude to Internment*, 40 B.C. L. REV. 37, 41–42 (1998).

22. *Id.* at 38, 42–44; Polly J. Price, *A "Chinese Wall" at the Nation's Borders: Justice Stephen Field and the Chinese Exclusion Case*, 43 J. SUP. CT. HIST. 7, 7–8 (2018) (noting headlines in popular newspapers of the 1880s like *Anti-Coolie Agitation*, L.A. TIMES, Nov. 28, 1885; *Still They Come: The Chinese Exclusion Act a Dead Letter in San Francisco*, DETROIT FREE PRESS, Sept. 21, 1889; *Exclusion of the Chinese: Efforts to Manufacture Political Capital Out of the Question*, BALT. SUN, Sept. 21, 1888).

23. *See* Aoki, *supra* note 21, at 42–44. For examples of such laws, see sources cited *supra* notes 17–18.

24. Naturalization Act of 1870, ch. 542, § 7, 16 Stat. 254, 256.

25. Marian L. Smith, *Race, Nationality, and Reality*, 34 PROLOGUE MAG. 91, 92 (2002).

26. *See* Aoki, *supra* note 21, at 39–40 (noting that Japanese people were barred from naturalizing under the Naturalization Act as they were "non-[W]hite"). Individuals of Asian descent do not constitute "[W]hite persons" as used in Naturalization Act and were thereby ineligible for citizenship. *See, e.g.*, Ozawa v. United States, 260 U.S. 178, 197 (1922); *In re* Yamashita, 70 P. 482, 483 (Wash. 1902).

27. *See* Chinese Exclusion Act of 1882, ch. 126, 22 Stat. 58 (repealed 1943).

professions like merchants, teachers, students, and officials.[28] By defining "laborers" to include both skilled and unskilled workers,[29] the Act severely limited Chinese people's ability to relocate to the United States. Chinese immigrants already living in the United States at the time of its passage were also affected, as they were forced to acquire special certificates if they sought to leave and reenter the country.[30] Proponents of the Act argued it would address concerns that Chinese laborers immigrating to the United States would endanger the "good order of certain localities."[31]

Unfortunately, this anti-Asian sentiment was not short-lived. When the Chinese Exclusion Act expired in 1892, Congress extended it for another ten years through the Geary Act, which was made permanent in 1902.[32] In 1924, Congress built on this legislation with the Johnson-Reed Act.[33] The Act used the 1890 U.S. Census as a fixed baseline for determining how many immigrants to admit each year.[34] Under the Act, admission of immigrants from certain countries was limited to just 2 percent of the total number of people living in the United States from that country in 1890.[35] For example, if only one hundred Italians resided in the United States in 1890, then the Act would only permit two Italians to immigrate in any

28. *Id.* The cherry-picking of skilled professionals for immigration from Asia, which the United States continued into the twentieth century with the 1965 Immigration and Naturalization Act, has contributed to what many academics dub the "model minority myth," resulting in extensive harms to Asian American communities. *See, e.g.*, SANJOY CHAKRAVORTY, ET AL., THE OTHER ONE PERCENT: INDIANS IN AMERICA 68–69 (2016); Noorie Baig, How South Asian Activists Queer the Model Minority Myth: A Critical Oral History Project 11–19 (Dec. 7, 2022) (PhD dissertation, University of New Mexico), https://digitalrepository.unm.edu/cgi/viewcontent.cgi?article=1163&context=cj_etds [https://perma.cc/SWX6-D2RQ]; Neil G. Ruiz, et al., *Asian Americans and the 'Model Minority' Stereotype*, PEW RSCH. CTR. (Nov. 30, 2023), https://www.pewresearch.org/race-and-ethnicity/2023/11/30/asian-americans-and-the-model-minority-stereotype [https://perma.cc/EQ74-M46H].

29. Chinese Exclusion Act of 1882 § 15.

30. *Id.* §§ 4–7.

31. *Id.* § 1.

32. Geary Act, ch. 60, 27 Stat. 25 (1892) (amended 1893) (repealed 1943); *Chinese Exclusion Act (1882)*, NAT'L ARCHIVES, https://www.archives.gov/milestone-documents/chinese-exclusion-act [https://perma.cc/8T6K-Z2B8].

33. Immigration Act of 1924, Pub. L. No. 68-139, ch. 190, 43 Stat. 153.

34. *Id.*

35. § 11(a), 43 Stat. at 159.

subsequent year.[36] While more recent census data was available, Congress selected the 1890 U.S. Census to encourage immigration from western and northern Europe, while minimizing immigration from elsewhere.[37] These laws were effective in reducing Chinese immigration, shrinking the Chinese diaspora in the United States from 105,465 in 1890 to 89,863 in 1900 to a mere 61,639 in 1920.[38] Together, these laws reduced the numbers of Chinese, Japanese, and other Asian descendants from immigrating to the United States and largely excluded all Asian immigrants from ever becoming citizens.

The racist motives underlying the passage of laws like the Chinese Exclusion Act and the Johnson-Reed Act are difficult to argue. That said, it seems Congress made some attempt to obscure these motives, however minimal. For instance, by using census data from thirty years prior as a basis for how many immigrants to admit—a facially neutral quota system, rather than an outright immigration ban from non-White countries—the Johnson-Reed Act could arguably be said to have been based on a relatively neutral quota system. All the while, such a system operated to suppress immigration from countries outside western and northern Europe. Other legislation took a more direct approach, like Oregon's 1857 Constitution, explicitly barring any "Chinaman" from holding real property.[39]

Beginning with California's 1913 immigrant land law, most immigrant land laws and other legislation targeting immigrants adopted the former approach, using the facially neutral phrase "aliens ineligible for citizenship," often without mentioning specific countries or ethnicities.[40] For instance, Florida's

36. *Id.*; Jill Weiss Simins, *"America First": The Ku Klux Klan Influence on Immigration Policy in the 1920s*, UNTOLD IND. (Apr. 3, 2024), https://blog.history.in.gov/tag/johnson-reed-act [https://perma.cc/ZT57-V2Q6] (noting the annual quota for German immigrants was around 51,000 people, compared to one hundred for Syrian immigrants).

37. *See* H.R. REP. NO. 350, at 13 (1924) (explaining the committee made the decision "after long and careful consideration of every element in the entire immigration problem"); *see also* MATTHEW FRYE JACOBSON, WHITENESS OF A DIFFERENT COLOR: EUROPEAN IMMIGRANTS AND THE ALCHEMY OF RACE 82–83, 85 (1998).

38. RONALD TAKAKI, STRANGERS FROM A DIFFERENT SHORE 111–12 (1990).

39. OR. CONST. art. XV, § 8 (repealed 1946).

40. Emma Newcombe, *How States Used Land Laws to Exclude and Displace Asian Americans*, GOVERNING (Nov. 23, 2022), https://www.governing.com/context/how-states-used-land-laws-to-exclude-and-displace-asian-americans [https://perma.cc/B4HF-6RHD]. Such an approach

Constitution included a provision of basic rights, explaining that all persons are equal under the law with the right to acquire property "except that the ownership, inheritance, disposition and possession of real property by *aliens ineligible for citizenship* may be regulated or prohibited by law."[41] Regardless of language, however, the effect of state-passed immigrant land laws was the same: Asian immigrants were prohibited from purchasing land in much of the country. Though some fifteen states enacted their own immigrant land laws to bar a multitude of Asian Americans from purchasing land in the United States,[42] two states exemplify this history particularly well: California and Washington.

The proceeding Sections will further explore immigrant land laws in America, using those passed in California before moving on to those in Washington as examples. It concludes by examining the resulting judicial interpretation of such laws.

1. The Introduction of Immigrant Land Laws in California

> *"But the so-called 'Alien Land Law' did more to disturb friendly relations . . . ."*
>
> — Japanese Association of America, 1919[43]

In 1913, California passed its first immigrant land law by an overwhelming majority.[44] The law barred both individuals

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benefitted governments by allowing them to argue the law was not racist and merely mimicked the federal government's policies by incorporating its term "aliens ineligible for citizenship." *Id.*

41. FLA. CONST. art. I, § 2 (amended 2018) (emphasis added). In 2018, Floridians finally voted to remove the above quoted language from the state's Constitution after a similar amendment failed in 2008. Roberto Martinez & Carolyn Timmann, *Amendment 11: Property Rights; Removal of Obsolete Provision; Criminal Statutes*, FLA. BAR J., Sept.–Oct. 2018, at 22.

42. *Alien Land Laws in California*, UNIV. OF TEX. AT AUSTIN DEP'T OF HIST., https://immigrationhistory.org/item/alien-land-laws-in-california-1913-1920 [https://perma.cc/NP23-UURW]; *see also* Henry Gannett, *Map of the Foreign-Born Population of the United States, 1900*, GILDER LEHRMAN INST. OF AM. HIST., https://www.gilderlehrman.org/history-resources/spotlight-primary-source/map-foreign-born-population-united-states-1900 [https://perma.cc/X6N7-3BCY].

43. STATE BD. OF CONTROL OF CAL., *supra* note 4, at 210.

44. Act of May 19, 1913, ch. 113, 1913 Cal. Stat. 206 (repealed 1952); *see* Paolo E. Coletta, *"The Most Thankless Task": Bryan and the California Alien Land Legislation*, 36 PAC. HIST. REV. 163, 173 (1967) (noting that the bill passed the

ineligible for citizenship and corporations run by a majority of such individuals from "acquir[ing], possess[ing], enjoy[ing], transmit[ing],] and inherit[ing] real property, or any interest therein" in the state.[45] In 1913, Ulysses Webb—bill sponsor and California Attorney General—candidly articulated the purpose of the law, stating that:

> The fundamental basis of all legislation upon this subject, State and Federal, has been, and is, race undesirability. It is unimportant and foreign to the question under discussion whether a particular race is inferior. The simple and single question is, is the race desirable . . . . It [the immigrant land law] seeks to limit their presence by curtailing their privileges which they may enjoy here; for they will not come in large numbers and long abide with us if they may not acquire land. And it seeks to limit the numbers who will come by limiting the opportunities for their activity here when they arrive.[46]

Likewise, as put by the then California Governor William Stephens, California sought to prevent the "gravest menace of serious conflict" that it believed would occur should Japanese immigrants continue settling in the state.[47]

The racist, exclusionary policy behind California's 1913 law grew increasingly popular not just in California[48] but across the country. For instance, bill supporter and future President

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California Senate by a vote of 35 to 2 and the Assembly by a vote of 72 to 3); Edwin E. Ferguson, *The California Alien Land Law and the Fourteenth Amendment*, 35 CALIF. L. REV. 61, 66–67 (1947) (noting California's first immigrant land law was passed in 1913). *But see* HARRY ALVIN MILLIS, THE JAPANESE PROBLEM IN THE UNITED STATES: AN INVESTIGATION FOR THE COMMISSION ON RELATIONS WITH JAPAN APPOINTED BY THE FEDERAL COUNCIL OF THE CHURCHES OF CHRIST IN AMERICA 208–10 (1915) (noting instances of earlier regulation of land ownership by immigrants though conceding California "was the first to deprive Japanese subjects of any substantial right over real property which they had enjoyed"); Gabriel J. Chin & Anna Ratner, *The End of California's Anti-Asian Alien Land Law: A Case Study in Reparations and Transitional Justice*, 29 ASIAN AM. L.J. 17, 21 (2022) (explaining California laws restricting land usage by non-White immigrants before 1913 but noting, "no statute actually deprived noncitizens of other races of the ability to hold title to land until 1913").

45. Ch. 113, § 1, 1913 Cal. Stat. 206.

46. Oyama v. California, 332 U.S. 633, 657 (1948) (Murphy, J., concurring) (citing a speech before the Commonwealth Club of San Francisco on August 9, 1913 quoted in YAMATO ICHIHASHI, JAPANESE IN THE UNITED STATES 275 (1932)).

47. STATE BD. OF CONTROL OF CAL., *supra* note 4, at 10.

48. Ferguson, *supra* note 44, at 62–68.

Woodrow Wilson was a vocal advocate of such a racist policy. In 1912, while serving as New Jersey's governor,[49] he wrote to a wealthy Californian businessman who had backed the bill that he supported a national policy of exclusion or restricted immigration when it came to "Chinese and Japanese coolie immigration."[50] His rationale, likely shared by many of California's legislators at the time, was his belief that "[w]e cannot make a homogeneous population out of people who do not blend with the Caucasian race . . . . Oriental coolieism will give us another race problem to solve, and surely we have had our lesson."[51]

Accordingly, California's immigrant land law was careful to preserve land ownership by western and northern European persons while limiting land ownership by Asian persons. Drafters only limited the rights of individuals "ineligible for citizenship," rather than all immigrants. Such language thereby preserved the rights of European immigrants—who could become citizens—and corporations owned by such immigrants to purchase land.[52]

However, such language also provided a work-around for many Asian Americans to circumvent the law. While the law clearly prohibited land ownership by certain individuals who themselves immigrated, many such immigrants had since started families in the United States. By putting property in the names of their American-born children, Asian Americans could effectively own the land and make themselves the managers of the property.[53] In response to this growing practice, the law was

49. JOHN MILTON COOPER, JR., WOODROW WILSON: A BIOGRAPHY 126, 189 (2011).

50. ROGER DANIELS, THE POLITICS OF PREJUDICE 55 (2d ed. 1977) (quoting Letter from Governor Woodrow Wilson, Governor, N.J., to James D. Phelan, Sen., Cal. (May 3, 1912) (on file with the University of California, Berkeley Library)).

51. *Id.*; Don Wolfensberger, Woodrow Wilson Int'l Ctr. for Scholars, Introductory Essay at the Congress Project Seminar: Congress and Anti-Immigrant Sentiment in America, Congress and the Immigrant Dilemma: Is a Solution in Sight? 5 (Mar. 12, 2007), https://www.wilsoncenter.org/sites/default/files/media/documents/event/immigration-essay-intro-corrected.pdf [https://perma.cc/XV3G-7BGS].

52. Ferguson, *supra* note 44, at 66.

53. Scott A. Merriman, *Alien Land Laws*, IMMIGR. TO U.S. (May 25, 2011, 3:43 PM), https://immigrationtounitedstates.org/334-alien-land-laws.html [https://perma.cc/PK69-EFJM] ("The 1920 law also prohibited naming as trustees persons ineligible for citizenship and effectively reversed the traditional burden of proof, requiring people to prove themselves innocent."); *see* U.S. CONST. amend. XIV, § 1 ("All persons born . . . in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside.").

amended in 1920 to require all people purchasing land in another's name to prove they were not doing so to circumvent the 1913 law.[54]

2. The Proliferation of Immigrant Land Laws: Washington Follows Suit

Following California's lead, Washington passed its own immigrant land law one year after California's 1920 amendment, going into effect on March 8, 1921.[55] Washington's immigrant land law sought to expand the existing anti-immigrant land provisions in its 1889 Constitution[56] by going beyond mere land ownership to restrict certain immigrants from leasing and renting property.[57] Washington's statute defined "alien" similarly to California's, subjecting Chinese and Japanese immigrants to its restrictions due to their federal status of being "ineligible for citizenship."[58] Moreover, the law foreclosed on all existing mortgages held by such immigrants.[59] It aimed to ensure widespread enforcement by also criminalizing the sale or holding of land in trust for an immigrant as well as failure to report immigrant land use violations.[60]

As in California, legislators supporting Washington's immigrant land laws appeared motivated by concerns over the state's growing racial diversity, particularly in the agricultural sector—a sentiment echoed by Florida lawmakers almost a century later. By 1920, Japanese farmers produced almost 75 percent of all vegetables consumed in King County—home to the state's most populous city of Seattle—as well as roughly half

54. Merriman, *supra* note 53.

55. Act of Mar. 8, 1921, ch. 50, 1921 Wash. Sess. Laws 156–60 (repealed 1967).

56. WASH. CONST. art. II, § 33 (1889) (repealed 1966) ("The ownership of lands by aliens, other than those who in good faith have declared their intention to become citizens of the United States, is prohibited in this state . . . . Every corporation, the majority of the capital stock of which is owned by aliens, shall be considered an alien for the purposes of this prohibition.").

57. Ch. 50, §§ 1(b), 2, 1921 Wash. Sess. Laws at 156–57.

58. The law prohibited land ownership by immigrants except those who "in good faith declared his intention to become a citizen of the United States." §§ 1(a), 2. Because federal law made most Asian immigrants ineligible for U.S. citizenship, they could not "in good faith declare" an intention to become a citizen and were thus subjected to the law.

59. Ch. 50, § 5, at 158.

60. Ch. 50, § 7, at 158–59.

of the dairy products.[61] Perceived as a threat to White farmers, a state representative introducing the bill in the House lamented "the alarming situation" of "aliens, and especially Japanese, . . . acquiring our agricultural lands. For the purpose of prohibiting and stopping this evil I have drawn a measure which prevents aliens owning land."[62]

However, as had been done in California and elsewhere, Asian Americans got around the law by having their minor child with birthright citizenship hold the land deed.[63] In response, Washington amended the law to also criminalize land owned by a minor child of an immigrant.[64] As a result, families determined to hold land in their own names often resorted to transferring the title to a trusted White lawyer—a strategy that carried significant risk if the attorney proved untrustworthy. The laws effectively reduced the number of Japanese farms from 699 in 1920 to less than 250 by 1925.[65] Facing such draconian provisions, challengers soon took these laws to court.

3. Judicial Interpretation of Immigrant Land Laws

In 1923, the Supreme Court of the United States heard challenges to both Washington's and California's immigrant land laws. Soon after Washington's law took effect in 1921, a White Washingtonian citizen named Frank Terrace declared his intention to lease part of his farmland to a Japanese man subjected to the law, Mr. Nakatsuka.[66] Mr. Terrace challenged the law in court, arguing it violated the Due Process and Equal Protection Clauses of the Fourteenth Amendment.[67] Upon reaching the Supreme Court, both claims were promptly dismissed. As to the first, the Supreme Court determined that, absent a federal provision to the contrary, states have the power

61. John Caldbick, *Washington Governor Louis Hart Signs Stringent Alien Land Bill on March 8, 1921*, HISTORYLINK (Feb. 9, 2018), https://www.historylink.org/file/2124 [https://perma.cc/MN64-YHTG].

62. STAN FLEWELLING, SHIRAKAWA: STORIES FROM A PACIFIC NORTHWEST JAPANESE AMERICAN COMMUNITY 72–73 (1st ed. 2002).

63. Nicole Grant, *White Supremacy and the Alien Land Laws of Washington State*, UNIV. OF WASH. SEATTLE C.R. & LAB. HIST. PROJECT, https://depts.washington.edu/civilr/alien_land_laws.htm [https://perma.cc/X6BB-5M7P].

64. *Id.*

65. *Id.*

66. Terrace v. Thompson, 263 U.S. 197, 211–12 (1923).

67. *Id.* at 211.

to deny "aliens the right to own land within its borders."[68] So long as the legislation applied "alike and equally to all aliens," it could not be found to be capricious, an arbitrary deprivation of property, nor a transgression of the Due Process Clause.[69] In other words, because Washington's immigrant land law applied to limit *all* immigrants "ineligible for citizenship" from acquiring land, as opposed to only specific, named populations, it did not "transgress the [D]ue [P]rocess [C]lause."[70]

Mr. Terrace's second claim—that the law denied equal protection to immigrants "ineligible for citizenship"—also failed to persuade the Supreme Court. It reasoned that the rights, privileges, and duties of immigrants are drastically different than those of citizens.[71] Affording deference to congressional decisions on immigration, it found that Congress "may grant or withhold the privilege of naturalization upon any grounds or without any reason,"[72] including its determination to allow only free White persons and persons of African descent to petition for citizenship.[73] Citing the lower court's upholding of the law, the Supreme Court found:

> It is obvious that one who is not a citizen and cannot become one lacks an interest in, and the power to effectually work for the welfare of, the state, and, so lacking, the state may rightfully deny him the right to own and lease real estate within its boundaries. If one incapable of citizenship may lease or own real estate, it is within the realm of possibility that every foot of land within the state might pass to the ownership or possession of noncitizens.[74]

Building on that logic, the Supreme Court concluded that states may properly assume congressional classifications are reasonable and, in turn, impose laws restricting land use based on those categories.[75] It found that the law did not discriminate based on race but rather on immigration status—that is, on who could and could not become citizens. The Court then went on to

68. *Id.* at 217.
69. *Id.* at 218.
70. *Id.*
71. *Id.*
72. *Id.* at 220.
73. *Id.*
74. *Id.* at 220–21.
75. *Id.* at 220.

determine whether the law violated a treaty with Japan then in effect, ultimately finding that it did not.[76]

The validity of California's immigrant land law was also upheld by the Supreme Court in its 1923 session in *Porterfield v. Webb*.[77] Presenting similar facts and argument, the Supreme Court reaffirmed that states have the fundamental right to ban certain immigrants from owning and even possessing land within the state, finding California's law constitutional.[78] Citing *Terrace*, it found the classification between those eligible for citizenship and those not a valid classification, noting that "states have wide discretion" in making such classifications.[79] Thus the laws remained on the books; however, their enforcement intensified in the early 1940s when Japan's position as an Axis power made it America's public enemy number one.[80]

Accordingly, in 1947 California's immigrant land law was once again brought before the Supreme Court, this time in response to the recent uptick in escheat actions[81] instituted by the state.[82] In *Oyama v. California*, plaintiff Fred Oyama challenged the law as a minor holding title to land for his father—a Japanese immigrant ineligible for citizenship. He made similar arguments as those presented in *Porterfield* and *Terrace*, claiming that the law's applicability to him, an American citizen, violated the Due Process and Equal Protection Clauses of the Constitution.[83]

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76. *Id.* at 223.

77. Porterfield v. Webb, 263 U.S. 225, 231 (1923).

78. *Id.*

79. *Id.* at 233.

80. Oyama v. California, 332 U.S. 633, 661–62 (1948) (Black, J., concurring) (noting that "[a]t least 79 escheat actions have been instituted by the state since the [immigrant land law] became effective" and "[c]uriously enough, 59 of the 73 Japanese cases were begun by the state . . . during the period when the hysteria generated by World War II magnified the opportunities for effective anti-Japanese propaganda"); *see also Polling and Pearl Harbor*, ROPER CTR. (Dec. 1, 2016), https://ropercenter.cornell.edu/blog/polling-and-pearl-harbor [https://perma.cc/G8N3-7EE2].

81. *Escheat*, BLACK'S LAW DICTIONARY (12th ed. 2024) (defining escheat as the "[r]eversion of property (esp. real property) to the state upon the death of an owner who has neither a will nor any legal heirs"); *see* Ferguson, *supra* note 44, at 71. Though many affected landholders who acquired land through their American-born child or other loophole had legal heirs, California laws operated to deprive them of their right to convey good title any time prior to escheat proceedings.

82. *See Oyama*, 332 U.S. at 661–62 (Black, J., concurring).

83. *Id.* at 635–36 (majority opinion).

Writing for the majority, Chief Justice Vinson agreed with Mr. Oyama, applying an early version of what would become strict scrutiny to find that California presented no "compelling justification" for denying a citizen his right to own property solely because of his father's country of origin.[84] Thus, the Supreme Court concluded, Mr. Oyama's right to equal protection and "privileges as an American citizen" had been violated.[85] However, the Supreme Court declined to address whether the remaining provisions of the law violated the Constitution. Specifically, it did not consider whether "ineligible aliens" like Mr. Oyama's father were denied equal protection, leaving open the authority of the states to continue regulating noncitizens' use and control of land.[86]

Oyama paved the way for California's immigrant land law's final invalidation. In 1948, the California Supreme Court struck down the law on equal protection grounds, finding "that the Fourteenth Amendment protects aliens as well as citizens from arbitrary discrimination."[87] It determined that the law, while facially classifying only on the basis of eligibility for citizenship, effectively discriminated on the basis of race by excluding Japanese immigrants from acquiring land, but not other immigrants—like Brits or Norwegians.[88] It thus found immigrant land laws "immediately suspect," and subject to "the most rigid scrutiny."[89]

In its analysis, the California Supreme Court rejected the state's alleged interest in limiting the use and ownership of land only "to persons who are loyal and have an interest in the welfare of the state."[90] It concluded that such an interest was not the true purpose of the legislation and, even if it were, there was no reasonable relationship between this alleged interest and the law's land use classifications.[91] The court reasoned that "[j]ust as eligibility to citizenship does not automatically engender loyalty or create an interest in the welfare of the country, so ineligibility does not establish a lack of loyalty or the

84. *Id.* at 640.
85. *Id.*
86. *Id.* at 647.
87. Sei Fujii v. State, 242 P.2d 617, 625 (Cal. 1952).
88. *Id.*
89. *Id.*
90. *Id.* at 627.
91. *Id.*

absence of interest in the welfare of the country."[92] The case never reached the U.S. Supreme Court, leaving *Oyama*, *Terrace*, and *Porterfield* as the reigning federal precedents on immigrant land laws to this day.

In sum, while some state courts like California's effectively invalidated laws restricting land ownership on the basis of citizenship status in their respective states, there exists no similar federal ban on immigrant land laws. Rather, in *Oyama*, *Terrace*, and *Porterfield*, the Supreme Court gave the stamp of approval to such laws that restrict land ownership based on congressionally designated immigration laws. Thus, this legal landscape suggests that immigrant land laws enacted in present day—like the IFCA—may well be deemed constitutional uses of state authority. That said, the context in which California's and Washington's immigrant land laws were challenged—where immigrants were often vilified and racism permeated the national fabric—must also be taken into account in considering whether such laws, like the IFCA, would receive the same treatment from federal courts as its predecessors did in the twentieth century.

The next Part thus examines the current cultural context that has facilitated the resurgence of immigrant land laws in America. Given the racist history associated with such laws in the United States, it scrutinizes the contemporary racial dynamics surrounding the primary targets of the IFCA: Asian Americans. While drawing a direct parallel between the racist motivations behind immigrant land laws of the past and those of today would be a misguided oversimplification, the historical narrative presented in Part I underscores the importance of considering the racial context in which these new immigrant land laws are being enacted. Such an examination is crucial for assessing the IFCA's impact on Floridians, Americans more broadly, and particularly on Asian Americans. Following this, Section B explores the stated justification behind the IFCA: national security.

