No. 25-1047

IN THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT

JONES EAGLE LLC,

Plaintiff-Appellee,

v.

WES WARD, et al.,

Defendants-Appellants.

On Appeal from the United States District Court for the Eastern District of Arkansas, No. 4:24-cv-990 (Hon. Kristine G. Baker)

BRIEF OF RACIAL JUSTICE CENTERS, AFFINITY BAR AND PROFESSIONAL ASSOCIATIONS, AND CIVIL RIGHTS ADVOCACY ORGANIZATIONS AS AMICI CURIAE IN SUPPORT OF PLAINTIFF-APPELLEE AND AFFIRMANCE OF THE DISTRICT COURT'S PRELIMINARY INJUNCTION

Jeffrey T. Green
Green Lauerman Chartered PLLC
1050 30th Street, NW
Washington, DC 20007
(240)-286-5686
jeff@glclaw.net
Counsel for Amici Curiae

Counsel list continued on the following page

Additional Counsel for Amici Curiae:

Gabriel J. Chin
Aoki Center for Critical Race
and Nation Studies
UC Davis School of Law
400 Mrak Hall Dr.
Davis, CA 95616
(530) 752-3112
gjchin@ucdavis.edu

Rose Cuison-Villazor
Center for Immigrant Justice
Rutgers Law School
123 Washington Street
Newark, NJ 07102
(973) 535-3159
rose.villazor@law.rutgers.edu

Matthew S. Erie
American University
Washington College of Law
4300 Nebraska Ave NW
Washington, DC 20016
merie@american.edu

Pei "Leo" Yu
c/o University of Massachusetts School
of Law
333 Faunce Corner Road
Dartmouth, MA 02747-1252
pyu@umassd.edu

August 19, 2025

CERTIFICATE OF INTERESTED PERSONS AND CORPORATE DISCLOSURE STATEMENT

Amici's certificate of interested persons and corporate disclosure statements are included in the Appendix to this motion.

TABLE OF CONTENTS

CERTIFICATE OF INTERESTED PERSONS AND CORPORATE DISCLOSURE STATEMENT C-1
TABLE OF AUTHORITIES v
INTEREST OF AMICI CURIAE 1
STATEMENT OF THE ISSUE 4
SUMMARY OF ARGUMENT 5
ARGUMENT 9
CONCLUSION 20
CERTIFICATE OF COMPLIANCE 22
CERTIFICATE OF SERVICE 23

TABLE OF AUTHORITIES

CASES

Applegate v. Lum Jung Luke, 291 S.W. 978, 979 (Ark. 1927) 13
Brown v. Board of Education, 347 U.S. 483 (1954). 18
Cabell v. Chavez-Salido, 454 U.S. 432 (1982) 7
City of Cleburne v. Cleburne Living Ctr., 473 U.S. 432, 440 (1985) 9
De Canas v. *Bica*, 424 U.S. 351 (1976).....16
Duffner v. City of St. Peters, 930 F.3d 973, (8th Cir. 2019) 5
Fisher v. Univ. of Tex. at Austin, 570 U.S. 297 (2013).....9
Fujii v. State, 242 P.2d 617 (Cal. 1952).....18
Graham v. *Richardson*, 403 U.S. 365 (1971) 7, 9, 16
Hernandez v. Texas, 347 U.S. 475 (1954) 17
Johnson v. California, 543 U.S. 499 (2005) 9
Korematsu v. United States, 323 U.S. 214 (1944) 19
Lum v. Rice, 275 U.S. 78 (1927).....18
Namba v. McCourt, 204 P.2d 569, 579 (Or. 1949).....18
Oyama v. California, 332 U.S. 633 (1948).....6, 18
Railroad Retirement Bd. v. Fritz, 449 U.S. 166 (1980) 13
Shen v. *Simpson*, No. 23-12737, Order (11th Cir. Feb. 1, 2024) 9
State v. Oakland, 287 P.2d 39 (Mont. 1955) 18
States v. Sitladeen, 64 F.4th 978 (8th Cir. 2023) 16
Students for Fair Admissions, Inc. v. President & Fellows of Harv. Coll., 143 S. Ct. 2141 (2023) 18
Takahashi v. Fish & Game Comm'n, 334 U.S. 410 (1948).....6, 13, 16, 18
Terrace v. Thompson, 263 U.S. 197 (1923).....6, 7, 15, 18
Toll v. *Moreno*, 458 U.S. 1 (1982).....16
Trump v. Hawaii, 585 U.S. 667 (2018).....19
Williams v. Mississippi, 170 U.S. 213 (1898).....17