II. DISCRIMINATION OR PROTECTING STATE SECURITY? THE CROSSROADS OF NATIONAL SECURITY AND RACISM

The United States has long struggled with the challenge of separating national and local crises from its domestic treatment

92. *Id.*

of individuals from the countries linked to those crises. For example, in 1916, acts of racism against Italians skyrocketed after a polio epidemic was determined to have begun in an Italian neighborhood of New York City.[93] A few years later, during World War I, anti-German sentiment in the United States led to the changing of many German-sounding names for foods, schools, and towns.[94] For instance, Germania, Iowa was changed to Lakota;[95] New Berlin, Ohio became North Canton;[96] and, perhaps most famously, sauerkraut was remarketed as "liberty cabbage."[97] American contempt toward Germany and its people was also expressed through acts of violence and the systematic elimination of German culture in towns and cities throughout the country, from book burning to outlawing the German language in schools.[98]

About two decades later, as the United States entered World War II, Americans' contempt shifted toward Japan. Japanese Americans found themselves targets of racist propaganda, violence, discrimination, and finally forced relocation and incarceration—all because of their ethnic identity.[99] Despite such horrific measures taken during World War II, this tradition persisted into the 1960s. As America intensified its involvement in the increasingly unpopular Vietnam War, anti-Vietnamese sentiment spread through the media, fueled by racist cartoons

93. Donald G. McNeil Jr., *In Reaction to Zika Outbreak, Echoes of Polio*, N.Y. TIMES (Aug. 29, 2016), https://www.nytimes.com/2016/08/30/health/zika-outbreak-echoes-of-polio.html [https://perma.cc/UQ97-HKDS].

94. *Shadows of War*, LIBR. OF CONG., https://www.loc.gov/classroom-materials/immigration/german/shadows-of-war [https://perma.cc/Y7GF-WY5N].

95. *Lakota, Iowa*, KOSSUTH CNTY., https://kpacedc.com/county-community/community-living/lakota [https://perma.cc/9L5M-7AF2].

96. *History of the City of North Canton*, CITY OF N. CANTON, OHIO, https://northcantonohio.gov/208/History [https://perma.cc/N4WT-7H7A].

97. Jonathan Baker, *Freedom Fries, Liberty Cabbage & the Myth*, HIGH PLAINS PUB. RADIO (Feb. 21, 2018, 7:30 AM), https://www.hppr.org/hppr-arts-culture-history/2018-02-21/freedom-fries-liberty-cabbage-the-myth [https://perma.cc/U2Y4-R26Y].

98. *See Shadows of War*, *supra* note 94; *see also* Meyer v. Nebraska, 262 U.S. 390, 396–97 (1923) (challenging a 1919 Nebraska law prohibiting, among other things, the German language from being taught in schools).

99. *See, e.g.*, Campus Writing Program, *WWII Propaganda: The Influence of Racism*, UNIV. OF MO. CAMPUS WRITING PROGRAM (Mar. 30, 2012), https://cwp.missouri.edu/2012/wwii-propaganda-the-influence-of-racism [https://perma.cc/4QWU-3RF9]; *Anti-Japanese Propaganda*, HAMPTON RD. NAVAL MUSEUM, https://www.history.navy.mil/content/dam/museums/hrnm/Education/EducationWebsiteRebuild/AntiJapanesePropaganda/AntiJapanesePropagandaInfoSheet/Anti-Japanese percent20Propagandapercent20info.pdf [https://perma.cc/6VHA-REX6].

and rhetoric.[100] Most recently, the war on terror has led to widespread violence, discrimination, fear, and negative media depictions of Muslims and Arab people in both the United States and abroad.[101]

Unfortunately, this trend seems to persist even into the twenty-first century, with the United States now turning its wrath toward China. This Part sketches the reasons China and its people have become an enemy in the eyes of many Americans[102] by first exploring America's most recent brush with a national crisis marked by racial animosity: COVID-19. As seen time and again in U.S. history, many Americans confronted with this crisis misdirected their anger not just to China but to all individuals of Chinese descent, leading to outbreaks of racial violence and prejudice. Section A delves into this crisis, exploring its impact on racial dynamics in the United States and examining the treatment—and mistreatment—of Chinese Americans through the lenses of violence and the law.

A. Effect of COVID-19 on Asian Americans

On January 7, 2020, Chinese public health officials identified a novel coronavirus as the cause of an outbreak in Wuhan province, China.[103] Just thirteen days later, on January 20, the first lab-reported case of COVID-19 was confirmed in the United States in Snohomish County, Washington.[104] Following the World Health Organization's

100. *See, e.g.*, Karen L. Ishizuka, *Looking Like the Enemy: Political Identity & the Vietnam War*, PAC. COUNCIL ON INT'L POL'Y (May 7, 2019), https://www.pacificcouncil.org/newsroom/looking-enemy-political-identity-vietnam-war [https://perma.cc/876C-3NMZ]; David Roediger, *Gook: The Short History of an Americanism*, MONTHLY REV., Mar. 1992, at 50–54.

101. *See, e.g.*, Tariq Amin-Khan, *New Orientalism, Securitisation and the Western Media's Incendiary Racism*, 33 THIRD WORLD Q. 1595 (2012); Ariane Chebel d'Appollonia, *Researching the Civil Rights and Liberties of Western Muslims*, 46 REV. MIDDLE E. STUD. 200 (2012); JOCELYNE CESARI, MUSLIMS IN THE WEST AFTER 9/11: RELIGION, POLITICS AND LAW (2009).

102. Laura Silver et al., *Americans Are Critical of China's Global Role – as Well as Its Relationship with Russia*, PEW RSCH. CTR. (Apr. 12, 2023), https://www.pewresearch.org/global/2023/04/12/americans-are-critical-of-chinas-global-role-as-well-as-its-relationship-with-russia [https://perma.cc/79XW-6YNW] (noting that about four in ten Americans describe China as an enemy of the United States).

103. *CDC Museum COVID-19 Timeline*, CDC, https://www.cdc.gov/museum/timeline/covid19.html [https://perma.cc/TF4H-2JHX] (last updated Mar. 15, 2023).

104. *Id.*

declaration of a public health emergency, President Trump declared COVID-19 a national emergency on March 13 and statewide lockdown orders quickly ensued.[105] As deaths, isolation, and frustrations rose, so too did many Americans' inclination to hold a culprit responsible: China. Indeed they did, through lawsuits, proposed legislation, proclamations, public rhetoric, and even violence.[106]

For instance, in July 2020, a White Floridian with no criminal record began harassing an Asian American family by sending threatening messages to them through Facebook.[107] He followed up on the threats by painting anti-Asian slurs on their cars and placing nails in their driveway.[108] Similar attacks occurred throughout the United States: Asian Americans were told to "go back to China" and were accused of being disease-riddled because they looked Asian.[109] In Texas, for example, a man followed what he believed to be a Chinese family inside a grocery store, believing they came to the United States to "spread[] the disease around."[110] Once inside, he took hold of some kitchen knives that were on sale and started attacking the family, slashing the father and his six-year-old child.[111]

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105. *Id.*

106. *See, e.g.*, Jacques deLisle, *Pursuing Politics Through Legal Means: U.S. Efforts to Hold China Responsible for COVID-19*, FOREIGN POL'Y RSCH. INST. (May 12, 2020), https://www.fpri.org/article/2020/05/pursuing-politics-through-legal-means-u-s-efforts-to-hold-china-responsible-for-covid-19 [https://perma.cc/QS4Z-96CA]; *Covid-19 Fueling Anti-Asian Racism and Xenophobia Worldwide*, HUM. RTS. WATCH (May 12, 2020, 3:19 PM), https://www.hrw.org/news/2020/05/12/covid-19-fueling-anti-asian-racism-and-xenophobia-worldwide [https://perma.cc/PLQ7-U9FP].

107. Gina Martinez, *Florida Man, 34, Who Threatened Asian Family over Facebook Under a 'Squirrel' Profile and Vandalized Cars with Slurs Is Sentenced for Hate Crime*, DAILY MAIL (July 15, 2021, 11:05 AM), https://www.dailymail.co.uk/news/article-9791687/Florida-man-34-threatened-Asian-family-vandalized-cars-slurs-charged-hate-crime.html [https://perma.cc/8DVF-UN5D].

108. *Id.*

109. Natalie Escobar, *When Xenophobia Spreads Like a Virus*, NPR (Mar. 4, 2020, 12:37 AM), https://www.npr.org/2020/03/02/811363404/when-xenophobia-spreads-like-a-virus [https://perma.cc/D7A2-V9XQ]; *see also* Maina Chen, *Woman Kicked in the Face by Teens at Bus Stop in Minnesota*, NEXTSHARK (May 5, 2020), https://nextshark.com/woman-kicked-bus-stop-minnesota [https://perma.cc/7DLT-9QH8].

110. Andy Rose, *A Man Who Attacked and Blamed an Asian Family for Covid-19 Pleaded Guilty to Hate Crimes Charges*, CNN (Feb. 23, 2022, 6:57 PM), https://www.cnn.com/2022/02/23/us/texas-man-pleads-guilty-hate-crimes-attack-asian-family/index.html [https://perma.cc/H9G3-HY43].

111. *Id.*

Such attacks have been widespread in recent years. From 2019 to 2020, the Federal Bureau of Investigation (FBI) reported a 77 percent increase in the number of Asian hate crimes in the United States.[112] Asian Americans reported experiencing discrimination—including insults, violence, and service refusal—at a rate of 29 percent,[113] while one in four feared members of their household would be attacked solely for being Asian.[114] Such feelings led 32 percent of Asian Americans to report that they had changed their behaviors to avoid such harassment and violence.[115] Americans' anger toward China and its people was not limited to individual instances of crime, however. Rather, it permeated public forums and discourse, echoed by journalists, public figures, and even legislative bodies.

Politicians like Donald Trump, for instance, quickly bolstered these anti-Chinese frustrations by venting on social media and pursuing available political avenues.[116] On January 31, 2020, President Trump announced a travel ban for those who recently traveled to China, excluding only U.S. citizens, permanent residents, and their immediate family.[117]

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112. *2020 FBI Hate Crimes Statistics*, U.S. DEP'T OF JUST., https://www.justice.gov/crs/highlights/2020-hate-crimes-statistics [https://perma.cc/28Q7-6K5N] (last updated Apr. 4, 2023).

113. Brendan Lantz & Marin R. Wenger, *Bias and Hate Crime Victimization During the COVID-19 Pandemic*, FLA. STATE UNIV. COLL. OF CRIMINOLOGY & CRIM. JUST., https://criminology.fsu.edu/sites/g/files/upcbnu3076/files/2020-10/covid-19-hate-crime-report-lantz-wenger_final.pdf [https://perma.cc/H9Q2-CTQ6].

114. Leila Fadel, *With Racial Attacks on the Rise, Asian Americans Fear for Their Safety*, NPR, https://www.npr.org/sections/health-shots/2021/10/13/1045746655/1-in-4-asian-americans-recently-feared-their-household-being-targeted-poll-finds [https://perma.cc/R7GS-HT2L] (last updated Oct. 22, 2021, 9:46 AM).

115. Lantz & Wenger, *supra* note 113 (noting that behavior changes reported include avoiding certain situations and being careful about one's language, wording, and appearance).

116. Notably, even President Trump, a divisive leader and outspoken admirer of North Korea and Russia's leaders—two of the United States' staunchest adversaries—has expressed hostility and suspicion of China. *See, e.g.*, *Russia: Trump & His Team's Ties*, CONGRESSMAN ERIC SWALWELL, https://swalwell.house.gov/issues/russia-trump-his-administration-s-ties [https://perma.cc/ZW3L-GH2Y] (last updated Jan. 7, 2024, 1:40 PM); Steve Benen, *Trump Touts Kim Jong Un as North Korea's 'Absolute Leader'*, MSNBC (May 28, 2024, 10:14 AM), https://www.msnbc.com/rachel-maddow-show/maddowblog/trump-touts-kim-jong-un-north-koreas-absolute-leader-rcna154294 [https://perma.cc/RLF7-K6S2].

117. Proclamation No. 9984, 85 Fed. Reg. 6709 (Jan. 31, 2020). The proclamation barred people from entering the United States if they'd been anywhere in China—except Hong Kong and Macau—within the last fourteen days. *Id.* It excluded

Trump explained that his ban would "stop the spread of the China virus" from what he called "heavily infected China."[118] The "China virus" was just one of many terms that President Trump and his Administration commonly used to refer to COVID-19, in addition to terms such as "Kung-Flu" and the "Wuhan virus."[119] Likewise, Trump publicly blamed "our enem[y]" China for the pandemic.[120] This rhetoric soon multiplied on social media and news platforms, with other politicians, journalists, and the public eagerly joining in.[121] Trump's approach to the pandemic left many Americans feeling uninhibited to release their frustrations toward China, and by extension its people, for "causing" the pandemic, whether through protests, violence, or the legislative process.

As the wave of anti-Chinese rhetoric surged, so too did legislation targeting Asian persons. Bills introduced in Congress expressly blamed China for the devastation caused by the pandemic and sought to establish means of redress. The bipartisan Never Again International Outbreak Prevention Act bill, for instance, proposed waiving sovereign immunity for countries that "intentionally misled the international

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certain individuals like U.S. citizens and lawful permanent residents from the ban. *Id.*

118. Stephen Braun et al., *AP Fact Check: Trump and the Virus-Era China Ban That Isn't*, ASSOCIATED PRESS (July 18, 2020, 6:43 AM), https://apnews.com/article/asia-pacific-anthony-fauci-pandemics-politics-ap-fact-check-d227b34b168e576bf5068b92a03c003d [https://perma.cc/TTC5-3Z26].

119. *See, e.g.*, Donald J. Trump (@realDonaldTrump), TRUTH SOC. (Mar. 4, 2023 10:46 PM), https://truthsocial.com/@realDonaldTrump/posts/109966263156390280 [https://perma.cc/H22N-TVC6] ("The world has finally woken to the truth about the Wuhan virus. Now it's time to hold China to account."); Los Angeles Times, *Trump Calls the Coronavirus the 'Kung Flu'*, YOUTUBE (June 20, 2020), https://www.youtube.com/watch?v=fN2tgtcKGck [https://perma.cc/L3FN-JAK2] ("I can name kung flu, I can name nineteen different versions of them.").

120. *See, e.g.*, Kimmy Yam, *Trump Doubles Down That He's Not Fueling Racism, but Experts Say He Is*, NBC NEWS (Mar. 18, 2020, 4:16 PM), https://www.nbcnews.com/news/asian-america/trump-doubles-down-he-s-not-fueling-racism-experts-say-n1163341 [https://perma.cc/E49G-Z6MQ]; Seashia Vang, *Trump Adds to Asian-Americans' Fears*, DIPLOMAT (Apr. 1, 2020), https://thediplomat.com/2020/04/trump-adds-to-asian-americans-fears [https://perma.cc/SA6S-ATYW]. *See generally* Donald Trump, *Archive of President Trump's Tweets*, TRUMP TWITTER ARCHIVE, https://www.thetrumparchive.com [https://perma.cc/2VSM-9QZU].

121. *See* Trump, *supra* note 119; *see also* Kimmy Yam, *Anti-Asian Bias Rose After Media, Officials Used 'China Virus,' Report Shows*, NBC NEWS (Sept. 29, 2020, 1:25 PM), https://www.nbcnews.com/news/asian-america/anti-asian-bias-rose-after-media-officials-used-china-virus-n1241364 [https://perma.cc/RYZ7-4CYX].

community" on the outbreak of a pandemic, namely China.[122] Similar bills, such as the Holding the Chinese Communist Party Accountable for Infecting Americans Act of 2020, proposed the same: to allow private citizens and state attorneys general to sue China for what they deemed its intentional cover-up of COVID-19.[123] Other bills proposed imposing sanctions on China and implementing travel restrictions for Chinese nationals. Although none of the bills actually made it out of committee and did little to address pandemic-related risks, they contributed to escalating tensions and deepening prejudice toward China.

It is against this backdrop that Florida passed the IFCA. While frustrations against Asian Americans spurred by COVID-19 are not explicitly mentioned in the IFCA's text nor by its sponsors as a basis for its passage, the nationwide hostilities toward minorities that spurred immigrant land laws in the twentieth century—whether due to impending war or fear of economic or political control—make this context important to consider. The next critical consideration in analyzing contemporary immigrant land laws is their modern justification: national security, with a particular focus on China's role. This analysis is two-fold: (1) assessing how China practically threatens U.S. national security and, in turn, the appropriate scope of responsive policy this threat warrants; and (2) evaluating whether this response could, like COVID-19, threaten to worsen divisions and lead to a rise in anti-Asian discrimination.

Thus, the next Section explores China's position as a national security threat. This includes a look at the present national security environment in America, how it has contributed to a rise in negative sentiments toward China among Americans, and to what extent government action may be necessary to combat real threats to national security.

122. Never Again International Outbreak Prevention Act, H.R. 3583, 117th Cong. § 4 (2021). This bill was sponsored by Pennsylvania Reps. Fitzpatrick, a Republican, and Lamb, a Democrat. *Id.* It was referred to, but failed to pass, the Committees on Foreign Affairs, Financial Services, the Judiciary, and Oversight and Reform. H.R. 3583, 117th Cong., 167 CONG. REC. 94 (2021).

123. Holding the Chinese Communist Party Accountable for Infecting Americans Act of 2020, H.R. 6519, 116th Cong. (2020); Civil Justice for Victims of Coronavirus Act, S. 3674, 116th Cong. (2020); *see also* deLisle, *supra* note 106.

B. National Security: China as a Growing Threat

Throughout the past century, U.S. authorities have increasingly regarded China[124] as an escalating threat. The Chinese Communist Party was founded in 1921.[125] Twenty-eight years later, the Party founded the People's Republic of China as the country's sole ruling party.[126] Over the subsequent two decades, there was a notable absence of diplomatic ties between China and the United States as America worked to counteract the spread of communism worldwide in the aftermath of World War II.[127] In the 1970s, the Nixon Administration sought to cool tensions between the two countries and began organizing plans to end over twenty years of isolationism. In 1971, he sent his national security advisor and close confidant Henry Kissinger on an official trip to China. One year later, the president made a highly publicized trip to the country himself.[128]

As a result of Nixon's trip, the United States eventually established diplomatic ties with China, paving the way for exchanges of business, scholarship, tourism, and more. Consequently, other Western countries began doing the same, gradually elevating China's influence and position on the world stage throughout the latter half of the twentieth century.[129] However, as its political, economic, technological, and military capabilities advanced and its role in global affairs expanded, the West increasingly began to view China as a threat to its power, influence, and economy. This was especially true in the United States, whose leaders recognized that China's enormous population and resources made it uniquely positioned to achieve

124. In this instance, I use the term "China" to refer only to the Chinese civilization at-large, rather than the geo-political entity as described in *supra* note 10.

125. *Chronology of U.S.-China Relations, 1784–2000*, U.S. DEP'T OF STATE OFF. OF THE HISTORIAN, https://history.state.gov/countries/issues/china-us-relations [https://perma.cc/CP2Z-Y2W8].

126. *Id.*

127. *The Chinese Revolution of 1949*, OFF. OF THE HISTORIAN: U.S. DEP'T OF STATE OFF. OF THE HISTORIAN, https://history.state.gov/milestones/1945-1952/chinese-rev [https://perma.cc/CUX3-QG7X].

128. *50 Years Later: Richard Nixon's Historic Visit to China*, GW TODAY (Mar. 2, 2022), https://gwtoday.gwu.edu/50-years-later-richard-nixons-historic-visit-china [https://perma.cc/TZD9-ZX68] (interviewing two leading experts on U.S.-China relations).

129. *Id.*

its aspirations of being a prosperous, dominating world power.[130]

China has since leveraged these resources to advance its objectives, emerging as a major global power.[131] In pursuit of its goals, China has resorted to counterintelligence, unfair business practices, human rights violations, and espionage.[132] It has imposed censorship measures to limit its citizenry's access to information, including from U.S. companies and media installations, and Internet platforms remain severely restricted.[133] Freedom of speech and expression are also hindered, with even minor criticism of the government punishable with lengthy prison terms.[134] Academics and members of ethnic minorities, most notably the Uyghurs—a

130. Jeffrey Bader, *Meeting the China Challenge: A Strategic Competitor, Not an Enemy*, *in* THE FUTURE OF U.S. POLICY TOWARD CHINA (Ryan Hass et al. eds., 2020), https://law.yale.edu/sites/default/files/area/center/china/document/1-introduction-jeffrey-bader-v2.pdf [https://perma.cc/M39B-WUJG]; OFF. OF THE SEC'Y OF DEF., U.S. DEP'T OF DEF., ANNUAL REPORT TO CONGRESS: MILITARY AND SECURITY DEVELOPMENTS INVOLVING THE PEOPLE'S REPUBLIC OF CHINA 1 (2023).

131. Bader, *supra* note 130, at 1–4.

132. *See The China Threat*, FBI, https://www.fbi.gov/investigate/counterintelligence/the-china-threat [https://perma.cc/UVN6-ZF52] (noting the Chinese government's practice of influencing lawmakers and public opinion to achieve foreign policy favorable to China, predatory lending, theft of intellectual property, and "brazen cyber intrusions"); *Executive Summary China: The Risk to Corporate America*, FBI, https://www.fbi.gov/file-repository/china-exec-summary-risk-to-corporate-america-2019.pdf/view [https://perma.cc/5TB4-9KZG] (noting the Chinese government's practice of requiring foreign companies to form joint ventures with Chinese companies before they may gain access to their markets and, in turn, using these collaborations to gain access to foreign proprietary information and its program of "national champions" utilized to steal intellectual property and trade secrets from foreign companies); *see also China: Unrelenting Crimes Against Humanity Targeting Uyghurs*, HUM. RTS. WATCH (Aug. 31, 2023, 8:00 AM), https://www.hrw.org/news/2023/08/31/china-unrelenting-crimes-against-humanity-targeting-uyghurs [https://perma.cc/D83R-R49X] (noting the Chinese government's "systematic attack against Uyghurs and Turkic Muslims in Xinjiang" includes "mass arbitrary detention, torture, enforced disappearances, mass surveillance, cultural and religious persecution, separation of families, forced labor, sexual violence, and violations of reproductive rights").

133. Sarah Cook, *How Beijing's Censorship Impairs U.S.-China Relations*, FREEDOM HOUSE (July 23, 2015), https://freedomhouse.org/article/how-beijings-censorship-impairs-us-china-relations [https://perma.cc/FTW7-ACV7].

134. Li Yuan, *China Persecutes Those Who Question 'Heroes.' A Sleuth Keeps Track.*, N.Y. TIMES (Feb. 26, 2021), https://www.nytimes.com/2021/02/26/business/china-online-censorship.html [https://perma.cc/D63K-HH32].

predominantly Muslim, Turkic-speaking ethnic group[135]—have been subject to unjust prison sentences, forced labor, and widespread surveillance. Such actions have been condemned by numerous human rights groups as well as by the United States.[136]

In addition to government-imposed abuses against its own citizens, China has carried out an array of covert operations against autonomous nations, including the United States.[137] While far from the only country to engage in such activities against sovereign nations,[138] the scale and sophistication of China's intelligence operations have consistently grown throughout the twenty-first century.[139] In recent years, China has ramped up its operations in an effort to undermine U.S. security and power through political coercion, influence, and the theft of weapons technology and intellectual property.[140] In other words, China routinely jeopardizes U.S. national security

135. Lindsay Maizland, *China's Repression of Uyghurs in Xinjiang*, COUNCIL ON FOREIGN RELS., https://www.cfr.org/backgrounder/china-xinjiang-uyghurs-muslims-repression-genocide-human-rights [https://perma.cc/Y3P8-HNK8] (last updated Sept. 22, 2022, 11:30 AM).

136. Simone McCarthy, *US Condemns China's Reported Life Sentence of Acclaimed Uyghur Scholar*, CNN (Oct. 2, 2023, 4:13 AM), https://www.cnn.com/2023/10/02/china/rahile-dawut-uyghur-academic-china-life-sentence-intl-hnk/index.html [https://perma.cc/KZ88-GN8K]. For a more in-depth look on China's human rights record, see BUREAU OF DEMOCRACY, H.R. & LAB., U.S. DEP'T OF STATE, CHINA 2022 HUMAN RIGHTS REPORT (2022), which explains various instances and methods of human rights violations in China for the year 2022).

137. *See The China Threat*, *supra* note 132. It should be noted that most, if not all, countries utilize spy operations in various ways, including the United States. *See* sources cited *infra* note 138.

138. THE OXFORD HANDBOOK OF NATIONAL SECURITY INTELLIGENCE 757–73, 806 (Loch K. Johnson ed., Oxford Univ. Press 2010) (describing intelligence and covert operations in Bulgaria, Czechoslovakia, Hungary, Poland, Israel, Romania, Argentina, South Africa, and Brazil, among others); Bruce D. Berkowitz & Allan E. Goodman, *The Logic of Covert Action*, NAT'L INT., Spring 1998, at 39 (listing instances of U.S. covert actions in countries such as Laos, Italy, Cuba, Iran, and the Philippines).

139. THE OXFORD HANDBOOK OF NATIONAL SECURITY INTELLIGENCE, *supra* note 138, at 505–17; CHRISTOPHER ANDREW, THE SECRET WORLD: A HISTORY OF INTELLIGENCE 752–56 (2018); David E. Sanger et al., *Emerging Details of Chinese Hack Leave U.S. Officials Increasingly Concerned*, N.Y. TIMES (Nov. 22, 2024), https://www.nytimes.com/2024/11/22/us/politics/chinese-hack-telecom-white-house.html [https://perma.cc/Q23E-4F7C] (describing Chinese operatives recent success in a large-scale hacking operation of Americans' phones).

140. *The China Threat*, *supra* note 132; *Survey of Chinese Espionage in the United States Since 2000*, CTR. FOR STRATEGIC & INT'L STUD. (Mar. 2023), https://www.csis.org/programs/strategic-technologies-program/archives/survey-chinese-espionage-united-states-2000 [https://perma.cc/YT7K-6MZ7].

by undercutting its strategic military, political, and economic standing by engaging in operations to disrupt U.S. government functions, influence foreign policy, and steal technology and trade secrets.[141] As part of these operations, Chinese authorities have purchased military secrets from Americans with a security clearance; recruited agents—typically Americans with access to confidential information—through sex[142] or money; and even purchased property next to military and research facilities.[143]

However, as Internet use becomes more ubiquitous, cyber espionage has emerged as one of China's most utilized and effective tools.[144] The country appears to have recognized cyberspace's value in geopolitics and intelligence as early as 2004, when Major General Li Bingyan proclaimed that China must implement a better cybersecurity policy to counter the United States.[145] Bingyan emphasized that such a policy should be based on deception and reflexive control.[146]

Since then, China has achieved great success in its cybersecurity operations, with 96 percent of all state-affiliated cyber espionage attempts in pursuit of intellectual property in 2013 originating in China.[147] In 2014, FBI Investigation Director James Comey explained, "There are two kinds of big

141. *See Terrorism and National Security Threats*, DEP'T OF HOMELAND SEC. INVESTIGATIONS, https://www.dhs.gov/hsi/investigate/terrorism-and-national-security-threats [https://perma.cc/FG9E-H82D] (last updated Apr. 22, 2024).