OTHER AUTHORITIES

Allison Brownell Tirres, *The Unfinished Revolution for Immigrant Civil Rights*, 25 J. Const. L. 846, 847-48; 911-12 (2023). 8
Exec. Order No. 14067 § 3(a), Ensuring Responsible Development of Digital Assets, 87 Fed. Reg. 14143 (Mar. 14, 2022) 14
Exec. Order No. 14179 § 1(a), Removing Barriers to American Leadership in Artificial Intelligence, 90 Fed. Reg. 8741 (Jan. 31, 2025).....14
Gabriel J. Chin, *A Nation of White Immigrants: State and Federal Racial Preferences for White Noncitizens*, 100 B.U. L. Rev. 1271, 1294-95 (2020) 13

Leo Yu, *Reviving Exclusion*, 12 Tex. A&M L. Rev. 1683, 1687-88; 1698-1700 (2025) 7, 10
Matthew S. Erie, *Property as National Security*, 2024 Wis. L. Rev. 255, 309 (2024) 7, 13
Office of Governor Sarah Huckabee Sanders, *Sanders Administration Holds China Accountable,* Arkansas Governor's Office (Dec. 13, 2023), https://governor.arkansas.gov/news_post/sanders-administration-holds-china-accountable/ 12
Rose Cuison Villazor, *Rediscovering* Oyama v. California: *At the Intersection of Property, Race, and Citizenship*, 87 Wash. U.L. Rev. 979, 984 (2010) 13

REGULATIONS

22 C.F.R. § 126.1 10
Ark. Acts 147 (2023)
Ark. Acts 636 (2023)
Ark. Act 636, § 18-11-702(5)(A) 10
Ark. Code § 14-1-606(e)(3)(A)-(D). 11
Ark. Code § 18-11-802 10
Ark. Code § 18-11-803(a)(1) 10
Ark. Code §14-1-606 11
Ark. Code §14-1-606(c)(1) 11
Ark. Code §18-11-804 ..... 11, 15

INTEREST OF AMICI CURIAE [1]

Amici include a coalition of racial justice centers, affinity bars and professional associations, and civil rights advocacy organizations, listed below.

Racial Justice Centers:

Aoki Center for Critical Race and Nation Studies at UC Davis School of Law;

Center for Civil Rights and Racial Justice at the University of Pittsburgh School of Law;

Center for Immigrant Justice at Rutgers Law School; and

Center on Race, Inequality, and the Law at New York University School of Law.

These racial justice centers include scholars who study historical and contemporary race discrimination, including the treatment of persons of Asian ancestry.

Affinity Bar/Professional Associations:

Conference of Asian Pacific American Law Faculty;

National Asian Pacific American Bar Association; and

National Filipino American Lawyer Association.

[1] Complete statements of interest are included as an Appendix to this amicus brief. Amici certify that neither party's counsel authored this brief in whole or in part, nor did any party or party's counsel, other than amici and their counsel, contribute money to fund preparation or submission of this brief. Amici also certify they have received the consent of the parties to file this brief.

These affinity bar/professional organizations are familiar with the history of discrimination that has thwarted inclusion and participation in this country's political, economic, and cultural spheres.

Civil Rights and Other Advocacy Organizations:

Asian American Legal Defense and Education Fund (AALDEF);

Asian American Legal Defense Fund;

Asian Americans Advancing Justice;

Asian Americans Advancing Justice – Atlanta;

Asian Americans Advancing Justice – Chicago;

Asian Americans Advancing Justice – Southern California;

Asian Law Caucus;

Chinese for Affirmative Action;

Committee of 100;

LatinoJustice PRLDEF;

National Iranian American Committee;

National Korean American Service & Education Consortium; and

Stop AAPI Hate.