142. Curt Gresseth, *To Steal Secrets, Spies from China Bide Their Time, Former FBI Agent Says*, KSL NEWSRADIO (Dec. 11, 2020, 6:09 PM), https://kslnewsradio.com/1938541/spies-from-china [https://perma.cc/6BVS-SUQG]. For a look at the newly emerging "digital honeypot," see R. C. JOSHI & ANJALI SARDANA, HONEYPOTS: A NEW PARADIGM TO INFORMATION SECURITY (2011). *See also* PETER NAVARRO & GREG AUTRY, DEATH BY CHINA: CONFRONTING THE DRAGON – A GLOBAL CALL TO ACTION 138 (2011) ("[W]hile traditional spycraft has often relied on the 'honeypot trap'—a Mata Hari mistress to extract secrets during pillow talk or a lady of the night to put potential marks into compromising positions—China's virtual spymasters are now using a variety of digital 'honeypots' to hijack data from computers.").

143. *Survey of Chinese Espionage in the United States Since 2000*, *supra* note 140.

144. EXEC. OFF. OF THE PRESIDENT, NATIONAL SECURITY STRATEGY (2010); *IP and Strategic Competition with China: Part III—IP Theft, Cybersecurity, and AI: Hearing Before the Subcomm. on Cts., Intell. Prop., and the Internet of the H. Comm. on the Judiciary*, 118th Cong. 33 (2023) (statement of Benjamin Jensen, Senior Fellow, International Security Program, Center for Strategic and International Studies) ("China is the world's most egregious actor in terms of cyber espionage.").

145. Richard B. Andres, *Cyber Conflict and Geopolitics*, 2019 GREAT DECISIONS 69, 75.

146. *Id.*

147. *Id.*

companies in the United States. There are those who've been hacked by the Chinese and those who don't know they've been hacked by the Chinese."[148] In addition to its extensive history of hacking private companies' databases and software, China's cyber espionage activities have expanded into the public sector, targeting computers and databases belonging to governments and private citizens alike. In May 2023, for example, the Cybersecurity and Infrastructure Security Agency issued an advisory notice after discovering a cluster of online attacks by the Chinese government.[149] Eight months later, in January 2024, the Director of the FBI testified before a House subcommittee that China was preparing an extensive hacking operation targeting power grids, oil pipelines, and other essential forms of public infrastructure in the United States.[150]

China's cyber operations serve several primary objectives: (1) obtain information like intellectual property and sensitive data;[151] (2) disrupt certain pieces of critical infrastructure like water and wastewater treatment plants, hospitals, and energy systems;[152] and (3) exert social influence to undermine

148. *Id.*

149. *People's Republic of China State-Sponsored Cyber Actor Living off the Land to Evade Detection*, CYBERSECURITY & INFRASTRUCTURE SEC. AGENCY (May 24, 2023), https://www.cisa.gov/news-events/cybersecurity-advisories/aa23-144a [https://perma.cc/Q3G8-5265].

150. Glenn Thrush & Adam Goldman, *China Is Targeting U.S. Infrastructure and Could 'Wreak Chaos,' F.B.I. Says*, N.Y. TIMES (Jan. 31, 2024), https://www.nytimes.com/2024/01/31/us/politics/fbi-director-china-wray-.html [https://perma.cc/BM2D-GA8X].

151. *Top CVEs Actively Exploited by People's Republic of China State-Sponsored Cyber Actors*, CYBERSECURITY & INFRASTRUCTURE SEC. AGENCY (Oct. 6, 2022), https://media.defense.gov/2022/Oct/06/2003092365/-1/-1/0/Joint_CSA_Top_CVEs_Exploited_by_PRC_cyber_actors_.PDF [https://perma.cc/3VCD-8HMK]; Vaishali Basu Sharma, *Mounting Cyber Espionage and Hacking Threat from China*, MOD. DIPL. (Aug. 19, 2023), https://moderndiplomacy.eu/2023/08/19/mounting-cyber-espionage-and-hacking-threat-from-china [https://perma.cc/K9CK-8K7A]; *Cyber Espionage and the Theft of U.S. Intellectual Property and Technology: Hearing Before the Subcomm. on Oversight and Investigations of the H. Comm. on Energy and Com.*, 113th Cong. 33–43 (2023) (statement of James A. Lewis, Director and Senior Fellow, Technology and Public Policy Program, Center for Strategic and International Studies).

152. *PRC State-Sponsored Actors Compromise and Maintain Persistent Access to U.S. Critical Infrastructure*, CYBERSECURITY & INFRASTRUCTURE SEC. AGENCY (Feb. 7, 2024), https://www.cisa.gov/news-events/cybersecurity-advisories/aa24-038a [https://perma.cc/2ZW9-7268].

Americans' morale and faith in their government.[153] Cyber activities are the primary means through which China conducts psychological manipulation to shape public opinion and, by extension, policy in the United States and elsewhere.[154] In just six years, China spent around $268 million to influence politics in the United States.[155] It worked to stoke divisions in the United States on issues of race, class, social justice, and gun control.[156] In 2019, for example, Chinese operatives created thousands of fake social media accounts to manipulate discourse about China, shape opinions of its critics, and amplify political divisions.[157]

China's counterintelligence and economic espionage activities against the United States are well known by both the U.S. government and its citizens. The FBI lists the threat from China as its top counterintelligence priority.[158] As this "China threat" grows, so too does public disfavor of the country. When asked about China, U.S. respondents across political parties generally cited concerns about its human rights record, economy, and political system.[159] Many Americans do not view these features of China favorably, with some 83 percent of Americans reporting negative views of the country as of

153. Doug Livermore, *China's "Three Warfares" in Theory and Practice in the South China Sea*, GEORGETOWN SEC. STUD. REV. (Mar. 25, 2018), https://georgetownsecuritystudiesreview.org/2018/03/25/chinas-three-warfares-in-theory-and-practice-in-the-south-china-sea [https://perma.cc/5XPX-QFJR]; Ainikki Riikonen, *Decide, Disrupt, Destroy: Information Systems in Great Power Competition with China*, STRATEGIC STUD. Q., Winter 2019, at 130–33.

154. OFF. OF THE SEC'Y OF DEF., U.S. DEP'T OF DEF., *supra* note 130, at 95.

155. Joshua Kurlantzick, *China's Growing Attempts to Influence U.S. Politics*, COUNCIL ON FOREIGN RELS. (Oct. 31, 2022, 5:39 PM), https://www.cfr.org/article/chinas-growing-attempts-influence-us-politics [https://perma.cc/Y6DD-6VSX].

156. *Id.*

157. *Id.*; Dustin Volz, *China-Linked Internet Trolls Try Fueling Divisions in U.S. Midterms, Researchers Say*, WALL ST. J. (Oct. 26, 2022, 10:00 AM), https://www.wsj.com/articles/china-linked-internet-trolls-try-fueling-divisions-in-u-s-midterms-researchers-say-11666777403 [https://perma.cc/FWB2-C3YG].

158. *The China Threat*, *supra* note 132.

159. Shannon Schumacher & Laura Silver, *In Their Own Words: What Americans Think About China*, PEW RSCH. CTR. (Mar. 4, 2021), https://www.pewresearch.org/short-reads/2021/03/04/in-their-own-words-what-americans-think-about-china [https://perma.cc/HR26-7JNP].

March 2023,[160] and nearly 50 percent labeling the country as an "enemy to the United States."[161]

This sentiment is echoed on both sides of the political aisle in the United States. While Americans may differ on their reasoning for their negative views of China—some citing the COVID-19 pandemic and others pointing to China's role on the international stage—there is undoubtedly a growing sense of shared distrust, and at times even hostility, toward China. As these views gain traction, they influence policy discussions, leading to numerous bipartisan efforts to pass legislation aimed at addressing concerns related to China.

The next Part will focus on one such example of these legislative measures: Florida's Interests of Foreign Countries Act. Building on the context provided in this Part, Part III evaluates the IFCA in light of its goal—improving national security—while balancing concerns over Asian American discrimination laid out in Section II.A. and Part I.

III. STATE LAW TARGETING NATIONAL SECURITY THREATS: FLORIDA'S INTERESTS OF FOREIGN COUNTRIES ACT

This Part examines Florida's Interests of Foreign Countries Act itself. Section A begins by exploring the current legal terrain of state involvement in regulating immigration and the ensuing wave of recent immigrant land laws. After providing this background, Section B shifts its focus to the IFCA, explaining: (1) who is subject to the law; (2) the date the IFCA came into effect; (3) what actions are prohibited and allowed; (4) where its prohibitions apply; and (5) consequences for violating the law. Finally, Section C explores the practical impacts of the IFCA—how much land is covered, how many people will be affected, and the potential for discrimination.

A. State Regulation of Immigration

The interaction between state and federal legislation on matters related to immigration and national security, areas

160. Silver et al., *supra* note 102.

161. *Id.*; *see also* Nam Lam & Laura Silver, *Americans Name China as the Country Posing the Greatest Threat to the U.S.*, PEW RSCH. CTR. (July 27, 2023), https://www.pewresearch.org/short-reads/2023/07/27/americans-name-china-as-the-country-posing-the-greatest-threat-to-the-us [https://perma.cc/MVR8-SEVM].

traditionally within the federal government's scope of authority, is a messy one. The U.S. federal government generally enjoys plenary authority to regulate immigration pursuant to section eight of the Constitution.[162] Coupled with the Supremacy Clause, states have historically been barred from enacting laws on immigration.[163] That said, there are two ways in which states may play a judicially approved role in regulating immigration. First, states may typically regulate matters within their wheelhouse—such as crime, real property, contracts, and public welfare—that align with applicable federal law. Sitting as a prime example are the immigrant land laws of the twentieth century, which often survived judicial scrutiny under the guise of regulating a state interest—real property—while simply incorporating federal classifications on immigration.[164]

Second, while states are still largely prohibited from enacting laws covering "pure" immigration law, they have played an increasingly active role in governing what many academics dub "alienage law."[165] This body of law sets out the rights and obligations of noncitizens in the United States, specifically in the states enacting "alienage" laws, without

162. U.S. CONST. art. I., § 8, cl. 1, 4 ("The Congress shall have Power To . . . establish an uniform Rule of Naturalization."). This language has been interpreted by the judiciary to give Congress plenary power over immigration. *See* Kris W. Kobach, *Reinforcing the Rule of Law: What States Can and Should Do to Reduce Illegal Immigration*, 22 GEO. IMMIGR. L.J. 459, 464 (2008) ("[I]mmigration is a field in which the federal government enjoys plenary authority under Article I of the U.S. Constitution."); *see also* De Canas v. Bica, 424 U.S. 351, 354 (1976) ("Power to regulate immigration is unquestionably exclusively a federal power."), *superseded by statute*, Immigration Reform and Control Act of 1986, Pub. L. No. 99-603, sec. 101, § 274A(h)(2), 100 Stat. 3359, 3368, *as recognized in* Chamber of Comm. v. Whiting, 1563 U.S. 582 (2011).

163. Truax v. Raich, 239 U.S. 33, 42 (1915) ("The authority to control immigration—to admit or exclude aliens—is vested solely in the Federal Government.") (citing Fong Yue Ting v. United States, 149 U.S. 698, 713 (1893)); *see also* Galvan v. Press, 347 U.S. 522, 531 (1954) ("Policies pertaining to the entry of aliens and their right to remain here . . . is entrusted exclusively to Congress.").

164. *See supra* Section I.A.3.

165. *See* Gabriel J. Chin & Marc L. Miller, *The Unconstitutionality of State Regulation of Immigration Through Criminal Law*, 61 DUKE L.J. 251, 263–64 (2011). "Alienage" refers to the state or condition of being an immigrant. *Alienage*, Merriam-Webster, https://www.merriam-webster.com/dictionary/alienage [https://perma.cc/38SX-T9WU]; *see Alien*, Merriam-Webster, https://www.merriam-webster.com/dictionary/alien [https://perma.cc/2ZV4-BEK9]. Like the term "alien," "alienage" is harmful and a racially and politically charged term. While I will retain the term in quoted and statutory text, I will not personally use it. Instead, I will use "immigrant status" to refer to persons who are identified or discriminated against as persons from countries other than the United States, but residing here who have yet to, or are unable to, become citizens.

actually regulating their entry into the country—considered "pure" immigration law.[166] In other words, states may play a role in regulating *immigrants*, not *immigration*.[167] This legal dynamic, wherein immigration law is enforced by both the states and federal government, was largely developed throughout the last fifty years.[168]

For example, in 1996, Congress passed the Personal Responsibility and Work Opportunity Reconciliation Act (PRWORA),[169] accelerating state involvement in immigration by merging state power over citizen welfare with the traditionally federal power of regulating immigration.[170] To do so, PRWORA authorized states to deny various public benefits to noncitizens, including permanent residents, in an effort to curtail reliance on social services by immigrants.[171] With such explicit federal approval in hand, states were quick to enact legislation limiting access to state benefits and social services based on immigration status.[172] Proponents of PRWORA and ensuing state legislation advanced the idea that state-held powers—like police—and concerns—like the welfare of its people—are inevitably linked with immigration.[173] The Supreme Court ultimately agreed, finding that "the States do have some authority to act with respect to illegal aliens, at least where such action mirrors federal objectives and furthers a legitimate state goal."[174]

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166. Clare Huntington, *The Constitutional Dimension of Immigration Federalism*, 61 VAND. L. REV. 787, 796–97 (2008).

167. Chin & Miller, *supra* note 165, at 269.

168. For an in-depth look at this history, see Maria Fernanda Parra-Chico, *An Up-Close Perspective: The Enforcement of Federal Immigration Laws by State and Local Police*, 7 SEATTLE J. FOR SOC. JUST. 321, 323–30 (2008) and David Alan Sklansky, *Crime, Immigration, and Ad Hoc Instrumentalism*, 15 NEW CRIM. L. REV. 157, 163–89 (2012).

169. Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Pub. L. No. 104-193, §§ 400–451, 110 Stat. 2105, 2260–76 (codified in sections of 8 U.S.C., 42 U.S.C.).

170. *Id.*; *see also* Juliet P. Stumpf, *States of Confusion: The Rise of State and Local Power over Immigration*, 86 N.C. L. REV. 1557, 1585–86 (2008).

171. Personal Responsibility and Work Opportunity Reconciliation Act of 1996 §§ 400–451; Brendon O'Connor, *The Protagonists and Ideas Behind the Personal Responsibility and Work Opportunity Reconciliation Act of 1996: The Enactment of a Conservative Welfare System*, SOC. JUST., Winter 2001, at 4, 4–5.

172. *See* Stumpf, *supra* note 170, at 1560, 1598–99; *see also* Karla Mari McKanders, *The Constitutionality of State and Local Laws Targeting Immigrants*, 31 U. ARK. LITTLE ROCK L. REV. 579, 580 (2009).

173. Chin & Miller, *supra* note 165, at 269–72.

174. Plyler v. Doe, 457 U.S. 202, 225 (1982) (citing DeCanas v. Bica, 424 U.S. 351 (1976)).

Thus, if states can show their regulations are in line with federal law and further a legitimate state interest, there is room for them to legislate in this space.[175] This legal landscape has allowed states to supplement federal national security objectives, such as by using their police powers to pursue terrorists in the absence of available federal resources.[176] There, states are furthering a real interest—protecting their citizens from terrorism—using their traditional police powers while acting in accordance with federal policy: to apprehend identified terrorists. As for laws like the IFCA, the state's interest is arguably the protection and security of its citizenry, encompassing trade and food security concerns.[177] To address these state interests, Florida has opted to exercise a power duly reserved to states: use and ownership of land within its boundaries.[178]

Florida, however, is far from alone in using its powers to regulate property purchases and to enact laws restricting land ownership based on citizenship classifications. At the federal level, regulations require foreign investors and owners to disclose purchases of agricultural land—but there are no federal limits on the location or amount of land sold.[179] As a result, many states have sought to fill this gap by using their authority to regulate land use and transactions within their borders. In 2023, for example, a Louisiana state legislator introduced a bill prohibiting the leasing of property to any Chinese citizen lacking

175. Chin & Miller, *supra* note 165, at 253 (emphasis added) (describing the mirror image theory as a way "states can help carry out federal immigration policy by enacting and enforcing state laws that *mirror* federal statutes").

176. David A. Harris, *The War on Terror, Local Police, and Immigration Enforcement: A Curious Tale of Police Power in Post-9/11 America*, 38 RUTGERS L.J. 1, 3 (2006) (noting that "local law enforcement may have to carry the bulk of the everyday anti-terrorism work . . . using police power to thwart terrorists has become a top priority for every police agency, federal, state, or local").

177. FLA. S. PRO. STAFF OF THE COMM. ON RULES, BILL ANALYSIS AND FISCAL IMPACT STATEMENT, S. 55-264, Reg. Sess., at 2–4 (2023).

178. State authority to regulate land use and ownership is generally a valid exercise of state power. *See* Richard Barrows & Lawrence W. Libby, *The Federal Role in Land Use Policy: Arguments for and Against Federal Involvement*, 1982 INCREASING UNDERSTANDING PUB. PROBS. & POL'YS 45, 49 ("The federal Constitution does not identify direct control of privately-owned land as a federal prerogative. Therefore, this power resides in the states.").

179. RENÉE JOHNSON, CONG. RSCH. SERV., IF11977, FOREIGN OWNERSHIP AND HOLDINGS OF U.S. AGRICULTURAL LAND (2023).

permanent residence within fifty miles of a military facility.[180] Since Baton Rouge—home to Louisiana State University—houses such a facility, such a law would likely have a devastating impact on hundreds of Chinese students and employees with nonimmigrant visas.[181] Likewise, legislators in states such as California, New York, Texas, and South Carolina have proposed similar measures,[182] while fifteen other states have passed similar legislation in 2023.[183]

B. Florida's Interests of Foreign Countries Act

Florida quickly followed suit, with Governor Ron DeSantis signing Florida's Interests of Foreign Countries Act into law on May 8, 2023.[184] The law effectively prohibits individuals from "countr[ies] of concern" from acquiring any interest in agricultural land or any land located within ten miles of a military installation or a "critical infrastructure" facility.[185] It went into effect on July 1, 2023.[186]

As with similarly drafted laws in other states, the purported purpose behind the IFCA's passage is, in the words of Governor DeSantis, to counteract the malign influence of the Chinese Communist Party in the state of Florida.[187] In its March 2023

180. S.B. 91, 2023 Leg., Reg. Sess. (La. 2023). Louisiana is home to five military bases, one of which is in Baton Rouge with another two in Belle Chasse, about thirteen miles from New Orleans. *See Louisiana Installations*, MIL. INSTALLATIONS, https://installations.militaryonesource.mil/state/LA/state-installations [https://perma.cc/63Z8-RUTT].

181. *Louisiana Installations*, *supra* note 180. Louisiana State University reports hosting over 1,000 international students, with 165 international students from China alone in 2023—tailing only India at 175 for top countries represented. LSU INT'L SERVS., ANNUAL REPORT FALL 2023 at 8 (2023), https://www.lsu.edu/global-engagement/files/update-fall-2023-annual-report.pdf [https://perma.cc/4BAG-MYPX].

182. Edgar Chen, *With New "Alien Land Laws" Asian Immigrants Are Once Again Targeted by Real Estate Bans*, JUST SEC. (May 26, 2023), https://www.justsecurity.org/86722/with-new-alien-land-laws-asian-immigrants-are-once-again-targeted-by-real-estate-bans [https://perma.cc/W4J2-EPJM].

183. APRIL J. ANDERSON ET AL., CONG. RSCH. SERV., LSB11013, STATE REGULATION OF FOREIGN OWNERSHIP OF U.S. LAND: JANUARY TO JUNE 2023 at 1 (2023).

184. Press Release, May 8, 2023, *supra* note 7.

185. FLA. STAT. §§ 692.201–.205 (2024).

186. *Id.* A preliminary injunction was granted for *named* plaintiffs in *Yifan Shen v. Comm'r*, but only to the challenged sections—not the law in full. Yifan Shen v. Comm'r, No. 23-12737, 2024 U.S. App. LEXIS 2346, at *4 (11th Cir. Feb. 1, 2024).

187. Press Release, May 8, 2023, *supra* note 7.

bill analysis and fiscal impact statement, the Senate Committee on Judiciary cited a recent attempt by a Chinese food manufacturer to purchase property in North Dakota.[188] The sale was abandoned after the Assistant Secretary of the Air Force for Acquisition, Technology, and Logistics deemed the purchase a threat to U.S. national security.[189] Similarly, the report highlighted other instances where China, or its agents, engaged in activities aimed at advancing espionage efforts, compromising U.S. food security, stealing intellectual property, targeting dissidents living in America, and exerting coercive influence on a global scale.[190]

Although the legislative history of the IFCA appears to focus primarily on concerns relating to China,[191] the law extends its reach to entities associated with six other countries of "concern": Russia, Iran, North Korea, Cuba, Syria, and "the Venezuelan regime of Nicolás Maduro."[192] This broader inclusion is ostensibly intended to "restrict[] the issuance of government contracts or economic development incentives" to such countries.[193] Specifically, the IFCA applies to "foreign principals" of the seven identified countries, which means any one of the following:

> (1) the government or official of;
>
> (2) member of a political party or its subdivision in;
>
> (3) business structures including partnerships and corporations, or a subsidiary of such an entity, organized under the laws of or having its principal place of business in;
>
> (4) *any person who is not a citizen or lawful permanent resident of the United States and is domiciled in*;

188. FLA. S. PRO. STAFF OF THE COMM. ON RULES., BILL ANALYSIS AND FISCAL IMPACT STATEMENT, S. 55-264, Reg. Sess., at 2–4 (2023).
189. *Id.* at 2–3.
190. *Id.* at 3–4.
191. *See id.* at 2–4.
192. FLA. STAT. § 692.201(3) (2024).
193. FLA. S. JUDICIARY COMM., BILL SUMMARY OF CS/CS/SB 264—Interests of Foreign Countries, Reg. Sess., (2023), https://www.flsenate.gov/Committees/BillSummaries/2023/html/3145 [https://perma.cc/46XP-U6HB].

> (5) any person or entity in one of the above groups having a controlling interest in a legal entity formed for the purpose of owning real property in the state.[194]

The IFCA bars these "foreign principals" from—directly or indirectly—owning, having a controlling interest in, or acquiring certain real property in Florida, except a *de minimis* indirect interest.[195] As clarified by the Florida Department of Commerce, this prohibition does not include leases.[196] Subjected property includes agricultural land[197] and property, including residential, that is within ten miles of a military installation[198] or place of critical infrastructure.[199] Moreover, the law entirely prohibits the following from owning property anywhere in the state:

> (1) members or officials of the People's Republic of China; the Chinese Communist Party; or any other political party, or subdivision thereof, within China;
>
> (2) a partnership, association, corporation, organization, or similar institution organized under the laws of or maintaining a principal place of business in China, including any subsidiaries of such an organization;
>
> (3) non-permanent residents of the United States who are domiciled[200] in China; and

194. § 692.201(4)(a)–(e) (emphasis added) (paraphrasing the IFCA's definition of foreign principal).

195. § 692.203(1). Acquiring includes by purchase, grant, devise, and descent. *Id.*

196. FLA. ADMIN. CODE r. 73C-60.001(3), (10) (2024).

197. § 692.202(1).

198. § 692.203(1).

199. *Id.* Areas of "critical infrastructure" include chemical manufacturing facilities, refineries, electrical power plants, water treatment facilities or wastewater treatment plants, liquid natural gas terminals, telecommunications central switching offices, gas processing plants—including a plant used in the processing, treatment, or fractionation of natural gas—seaports, spaceport territories, or airports. § 692.201(2)(a)–(j) (defining critical infrastructure facility).

200. As determined by Florida's Department of Commerce for purposes of administering the statute, "domicile" is defined as "the place where the individual is physically present and intends to remain permanently or indefinitely." FLA. ADMIN. CODE r. 73C-60.001(7) (2024).

> (4) any person described above who owns a controlling interest in a legal entity created for the purpose of owning property in Florida.[201]

However, a natural person meeting one of these classifications may still purchase one residential property up to two acres in size if: (1) the property is not within five miles of a military installation; (2) the person maintains a visa or other official documentation granting them asylum in the United States and permission to be legally present in Florida; and (3) the purchase is in the name of the person holding such a visa as described in (2).[202]

In addition, the IFCA provides three other carve-outs. First, a legacy provision allows foreign principals who owned property subject to the law before its enactment to keep their property.[203] However, they must register it with the state and cannot obtain new property.[204] Second, the IFCA allows subjected individuals to acquire real property if done by "devise or descent, through the enforcement of security interests, or through the collection of debts."[205] However, property subject to the second exception must be sold, transferred, "or otherwise divest[ed]" within three years.[206] Likewise, the property must also be registered with the state.

Finally, real property otherwise subjected to the IFCA may be owned or acquired by those with only a "de minimus [*sic*] indirect interest" in it.[207] A de minimis indirect interest means that the ownership is "the result of [their] ownership of registered equities in a publicly traded company owning the land,"[208] and their ownership interest meets one of two thresholds. Owners of publicly traded stock amounting to less than 5 percent in one class of stock, or under 5 percent in the aggregate across multiple classes, meet the definition of de minimis.[209] Alternatively, holding a non-controlling interest in a non-foreign company also allows one to qualify as having a

201. § 692.204(1)(a).
202. § 692.204(2).
203. §§ 692.202(2), .203(2)–(3), .204(3).
204. §§ 692.202(2)–(3), .203(2)–(3), .204(3)–(4).
205. §§ 692.202(4), .203(5), .204(5).
206. *Id.*
207. §§ 692.202(1), .203(1), .204(1).
208. §§ 692.202(1), .203(1), .204(1)(b).
209. §§ 692.202(1)(a), .203(1)(a), .204(1)(b)(1).

de minimis interest provided that an investment adviser manages the company.[210]

Purchasers of real estate in Florida must sign affidavits declaring that they are not a "foreign principal" as defined by the IFCA. Failure to comply with the law—whether by purchasing or "knowingly" selling subjected property to a relevant individual—may result in civil penalties, a misdemeanor, a third-degree felony, or forfeiture of land to the state.[211] If convicted of a third-degree felony, violators may be subject to up to ten years in prison and a $5,000 fine.[212]

C. Practical Effects and Discriminatory Impacts of the Interests of Foreign Countries Act

While it remains to be seen whether the IFCA will effectively "counteract the malign influence of the Chinese Communist Party in the state of Florida,"[213] its impact on law-abiding immigrants will almost certainly be felt. The United States hosts roughly eleven *million* undocumented immigrants[214] and issued some ten million nonimmigrant visas in 2023 alone.[215] A significant number of these people call Florida home, placing Florida among the top five states with the highest population of undocumented immigrants as of 2016.[216] Boasting a long history of Cuban settlement dating back to the 1960s,[217] Florida has continued to attract thousands of

210. § 692.202(1)(a)–(b).

211. §§ 692.202(7)–(8), .203(7)–(9), .204(7)–(9).

212. §§ 692.204(8); §§ 775.082(3)(e), .082(9)(a)(3)(d), .083(1)(c), .084(4)(a)(3), .084(4)(a)(3)–(d)(3).

213. Press Release, May 8, 2023, *supra* note 7.

214. Jeffrey S. Passel & Jens Manuel Krogstad, *What We Know About Unauthorized Immigrants Living in the U.S.*, PEW RSCH. CTR. (July 22, 2024), https://www.pewresearch.org/short-reads/2024/07/22/what-we-know-about-unauthorized-immigrants-living-in-the-us [https://perma.cc/MU2B-7XSC].

215. *Table XV(A) Classes of Nonimmigrants Issued Visas (Including Border Crossing Cards) Fiscal Years 2019–2023*, U.S. DEP'T OF STATE, https://travel.state.gov/content/dam/visas/Statistics/AnnualReports/FY2023AnnualReport/FY2023_AR_TableXVA.pdf [https://perma.cc/DU3A-XCLG].

216. *U.S. Unauthorized Immigrant Population Estimates by State, 2016*, PEW RSCH. CTR. (Feb. 5, 2019), https://www.pewresearch.org/race-and-ethnicity/feature/u-s-unauthorized-immigrants-by-state [https://perma.cc/G6AJ-SA8W].

217. Mohamad Moslimani, Luis Noe-Bustamante & Sono Shah, *Facts on Hispanics of Cuban Origin in the United States, 2021*, PEW RSCH. CTR. (Aug. 16, 2023), https://www.pewresearch.org/fact-sheet/u-s-hispanics-facts-on-cuban-origin-latinos [https://perma.cc/K46M-7QLD].

immigrants each year, ranking as the fastest-growing state for undocumented people since 2019.[218] A large portion of these immigrants hailed from Venezuela, one of the IFCA's "countries of concern."[219] Similarly, Florida ranks among the top ten states with the largest Chinese American population.[220]

Upon arriving in Florida, most of these immigrants quickly find work in fields critical to Florida's economy, stability, and prosperity. For instance, Florida's construction industry employs the highest number of undocumented workers in the state—an essential sector to a state frequently plagued by destructive hurricanes.[221] Agriculture, too, hires thousands of undocumented workers a year, an industry that the IFCA was supposedly tailored to safeguard.[222] On the other hand, legally authorized workers like nonimmigrant visa holders—a group *Yifan Shen* suggests will be subject to the law[223]—are primarily working professionals vital to Florida's workforce. This includes individuals with exceptional abilities in fields like science, business, the arts, education, athletics, or entertainment such as Nobel Prize winners, professors, patent-holders, or athletes;[224] internationally recognized entertainers, artists, or performers; and specialty workers like engineers, doctors, nurses, and teachers.[225] The IFCA's potential reach into these sectors raises concerns about its broader impact on the state's economy and workforce.

Indeed, many industry and business leaders have already begun raising concerns about the IFCA's impact on the labor force and business. Fears that the IFCA will harm private

218. Passel & Krogstad, *supra* note 214.

219. *Profile of the Unauthorized Population: Florida*, MIGRATION POL'Y INST., https://www.migrationpolicy.org/data/unauthorized-immigrant-population/state/FL [https://perma.cc/83V4-AGPR] (listing Venezuela as the second-ranked country from which Florida's undocumented population comes from).

220. *Chinese American Demographics*, AMÉREDIA, https://www.ameredia.com/resources/demographics/chinese.html [https://perma.cc/C236-LSFA].

221. *U.S. Unauthorized Immigrant Population Estimates by State, 2016*, *supra* note 216.

222. *Id.*

223. *See infra* Section IV.A.

224. *O-1 Visa, Explained*, BOUNDLESS, https://www.boundless.com/immigration-resources/o-1-visa-explained [https://perma.cc/J8U5-BUJG].

225. *Temporary (Nonimmigrant) Workers*, U.S. CITIZENSHIP & IMMIGR. SERVS., https://www.uscis.gov/working-in-the-united-states/temporary-nonimmigrant-workers [https://perma.cc/4LN6-S3E2] (last updated July 24, 2024).

investors and businesses more than U.S. "enemies" abound and are not without merit.[226] Since many of the restricted locations in the IFCA are in or near Florida's biggest cities,[227] many workers subject to the law may feel pushed out, leading to resignations and relocations. On top of a potential shortfall in workers, the IFCA's business provisions have stoked concerns over its economic impact. By limiting the ability of subjected individuals to own stock and companies to own real property,[228] investments in companies like Plum Creek Timber, St. Joe Co., and Lennar[229] may well decline. Likewise, the IFCA may deter foreign investment because it restricts companies, partnerships, and other business structures from investing in or purchasing land in the state.[230] Such an impact is harmful to urban investment and development and bad for the overall economy.[231]

Beyond its economic implications, the IFCA's use of seemingly inconsequential sites like military installations and

226. Mandee R. Gruen et al., *Far Beyond Real Estate: The Real Impact of Florida's SB 264*, GOODWIN (July 17, 2023), https://www.goodwinlaw.com/en/insights/publications/2023/07/alerts-realestate-far-beyond-real-estate [https://perma.cc/6FGJ-ZZB6].

227. *Florida Military Bases*, MIL. BASES, https://militarybases.com/florida [https://perma.cc/8MKG-TUKP].

228. FLA. STAT. §§ 692.202(1), .203(1), .204(1)(a)–(b) (2024).

229. These companies make up some of Florida's biggest landholders. *See* Cynthia Barnett, *Florida's Biggest Private Landowners*, FLA. TREND (Apr. 1, 2011), https://www.floridatrend.com/article/2195/floridas-biggest-private-landowners [https://perma.cc/6E8C-W9QS]; *Mapping Out Florida's Biggest Land Grabs of 2023*, RABIDEAU KLEIN, https://rabideauklein.com/law-and-the-land/mapping-out-floridas-biggest-land-grabs-of-2023 [https://perma.cc/M7E6-FWKG].

230. *See* § 692.201(4)(c)–(e) (subjecting certain foreign-owned partnerships, associations, corporations, and other business organizations to the law). It should be noted that the IFCA's regulations overlap with existing federal sanctions against Iran, Cuba, North Korea, Russia, and Syria, thereby severely limiting the potential for business transactions between U.S. persons and entities affiliated with such companies. *See Sanctions Programs and Country Information*, U.S. DEP'T OF THE TREASURY, https://ofac.treasury.gov/sanctions-programs-and-country-information [https://perma.cc/K4PT-97EW]. However, the law may deter other countries from investing due to business connections with entities in those countries, misunderstanding of its scope, concerns of instability, or fear that Florida may add one's country to the IFCA in the future.

231. *See generally* Adam A. Millsap, *How Too Much Regulation Hurts America's Poor*, FORBES, https://www.forbes.com/sites/adammillsap/2019/07/23/how-too-much-regulation-hurts-americas-poor [https://perma.cc/E45A-8WLY] (last updated July 23, 2019, 8:47 AM) (describing how limits on business investment contribute to lower wages); *see also* Germán Gutiérrez & Thomas Philippon, *Declining Competition and Investment in the U.S.* 54–56, 58–59 (Nat'l Bureau of Econ. Rsch., Working Paper No. 23583, 2017) (arguing that regulation can harm competition, leading to low investment and welfare losses).

critical infrastructure facilities as key benchmarks carries more weight than it may initially appear. With limited exceptions, noncitizens and entities from China are largely barred from owning *any* property in the state.[232] At the same time, property purchases by Iranians, Venezuelans, North Koreans, Syrians, Russians, and Cubans are limited to non-agricultural land over ten miles from a military installation or critical infrastructure facility.[233] Such language gives the IFCA broad reach. In defining the term airport, for example, the statute explains it as "any area of land or water designed and set aside for the landing and taking off of aircraft and used or to be used in the interest of the public for such purpose."[234] This contrasts with Florida's definition of a "public-use airport," suggesting the law may encompass many of Florida's 140 airports beyond those strictly characterized as public-use.[235]

Likewise, Florida is home to twenty-one military bases,[236] forty-five electrical power plants,[237] thousands of wastewater and water treatment facilities,[238] and over 160 telecommunications central switching offices.[239] Many of Florida's military installations are in or near large metropolitan areas like Orlando, Tampa, Panama City, Jacksonville, Miami, Key West, and Pensacola, which are home to some of the largest immigrant populations in the country.[240] And while some of the

232. § 692.204.

233. § 692.203(1).

234. § 692.201(2)(j) (citing FLA. STAT. § 333.01(2) (2023)).

235. § 333.01(15); *Florida: Airport Information*, W. PALM JETS, https://westpalmjetcharter.com/charter-airports/usa/florida [https://perma.cc/PU2X-QULC] (noting Florida has 109 public-use airports, 11 private-use landing fields, and 20 airports providing scheduled passenger and general aviation services).

236. *Florida Military Bases*, *supra* note 227.

237. *Certified Power Plants*, FLA. DEP'T OF ENV'T PROT., https://geodata.dep.state.fl.us/datasets/FDEP::certified-power-plants/explore [https://perma.cc/CD7J-DF3J] (last updated Aug. 22, 2023).

238. *General Facts and Statistics about Wastewater in Florida*, FLA. DEP'T OF ENV'T PROT., https://floridadep.gov/water/domestic-wastewater/content/general-facts-and-statistics-about-wastewater-florida [https://perma.cc/QRW9-WKNP] (last updated Apr. 20, 2022, 10:50 AM).

239. *Local Telephone Services*, FLA. DEP'T OF MGMT. SERVS., https://www.dms.myflorida.com/business_operations/telecommunications/suncom2/voice_services/local_telephone_services [https://perma.cc/UG5N-M94A].

240. *Florida Military Bases*, *supra* note 227; Mohamad Moslimani & Jeffrey S. Passel, *What the Data Says About Immigrants in the U.S.*, PEW RSCH. CTR. (Sept. 27, 2024), https://www.pewresearch.org/short-reads/2024/09/27/key-findings-about-us-immigrants [https://perma.cc/X3EL-L5JM] (listing Miami among the top

designated areas in the statute are defined, many are not. This ambiguity will create uncertainty for citizens that will depend on how broadly courts interpret the designations. In turn, the resolution of this uncertainty will influence just how much of Florida will be covered by the law.

As a result of the IFCA's breadth and ambiguity, many law-abiding immigrant communities—whether they are currently in Florida or hoping to call it home in the future—are likely to feel the repercussions of the law. Furthermore, the IFCA has already started instilling fear among Asian American *citizens*, who are largely immune from the law's prohibitions.[241] During Florida's 2023 legislative session, over one hundred concerned individuals protested the bill, distressed over its potential discriminatory effects.[242] Given the penalties for one who "knowingly" sells property in violation of the statute, regardless of their citizenship status, many believe that the bill will cause sellers to avoid anyone with Chinese-sounding last names for fear of violating the law.[243]

These fears are not groundless. When states and localities pass laws targeting immigrants, they reinforce the notion that these people do not belong.[244] Laws that categorize groups of

three cities in the United States with the largest number of immigrants, followed by Orlando and Tampa within the top twenty in the country); J.H. Cullum Clark, *Immigrants and Opportunity in America's Cities*, GEORGE W. BUSH INST. 28 (Dec. 2022), https://gwbushcenter.imgix.net/wp-content/uploads/Immigrants-and-Opp-3.pdf [https://perma.cc/L5A3-DRDZ] (noting Miami as the top city for immigration rates, followed closely by Orlando at number two, Cape Coral at ten, Tampa at fifteen, and Lakeland at seventeen). It should also be noted that immigrants typically gravitate more toward cities, thus emphasizing the impact that the locations of these bases will have on pending migration. *See* Jessica Brandt, *How American Cities Can Lead on Migration*, BROOKINGS (Nov. 15, 2018), https://www.brookings.edu/articles/how-american-cities-can-lead-on-migration [https://perma.cc/U6Z8-DWCX].

241. *See* Frank Wu, '*Can We Move?' Chinese Residents Are Fearful over New US Laws Banning Property Ownership*, GUARDIAN (July 26, 2023, 7:13 AM), https://www.theguardian.com/us-news/2023/jul/26/florida-law-discrimination-china-immigrant-property-purchase [https://perma.cc/4UE7-WYCV].

242. Lawrence Mower, *DeSantis Bill on Chinese Land Ownership Called 'Discriminatory'*, TAMPA BAY TIMES (Apr. 19, 2023), https://www.tampabay.com/news/florida-politics/2023/04/19/chinese-property-owners-land-discrimination-foreign-investment-desantis [https://perma.cc/NRP6-HG7A].

243. Lawrence Mower, *DeSantis Signs Bills Limiting Chinese Land Ownership, TikTok at Schools*, TAMPA BAY TIMES (May 8, 2023), https://www.tampabay.com/news/florida-politics/2023/05/08/florida-desantis-china-land-communist-university [https://perma.cc/NY9S-PPFV].

244. McKanders, *supra* note 172, at 590.

people based on perceived differences, whether race, political beliefs, or national origin, dismantle perceptions of community and similarities between people.[245] In turn, these laws and their effects on the public psyche can reduce empathy and productive discourse, which sets the stage for extra-legal activities like citizen enforcement of such laws, hate crimes, harassment, and discrimination.[246] Such activities are harmful not only to communities and victims of such abuses but also to democracy.[247] Accordingly, U.S. adversaries such as Russia and China, aiming to weaken U.S. institutions and democracy, have repeatedly tried to create discord, deepen societal divisions, and instill fears of "otherness" among residents.[248]

Troubled by such concerns, some Floridians took it upon themselves to challenge the law before it went into effect.[249]

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245. Clint Curle, *Us vs. Them: The Process of Othering*, CAN. MUSEUM FOR HUM. RTS. (Jan. 24, 2020), https://humanrights.ca/story/us-vs-them-process-othering [https://perma.cc/Q3LP-5YBN].

246. *Id.*; McKanders, *supra* note 172, at 589–90. An extreme example of this practice is the treatment of Jewish people in Nazi Germany, enacting laws depriving them of their rights and forcing them to wear yellow stars to distinguish them from the general population.

247. David A. Carrillo & Stephen M. Duvernay, *Citizen Enforcement Laws Threaten Democracy*, 1 FORDHAM L. VOTING RTS. & DEMOCRACY F. 124, 126–27 (2023); *see The Rise in Political Violence in the United States and Damage to Our Democracy: Testimony Before the Select Comm. to Investigate the Jan. 6th Attack on the United States Capitol*, 117th Cong. (2022), https://carnegieendowment.org/posts/2022/03/the-rise-in-political-violence-in-the-united-states-and-damage-to-our-democracy?lang=en [https://perma.cc/K24R-ZBG4] (statement of Rachel Kleinfeld, Carnegie Endowment for International Peace); *see also* Jason Chan, Anindya Ghose & Robert Seamans, *The Internet and Racial Hate Crime: Offline Spillovers from Online Access*, 40 MIS Q. 381, 398 (2016) ("Individuals go online to engage in the construction and affirmation of individual racial identities . . . . [T]he specialization of interests allows the Internet medium to amplify the messages, values, and ideas that are posted on it . . . which has the opposite effect of promoting the more inclusive, democratic society that was envisioned by early thought leaders regarding usage of the Internet.").

248. Jake Sullivan & Hal Brands, *China Has Two Paths to Global Domination*, FOREIGN POL'Y (May 22, 2020), https://foreignpolicy.com/2020/05/22/china-superpower-two-paths-global-domination-cold-war [https://perma.cc/M5PR-ARPH]; *see China's Foreign Influence and Sharp Power Strategy to Shape and Influence Democratic Institutions: Hearing Before the H. Permanent Select Comm. on Intell.*, 116th Cong. (2019), https://nsarchive.gwu.edu/document/20112-national-security-archive-146-testimony [https://perma.cc/N563-PWM9] (statement of Christopher Walker, Vice President, National Endowment for Democracy); Dan De Luce & Gary Grumbach, *AI Gives Russia, China New Tools to Sow Division in the U.S., Undermine America's Image, Intel Agencies Say*, NBC NEWS (Mar. 11, 2024, 5:36 PM), https://www.nbcnews.com/politics/national-security/china-russia-ai-divide-us-society-undermine-us-elections-power-rcna142880 [https://perma.cc/CFV3-LSYC].

249. Yifan Shen v. Simpson, 687 F. Supp. 3d 1219, 1219 (N.D. Fla. 2023).

Unfortunately for potential claimants, the judiciary is unlikely to provide relief from the Interests of Foreign Countries Act.

IV. JUDICIAL ACTION: WHY THE COURTS WILL NOT SOLVE THE PROBLEM OF THE INTERESTS OF FOREIGN COUNTRIES ACT

Turning to legal avenues for redress, this Part discusses possible strategies for overturning the Interests of Foreign Countries Act (IFCA) and why each is unlikely to succeed. In other words, it examines why the invalidation of the IFCA by the U.S. court system is improbable.

First, it should be noted that Florida's legislature appears unlikely to repeal or substantially amend the IFCA any time soon. The law was passed with overwhelming support in both Florida's House, by a vote of 95 to 17, and in its Senate, by a vote of 31 to 8.[250] Legislative backing came from both Democrats and Republicans.[251] In 2024, a handful of Democratic legislators attempted to limit the IFCA's scope by introducing bills amending it to be inapplicable to anyone who had resided in the United States for at least 183 days, but all died in committee.[252]

Given the improbability of the IFCA being repealed by the legislature, this Section explores an alternative avenue for redress: the courts. Section A addresses the first step of any lawsuit: establishing standing.[253] Although often a relatively

250. FLA. S. JUDICIARY COMM., BILL SUMMARY OF CS/CS/SB 264—Interests of Foreign Countries, Reg. Sess., (2023), https://www.flsenate.gov/Committees/BillSummaries/2023/html/3145 [https://perma.cc/46XP-U6HB].

251. *Roll Call: FL S0264*, LEGISCAN, https://legiscan.com/FL/rollcall/S0264/id/1318994 [https://perma.cc/Q6HW-MXKC] (noting eighty-four House Republicans and eleven House Democrats voted in favor of the bill); *Roll Call: FL S0264*, LEGISCAN, https://legiscan.com/FL/rollcall/S0264/id/1318993 [https://perma.cc/4CYX-SQP7] (noting twenty-eight Senate Republicans and three Senate Democrats voted in favor of the bill).

252. H.R. 1455, 2024 Reg. Sess. (Fla. 2024); S. 1480, 2024 Reg. Sess. (Fla. 2024); S. 1524, 2024 Reg. Sess. (Fla. 2024).

253. *Standing*, BLACK'S LAW DICTIONARY 1536 (9th ed. 2009) (defining standing as a party's right to make a legal claim or seek judicial enforcement of a duty or right). For federal standing requirements, see U.S. CONST. art. III, § 2, cl. 1 and *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560–61 (1992), which explains the three elements of standing. For Florida's standing requirements, see *Nedeau v. Gallagher*, 851 So. 2d 214, 215 (Fla. Dist. Ct. App. 2003), which explains that "[s]tanding depends on whether a party has a sufficient stake in a justiciable controversy, with a legally cognizable interest which would be affected by the

easy hurdle to cross, the IFCA's application to individuals "domiciled in" a foreign country of concern has the potential to create standing issues for plaintiffs challenging the IFCA, as discussed below. Next, Section B considers potential challenges brought under the Equal Protection and the Due Process Clauses of the Fourteenth Amendment and whether the challenges will be rejected. Section C discusses challenges brought under the Supremacy Clause and the law's interactions with existing statutes, such as the Fair Housing Act, and why these challenges are also unlikely to succeed. Throughout, it references *Yifan Shen v. Simpson*—the first legal challenge to the IFCA thus far—to illustrate the obstacles in seeking to void the IFCA through the courts.[254]

A. Establishing Standing Under the Interests of Foreign Countries Act

As an initial matter, challenging the IFCA under any legal theory will first require showing standing.[255] The requirements for standing vary depending on whether one chooses to file in state or federal court.[256] Because the IFCA's first judicial challenge was made in federal court,[257] which maintains more exacting standing requirements than Florida state courts,[258]

outcome of the litigation." *See also* Dep't of Revenue v. Kuhnlein, 646 So. 2d 717, 720–21 (Fla. 1994), ("Florida recognizes a general standing requirement in the sense that every case must involve a real controversy as to the issue or issues presented.").

254. *Yifan Shen*, 687 F. Supp. 3d at 1219. The complaint contained four counts, alleging the IFCA violated: (1) plaintiff's equal protection rights under the Fourteenth Amendment and 42 U.S.C. § 1983, (2) plaintiff's procedural due process rights under the Fourteenth Amendment and 42 U.S.C. § 1983, (3) the Fair Housing Act, and (4) the Supremacy Clause, preempted specifically "by federal regimes governing foreign affairs, foreign investment, and national security, including CFIUS and OFAC within the U.S. Treasury Department." Complaint at 27–36, *Yifan Shen*, 687 F. Supp. 3d 1219 (No. 4:23-cv-208).

255. *See, e.g.*, Davis v. FEC, 554 U.S. 724, 732–33 (2008) (stating that federal courts must always ensure standing exists before proceeding to the merits of a claim).

256. *See* sources cited *supra* note 253 and accompanying text.

257. *Yifan Shen*, 687 F. Supp. 3d at 1219 (filing suit in the U.S. District Court for the Northern District of Florida).

258. *Kuhnlein*, 646 So. 2d at 720 ("Unlike the federal courts, Florida's circuit courts are tribunals of plenary jurisdiction. Art. V, § 5, Fla. Const. They have authority over any matter not expressly denied them by the Constitution or applicable statutes. Accordingly, the doctrine of standing certainly exists in Florida, but not in the rigid sense employed in the federal system."). Thus, if plaintiffs can

this Section will primarily focus on establishing standing in federal courts.

To establish standing in federal court, three elements must be established.[259] First, the plaintiff must have suffered an "injury in fact" that is "concrete . . . particularized" and "actual or imminent, not conjectural or hypothetical."[260] Plaintiffs must demonstrate a "realistic danger of sustaining a direct injury as a result of the [Act's] operation or enforcement."[261] However, a plaintiff need not expose themselves to actual liability.[262] Second, there must be a "causal connection" between the injury and the defendant's actions such that the plaintiff's injury is "fairly traceable" to the defendant's conduct, rather than to some unnamed third party.[263] Finally, it must be "likely"—not "merely speculative"—that a favorable decision will remedy the plaintiff's injury.[264] This test applies to *each* claim brought by the plaintiff.[265] Thus, if an entire statute is challenged—rather than just one provision like a reporting requirement—then plaintiffs generally must show how *each* challenged provision will cause them harm.[266]

Turning to standing's first element, the IFCA must be shown to cause a plaintiff a concrete, particularized harm.[267] In determining this, it is useful to look at potential plaintiffs—that is, *whom* the IFCA covers—that could suffer the IFCA's harms: certain business structures, governments, political

satisfy the stricter standards for standing in federal court, they should have no problem doing so in state courts.

259. Lujan v. Def. of Wildlife, 504 U.S. 555, 560–63 (1992).

260. *Id.* at 560.

261. Seniors C.L. Ass'n v. Kemp, 965 F.2d 1030, 1033 (11th Cir. 1992) (quoting Babbitt v. United Farm Workers' Nat'l Union, 442 U.S. 289, 297 (1979)).

262. MedImmune, Inc. v. Genentech, Inc., 549 U.S. 118, 128–29 (2007) ("[W]e do not require a plaintiff to expose himself to liability before bringing suit to challenge the basis for the threat—for example, the constitutionality of a law threatened to be enforced.").

263. *Lujan*, 504 U.S. at 560.

264. *Id.* at 561.

265. TransUnion LLC v. Ramirez, 594 U.S. 413, 431 (2021).

266. Davis v. FEC, 554 U.S. 724, 733–34 (2008) (explaining that standing may not be "dispensed in gross," thus plaintiffs must show standing for each claim brought); *see also* Adams Outdoor Advert. Ltd. P'ship v. Beaufort Cnty., 105 F.4th 554, 565 (4th Cir. 2024) ("A party must demonstrate standing to challenge each provision it opposes."); Pernell v. Fla. Bd. of Governors of the State Univ. Sys., 641 F. Supp. 3d 1218, 1249 (N.D. Fla. 2022) (citing CAMP Legal Def. Fund, Inc. v. City of Atlanta, 451 F.3d 1257, 1271–72 (11th Cir. 2006)) ("Plaintiffs must also demonstrate standing for each provision of the statute they challenge.").

267. *Lujan*, 504 U.S. at 560.

parties, and individuals from "countries of concern."[268] Governments and political parties in countries such as Iran, Russia, and China seem improbable candidates for purchasing property in Florida for personal or non-political reasons, like buying a home to live in or a farm to work.[269] Thus, the most likely—and compelling—challengers to the IFCA are likely to be business organizations and individuals who lack U.S. citizenship or lawful permanent residency and are "domiciled in" a "country of concern,"[270] like those in *Yifan*.[271]

For an individual to be subject to the IFCA and by extension its corresponding harm, that person must (1) not be a U.S. lawful permanent resident, (2) not be a U.S. citizen, and (3) be "domiciled" in a country of concern.[272] The IFCA's first two prongs, then, limit the pool of potential plaintiffs to undocumented immigrants and certain holders of nonimmigrant or immigrant visas. In Florida, domicile means the place where one has "fixed an abode" with the present intention of making it a permanent home.[273] Once established, a person's domicile remains in effect until replaced by a new one.[274] The interaction between these statutory provisions—restricting the IFCA's application to a certain class of immigrants "domiciled" in a country of concern seeking to acquire property in Florida—could further limit the IFCA's scope, potentially in a substantial way.

Immigrant visas are designed for immigrants coming to the United States with plans to stay *permanently*, such as for

268. *See supra* Section III.B.

269. *2022 Profile of International Residential Transactions in Florida*, FLA. REALTORS 6–8, https://www.floridarealtors.org/sites/default/files/basic-page/attachments/2023-04/2022%20Profile%20of%20International%20Residential%20Transactions%20in%20Florida.pdf [https://perma.cc/6K4L-3R6G].

270. *See* FLA. STAT. § 692.201(4)(d) (2024).

271. Yifan Shen v. Simpson, 687 F. Supp. 3d 1219, 1230 (N.D. Fla. 2023). Challengers include "native-born citizens of China living in Florida," who "own Florida real estate, plan to buy some, or both." Three are present on nonimmigrant H-1B visas, given to workers in specialty occupations, or F-1 visas, given to students. *Id.* One has a pending political asylee application. *Id.* None are citizens or lawful permanent residents. *Id.*

272. § 692.201(4)(d).

273. Keveloh v. Carter, 699 So. 2d 285, 288 (Fla. Dist. Ct. App. 1997) (citing Minick v. Minick, 111 So. 483 (Fla. 1933)); Nicolas v. Nicolas, 444 So. 2d 1118, 1119–20 (Fla. Dist. Ct. App. 1984).

274. *Keveloh*, 699 So. 2d at 288 ("Once established, a domicile continues until it is superseded by a new one.").

spouses of U.S. citizens. [275] Accordingly, many immigrant visa recipients are granted lawful permanent resident status at the time they're admitted into the United States—thus exempting them from the IFCA's scope. [276] Meanwhile, nonimmigrant visas are a class of federally issued documents allowing foreign nationals to enter the United States for a specific purpose and period of time. [277] They are issued to those seeking to enter the country on a *temporary* basis, such as for education or tourism purposes. [278] To obtain a nonimmigrant visa, applicants must declare that they do not intend to stay in the United States permanently in their application. [279] Nonimmigrant visas include, for example, those given to students, temporary agricultural workers, and certain family members of U.S. sponsors. [280]

This legal dynamic creates tension within the IFCA's scope and its ability to "harm" potential plaintiffs sufficient to establish standing. That is, if nonimmigrant visa holders legally declared their intention to stay in the United States *temporarily*, but are now seeking to buy land to make a home in Florida, or even declare in pleadings—as the plaintiffs in *Yifan Shen* did—that they intend to stay in Florida, are they domiciled in Florida or their home country? [281] The issue arose in *Yifan Shen*, where the state argued that the plaintiffs—China-born immigrants without citizenship or lawful permanent residency living in Florida on temporary visas—could not demonstrate the harm needed for standing as the IFCA applies to those "domiciled in"

275. *Adjustment of Status: Get a Green Card if You Are in the United States*, USAGOV, https://www.usa.gov/adjustment-of-status [https://perma.cc/8QVE-NZHP] (last updated Sept. 26, 2024).

276. 8 U.S.C. § 1255(a)–(b). The IFCA exempts citizens and lawful permanent residents. FLA. STAT. §§ 692.201(4)(d), .202(1), .203(1), .204(1)(a)(4) (2024).

277. *Glossary*, U.S. CITIZENSHIP & IMMIGR. SERVS., https://www.uscis.gov/tools/glossary [https://perma.cc/GE2L-VZGD]; 22 C.F.R. § 41.27 (2021).

278. *See* 8 C.F.R. § 214.1 (2024); SCOTT MEEKS, DHS OFF. OF IMMIGR. STAT., U.S. NONIMMIGRANT ADMISSIONS: 2021 at 1 (2022).

279. § 214.1(a)(3)(ii).

280. *Nonimmigrant (V) Visa for Spouse and Children of a Lawful Permanent Resident (LPR)*, TRAVEL.STATE.GOV, https://travel.state.gov/content/travel/en/us-visas/immigrate/family-immigration/nonimmigrant—visa-for-spouse-and-children-of-a-lawful-permanent-resident.html [https://perma.cc/RP36-TQC9]; U.S. DEP'T OF STATE, 9 FAM 402.1, OVERVIEW OF NIV Classifications (2024).

281. *See* Minick v. Minick, 149 So. 482, 487 (Fla. 1933) (emphasis added) ("[T]he domicile of a person [is that] in which he has voluntarily fixed his abode, not for a mere special or temporary purpose, but with a present intention of making it his *permanent* home.").

a country of foreign concern.[282] Since plaintiffs were living in Florida, they were not "domiciled" in China, the relevant country of "concern," and therefore would not suffer the IFCA's impacts.[283]

On this issue, many courts—federal and state—have found that nonimmigrant visas are not dispositive in determining domicile since these visa holders are frequently eligible to apply for lawful permanent resident status.[284] Such a situation presents what courts have called a "dual intent."[285] Accordingly, the court in *Yifan Shen v. Simpson* determined plaintiffs could balance their intention of making Florida home, as they claimed, while being considered "domiciled" in China pursuant to their nonimmigrant visas.[286] Thus, the court concluded, plaintiffs could be subject to the IFCA and its corresponding "concrete" harm, sufficient to show standing, at least for certain sections of the law.[287]

Such a finding is a double-edged sword: While being "domiciled" in a "country of concern" makes challengers eligible to establish standing, it also means the law will most likely be deemed applicable to all nonimmigrant visa holders living in Florida. Having determined that potential challengers to the IFCA are likely to succeed in demonstrating standing, the next

282. Defendant's Corrected Memorandum in Opposition to Plaintiff's Motion for Preliminary Injunction at 8–10, Yifan Shen v. Simpson, 687 F. Supp. 3d 1219 (N.D. Fla. 2023) (No. 4:23-cv-208-AW-MAF), 2023 WL 8118029.

283. *Id.*

284. *E.g.*, Dandamudi v. Tisch, 686 F.3d 66, 77 (2d Cir. 2012) ("[N]onimmigrant aliens are lawfully permitted to express an intent to remain temporarily (to obtain and maintain their work visas) as well as an intent to remain permanently (when they apply for LPR status)."); Bustamante v. Bustamante, 645 P.2d 40, 42 (Utah 1982) ("[W]e hold that an alien may have a "dual intent"—an intent to remain if that may be accomplished and at the same time an intent to leave if the law so commands."); Brownell v. Stjepan Bozo Carija, 254 F.2d 78, 80 (D.C. Cir. 1957) (holding that the Attorney General's denial of permanent status to nonimmigrant plaintiffs on the basis of their dual intention was improper notwithstanding their unlawful entries); Bong Youn Choy v. Barker, 279 F.2d 642, 645 (9th Cir. 1960) (discussing and applying *Brownell* to its own facts, holding the same).

285. *Dandamudi*, 686 F.3d at 70 ("[A]lthough plaintiffs had to indicate that they did not intend to stay here permanently to obtain their visas, the truth is that many (if not all) actually harbor a hope (a dual intention) that some day [*sic*] they will acquire the right to stay here permanently.").

286. *Yifan Shen*, 687 F. Supp. 3d at 1233.

287. *Id.* at 1234. Since the plaintiff there sought to buy residential property that they did not own yet, they were unlikely to succeed in demonstrating a "concrete" and "imminent" harm as it relates to sections of the IFCA focused on agricultural land purchases and its legacy clause.

Section moves on to evaluating potential legal arguments for invalidating the IFCA on the merits.

B. Fourteenth Amendment

Once standing has been established, legal proceedings shift to analyzing arguments raised on the merits. Plaintiffs seeking to invalidate laws involving classifications based on things like immigrant status and other personal characteristics have frequently turned to the Equal Protection Clause of the U.S. Constitution's Fourteenth Amendment for relief. Similarly, statutes involving property ownership, or restrictions on it, have often been challenged on due process grounds via the Fourteenth Amendment. This Section will explore both avenues in turn, illustrating why each challenge is unlikely to succeed.

1. Equal Protection

The Fourteenth Amendment's Equal Protection Clause prohibits states from "mak[ing] or enforc[ing] any law which shall . . . deny to any person within its jurisdiction the equal protection of the laws."[288] In other words, states must govern impartially, avoiding laws that treat certain populations differently than others without a justifiable reason.[289] Consistent with the Equal Protection Clause's explicit protection of "any person," federal courts have consistently interpreted it to apply to both citizens and noncitizens.[290] Over time, this equality-driven amendment has often served as a basis for challenging discriminatory immigrant land laws.[291] Indeed, it was invoked in response to the IFCA in *Yifan Shen*,

288. U.S. CONST. amend. XIV, §1.

289. City of Grants Pass v. Johnson, 603 U.S. 520, 541 (2024) ("The Equal Protection Clause of the Fourteenth Amendment prevents governments from adopting laws that invidiously discriminate between persons."). *But see* Graham v. Richardson, 403 U.S. 365, 371 (1971) ("Under traditional equal protection principles, a State retains broad discretion to classify as long as its classification has a reasonable basis.").

290. Yick Wo v. Hopkins, 118 U.S. 356, 368–69 (1886) ("The [F]ourteenth [A]mendment . . . is not confined to the protection of citizens. . . . [Its] provisions are universal in their application, to all persons within the territorial jurisdiction, without regard to any differences of race, of color, or of nationality; and the equal protection of the laws is a pledge of the protection of equal laws.").

291. *See* Oyama v. California, 332 U.S. 633, 635–36 (1948); Terrace v. Thompson, 263 U.S. 197, 211 (1923).

demonstrating its continued relevance in addressing discriminatory practices against noncitizens.[292]

To challenge a law as a violation of equal protection, plaintiffs must first demonstrate that the law treats different groups of people unequally.[293] Such a distinction may be facial,[294] or it may be one with both a (1) disparate impact *and* (2) a discriminatory purpose—a difficult lift for any plaintiff.[295] Once such a distinction has been shown, the analysis turns to *how* the law classifies different people and whether a fundamental right is at issue.[296] Laws that require, say, certain qualifications to practice medicine in state hospitals are not automatically struck down simply because they treat people differently based on their education. Rather, to warrant strict scrutiny under the Equal Protection Clause, the law must either impinge on a fundamental right or treat people differently based on a suspect class.[297]

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292. *Yifan Shen*, 687 F. Supp. 3d at 1229 (N.D. Fla. 2023).

293. For an in-depth overview of Equal Protection Clause analysis, see Russell W. Galloway, Jr., *Basic Equal Protection Analysis*, 29 SANTA CLARA L. REV. 121 (1989).

294. *See, e.g.*, Brown v. Bd. of Educ., 347 U.S. 483, 487 (1954) (challenging statutes explicitly requiring race-based segregation in public schools); Strauder v. West Virginia, 100 U.S. 303, 305 (1879) (challenging a statute making only "[W]hite male persons" eligible for jury service).

295. *See, e.g.*, *Yick Wo*, 118 U.S. at 357 (striking down a facially neutral ordinance as a violation of the Fourteenth Amendment because, in effect, it discriminated against Chinese people and appeared to be motivated by such a purpose). The Court in *Yick Wo* did not explicitly state that laws motivated by animus were unconstitutional. *See* Gabriel J. Chin, *Unexplainable on Grounds of Race: Doubts About* Yick Wo, 2008 U. ILL. L. REV. 1359, 1388–90. However, the case has since been interpreted to do so. *See* Gorieb v. Fox, 274 U.S. 603, 607–08 (1927) (distinguishing *Yick Wo* from the case at hand, stating that the ordinance in *Yick Wo* was motivated by "the express purpose of depriving the petitioner in that case of a privilege that was extended to others").

296. Heller v. Doe, 509 U.S. 312, 319–21 (1993) (citations omitted) ("[A] classification neither involving fundamental rights nor proceedings along suspect lines . . . cannot run afoul of the Equal Protection Clause if there is a rational relationship between disparity of treatment and some legitimate governmental purpose."); Mass. Bd. of Ret. v. Murgia, 427 U.S. 307, 312 (1976) ("[E]qual protection analysis requires strict scrutiny of a legislative classification only when the classification impermissibly interferes with the exercise of a fundamental right or operates to the peculiar disadvantage of a suspect class.").

297. *See Heller*, 509 U.S. at 319–21; *Murgia*, 427 U.S. at 312.

A fundamental right is one that is "explicitly or implicitly guaranteed by the Constitution,"[298] like freedom of speech[299] or interstate migration.[300] Meanwhile, a suspect class refers to a group "saddled with such disabilities, or subjected to such a history of purposeful unequal treatment, or relegated to such a position of political powerlessness as to command extraordinary protection from the majoritarian political process."[301] Suspect classifications include those based on race, national origin, or religion.[302]

To illustrate, consider a law that requires public universities to set workload standards for professors but exempts those standards from collective bargaining.[303] While the statute treats people unequally—allowing only certain public employees to negotiate their workloads—it is unlikely to be voided as an equal protection violation. This is because, as explained by the Supreme Court, it did not (1) involve a fundamental right nor (2) discriminate along suspect classes, like race.[304] On the other hand, statutes banning qualified Black applicants from attending state-funded schools solely because of their race are violations of the Equal Protection Clause because they treat people differently based on the suspect class of race.[305]

Once one of these two elements is established—that the law draws lines based on a suspect class or involves a fundamental right—it may be subject to heightened scrutiny under the Equal Protection Clause.[306] That is, courts may assess the law under a more exacting standard, demanding the government show a

298. San Antonio Indep. Sch. Dist. v. Rodriguez, 411 U.S. 1, 33–34 (1973).

299. *E.g.*, Stromberg v. California, 283 U.S. 359, 369 (1931) ("The maintenance of the opportunity for free political discussion . . . is a fundamental principle of our constitutional system."); Police Dep't v. Mosley, 408 U.S. 92 (1972).

300. *E.g.*, Shapiro v. Thompson, 394 U.S. 618 (1969).

301. *San Antonio Indep. Sch. Dist.*, 411 U.S. at 28.

302. *See* Galloway, *supra* note 293, at 122, 135.

303. Cent. State Univ. v. Am. Ass'n of Univ. Professors, 526 U.S. 124, 127–28 (1999).

304. *Id.* For cases deeming race a suspect class and therefore subjecting the laws at issue to strict scrutiny, see Palmore v. Sidoti, 466 U.S. 429 (1984), in which the Supreme Court found that removing a child from her White mother because she was living with a Black man was an impermissible violation of the Equal Protection Clause. *See also* Loving v. Virginia, 388 U.S. 1 (1967) (holding Virginia's anti-miscegenation law violated the Equal Protection Clause); Students for Fair Admissions, Inc. v. President of Harvard Coll. (2023) (holding college admissions programs using race as a consideration violated the Equal Protection Clause).

305. Sipuel v. Bd. of Regents, 332 U.S. 631, 632–33 (1948) (per curiam).

306. *See, e.g.*, Plyler v. Doe, 457 U.S. 202, 205 (1982).

compelling or important governmental interest, instead of an easier burden like a legitimate government interest.[307] Laws subjected to strict scrutiny are rarely upheld, as they must also be narrowly tailored to achieve that compelling government interest.

Turning to the IFCA, the law uses a facial classification: separating those who can buy land in restricted areas from those who cannot based on their domicile and citizenship status. The next question, then, is whether the IFCA impacts a fundamental right, or draws lines based on a suspect classification. Noncitizens do not have a fundamental right to own land, forcing challengers to rely on the Equal Protection Clause's suspect classification for relief.[308] Challengers to Florida's law will likely argue the IFCA classifies on the basis of a suspect or semi-suspect classification, like race, national origin, or immigration status, because it targets non-permanent residents and citizens from specific countries. However, national origin "refers to the country where a person was born, or, more broadly, the country from which his or her ancestors came,"[309] and classifications based on it are not related to one's legal status.[310] Florida's statute is written in terms of immigration status, not national origin, subjecting only those who are not citizens nor permanent residents domiciled in Florida to its terms—not all *people* born in Iran or China. Likewise, it does not discriminate on account of race. It applies to Chinese citizens of Chinese descent *without* permanent residence status but not to that same class *with* permanent residence status.

Thus, the best argument for the IFCA challengers is that the law discriminates based on their immigration status. Starting with the Supreme Court's decision in *Graham v. Richardson,* classifications based on immigration status have been subject to strict scrutiny—the highest level of

307. For a more in-depth review of the varying levels of scrutiny, see Stephen A. Siegel, *The Origin of the Compelling State Interest Test and Strict Scrutiny*, 48 AM. J. LEGAL HIST. 355 (2006).

308. Terrace v. Thompson, 263 U.S. 197, 217–18 (1923) ("[E]ach State, in the absence of any treaty provision to the contrary, has power to deny to aliens the right to own land within its borders."). *See infra* Section IV.B.2 for a discussion on the IFCA's impact on fundamental rights.

309. Espinoza v. Farah Mfg. Co., 414 U.S. 86, 88 (1973).

310. United States v. Osorto, 995 F.3d 801, 822 (11th Cir. 2021) (explaining that citizenship status differs from national origin).

scrutiny courts apply to laws challenged as unconstitutional.[311] There, the Supreme Court struck down two state statutes as violating the Equal Protection Clause because they used citizenship to determine eligibility for welfare benefits. Heightened scrutiny was warranted, the Supreme Court determined, because "[a]liens as a class are a prime example of a 'discrete and insular' minority.'"[312] The Court also took issue with the statutes because they were at odds with then-federal policy "that lawfully admitted resident aliens who become public charges for causes arising after their entry are not subject to deportation, and that as long as they are here they are entitled to the full and equal benefit of all state laws for the security of persons and property."[313]

Importantly, though, the Supreme Court in *Graham* analyzed statutes discriminating against legally present, resident noncitizens.[314] This fact has prevented *Graham* from ultimately establishing a clear precedent that *all* legal immigrants automatically warrant heightened scrutiny as a

311. *See, e.g.*, Graham v. Richardson, 403 U.S. 365, 372 (1971) ("[C]lassifications based on alienage, like those based on nationality or race, are inherently suspect and subject to close judicial scrutiny."); *In re* Griffiths, 413 U.S. 717, 729 (1973); Nyquist v. Mauclet, 432 U.S. 1, 12 (1977) (striking down laws based on immigration status under strict scrutiny). For a more in-depth explanation of applying strict scrutiny, see *Deep Dive: "A Compelling State Interest Achieved by the Least Restrictive Means,"* ACLU VT. (Sept. 16, 2022), https://www.acluvt.org/en/news/deep-dive-compelling-state-interest-achieved-least-restrictive-means [https://perma.cc/5J38-7P6Q].

312. *Graham*, 403 U.S. at 372 (citing United States v. Carolene Prods. Co., 304 U.S. 144, 152–53 n.4 (1938)).

313. Id. at 378. *Graham* was decided prior to the enactment of the Personal Responsibility and Work Opportunity Reconciliation Act, changing federal policy to expressly empower states to deny certain public benefits to noncitizens. *See supra* notes 196–174 and accompanying text.

314. As used in *Graham*, the term "alien" seemingly refers only to those noncitizens who are lawfully present in the United States. *See Graham*, 403 U.S. at 367, 369 (describing plaintiffs as "lawfully admitted resident alien[s]"); s*ee also* Plyler v. Doe, 457 U.S. 202, 219 n.19 (1982) (distinguishing "aliens" from "illegal aliens," while noting that the Court had never addressed whether the latter constitute a "suspect class"). In other legal contexts, however, the meaning of "alien" is not always clear and may differ depending on the circumstances and status of immigration law. *See, e.g.*, Keith Cunningham-Parmeter, *Alien Language: Immigration Metaphors and the Jurisprudence of Otherness*, 79 FORDHAM L. REV. 1545, 1569–70 (2011) ("[I]n the statutory context, 'alien' seems to be a neutral word that means simply 'noncitizen,'" but can also be understood as suggesting "otherness, illegality, and ethnicity."); 8 U.S.C. § 1101(a)(3) ("The term 'alien' means any person not a citizen or national of the United States."); M. Anderson Berry, *Whether Foreigner or Alien: A New Look at the Original Language of the Alien Tort Statute*, 27 BERKELEY J. INT'L L. 316, 319–21 (2009).

suspect class. As a result, there have been increasingly expansive caveats to *Graham*'s treatment of immigrants.[315] First, federal laws discriminating against undocumented immigrants typically do not warrant strict scrutiny, as they may be wholly appropriate acts under the federal government's plenary power concerning immigration and foreign policy.[316] Second, laws treating immigrants differently with respect to "government functions" also receive rational basis review—the lowest level of judicial scrutiny and easiest for statutes to survive[317]—and are often upheld.[318] This exception is available even to state laws excluding lawful permanent residents, barring them from performing "governmental functions"—like serving as public school teachers,[319] police officers,[320] or elected officials.[321]

Third, undocumented individuals[322] are not considered a suspect class. Undocumented individuals, the Supreme Court

315. Foley v. Connelie, 435 U.S. 291, 295 (1978) (quoting Nyquist v. Mauclet, 432 U.S. 1, 14 (1977) (Burger, C.J., dissenting)) (declining to subject every exclusion of immigrants to strict scrutiny because doing so "would 'obliterate all the distinctions between citizens and aliens, and thus depreciate the historic values of citizenship'").

316. *Graham*, 403 U.S. at 378; Mathews v. Diaz, 426 U.S. 67, 83 (1976); Reginald Oh, *Dehumanization, Immigrants, and Equal Protection*, 56 CAL. W. L. REV. 103, 129 (2019).

317. Under rational basis review, states need only show they have a legitimate government interest in enacting the laws—such as the power to regulate its police force or to self-govern. *See Foley*, 435 U.S. at 299; Ambach v. Norwick, 441 U.S. 68, 81 (1979) (upholding state laws based on immigration status because of their relation to self-governance).

318. *See* John Harras, *Suspicious Suspect Classes—Are Nonimmigrants Entitled to Strict Scrutiny Review Under the Equal Protection Clause?: An Analysis of* Dandamudi *and* LeClerc, 88 ST. JOHN'S L. REV. 849, 852–53 (2014) (explaining the "governmental functions" and the "undocumented aliens" exceptions to the *Graham* rule).

319. *Ambach*, 441 U.S. at 69 (finding a statute barring noncitizens without a manifested intention to become a citizen from being public school teachers is not a violation of the Equal Protection Clause).

320. *Foley*, 435 U.S. at 297 (finding that since police fulfilled "a most fundamental obligation of government," a statute barring "aliens" from the force was subject to only rational basis review).

321. Sugarman v. Dougall, 413 U.S. 634, 647 (1973) ("Neither do we hold that a State may not, in an appropriately defined class of positions, require citizenship as a qualification for [public] office.").

322. Though courts such as the Supreme Court in *Graham* and legislation have historically used the term "illegal alien" to describe those undocumented individuals in the country unlawfully, there has a been a recent shift in terminology used by the executive and judiciary. *See* Plyler v. Doe, 457 U.S. 202, 219 n.19 (1982) (describing those in the United States unlawfully as "illegal aliens"); JEAN KING,

explained, are unlike most suspect classes—like race and national origin—because entry into the United States is "the product of voluntary action" and can often be a crime.[323] Since undocumented immigrants are not a suspect class, those challenging the IFCA under equal protection grounds will receive only rational basis review, which demands Florida show only that the law is "rationally related to legitimate government interests."[324] With undocumented immigrants unlikely to succeed in challenging the IFCA and the statute being inapplicable to lawful permanent residents, its validity will likely depend on how courts classify the nonimmigrant visa holders it targets—individuals who are legally in the United States but not permanent residents.

Unfortunately for such plaintiffs, many federal circuits have since developed the findings in *Graham* to lay out a clear rule on when legal immigrants constitute a "suspect" class. In the Fifth Circuit, for instance, only lawful permanent residents are a suspect class, while those with "lesser legal status"—like non-immigrant visa holders[325]—definitively are not, and are therefore not entitled to strict scrutiny.[326] In 2007, the Sixth Circuit followed suit, explaining that "[t]here are abundant good reasons, both legal and pragmatic, why lawful permanent residents are the *only* subclass of aliens who have been treated as a suspect class."[327] As a result, the Sixth Circuit upheld the Tennessee law at issue—making only citizens and lawful permanent residents eligible to receive driver's licenses—after applying only rational basis review.

In light of this legal landscape, plaintiffs' final hope in challenging the IFCA on equal protection grounds would be to convince the Eleventh Circuit to diverge from the rulings of the Fifth and Sixth Circuits and instead adopt the Second Circuit's position that immigrants with temporary visas should be treated

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ACTING DIR. OF THE EXEC. OFF. FOR IMMIGR. REV., U.S. DEP'T OF JUST., MEMORANDUM ON TERMINOLOGY (July 23, 2021).

323. *Plyler*, 457 U.S. at 219 n.19.

324. Box v. Planned Parenthood of Ind. & Ky., Inc., 587 U.S. 490, 491 (2019) (quoting Washington v. Glucksberg, 521 U. S. 702, 728 (1997)).

325. LeClerc v. Webb, 419 F.3d 405, 415 (5th Cir. 2005).

326. *Id.* (finding nonimmigrant people not a suspect class because they did not enter the United States to live and work permanently).

327. Leauge of United Latin American Citizens (LULAC) v. Bredesen, 500 F.3d 523, 533 (6th Cir. 2007) (emphasis added). *But see* Dandamudi v. Tisch, 686 F.3d 66, 72 (2d Cir. 2012) (finding immigrant status is a suspect classification).

as a suspect or semi-suspect class.[328] When faced with which approach to adopt in a circuit split,[329] courts often defer to relevant precedent. Unfortunately for challenges to the IFCA, caselaw in the Eleventh Circuit leans toward the Fifth Circuit's rule.

To begin, the Eleventh Circuit in *Estrada v. Becker* held that Deferred Action for Childhood Arrivals (DACA) recipients—who are allowed to work legally, avoid deportation, and obtain legal identification but lack a pathway to citizenship or permanent status[330]—do *not* qualify as a suspect class.[331] In reaching this decision, the court referenced the Fifth Circuit's precedent denying suspect class status to nearly all immigrants on temporary visas, explaining that "[w]hile the Supreme Court has said that 'classifications based on alienage . . . are inherently suspect and subject to close judicial scrutiny,' it has never 'held that *all* limitations on aliens are suspect."[332] With that, the court analyzed the policy at issue—requiring Georgia's most selective colleges to deny all DACA recipients admission—under the lens of rational basis review, ultimately upholding the legality of the policy.[333]

Looking beyond the Eleventh Circuit to binding federal precedent, the most relevant case addressing a state law that denies property ownership to immigrants is arguably *Terrace v. Thompson*. As discussed in Section I, *Terrace* involved a state law prohibiting certain noncitizens from owning land, similar to the IFCA. While the specifics of the laws differ, both effectively prevent individuals of "low legal status" from owning property: *Terrace* targeted those legally in the United States but permanently barred from citizenship, while the IFCA

328. *Dandamudi*, 686 F.3d at 72.

329. *Circuit Split*, BLACK'S LAW DICTIONARY (12th ed. 2024) ("The existence of conflicting decisions between two or more of the United States courts of appeals, usu. on a question of law.").

330. Laurence Benenson, *Fact Sheet: Deferred Action for Childhood Arrivals (DACA)*, NAT'L IMMIGR. F. (May 21, 2024), https://immigrationforum.org/article/fact-sheet-on-deferred-action-for-childhood-arrivals-daca [https://perma.cc/R7QX-DDFG].

331. Estrada v. Becker, 917 F.3d 1298, 1310 (2019). *But see* Rodriguez v. P&G, 465 F. Supp. 3d 1301, 1326 (S.D. Fla. 2020) (distinguishing *Estrada* on the basis that that DACA recipients may not be a "suspect class" under the Equal Protection Clause, but can still be afforded greater protection from statutes like 42 U.S.C. § 1981).

332. *Estrada*, 917 F.3d at 1309 (quoting LeClerc v. Webb, 419 F.3d 405, 416 (5th Cir. 2005)) (citation omitted).

333. *Id.* at 1311–12.

encompasses those temporarily in the United States without eligibility for citizenship. In upholding the law in *Terrace*, the Supreme Court found adequate grounds for distinguishing between citizens and noncitizens, stating "[t]he rights, privileges and duties of aliens differ widely from those of citizens."[334] As a result, it held that states have "wide discretion" to deny such "aliens" the right to own land within their borders, applying what would now be considered rational basis review to justify the law.[335]

Considering the Eleventh Circuit's precedent on immigrant groups and Supreme Court rulings, such as *Terrace*, the IFCA is unlikely to trigger heightened scrutiny. Subject to merely rational basis review, the IFCA will likely be upheld, as the classification only needs to be deemed not "arbitrary or unreasonable," allowing Florida broad discretion to enact such measures.[336]

2. Due Process

The Fourteenth Amendment of the U.S. Constitution bars state governments from depriving "any person" of property without due process of law.[337] The Fourteenth Amendment echoes the Fifth Amendment, which prohibits the federal government from depriving persons "of life, liberty, or property, without due process of law."[338] Likewise, the Fifth Amendment also features the Takings Clause—prohibiting the federal, and later state, government from taking a "person['s]" private property without just compensation.[339]

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334. Terrace v. Thompson, 263 U.S. 197, 218 (1923).

335. *Id.* at 216–21; *see also* Sugarman v. Dougall, 413 U.S. 634, 653 (1973) (Rehnquist, J., dissenting) (noting that the Supreme Court applied rational basis review in the *Terrace* cases).

336. Porterfield v. Webb, 263 U.S. 225, 233 (1923).

337. U.S. CONST. amend. XIV, § 1; *see also* Yick Wo v. Hopkins, 118 U.S. 356, 368–69 (1886) (finding the Fourteenth Amendment to apply to "all persons within the territorial jurisdiction," regardless of nationality or citizenship).

338. U.S. CONST. amend V. The Fifth Amendment's Takings Clause was incorporated into the Fourteenth Amendment in 1897, thereby requiring states—not just the federal government—to provide "just compensation" for taking property. Chic., Burlington & Quincy R.R. v. City of Chic., 166 U.S. 226, 236–37 (1897).

339. U.S. CONST. amend V. The Takings Clause has been interpreted as imposing "a categorical duty" on the government "to compensate the former owner" of property it took for the public interest. Tahoe-Sierra Pres. Council, Inc. v. Tahoe

In determining the meaning of "person" under these clauses, the Supreme Court has held that due process protections apply broadly, spanning U.S. citizens to undocumented immigrants.[340] Like with equal protection, however, courts have suggested that U.S. citizens and lawful permanent residents may enjoy more robust due process protections than immigrants with lesser status do.[341] Even so, the Supreme Court has affirmatively held that undocumented and legal immigrants on temporary visas—like those subject to the IFCA—are entitled to basic constitutional protections of due process.[342]

Having established the scope of the Due Process Clause—protecting nearly all "persons" regardless of citizenship status—the next step of a due process claim is determining whether the government has acted in violation of its protections. That is, by enacting the IFCA, has Florida "deprived" persons of life, liberty, or property? Due process has two general protections, and by extension, potential violations: (1) substantive due process—whether the government unconstitutionally deprives one of life, liberty, or property; and (2) procedural due process—whether the government's *process* of deprivation is fair.[343]

Reg'l Plan. Agency, 535 U.S. 302, 322 (2002) (citing United States v. Pewee Coal Co., 341 U.S. 114, 115 (1951)).

340. Plyler v. Doe, 457 U.S. 202, 210 (1982) (first citing Shaughnessy v. Mezei, 345 U.S. 206, 212 (1953); then citing Wong Wing v. United States, 163 U.S. 228, 238 (1896); and then citing *Yick Wo*, 118 U.S. at 369) ("Whatever his status under the immigration laws, an alien is surely a "person" in any ordinary sense of that term. Aliens, even aliens whose presence in this country is unlawful, have long been recognized as 'persons' guaranteed due process of law by the Fifth and Fourteenth Amendments.").

341. Demore v. Hyung Joon Kim, 538 U.S. 510, 543–44 (2003) (Souter, J., concurring in part) ("The constitutional protection of an alien's person and property is particularly strong in the case of aliens lawfully admitted to permanent residence (LPRs)."); Zadvydas v. Davis, 533 U.S. 678, 693–94 (2001) (noting the Due Process Clause protects immigrants, but "the nature of that protection may vary depending upon status and circumstance"). Moreover, nonresident nationals outside the United States do not generally have *any* due process rights. *See* Trump v. Hawaii, 585 U.S. 667, 703 (2018) ("[F]oreign nationals seeking admission [to this country] have no constitutional right to entry."); Landon v. Plasencia, 459 U.S. 21, 32 (1982) (citation omitted) ("[A]n alien seeking initial admission to the United States . . . has no constitutional rights regarding his application."); Mendoza-Linares v. Garland, 51 F.4th 1146, 1167 (9th Cir. 2022) ("[S]uch an alien 'has only those rights regarding admission that Congress has provided by statute.'").

342. *Zadvydas*, 533 U.S. at 693 ("[T]he Due Process Clause applies to all 'persons' within the United States, including aliens, whether their presence here is lawful, unlawful, temporary, or permanent.").

343. United States v. Salerno, 481 U.S. 739, 746 (1987); David H. Armistead, *Substantive Due Process Limits on Public Officials' Power to Terminate*

Substantive due process bars "certain government actions regardless of the fairness of the procedures used to implement them."[344] That is, governments may not deprive persons of certain life, property, and liberty rights *without sufficient justification*, regardless of the means by which it does so.[345] Whether the government's justification for depriving people of certain rights is sufficient depends in large part on what the government deprives its people of.[346] Deprivations of certain rights that the judiciary has come to recognize as "fundamental" are subject to a heightened level of scrutiny upon judicial review, making their survival unlikely.[347] Otherwise, statutes infringing on non-fundamental rights are generally subject to the lowest standard of scrutiny: rational basis.[348]

Like equal protection, the applicable standard of review for substantive due process claims is a key consideration when it comes to challenging the IFCA. The importance of these differing standards—strict scrutiny for deprivations of fundamental rights versus rational basis review for all others—in the context of substantive due process is well illustrated by the Supreme Court case *Washington v. Glucksberg*. At issue in the case was a state law banning physician-assisted suicide, which the petitioner alleged infringed on a fundamental right,

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State-Created Property Interests, 29 GA. L. REV. 769, 773 (1995); Erwin Chemerinsky, *Substantive Due Process*, 15 TOURO L. REV. 1501, 1501 (1999) ("Substantive due process asks the question of whether the government's deprivation of a person's life, liberty or property is justified by a sufficient purpose.").

344. Daniels v. Williams, 474 U.S. 327, 331 (1986).

345. Chemerinsky, *supra* note 343, at 1509.

346. *See, e.g.*, Doe v. Franklin Square Union Free Sch. Dist., 100 F.4th 86, 94 (2d Cir. 2024) (citation omitted) ("Strict scrutiny review applies only when the government infringes a 'fundamental' right. 'Where the claimed right is not fundamental,' we apply rational basis review, and the government action 'need only be reasonably related to a legitimate state objective.'").

347. *Id.*; Reno v. Flores, 507 U.S. 292, 301–02 (1993). Substantive due process "forbids the government to infringe certain 'fundamental' liberty interests at all, no matter what process is provided, unless the infringement is narrowly tailored to serve a compelling state interest." *Id.* Whole Woman's Health v. Hellerstedt, 579 U.S. 582, 638 (2016) (Thomas, J., dissenting) (describing the standard of review for fundamental rights under substantive due process as "strict scrutiny").

348. *Reno*, 507 U.S. at 306 (finding that since the law at issue did not infringe on a fundamental right, it was subject only to the "(unexacting) standard of rationally advancing some legitimate governmental purpose"); Foucha v. Louisiana, 504 U.S. 71, 115 (1992) (Thomas, J., dissenting) ("Except in the unusual case where a fundamental right is infringed, then, federal judicial scrutiny of the substance of state legislation under the Due Process Clause of the Fourteenth Amendment is not exacting.").

therefore violating substantive due process.[349] The fundamental right at issue was that of fully competent, terminally ill people to elect physician-assisted suicide.[350] The Court ultimately disagreed, finding no such fundamental right at issue in the law.[351] Accordingly, the Supreme Court demanded only that the law be reasonably related to a legitimate government interest—not the more exacting "compelling" interest. With an "unquestionably important and legitimate"[352] interest in preserving human life, among other justifications, the Supreme Court found Washington's ban on physician-assisted suicide to be reasonably related to furthering such an interest.[353] As such, the law was upheld.[354]

As *Glucksberg* illustrates, substantive due process claims that fail to show a fundamental right at issue typically receive the lowest standard of review, vastly improving the law's chance of surviving judicial review.[355] Accordingly, voiding the IFCA through substantive due process will likely require a showing that the law burdens such a right. Thus, the pressing question as it relates to the IFCA is whether the law impinges on a fundamental right and, therefore, is entitled to the strictest standard of review.

Fundamental rights largely stem from the Fifth and Fourteenth Amendments' "liberty" protection. Such language has been interpreted to protect not only the rights explicitly guaranteed by the first eight amendments to the Constitution but also certain rights absent from the Constitution's text that are deemed so essential to individual liberty as to be fundamental.[356] These include the rights of marrying a person

349. Washington v. Glucksberg, 521 U.S. 702, 705 (1997).
350. *Id.* at 708.
351. *Id.* at 728.
352. *Id.* at 735.
353. *Id.* at 728, 730–31.
354. *Id.* at 735.
355. *See Substantive Due Process—Fundamental Rights*, LAWSHELF, https://www.lawshelf.com/coursewarecontentview/substantive-due-process-fundamental-rights [https://perma.cc/3HH8-XKT9].
356. Dobbs v. Jackson Women's Health Org., 597 U.S. 215, 216 (2022). Note, however, that "where a particular amendment provides an explicit textual source of constitutional protection against a particular sort of government behavior, that Amendment, not the more generalized notion of substantive due process, must be the guide for analyzing these claims." Cnty. of Sacramento v. Lewis, 523 U.S. 833, 842 (1998) (citation omitted). Treating substantive due process as a sort of last resort, therefore, has put the focus of the law on liberty protections otherwise unmentioned in the Constitution.

of a different race[357] or of the same sex,[358] refusing medical treatment,[359] and that of parents to raise their children.[360] Whether the right of noncitizens to buy and own land—the activity targeted by the IFCA—is considered fundamental for purposes of substantive due process, however, remains unclear. While caselaw certainly recognizes certain property as worthy of constitutional protection—such as under the Fifth Amendment—such a right is far from comprehensive and, in the context of substantive due process, notably lacking.[361]

Confronting the question of noncitizens' rights to own property, the Supreme Court in *Terrace* affirmatively determined that no such right exists.[362] While *Terrace* may suggest that challenges to the IFCA—a law arguably very similar to the law at issue in *Terrace*—under substantive due process are destined to fail, it is worth considering the issue further for two reasons. First, substantive due process jurisprudence has greatly evolved since *Terrace* was decided in 1923.[363] Second, and relatedly, many jurists have even called for its overturning. Accordingly, it is worthwhile to consider more recent caselaw in determining whether the IFCA amounts to a fundamental rights violation.

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357. Loving v. Virginia, 388 U.S. 1, 12 (1967) (finding that to deny individuals the fundamental right to marry on the basis of race, a classification "so directly subversive of the principle of equality at the heart of the Fourteenth Amendment, is surely to deprive all the State's citizens of liberty without due process of law").

358. Obergefell v. Hodges, 576 U.S. 644, 681 (2015) ("[S]ame-sex couples may exercise the fundamental right to marry in all States.").

359. Cruzan *ex rel.* Cruzan v. Dir., Mo. Dep't of Health, 497 U.S. 261, 278 (1990) (holding that competent individuals enjoy a fundamental right to refuse medical treatment under the Due Process Clause).

360. Troxel v. Granville, 530 U.S. 57, 66 (2000) ("[T]he Due Process Clause of the Fourteenth Amendment protects the fundamental right of parents to make decisions concerning the care, custody, and control of their children.").

361. Kelley-Lomax v. City of Chic., 49 F.4th 1124, 1125 (7th Cir. 2022) (noting "[w]e do not doubt that property is a fundamental right," before upholding the city's disposal of an arrestee's personal property on substantive due process grounds because the "right to have the government serve as unpaid custodian of property for extended periods," is not fundamental).

362. Terrace v. Thompson, 263 U.S. 197, 218 (1923) ("State legislation applying alike and equally to all aliens, withholding from them the right to own land, cannot be said to be capricious or to amount to an arbitrary deprivation of liberty or property, or to transgress the [D]ue [P]rocess [C]lause.").

363. *See* Chemerinsky, *supra* note 343, at 1502–05 (describing the history of substantive due process beginning in the early twentieth century); William R. Musgrove, Note, *Substantive Due Process: A History of Liberty in the Due Process Clause*, 2 U. ST. THOMAS J.L. & PUB. POL'Y 125 (2008) (describing the history of substantive due process from its enactment through 2008).

Unfortunately for those seeking the IFCA's voiding on substantive due process grounds, relevant caselaw since *Terrace* provides little comfort. Despite the Fourteenth Amendment's clear language protecting "life, liberty," and "property," the Supreme Court has yet to establish a stand-alone fundamental right to property in the context of modern substantive due process—even for citizens.[364] Without such guidance, lower courts have tended to find that a general property right is not fundamental for substantive due process purposes.[365] Similarly, cases post-*Terrace* dealing with the property rights of noncitizens generally seem to find no such right, upholding regulations restricting such rights on due process grounds.[366]

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364. Jack May, Comment, *Wrong or (Fundamental) Right?: Substantive Due Process and the Right to Exclude*, 98 WASH. L. REV. 1355, 1357 (2023).

365. 301, 712, 2103 & 3151 LLC v. City of Minneapolis, 27 F.4th 1377, 1384–85 (8th Cir. 2022) (quoting Ala. Ass'n of Realtors v. Dep't of Health & Hum. Servs., 594 U.S. 758, 765 (2021)) (stating the right to exclude—"one of the most fundamental elements of property ownership"—has never been held as fundamental for purposes of substantive due process); Olympic Stewardship Found. v. State Env't. & Land Use Hearings Off., 199 Wn. App. 668, 720–21 (Wash. Ct. App. 2017) (finding that "the right to use one's property" is not a fundamental right for substantive due process purposes), *cert. denied*, 586 U.S. 817 (2018); Chong Yim v. City of Seattle, 451 P.3d 694, 702 (Wash. 2019), *as amended* (Jan. 9, 2020) ("None of the cases cited by the plaintiffs actually address the question of whether the use of property is a fundamental right for substantive due process purposes, and they certainly do not make such a holding."); Hill v. Borough of Kutztown, 455 F.3d 225, 234 (3d Cir. 2006) ("Whether a property interest is protected for purposes of substantive due process is a question that is not answered by reference to state law. Rather, for a property interest to be protected for purposes of substantive due process, it must be 'fundamental' under the United States Constitution."); 625 Fusion, LLC v. City of Fort Lauderdale, 526 F. Supp. 3d 1253, 1270 (S.D. Fla. 2021) (quoting Hamilton v. Southland Christian Sch., Inc., 680 F.3d 1316, 1319 (11th Cir. 2012)) ("Property rights are state common law rights and are not equivalent to fundamental rights.").

366. *See, e.g.*, Asbury Hosp. v. Cass Cnty., 326 U.S. 207, 212–13 (1945) ("The [D]ue [P]rocess [C]lause does not guarantee that a foreign corporation when lawfully excluded as such from ownership of land in the state shall recapture its costs. It is enough that the corporation, in complying with the lawful command of the state to part with ownership, is afforded a fair opportunity to realize the value of the land, and that the sale, when required, is to be under conditions reasonably calculated to realize its value at the time of the sale."); Shames v. Nebraska, 323 F. Supp. 1321, 1333 (D. Neb. 1971) (finding a Nebraska law denying "non-resident alien[s]" the right to inherit property is not a violation of the Due Process Clause), *aff'd mem.*, 408 U.S. 901 (1972); De Tenorio v. McGowan, 510 F.2d 92 (5th Cir. 1975) (upholding a Mississippi statute barring "non-resident alien[s]" from acquiring or holding land as permissible under the Due Process Clause), *cert. denied*, 423 U.S. 877 (1975); Pedrazza v. Sid Fleming Contractor, 607 P.2d 597 (N.M. 1980) (upholding New Mexican law barring workers compensation for non-residents); *see also* 14 THOMPSON ON REAL PROPERTY, THIRD

Without a clear precedent finding property ownership by noncitizens as a "fundamental" right in substantive due process context, challengers to the IFCA may well resort to arguing it should be recognized as such. In 2022, the Supreme Court clarified the method of determining whether a right is so crucial to one's liberty as to be considered fundamental. The question, it explained, is "whether the right is 'deeply rooted in [our] history and tradition' and whether it is essential to this Nation's 'scheme of ordered liberty.'"[367] For instance, in *Glucksberg*, the Supreme Court surveyed the historical landscape to ultimately determine that the right to suicide was not fundamental.[368] It considered the legal treatment of suicide and assisted suicide by the Anglo-American common law,[369] American colonists,[370] states in present day[371] and in centuries prior,[372] and voter referendums in recent years.[373]

Using the Supreme Court's current fundamental rights test—whether the right is "deeply rooted" in history and tradition—to determine whether noncitizens subject to the IFCA have a fundamental right to buy and own land, it would seem the answer is no. As noted in Part I, the United States has a long history of depriving immigrants from holding land. More recently, the Supreme Court has expressed opposition to expanding any rights as "fundamental" when it comes to immigrants.

In 2024, for instance, the Supreme Court analyzed the "history and tradition" of immigrants' rights for substantive due process purposes in *Department of State v. Muñoz*. There, a citizen argued she had a fundamental right under substantive due process to live with her noncitizen husband, whose marriage

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THOMAS EDITIONS § 107.12 (2024) (LexisNexis) (concluding states can likely restrict non-resident immigrants from owning land under the Due Process Clause "so long as that power is not exercised arbitrarily or without a reasonable purpose," comporting with the U.S. Supreme Court's decision in *Ambach v. Norwick*).

367. Dobbs v. Jackson Women's Health Org., 597 U.S. 215, 216 (2022).

368. Washington v. Glucksberg, 521 U.S. 702, 710 (1997).

369. *Id.* at 711 ("[F]or over 700 years, the Anglo-American common-law tradition has punished or otherwise disapproved of both suicide and assisting suicide.").

370. *Id.* at 712 ("For the most part, the early American Colonies adopted the common-law approach" of criminalizing suicide.).

371. *Id.* at 710 ("In almost every State—indeed, in almost every western democracy—it is a crime to assist a suicide.").

372. *Id.* at 715 (describing early state laws banning assisted suicide enacted in 1828, 1874, and 1877).

373. *Id.* at 716–17 (noting referendums in Washington and California wherein voters rejected a ballot initiative permitting a form of physician-assisted suicide).

visa application was denied.[374] The Court found that living with a noncitizen spouse was not fundamental because such an arrangement was not deeply rooted in the nation's history and tradition.[375] "On the contrary," it explained, "the through line of history is recognition of the [g]overnment's sovereign authority to set the terms governing the admission and exclusion of noncitizens."[376] It considered a long line of severely restrictive immigration statutes, such as the 1798 Act Concerning Aliens, Immigration Act of 1882, Page Act of 1875, and Emergency Quota Act of 1921.[377] Further, it considered the expansive authority of the federal government to regulate immigration, remarking that immigration is "an area unsuited to rigorous judicial oversight."[378] In its reasoning, the Supreme Court cited the 1896 case *Wong Wing v. United States* which affirmed, "that the United States can, as a matter of public policy . . . forbid aliens or classes of aliens from coming within [its] borders," and "'[n]o limits can be put by the courts upon' that power."[379]

Likewise, caselaw from a variety of circuits appears particularly reluctant to expand the scope of fundamental rights when it concerns noncitizens.[380] In the Fifth Circuit, for instance, substantive due process has been found to protect noncitizens from "gross physical abuse at the hands of state or federal officials,"[381] but little beyond that. As the U.S. Court of Appeals for the Fifth Circuit explained in *Gisbert v. United States Attorney General*, "excludable aliens may legally be denied other due process rights, including the right to be free of detention."[382] Likewise, in the Eleventh Circuit—where Florida sits—the rights of noncitizens and even the citizen children of noncitizens have extremely limited rights under substantive due process.[383]

374. U.S. Dep't of State v. Muñoz, 144 S. Ct. 1812, 1817–18 (2024).
375. *Id.* at 1818.
376. *Id.* at 1823.
377. *Id.*
378. *Id.* at 1822 (citing Fiallo v. Bell, 430 U.S. 787, 792 (1977)).
379. *Id.* at 1816.
380. *See, e.g.*, Shames v. Nebraska, 323 F. Supp. 1321, 1333 (D. Neb. 1971) ("The Supreme Court has never indicated in unequivocal terms whether a State is required to give due process to non-resident aliens.").
381. Lynch v. Cannatella, 810 F.2d 1363, 1374 (5th Cir. 1987).
382. Gisbert v. U.S. Att'y Gen., 988 F.2d 1437, 1442 (5th Cir. 1993).
383. *See* Mendez-Gutierrez v. U.S. Att'y Gen., 860 Fed. Appx. 155, 157 (11th Cir. 2021) ("[A]liens do not have a constitutionally protected liberty interest in purely discretionary forms of relief, and therefore, no substantive due process

Furthermore, the Supreme Court has long been resistant to expanding protections under substantive due process, including adopting new rights as "fundamental."[384] Going a step further, many judges appear poised to eliminate the doctrine of substantive due process altogether.[385] In a scathing opinion on substantive due process issued in 2024, Chief Judge Pryor of the Eleventh Circuit stated, "[t]he doctrine of substantive due process does violence to the text of the Constitution, enjoys no historical pedigree, and offers judges little more than shifting and unilluminating standards with which to protect unenumerated rights."[386]

Thus, precedent old and new seems to suggest that a noncitizen does not have a fundamental right, nor is likely to be

violation can arise from a deprivation of that relief."); De Perez v. U.S. Att'y Gen., No. 20-14738, 2022 U.S. App. LEXIS 15295, at *6–7 (11th Cir. June 3, 2022) ("[S]ubstantive due process is unavailable as a claim for children of deported aliens because "legal orders of deportation to [the] parents [of U.S. citizen children] do not violate any constitutional right of citizen children."); L.S. *ex rel.* Hernandez v. Peterson, 982 F.3d 1323, 1330 (11th Cir. 2020) ("Where no custodial relationship exists, "conduct by a government actor will rise to the level of a substantive due process violation only if the act can be characterized as arbitrary or conscience shocking in a constitutional sense."); Waddell v. Hendry Cnty. Sheriff's Off., 329 F.3d 1300, 1305 (11th Cir. 2003). Thus, this is a narrow standard where "[o]nly the most egregious official conduct" qualifies, so "even intentional wrongs seldom violate the Due Process Clause." *Waddell*, 329 F.3d at 1305 (alteration adopted) (internal quotation marks omitted).

384. Collins v. City of Harker Heights, 503 U.S. 115, 125 (1992) ("As a general matter, the Supreme Court has always been reluctant to expand the concept of substantive due process because guideposts for responsible decision-making in this unchartered area are scarce and open-ended.") (citing Regents of Univ. of Mich. v. Ewing, 474 U.S. 214, 225–26, (1985)); U.S. Dep't of State v. Muñoz, 144 S. Ct. 1812, 1821–22 (2024) (quoting Washington v. Glucksberg, 521 U.S. 702, 721 (1997)) ("Identifying unenumerated rights carries a serious risk of judicial overreach, so this Court 'exercise[s] the utmost care whenever we are asked to break new ground in this field.'").

385. Dobbs v. Jackson Women's Health Org., 597 U.S. 215, 333 (2022) (Thomas, J., concurring) (describing substantive due process as a "demonstrably incorrect reading of the Due Process Clause," and a "particularly dangerous" "legal fiction"). While critics like Justice Thomas appear focused largely on substantive due process—not its procedural counterpart—stripping the clause of its substantive component could arguably pave the way for nearly any type of governmental deprivation of life, liberty, and property. *See* Poe v. Ullman, 367 U.S. 497, 541 (1961) (Harlan, J., dissenting) ("Were due process merely a procedural safeguard it would fail to reach those situations where the deprivation of life, liberty or property was accomplished by legislation which by operating in the future could, given even the fairest possible procedure in application to individuals, nevertheless destroy the enjoyment of all three.").

386. Eknes-Tucker v. Governor of Ala., 114 F.4th 1241, 1243 (11th Cir. 2024). Judge Pryor described the clause as an "ahistorical legal fiction," with "almost no historical support" for its current use. *Id.*

granted one anytime soon, to own property under substantive due process. Assuming, for a moment, that plaintiffs can successfully argue noncitizens subject to the IFCA do have such a fundamental right, this does not necessarily demand voiding the IFCA.[387] Rather, substantive due process violations require the government to have an insufficient justification for the deprivation.[388] While the IFCA would likely receive an exacting standard of judicial review, Florida may well succeed in meeting that standard.[389] Under strict scrutiny, the court first considers whether the State has a compelling interest in prohibiting certain noncitizens from purchasing land in designated areas.[390] National security, the IFCA's purported justification, is typically given deference by the Supreme Court as a compelling interest.[391]

Procedural due process, on the other hand, protects an individual's right to notice, fair procedures, and a hearing before

387. Bates v. City of Little Rock, 361 U.S. 516, 524 (1960) ("Decision in this case must finally turn . . . on whether . . . the State ha[s] demonstrated so cogent an interest . . . as to justify the" burden on a constitutional right, because "[w]here there is a significant encroachment upon personal liberty, the State may prevail only upon showing a subordinating interest which is compelling.").

388. Chemerinsky, *supra* note 343, at 1509.

389. *See* Adam Winkler, *Fatal in Theory and Strict in Fact: An Empirical Analysis of Strict Scrutiny in the Federal Courts*, 59 Vanderbilt L. Rev. 793, 812–13 (2006) (Noting that "some decisions uphold laws while applying strict scrutiny," and describing a few such cases as "visible signs of a larger body of strict scrutiny decisions that uphold laws under even this most rigorous and exacting standard of review."). In his study of "every strict scrutiny decision published by the district, circuit, and Supreme courts between 1990 and 2003," *id.* at 795, Professor Adam Winkler found that 24 percent of what he deemed "fundamental rights cases" survived strict scrutiny analysis. *Id.* at 862–63.

390. *See* Zablocki v. Redhail, 434 U.S. 374, 388 (1978) ("When a statutory classification significantly interferes with the exercise of a fundamental right, it cannot be upheld unless it is supported by sufficiently important state interests and is closely tailored to effectuate only those interests.").

391. *See, e.g.*, Snepp v. United States, 444 U.S. 507 (1980) (finding restrictions on free speech otherwise protected by the First Amendment permissible because of the government's compelling interest in preserving national security); Rostker v. Goldberg, 453 U.S. 57, 69 n.6 (1981) ("[E]ven our most fundamental constitutional rights must in some circumstances be modified in the light of military needs, and . . . Congress' [*sic*] judgment as to what is necessary to preserve our national security is entitled to great deference.") (quoting S. REP. NO. 96-826, at 159–60 (1980)); U.S. Dep't of State v. Muñoz, 144 S. Ct. 1812, 1825 (2024) (noting that "other issues, including national security and foreign policy" are given weight by courts reviewing laws infringing on immigrants); Stephanie Howell, Note, *In the Shadow of* Korematsu*: Precedent & Policy Considerations for Trump's Muslim Registry*, 27 S. CAL. INTERDISC. L.J. 593, 612 (2018) ("[I]n general protection of national security is likely to be a compelling government purpose sufficient to justify the law's ends.").

a neutral decision maker.[392] It asks whether the government adhered to the proper procedures upon taking away life, liberty, or property.[393] That is, procedural due process is less concerned with depriving any particular right, but with *how* the government deprives persons of that right. As such, it is not the deprivation itself that is unconstitutional, but doing so without due process.[394] For example, states can seize a person's personal property, like their home, but states generally cannot do so without first providing notice and a hearing.[395] Likewise, a predetermination hearing is typically required before state workers can be dismissed if one can show that they have a property or liberty interest in their career.[396]

Procedural due process is typically a "flexible" inquiry that "calls for such procedural protections as the particular situation demands."[397] Such claims against states, such as Florida, generally consist of two parts: "(i) deprivation by state action of a protected interest in life, liberty, or property, and (ii) inadequate state process."[398]

Turning now to the IFCA and how due process protections may be used to invalidate it, the first question is whether due process protections extend to those subjected to the IFCA: people without legal authorization to be in the United States and those on temporary visas. As explained at the beginning of this Part, due process protections generally protect all "persons," regardless of legal status.

However, the IFCA is unlikely to receive strict scrutiny. As explained above, immigrants do not have the fundamental right to own property. On the contrary, *Terrace* found that states have the right to deny such use and ownership of land to immigrants.[399] Thus, once again, the law would likely be

392. Mathews v. Eldridge, 424 U.S. 319, 334 (1976).

393. Chemerinsky, *supra* note 343, at 1501 ("Procedural due process, by contrast, asks whether the government has followed the proper procedures when it takes away life, liberty or property.").

394. Carey v. Piphus, 435 U.S. 247, 259 (1978) ("Procedural due process rules are meant to protect persons not from the deprivation, but from the mistaken or unjustified deprivation of life, liberty, or property.").

395. *See* United States v. James Daniel Good Real Prop., 510 U.S. 43, 62 (1993).

396. *See, e.g.*, Bd. of Regents v. Roth, 408 U.S. 564, 564 (1972); Perry v. Sindermann, 408 U.S. 593, 593 (1972).

397. Morrissey v. Brewer, 408 U.S. 471, 481 (1972).

398. Reed v. Goertz, 598 U.S. 230, 236 (2023).

399. Terrace v. Thompson, 263 U.S. 197, 218 (1923).

subjected to only rational basis review and, as noted above, would most likely pass.[400]

Finally, the Supreme Court has recognized a property right in other constitutional contexts such as the Takings Clause.[401] The IFCA, however, contains a legacy provision, carving out an exception for individuals to whom the law would otherwise apply if they owned covered property before the law took effect.[402] That is, the state has not laid out an intent to take property from those already owning it.[403] Rather, the purpose of the law is to prevent further ownership. Accordingly, arguments under the Fifth Amendment's Takings Clause are likely inapplicable.

C. Supremacy Clause and Potential Violations of Existing Federal Statues

With Fourteenth Amendment challenges to Florida's law unlikely to succeed, challengers may well consider arguing that the IFCA conflicts with federal law. Should a court find such a conflict, the IFCA would be in violation of the Supremacy Clause, which bans states from enacting legislation in direct conflict with valid federal law.[404] For instance, Congress has the constitutional authority to regulate immigration and national security, so state laws aiming to legislate in this area—like the IFCA—may well be overturned as violations of the Supremacy Clause.[405] That said, state laws are not automatically rendered invalid simply because they touch on an area of federal control, as Congress "must accord States the esteem due to them as joint participants in a federal system."[406] Accordingly, a growing number of states have weighed in on issues within Congress's purview by enacting legislation that remains in effect.[407]

400. FCC v. Beach Commc'ns, 508 U.S. 307, 314 (1993) ("On rational-basis review, a classification in a statute . . . comes to us bearing a strong presumption of validity.").

401. *See* sources cited *supra* note 338 and accompanying text.

402. FLA. STAT. §§ 692.202(2)–(3), .203(2)–(3), .204(3) (2024).

403. *See* § 692.202.

404. *See* U.S. CONST. art. VI, cl. 2.

405. *See* Takahashi v. Fish & Game Comm'n, 334 U.S. 410, 419 (1948) ("The Federal Government has broad constitutional powers in determining what aliens shall be admitted to the United States, the period they may remain, regulation of their conduct before naturalization, and the terms and conditions of their naturalization.").

406. Alden v. Maine, 527 U.S. 706, 711 (1999).

407. *See* discussion *supra* Section III.A.

This Part will explore such arguments in the context of the IFCA. Section 1 will examine possible challenges to Florida's law under the Supremacy Clause, outlining the clause's scope and limitations. Section 2 will then analyze the federal statute most likely to conflict with the IFCA—the Fair Housing Act.

1. Supremacy Clause

The Supremacy Clause establishes that federal law, including the U.S. Constitution and valid federal legislation, takes precedence over state law.[408] The Supremacy Clause does not provide "federal preemption *in vacuo*," but rather applies only when a state law conflicts with an actual piece of federal legislation, treaty, or constitutional provision.[409] That is, tension between state law and some "brooding federal interest" or policy is insufficient for purposes of the Supremacy Clause—there must be an existing law or constitutional provision at issue.[410] Likewise, as with all valid legislation, the federal authority must be a legitimate exercise of congressional power. For instance, Congress has plenary power over immigration law, while states generally have authority to regulate things like health, safety, crime, welfare, police powers, and land use.[411]

408. U.S. CONST. art. VI, cl. 2.

409. Kansas v. Garcia, 589 U.S. 191, 202 (2020).

410. Va. Uranium, Inc. v. Warren, 587 U.S. 761, 767 (2019).

411. *See* sources cited *supra* note 162; McKanders, *supra* note 172, at 597 ("Congress has plenary power over immigration law," while states possess "traditional police powers to regulate the health, safety, and welfare of its citizens."); Stumpf, *supra* note 170, at 1565, 1569 (traditional state powers cover employment, health, welfare, and crime). However, as explained in Section III.A, the separation between states' traditional police powers and the federal government's authority to regulate immigration has become increasingly blurred. *See, e.g.*, *supra* notes 165–168 and accompanying text. This convergence of authority can be expected to deepen with the passage of the Laken Riley Act in January 2025, a bipartisan piece of federal legislation allowing states to sue the Department of Homeland Security for harms stemming from the agency's immigration decisions, such as the release of certain noncitizens from custody who are later charged with crimes. Laken Riley Act, S. 5, 119th Cong. (2025) (presented to President); *Roll Call 119th Congress, 1st Session*, U.S. H.R. (Jan. 22, 2025), https://clerk.house.gov/Votes/202523 [https://perma.cc/7FKX-NRKM] (noting a total of 263 Representatives voting in favor of the bill, 217 Republicans and 46 Democrats); *Roll Call Vote 119th Congress—1st Session*, U.S. Sen. (Jan. 20, 2025), https://www.senate.gov/legislative/LIS/roll_call_votes/vote1191/vote_119_1_00007.htm [https://perma.cc/7MTZ-8ZCG] (noting 64 votes in favor of passage in the Senate, 12 Democrats and 52 Republicans).

Perhaps unsurprisingly, there is often significant overlap between such federal authority and states' constitutional power. For example, the United States Citizenship and Immigration Services (USCIS), founded in 2003 as an arm of the Department of Homeland Security, is the designated federal agency for comprehensively regulating immigration in the United States.[412] USCIS has extensive authority over immigrants' lawful migration to, and legal status in, the United States. However, it does not regulate real estate transactions in any form—including those involving immigrants.[413]

Meanwhile, the Agricultural Foreign Investment Disclosure Act controls such transactions involving agricultural land.[414] The law requires foreign investors who acquire or transfer certain agricultural land to report the transaction to the Secretary of the Department of Agriculture within ninety days.[415] However, the law does not grant the Secretary the power to block such purchases.[416] Similarly, the Committee on Foreign Investment in the United States (CFIUS), a federally-established committee that reviews certain transactions involving foreign investment in the United States, lacks the authority to directly block transactions.[417] Both CFIUS and the Agricultural Foreign Investment Disclosure Act are largely reviewing bodies with limited power to act without further authorization.

Perhaps recognizing the limited scope of these existing authorities, Congress passed the Foreign Investment Risk Review Modernization Act of 2018,[418] which expanded the scope

412. 8 U.S.C. §§ 1101–1537.
413. *Id.*
414. 7 U.S.C. §§ 3501–3508.
415. *Id.*
416. *Id.*
417. *The Committee on Foreign Investment in the United States (CFIUS)*, U.S. DEP'T OF THE TREASURY, https://home.treasury.gov/policy-issues/international/the-committee-on-foreign-investment-in-the-united-states-cfius [https://perma.cc/2U6K-RT88].
418. 50 U.S.C. § 4565. The Office of Foreign Assets Control should also be noted as another example of federal law relevant to the IFCA, which administers and enforces economic sanctions programs against countries and individuals, like terrorists, to accomplish foreign policy and national security objectives. *Basic Information on OFAC and Sanctions*, U.S. DEP'T OF THE TREASURY, https://ofac.treasury.gov/faqs/topic/1501 [https://perma.cc/2GQ3-7H5T] (last updated Aug. 27, 2024); *Sanctions Programs and Country Information*, U.S. DEP'T OF THE TREASURY, https://ofac.treasury.gov/sanctions-programs-and-country-information [https://perma.cc/KS8D-68YG].

of covered transactions under CFIUS's purview. However, CFIUS continues to serve primarily as a reviewing committee without the power to stop transactions on its own.[419] This patchwork of federal law governing immigration and real estate transactions creates significant room for states to step in with their own laws. In other words, because so many gaps exist in the federal framework—which fails to comprehensively regulate foreign purchases of U.S. real property[420]—states have largely taken the lead in this area. For example, Oregon has restricted land purchases only to citizens and those who have declared an "intention to become a citizen" since 1967.[421]

Another notable example in this arena is the IFCA, which bans certain noncitizens from purchasing land in the state.[422] Determining whether the IFCA permissibly fills a gap in federal law—like Oregon—or impermissibly impinges on federal law in violation of the Supremacy Clause is a multistep analysis.

The first question is whether the IFCA and relevant federal law actually interfere with each other in a legally significant way. That is, did Congress intend to invalidate state law? In determining whether the IFCA actually clashes with federal law, is useful to determine which type of Supremacy Clause preemption it entails. Violations of the Supremacy Clause come in three forms: express, conflict, and field preemption.[423]

Express preemption is just that: a clear declaration of Congress that it intends for a piece of legislation to preempt any state law.[424] For example, the Immigration Reform and Control Act of 1986 largely expressly preempts state laws penalizing

419. *See, e.g.*, JAMES K. JACKSON, CONG. RSCH. SERV., RL33388, THE COMMITTEE ON FOREIGN INVESTMENT IN THE UNITED STATES (CFIUS) 12–16 (2020).

420. ANDERSON ET AL., *supra* note 183, at 3.

421. OR. REV. STAT. § 273.255 (2023).

422. *See supra* Section III.B.

423. Murphy v. NCAA, 584 U.S. 453, 477 (2018) (internal citations omitted) ("Our cases have identified three different types of preemption—"conflict," "express," and "field"—but all of them work in the same way: Congress enacts a law that imposes restrictions or confers rights on private actors; a state law confers rights or imposes restrictions that conflict with the federal law; and therefore the federal law takes precedence and the state law is preempted.").

424. *See, e.g.*, Morales v. Trans World Airlines, Inc., 504 U.S. 374, 420 (1992) (Stevens, J., dissenting) (quoting Airline Deregulation Act of 1978, Pub. L. No. 95-504, § 105(a), 92 Stat. 1708) (striking down a state statute because the relevant federal regulation provided that "no State or political subdivision thereof . . . shall enact or enforce any law . . . relating to rates, routes, or services of any [covered] air carrier").

employers who hire undocumented immigrants.[425] For instance, in *Dan's City Used Cars, Inc. v. Pelkey*, the Supreme Court considered the express preemption provisions of the Federal Aviation Administration Authorization Act of 1994. The Act prohibited states from enacting legislation "related to a price, route, or service of any motor carrier . . . with respect to the transportation of property."[426] The plaintiff contended that the law preempted a New Hampshire statute requiring car owners to cover the costs of removal and storage fees if their vehicle was towed.[427] However, the Supreme Court ultimately disagreed, concluding that New Hampshire's law was not preempted because it regulated vehicle storage and disposal after towing—not towing itself or other transportation services.[428] In other words, although the state law addressed similar issues to those covered in the federal law, the federal law only expressly preempted laws regarding transportation. Because the state law dealt exclusively with motor carrier services post-transportation—that is, the storage and removal of vehicles, not their transport—it was not preempted.

Meanwhile, conflict preemption occurs when it is impossible to comply with both state and federal law[429] or when a state law hinders a federal objective, such as when state law interferes with a federal legislative goal.[430] For instance, in *Crosby v. National Foreign Trade Council*, a Massachusetts law forbidding its agencies from doing business with Burma was invalidated as being preempted by federal law.[431] At issue in the case was the Foreign Operations, Export Financing, and Related Programs Appropriations Act, which imposed sanctions on Burma for human rights abuses and provided the president with flexible authority to address such abuses.[432] Even though the laws had similar objectives—denying investment and economic

425. *See* 8 U.S.C. § 1324a(h)(2); Arizona v. United States, 567 U.S. 387, 400, 403 (2012) (finding a state law criminalizing the failure to "complete or carry an alien registration document" preempted by 8 U.S.C. § 1304(e) (2006) and 18 U.S.C. § 3561). *But see* Kansas v. Garcia, 589 U.S. 191, 195 (2020) (holding a Kansas statute not preempted by the Immigration Reform Control Act).

426. Dan's City Used Cars, Inc. v. Pelkey, 569 U.S. 251, 254 (2013) (quoting 49 U.S.C. § 14501(c)(1)).

427. *Id.* at 259.

428. *Id.* at 255.

429. Fla. Lime & Avocado Growers, Inc. v. Paul, 373 U.S. 132, 142–43 (1963).

430. Pac. Gas & Elec. Co. v. State Energy Res. Conservation & Dev. Comm'n, 461 U.S. 190, 203–04 (1983).

431. Crosby v. Nat'l Foreign Trade Council, 530 U.S. 363, 366–67 (2000).

432. *Id.* at 368.

opportunities to Burma—the Supreme Court ultimately found that the state conflicted with the president's "authority to speak for the United States"[433] and undermined his ability "to restrain fully the coercive power of the national economy."[434] Thus, it held that the Massachusetts law "effectively undermine[d] the intended purpose and 'natural effect'" of federal law.[435]

Finally, field preemption occurs when federal law occupies an entire field of law "so comprehensively that it has left no room for supplementary state legislation."[436] As explained by the Supreme Court in *Rice v. Santa Fe Elevator Corporation*, field preemption generally requires that Congress enact a "scheme of federal regulation" that is "so pervasive as to make reasonable the inference that Congress left no room for states to supplement it."[437] In *Santa Fe*, the Supreme Court was tasked with determining whether the United States Warehouse Act preempted an Illinois statute regulating grain storage and warehouses.[438] It noted that courts must generally presume that state laws are not preempted when they deal with "historic police powers of the States . . . unless that was the clear and manifest purpose of Congress."[439] Despite this presumption, the Supreme Court ultimately concluded that the state law at issue was preempted. It was persuaded by Congress's "strong language" in a subsequent amendment to the Warehouse Act and accompanying committee reports, which granted exclusive authority over the licensing of grain warehouse operators to the federal government.[440] The Supreme Court interpreted this amendment as not simply affirming the supremacy of federal law but as "terminating the dual system of regulation."[441]

By its text, the IFCA does not appear to conflict with existing federal law in a manner that would preempt it. First, it is possible to comply with both the IFCA and applicable federal laws governing property and immigration status. Importantly, there is no federal law that explicitly bans the transactions outlined in Florida's law nor one expressly banning states from

433. *Id.* at 380.
434. *Id.* at 377.
435. *Id.* at 373.
436. R. J. Reynolds Tobacco Co. v. Durham Cnty., 479 U. S. 130, 140 (1986); *see also* Arizona v. United States, 567 U.S. 387, 399 (2012).
437. Rice v. Santa Fe Elevator Corp., 331 U.S. 218, 230 (1947).
438. *Id.*
439. *Id.*
440. *Id.* at 233–34.
441. *Id.* at 234.

regulating such transactions. Instead, existing federal authorities typically only review such transactions and, if they deem the transaction a potential national security threat, can recommend that such transactions be blocked.[442] Second, while not dispositive,[443] the IFCA does not obstruct federal objectives. Rather, the two complement each other. Florida's identification of targeted countries largely aligns with federal determinations on which countries pose a threat to the United States.[444] As the Supreme Court noted in *Terrace*, states may assume congressional classifications—such as those based on citizenship eligibility or national security risks—are reasonable and, in turn, impose laws restricting land use based on those categories.[445]

In *Yifan Shen*, the Eleventh Circuit Court of Appeals considered whether the IFCA was preempted by federal law after plaintiffs appealed the district court's denial of their motion for an injunction. At the district court level, the court denied the injunction, in part, based on its determination that the plaintiffs were unlikely to prove that the IFCA was preempted. The Eleventh Circuit disagreed.[446] In its short opinion granting the injunction in part, it found that the plaintiffs "have shown a substantial likelihood of success on their claim" that the IFCA is preempted by federal law.[447] Specifically, it suggested that the IFCA was likely preempted by the Foreign Investment Risk Review Modernization Act of 2018.[448]

However, the Foreign Investment Risk Review Modernization Act of 2018—which granted CFIUS more expansive authority to review transactions—does not change the fact that the committee is a reviewing body. As of 2020, only five transactions had been blocked since the committee was established.[449] This is likely due to the fact that, as a reviewing

442. *See, e.g.*, JACKSON, *supra* note 419.

443. While "complementary state regulation is impermissible" when "Congress occupies an entire field," Arizona v. United States, 567 U.S. 387, 401 (2012), this is a high bar. *See infra* text accompanying notes 459–471.

444. *See* Humana Inc. v. Forsyth, 525 U.S. 299, 313 (1999) (finding where federal law and state law appear to "complement" each other, there is no frustration).

445. Terrace v. Thompson, 263 U.S. 197, 220 (1923).

446. Yifan Shen v. Comm'r, No. 23-12737, 2024 U.S. App. LEXIS 2346, at *3 (11th Cir. Feb. 1, 2024).

447. *Id.*

448. *Id.*

449. JACKSON, *supra* note 442, at 23.

body under the president, the committee does not have the authority to directly block a transaction. Rather, CFIUS recommends transactions that should be blocked to the president, who then reviews certain factors to make the ultimate decision.[450] Florida's law, on the other hand, operates to expressly prevent certain transactions from happening in the first place in accordance with the guidelines put out by the federal government as to identified risks. Thus, taking a textualist approach,[451] the Supreme Court is unlikely to conclude that relevant federal regulations preempt the IFCA—especially given the weakening of executive agencies in recent years.

Moreover, the burden of proving federal law preempts state law is substantial, whether express, conflict, or field preemption.[452] For instance, given field preemption's sweeping consequences—effectively voiding most state laws that regulate a particular subject—courts are generally reluctant to find that field preemption exists.[453] Likewise, the Supreme Court has continued to refine, and narrow, the doctrine of preemption generally within the past decade or so, affirming the high bar that must be met for a federal regulation to preempt a state law.[454]

In *Chamber of Commerce v. Whiting*, for instance, the Supreme Court considered a federal regulation that "expressly preempts any State or local law imposing civil or criminal

450. *Id.* at 29–31.

451. The current makeup of the Supreme Court appears to have adopted a primarily textualist approach in recent years. *See* Jonathan Skrmetti, *Symposium: The Triumph of Textualism: "Only the Written Word Is the Law,"* SCOTUSBLOG (June 15, 2020, 9:04 PM), https://www.scotusblog.com/2020/06/symposium-the-triumph-of-textualism-only-the-written-word-is-the-law [https://perma.cc/9WT8-NN9T].

452. Gade v. Nat'l Solid Wastes Mgmt. Ass'n, 505 U.S. 88, 110 (1992) (Kennedy, J., concurring in part) ("Our decisions establish that a high threshold must be met if a state law is to be pre-empted for conflicting with the purposes of a federal Act."); *see also* Rice v. Norman Williams Co., 458 U.S. 654, 659 (1982) (stating that conflict between federal and state regulatory scheme must be "irreconcilable" and "[t]he existence of a hypothetical or potential conflict is insufficient to warrant the pre-emption of the state statute").

453. *See, e.g.*, Fla. Lime & Avocado Growers, Inc. v. Paul, 373 U.S. 132, 142 (1963); Camps Newfound/Owatonna, Inc. v. Town of Harrison, 520 U.S. 564, 617 (1997) (Thomas, J., dissenting) ("[O]ur recent cases have frequently rejected field pre-emption in the absence of statutory language expressly requiring it"); N.Y. Dep't of Soc. Serv. v. Dublino, 413 U.S. 405, 415 (1973).

454. *See* Chamber of Comm. v. Whiting, 563 U.S. 582, 607 (2011); Kansas v. Garcia, 589 U.S. 191, 195 (2020).

sanctions (other than through licensing and similar laws) upon those who employ, or recruit or refer for a fee for employment, unauthorized aliens.'"[455] It found that "[t]he simple fact that federal law creates procedures for federal investigations and adjudications culminating in federal civil or criminal sanctions does not indicate that Congress intended to prevent States from establishing their own procedures for imposing their own sanctions through licensing."[456] It thus concluded the law was not preempted.

Similarly, in *Kansas v. Garcia*, the Supreme Court overturned a lower court's decision that a Kansas law was preempted by the Immigration Reform and Control Act of 1986—a law that was previously found to have a broad preemptive effect.[457] In that case, plaintiffs had been convicted under Kansas's identity theft statute for using other people's social security numbers to obtain employment because they lacked work authorization.[458] They argued the Immigration Reform Act preempted the statute because it prohibits states from "imposing civil or criminal sanctions (other than through licensing and similar laws) *upon those who employ, or recruit or refer for a fee for employment*, unauthorized aliens."[459] However, the Supreme Court found that such language did not expressly preempt Kansas's law because it dealt only with "employers," not employees.[460]

Likewise, it found that the law did not invoke field preemption—which applies only in "rare" cases[461]—because while federal law may singularly occupy the field of immigrant registration it "does not create a comprehensive and unified system regarding the information that a State may require employees to provide."[462] Finally, it concluded, the federal statute didn't conflict with Kansas's law sufficient for conflict preemption, emphasizing that mere overlap between state and federal law is insufficient for preemption. "Indeed," it explained, "in the vast majority of cases where federal and state laws

455. *Chamber of Com.*, 563 U.S. at 590 (quoting 8 U.S.C. § 1324a(h)(2)).
456. *Id.* at 597–98.
457. *Kansas*, 589 U.S. at 211–13.
458. *Id.* at 198–99.
459. *Id.* at 197–98 (quoting 8 U.S.C. § 1324a(h)(2)).
460. *Id.* at 203–04.
461. *Id.* at 208.
462. *Id.* at 210.

overlap, allowing the States to prosecute is entirely consistent with federal interests."[463]

Put simply, there is no federal legislation comprehensively regulating the types of foreign real estate transactions and investments that Florida's law does. Federal laws and agencies that touch on these issues, like the Agricultural Foreign Investment Disclosure Act (AFIDA) or CFIUS, do not explicitly preempt the field or clearly set out to regulate this field. States have been regulating the intersection between land use and foreigners for over one hundred years. Therefore, without clearer language from the federal government, Florida's law is unlikely to be preempted.

2. Violation of Existing Statutes: Fair Housing Act

Beyond the Supremacy Clause, another possible legal route to voiding the IFCA is its potential for violating federal statutes, principally the Fair Housing Act (FHA). In 1968, Congress passed the FHA, making it unlawful for any person or entity to "refuse to sell . . . negotiate for the sale . . . or otherwise make unavailable or deny, a dwelling to any person because of race, color, religion, sex, familial status, or national origin."[464] It also provides that those engaged in residential real estate transactions are prohibited from discriminating in "making available such a transaction . . . because of race, color, religion, sex, handicap, familial status, or national origin."[465] Challenges to state laws under the FHA may be brought under a theory of disparate treatment or disparate impact.[466]

Notably, citizenship status is conspicuously absent from the FHA's list of protected characteristics under its discrimination ban. Instead, the FHA imposes a clear bar on housing discrimination based on "race, color, religion, sex, handicap, familial status, or national origin."[467] While the inclusion of

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463. *Id.* at 212.
464. 42 U.S.C. § 3604(a).
465. *See* § 3605(a).
466. Tex. Dep't of Hous. & Cmty. Affs. v. Inclusive Cmtys. Project, Inc., 576 U.S. 519, 540, 545–46 (2015) (recognizing disparate impact claims as cognizable under the FHA in addition to disparate treatment claims). Disparate treatment claims under the FHA involve showing that the defendant intended to discriminate against a minority, while disparate impact claims need only show that the defendant's practice disproportionately impacts a minority group, regardless of intent. *Id.* at 524.
467. 42 U.S.C. § 3604(c).

"race" and "national origin" may, on its face, suggest that the FHA was intended to prohibit the type of discrimination at issue in the IFCA—based on citizenship status—Supreme Court precedent suggests that it does not.

In *Espinoza v. Farah Mfg. Co.*, for instance, the Supreme Court considered whether the plaintiff, a lawful U.S. resident who had yet to obtain U.S. citizenship, suffered employment discrimination in violation of Title VII of the Civil Rights Act.[468] The text of Title VII prohibited employers from refusing to hire someone due to their national origin, among other characteristics, and the plaintiff argued that the defendant had done so when it refused to hire her because she did not have U.S. citizenship.[469] The Supreme Court affirmed the lower court's decision to dismiss the case, clarifying that "national origin" is distinct from citizenship status. National origin, it explained, means "the country where a person was born, or, more broadly, the country from which his or her ancestors came."[470] The term would encompass, for instance, a situation wherein an employer refuses to hire American citizens of Mexican ancestry,[471] but not one where an employer refuses to hire noncitizens of Mexican ancestry.

In 1996, Congress took steps to limit the scope of *Espinoza*[472] by amending Title VII to explicitly prohibit employment discrimination based on citizenship status for certain "protected individual[s]."[473] Such individuals include U.S. citizens, lawful permanent residents, refugees, asylees, and those lawfully admitted to the United States for temporary residence.[474] The FHA, by contrast, contains no similar language regarding citizenship status. The absence of such language is particularly important in today's judicial climate. The current Supreme Court Justices are, for the most part, textualists.[475] As such, they would most likely apply a textualist

468. Espinoza v. Farah Mfg. Co., 414 U.S. 86, 87 (1973), *superseded by statute*, Immigration Reform and Control Act of 1986, *as recognized in* Coretezano v. Salin Bank & Trust Co., 680 F.3d 936 (7th Cir. 2012).

469. *Id.* at 87–88.

470. *Id.* at 88.

471. *Id.* at 95.

472. *See Cortezano*, 680 F.3d at 940 ("We acknowledge that Congress took steps to limit *Espinoza*'s holding when it enacted 8 U.S.C. § 1324b in 1996.").

473. 8 U.S.C. § 1324b(a)(1)(B).

474. § 1324b(3).

475. *See* Sackett v. EPA, 598 U.S. 651, 671 (2023) (noting the majority's position that "[w]e start, as we always do, with the text"); *see also* Skrmetti, *supra* note 451.

approach to the IFCA should the question of the Supreme Court's interaction with the FHA reach its docket. Under such an approach, the Supreme Court is generally unwilling to read provisions into the text absent "a clear[] textual indication."[476]

Thus, while the Supreme Court has not directly addressed whether the FHA prohibits discrimination based on immigrant status, its interpretation of "national origin" in *Espinoza* and the absence of "citizenship status" language in the FHA suggests it does not. Accordingly, several circuit courts have interpreted *Espinoza* alongside the FHA's statutory language to reach the same conclusion.[477]

Considering the shortcomings of using the judiciary to overturn the Interests of Foreign Countries Act, Part V explores a realistic solution. Section V.A explores how regulatory agencies can be used, in combination with congressional action, to eliminate the harmful impacts of the Interests of Foreign Countries Act while ensuring national security concerns are being addressed. Section V.B examines both the necessary congressional action to achieve these goals and the likelihood of such action.

V. SOLUTION: COMBINING REGULATION WITH A NARROWING OF THE SCOPE OF THE INTERESTS OF FOREIGN COUNTRIES ACT TO MITIGATE HARM

As noted in Part IV, the IFCA passed with support from state legislators of both parties, with Florida's Governor proudly touting its passage.[478] Given this bipartisan support, the possibility of repeal by Florida's legislature appears remote. Likewise, the most viable legal challenges to the law are also likely to fail, as explained in Part IV above. This Part, therefore, moves to consider congressional action as the best chance to

476. *See* Jones v. Hendrix, 599 U.S. 465, 488 (2023); *see also* Ciminelli v. United States, 598 U.S. 306, 312 (2023) (looking at the original meaning of a statutory text).

477. *See, e.g.*, Martinez v. Partch, No. 07-cv-01237-REB-MEH, 2008 U.S. Dist. LEXIS 4162, *5 (D. Colo. Jan. 9, 2008) ("[The FHA] does not prohibit discrimination on the basis of citizenship."); Corwin v. B'Nai B'Rith Senior Citizen Hous., Inc., 489 F. Supp. 2d 405, 409 (D. Del. 2007) ("The prohibition of discrimination based on 'national origin' does not prohibit discrimination on the grounds of citizenship."); Espinoza v. Hillwood Square Mut. Ass'n, 522 F. Supp. 559, 567 (E.D. Va. 1981) (holding "alienage discrimination is not a per se violation of" the FHA).

478. Press Release, May 8, 2023, *supra* note 7.

curtail the IFCA's most discriminatory effects while protecting U.S. national security.

This Part explores a viable solution to mitigating the most harmful effects of Florida's law while still addressing a growing national threat. Sections V.A and B examine the role regulatory systems can play in achieving this goal and why they are best suited to tackle the problem. It first focuses on CFIUS before shifting gears to propose expansion of the AFIDA, including expanding the role of the USDA in this arena. The final Section explores congressional action that should, and realistically can, take place to achieve the proposals of the first two Sections. It focuses on the practicality of Congress acting, suggesting preemption by amendment as a more likely solution than an entirely new piece of legislation.

A. Utilizing CFIUS to Combat China as a National Security Concern While Protecting Civil Liberties of Noncitizens in the United States

Instead of having states like Florida tackle their national security concerns in a patchwork and ineffective way, the federal entity CFIUS should be vested with the authority to review Chinese purchases, assess the national security risk of these purchases, compel reporting of foreign purchases, and collaborate with allies about the risks of foreign investment. CFIUS, as noted in Part IV.C.1, is a federal agency under the executive branch's authority to regulate certain transactions involving noncitizens. It was created in 1975 through an executive order authored by President Gerald Ford after Congress amended the Defense Production Act.[479] Initially, it was tasked with studying and providing recommendations on foreign investment but was subsequently amended in 1988 after fears of Japanese investment galvanized Congress to strengthen its authority.[480]

Since then, CFIUS has undergone a number of changes—most notably with the Foreign Investment and National Security Act of 2007 and the Foreign Investment Risk Review

479. JACKSON, *supra* note 442, at 4, 6.
480. *Id.* at 4–7.

Modernization Act of 2018.[481] CFIUS reviews certain investments, business transactions, and real estate transactions. Currently, it has the power to prohibit or impose divestiture of certain purchases of land in the United States by foreigners.[482] The first step to CFIUS's review process begins only after the party to the subjected transaction voluntarily notifies CFIUS of the transaction.[483] Except in certain circumstances, notification of real property transactions with the potential to threaten national security is not mandatory.[484] Afterward, CFIUS begins its forty-five-day review process of the transaction with an eye toward a handful of national security factors, like the transaction's effect on the sale of military goods, critical infrastructure, and critical technologies.[485] In most cases, the review ends here, and the transaction proceeds unencumbered—largely barring CFIUS from any future action with respect to the transaction.[486] Otherwise, CFIUS initiates a national security investigation and, if it concludes that the transaction is a risk to U.S. national security, can recommend to the president that the deal be blocked.[487] CFIUS lacks unilateral authority to block the transactions on its own, and the Office of the President has only prohibited eight transactions as of December 2024.[488]

Beyond its inability to directly prohibit property transactions it deems a national security threat, CFIUS faces a number of other shortcomings when it comes to its authority over real estate transactions. It may only review certain real estate purchases, specifically those within a fixed proximity to U.S. military installations, airports, or maritime ports.[489] As of November 2024, only nine military installations under CFIUS's

481. *Id.* at 1–2, 10; *CFIUS Laws and Guidance*, U.S. DEP'T OF THE TREASURY, https://home.treasury.gov/policy-issues/international/the-committee-on-foreign-investment-in-the-united-states-cfius/cfius-laws-and-guidance [https://perma.cc/2QS4-8X4L].

482. 50 U.S.C. § 4565.

483. CATHLEEN D. CIMINO-ISAACS & KAREN M. SUTTER, CONG. RSCH. SERV., IF10177, COMMITTEE ON FOREIGN INVESTMENT IN THE UNITED STATES (CFIUS) 1 (2024).

484. *Id.*

485. *Id.* at 1–2; § 4565(b).

486. CIMINO-ISAACS & SUTTER, *supra* note 483, at 1–2.

487. *Id.* at 2.

488. *Id.*

489. ANDERSON ET AL., *supra* note 183, at 4; § 4565(a)(4).

purview existed in Florida.[490] Even for transactions within its geographic scope, numerous exceptions—such as those involving individual housing units—can preclude CFIUS review. As a result, there is a significant amount of property outside CFIUS's jurisdiction that is within the oversight of the IFCA, notably areas in proximity to refineries, electric power plants, or wastewater treatment facilities. By amending CFIUS, the agency can provide a comprehensive response to the concerns the IFCA seeks to address while minimizing the provisions most likely to adversely impact civil liberties.

First, CFIUS's authority should be expanded to include a comprehensive review of Chinese acquisitions in various sectors, including real estate. This would mean removing certain limitations to CFIUS's jurisdiction—namely those that limit its ability to review transactions falling outside its geographic scope. Achieving this goal would likely require more resources to be invested in CFIUS. Such an expanded scope should mirror those spots of critical infrastructure identified in Florida's law. However, the parties targeted should not include noncitizens "domiciled" in the United States. By doing this, CFIUS will have the regulatory authority to review potentially harmful purchases of property in critical areas while excluding the harmful impact Florida's law has on innocent scapegoats simply trying to make a life in Florida.

Second, CFIUS should strengthen its criteria for assessing national security risks associated with Chinese property acquisitions. This may involve a more nuanced evaluation of the acquired property's proximity to sensitive infrastructure. As noted in Part II, such infrastructure has been identified as a target of China. CFIUS has the resources to do this, equipping it with the knowledge and skill to identify true risks far more accurately and successfully than Florida. The agency can, and does, employ national security experts who dedicate their time solely to determining such risks.[491] It has access to far more confidential information relating to national security on a widespread scale. Such heightened and nuanced measures for determining risks provide safeguards against innocent people

490. *CFIUS Part 802 Geographic Reference Tool*, COMM. ON FOREIGN INV. IN THE U.S., https://mtgis-portal.geo.census.gov/arcgis/apps/webappviewer/index.html?id=0bb1d5751d76498181b4b531987ce263 [https://perma.cc/6FHF-DSFT] (providing an interactive map that shows military installations).

491. *See* JACKSON, *supra* note 442, at 38.

across the country being wrongfully targeted or excluded from purchasing land, unlike the IFCA.

Third, Congress should enhance CFIUS reporting requirements. By implementing more enforceable and transparent requirements for reporting foreign investments in applicable real property, CFIUS can properly identify potential risks and facilitate better-informed decision-making. Reports on these activities should be regularly made to Congress, increasing transparency and oversight. Such reporting provides a check on the agency, further ensuring that CFIUS does not take arbitrary or discriminatory actions. Additionally, by providing regular, current information to Congress on such purchases and acquisitions, Congress may be better informed to take further measures on combatting Chinese interference and espionage if warranted.

Finally, investing this authority with a well-resourced federal agency like CFIUS allows it to maintain and further strategic partnerships with allies. CFIUS, not Florida, is in the better and proper position to collaborate with U.S. allies—the United Kingdom, South Korea, and others—to share and receive necessary information on China's actions in the United States. Such partnerships facilitate collaboration and can enhance the United States' ability to mitigate potential risks to global security.

B. The AFIDA: Expanding Existing Legislation to Protect U.S. Soil and All Who Live on It

Expanding the reach of the AFIDA is another useful tool that the United States can use to balance national security concerns while mitigating the discriminatory impacts on Asian persons living in the United States. The law was passed in 1978 and requires certain disclosures to the USDA of farmland bought by certain purchasers.[492] The act requires non-U.S. government entities and individuals who are neither citizens nor permanent residents to disclose their interest in certain real estate transactions.[493]

As of 2021, Chinese investment was not of great concern to the United States. Among the five countries holding the largest

492. Agriculture Foreign Investment Disclosure Act (AFIDA), 7 U.S.C. §§ 3501–3508 (1978).

493. § 3508(2)–(3).

shares in agricultural land, China was not even listed. Those countries include: Canada (31 percent), the Netherlands (12 percent), Italy (7 percent), the United Kingdom (6 percent), and Germany (6 percent)—all allies of the United States.[494] This accounts for approximately 62 percent of all foreign-owned U.S. agricultural land. Other countries holding more than five hundred thousand acres included: Portugal,[495] France,[496] Denmark,[497] Luxembourg,[498] Mexico,[499] Switzerland,[500] the Cayman Islands,[501] Japan,[502] and Belgium.[503] China held a mere 383,935 acres, accounting for less than 1 percent of foreign-held acres.[504]

That said, purchases of agricultural land by Chinese citizens and investors increased tenfold from 2009 to 2016 alone.[505] Additionally, the Department of Agriculture's reporting contains many inaccuracies including underreporting and errors. While purchasers are supposed to report within ninety days, some properties go years without being reported or discovered.[506] Despite the USDA's monitoring of foreign acquisitions, it lacks the authority to conduct investigations, impose restrictions on the extent of land that foreign investors

494. Mary Estep et al., *Foreign Holdings of U.S. Agricultural Land Through December 31, 2021*, FARM SERV. AGENCY 4, https://www.fsa.usda.gov/sites/default/files/documents/2021_afida_annual_report_through_12_31_2021.pdf [https://perma.cc/VG6V-GBJJ] (last updated July 12, 2023).

495. *Id.* at 230 (holding 1,475,619 acres).

496. *Id.* at 229 (holding 719,195 acres).

497. *Id.* (holding 495,662 acres).

498. *Id.* at 230 (holding 517,205 acres).

499. *Id.* (holding 279,432 acres).

500. *Id.* (holding 321,941 acres).

501. *Id.* at 229 (holding 630,177 acres).

502. *Id.* (holding 280,736 acres).

503. *Id.* (holding 237,660 acres).

504. *Id.* at 4.

505. Rachel Treisman, *China Is Buying up More U.S. Farmland. Some Lawmakers Consider that a Security Threat*, NPR (Mar. 1, 2023, 1:22 PM), https://www.npr.org/2023/03/01/1160297853/china-farmland-purchases-house-hearing-competition [https://perma.cc/XG66-33S2].

506. Laura Strickler & Nicole Moeder, *Is China Really Buying up U.S. Farmland? Here's What We Found*, NBC NEWS (Aug. 25, 2023, 4:30 AM), https://www.nbcnews.com/news/investigations/how-much-us-farmland-china-own-rcna99274 [https://perma.cc/GUP9-NZFM]; *see also* RENÉE JOHNSON, CONG. RSCH. SERV., IF12312, FOREIGN OWNERSHIP OF U.S. AGRICULTURE: SELECTED POLICY OPTIONS (2023).

can purchase, or intervene to prevent transactions.[507] Considering the importance of food security, the increasing shortage of water, and the growing environmental threat facing the world, this land remains important to national security.[508]

First, the USDA should strengthen its reporting. Without accurate, current information, Congress cannot make fully informed decisions. The AFIDA should be amended to require the USDA to obtain additional data types and implement tightly enforced penalties for those who fail to report. Further, the agency should be granted investigatory powers to determine underreporting and false reporting better. Without such power, purchasers have little incentive to ensure they comply with the law because, as noted above, the chances that they will be discovered are not high.

Furthermore, the AFIDA's authority over foreign-invested agricultural land should be merged with CFIUS. While the USDA retains more specified knowledge and information on agricultural land and its importance, it lacks the recourse and knowledge that CFIUS has on national security threats. Both of these interests should be retained, but more collaboration between the agencies should be facilitated to better understand actual threats to U.S. farmland.

In order to implement these proposals, congressional action is required. The next Section will discuss how that can happen and how realistic such action is.

C. Congressional Approach

The polarization within American politics has emerged as a progressively dominant phenomenon. Divisions among the public are reinforced and solidified by their congressional representatives. Heightened divisiveness has overshadowed our political system by instilling hostility, gridlock, and dysfunctional governance. For example, even formerly uncontentious legislation, like spending bills, have become an opportunity for each side to air their grievances toward those

507. Agriculture Foreign Investment Disclosure Act (AFIDA), 7 U.S.C. §§ 3501–3508 (1978); JOHNSON, *supra* note 506, at 1–2; Antonia I. Tzinova & Jacob Marco, *Federal, State Governments Scrutinize Foreign Investment in U.S. Agricultural Land*, HOLLAND & KNIGHT (Apr. 24, 2024), https://www.hklaw.com/en/insights/publications/2024/04/federal-state-governments-scrutinize-foreign [https://perma.cc/LQ8E-VZGF].

508. JOHNSON, *supra* note 506, at 1–2.

they view as adversaries, not colleagues.[509] Moreover, there is an expanding rift, even within political parties, regarding national security and differing perspectives on the role the United States should play on the global stage.[510] Such disputes have only increased with the recent developments in Ukraine and Gaza.[511]

Nevertheless, as explained in Part II, both Democrats and Republicans have come to see China as a legitimate threat. This represents a rare issue where bipartisan agreement seems to prevail. Although specific approaches may vary along party lines, there appears to be common ground on the opportunity to proactively address the most detrimental effects of Florida's law. Congressional members on both sides of the political aisle have called for increased federal scrutiny of foreign land over national security concerns during the 118th Congress.[512] Expanding preexisting safeguards is the most plausible approach.

Congress has a few options to achieve the bipartisan goal of protecting U.S. interests and national security against China while also negating the most harmful effects of the IFCA on innocent members of the Asian American community. Congress could simply pass a bill preempting state laws such as Florida's, as Representative Al Green proposed in May 2023.[513] However, such measures are unlikely to pass without more concrete and comprehensive measures that congressional members can get behind. Congress may also introduce entirely new, comprehensive legislation addressing this issue. However, such all-encompassing statutes are often harder, and take longer, to pass.

Thus, one of the most realistic solutions for Congress is to include explicit preemption language in statutes to strengthen

509. *See* Catie Edmondson, *House G.O.P. Uses Spending Bills to Pick Partisan Policy Fights*, N.Y. TIMES (June 23, 2023), https://www.nytimes.com/2023/06/23/us/politics/house-republicans-spending-bills.html [https://perma.cc/G7B7-7TAH].

510. *See* Catie Edmondson, *McConnell Takes on Isolationist Wing of G.O.P. in Fight for Ukraine Aid*, N.Y. TIMES (May 16, 2022), https://www.nytimes.com/2022/05/16/us/politics/mcconnell-republicans-ukraine-aid.html [https://perma.cc/642J-7XYE].

511. Bryan Metzger, *Israel Could Eventually Divide the Left—While Ukraine Divides the Right*, BUS. INSIDER (Oct. 10, 2023, 2:20 PM), https://www.businessinsider.com/israel-divide-democrats-ukraine-republicans-hamas-gaza-2023-10 [https://perma.cc/EWP9-MBQX].

512. ANDERSON ET AL., *supra* note 183, at 4.

513. Preemption of Real Property Discrimination Act, H.R. 3697, 118th Cong. (2023).

existing regulatory authority over land purchases by China and other U.S. adversaries. Existing regulations are largely the responsibility of agencies as it currently stands. By expanding the authority of such agencies, as suggested in the two preceding Sections, members of the public and advocacy groups may have a better opportunity to air their concerns in notice and comment periods of rulemaking. Further, Congress is in a better position to regulate transactions subject to the IFCA because it has more resources and data on national security. It can thus use that information to better ensure that national security needs are met while mitigating the harmful, discriminatory effects of Florida's law.

Such solutions have support in Congress. Considering first CFIUS, Republican representatives, supported by some Democrats, have introduced legislation increasing CFIUS's authority on land purchases in the United States by Russia, China, Iran, or North Korea.[514] In 2024, the Senate voted to amend the proposed National Defense Authorization Act to expand CFIUS's authority to review certain foreign investments in agricultural land and businesses engaged in agriculture or biotechnology related to agriculture.[515] The amendment was supported by both Democrats and Republicans.[516] Other bills introduced also seek to further expand CFIUS's authority, supported by both Democrats and Republicans.[517]

Turning to the ADIFA and USDA expansions outlined above, these proposals appear to have garnered significant congressional backing. In 2022 and 2023, Congress allocated additional funds to strengthen the AFIDA, aiming to enhance reporting requirements and promote transparency.[518] During the 117th Congress, lawmakers introduced measures to prohibit certain foreign investors from participating in USDA programs

514. Protecting Military Installations from Foreign Espionage Act, H.R. 917, 118th Cong. (2023).

515. Servicemember Quality of Life Improvement and National Defense Authorization Act for Fiscal Year 2025, Pub. L. No. 118-159 (2024).

516. *Roll Call Vote 118th Congress—2nd Session*, U.S. SEN. (Dec. 18, 2024), https://www.senate.gov/legislative/LIS/roll_call_votes/vote1182/vote_118_2_00325.htm [https://perma.cc/53ZW-SSS5] (noting a total of eighty-five U.S. Senators voted in favor of the legislation).

517. *See, e.g.*, Security and Oversight for International Landholdings Act of 2023, S. 1066, 118th Cong. (2023).

518. Consolidated Appropriations Act, 2023, Public Law No. 117-328, 136 Stat. 4459 (2022).

or accessing specific governmental services.[519] Other proposals focused on expanding federal oversight of foreign investment in the U.S. food and agriculture sectors or barring specific foreign adversaries from engaging in such transactions.

Additionally, some proposals sought to incorporate agricultural systems and supply chains into the definitions of critical infrastructure and critical technologies under CFIUS, with a call for mandatory reviews of investments potentially leading to foreign control of U.S. agricultural businesses. They also recommended that the USDA and the Government Accountability Office report on instances of foreign influence in U.S. agriculture. Many of these initiatives enjoyed bipartisan support.[520]

CONCLUSION

In 1948, the Supreme Court confronted the constitutionality of California's immigrant land law.[521] In examining the law, Justice Murphy wrote:

> Loyalty and the desire to work for the welfare of the state, in short, are individual rather than group characteristics. An ineligible alien may or may not be loyal; he may or may not wish to work for the success and welfare of the state or nation. But the same can be said of an eligible alien or a natural born citizen. It is the essence of naïveté to insist that these desirable characteristics are always lacking in a racially ineligible alien, whose ineligibility may be remedied tomorrow by Congress. These are matters which depend upon factors far more subtle and penetrating than the prevailing naturalization standards. As this Court has said, *Loyalty is a matter of the heart and mind, not of race, creed, or color*."[522]

519. JOHNSON, *supra* note 506.

520. *Id.*; *see Roll Call 415 | Bill Number: H. R. 9456*, CLERK OF THE U.S. H.R. (Sept. 11, 2024), https://clerk.house.gov/Votes/2024415 [https://perma.cc/T6Y7-JMEU] (noting 214 Republican and 55 Democratic house representatives voted in favor of the Protecting American Agriculture from Foreign Adversaries Act); *Roll Call 112 | Bill Number: H. R. 4476*, CLERK OF THE U.S. H.R. (Apr. 5, 2022), https://clerk.house.gov/Votes/2022112 [https://perma.cc/24Y6-ZREY] (noting 135 Republican and 213 Democratic house representatives voted in favor of the Department of Homeland Security Trade and Economic Security Council Act).

521. Oyama v. California, 332 U.S. 633, 633 (1948).

522. *Id.* at 666 (Murphy, J., concurring) (emphasis added).

These words are as true today as they were over seventy-five years ago. Restricting where individuals may call home on the sole basis of their immigration status is discriminatory and perverts America's promise of civil liberties. Contrary to the claims of Governor DeSantis and other supporters, such restrictions have not been shown to advance national security. They did not do so when the United States encountered a wave of immigrant land laws in the twentieth century and it will not do so today. What laws like these have been shown to do is worsen racial stereotyping and prejudice.

That said, Governor DeSantis and supporters of the IFCA do have one thing right: China presents a looming threat to U.S. national security that must be addressed. By strengthening CFIUS and AFIDA, Congress can balance the need to address this threat while safeguarding the civil liberties of all.