These civil rights and other advocacy organizations seek to safeguard civil and political rights.

Amici are keenly aware of the history of race and alienage discrimination in restricting property rights and the devastating impact such discrimination has on individuals, communities, and this nation. Amici are also keenly aware that immigration restrictions, alien land laws, and the incarceration of Japanese Americans during World War II have been previously upheld by courts under the pretext of national security. Amici have an interest in this litigation to ensure that this pained part of American history, particularly as it relates to alien land laws, does not recur.

STATEMENT OF THE ISSUE

Whether, in addition to being conflict- and field-preempted, Ark. Acts 636 (2023) and Ark. Acts 174 (2023) violate the Equal Protection Clause because they: (1) carve out a discriminatory classification among aliens based on, at a minimum, national-origin; and (2) impose a burden (a restriction on real property ownership) that is greater than the classifications contained in the federal legislation that the State uses to justify the Acts.

INTRODUCTION

Amici respectfully wish to highlight for the Court an alternative ground supporting the District Court's preliminary injunction ruling: Ark. Acts 636 (2023) and Ark. Acts 174 (2023) violate the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution. This alternative ground is properly before the Court, as Plaintiff-Appellee pleaded such a violation in the Complaint (see Defendants-Appellants Br. at 6, *citing* App. 30-32), the parties briefed the question below, and the District Court, while not ruling on the question, noted that "on the limited record before it, [Plaintiff-Appellee] has the better of the argument with respect to all of its remaining claims." *Jones Eagle LLC v. Ward*, No. 4:24-cv-00990-KGB, 2024 U.S. Dist. LEXIS 225718, at 51-52 (E.D. Ark. Dec. 9, 2024). Where unconstitutional discrimination against protected classes overlaps with issues of national security and foreign relations, the doctrines of equal protection and federal preemption both come into play. Accordingly, impermissible state action "would not only violate the Equal Protection Clause, but would also encroach upon federal authority over lawfully admitted aliens." *Toll v. Moreno*, 458 U.S. 1, 12 (1982). *See also Examining Bd. of Eng'rs, Architects & Surveyors v. Flores de Otero*, 426 U.S. 572, 602 (1976) (noting that constitutional limits on state power over immigration rest on both equal protection principles and the Supremacy Clause). In any event, this Court has the authority to affirm on any ground supported by the

record. *See Duffner v. City of St. Peters*, 930 F.3d 973, 976 (8th Cir. 2019) ("We may affirm on any ground supported by the record."). The record amply supports affirmance on the additional ground presented here.

SUMMARY OF ARGUMENT

Acts 636 and 174 violate the Equal Protection Clause by relying on the International Traffic in Arms Regulations (ITAR) to define "prohibited foreign parties," thereby imposing a unique burden (a prohibition on agricultural land ownership) based upon, at a minimum, alienage and national origin. A state "should not be permitted to erect obstacles designed to prevent the immigration of people whom Congress has authorized to come into and remain in the country." *Oyama v. California*, 332 U.S. 633, 649 (1948) (Black, J., concurring). To the contrary, a state may "neither add to nor take from the conditions lawfully imposed by Congress upon admission, naturalization, and residence of aliens in the United States or the several states." *Takahashi v. Fish & Game Comm'n*, 334 U.S. 410, 419 (1948).

Moreover, as Plaintiff-Appellee's Complaint recites at length (Pl. Compl. ¶¶ 45-53), there is ample reason to suspect that both Acts specifically target individuals of Chinese origin, rendering the prohibited classification one based upon race as well as national origin and alienage. Such classifications are inherently suspect and subject to strict judicial scrutiny. The Acts cannot pass muster under the applicable strict scrutiny test and cannot even withstand the inapplicable rational-basis test. And

while reference to ITAR might conceivably justify certain defense-related trade restrictions relevant to trade in defense articles or services from or to Arkansas, the Acts go far beyond that scope. They prohibit both the possession of real property and, to the point of State-imposed divestment, incarceration, and massive fines, the legitimate business interests of U.S. citizens and lawfully present non-citizens, including the plaintiff in this action.

Defendants-Appellants' reliance on *Terrace v. Thompson*, 263 U.S. 197 (1923) (see Defendants-Appellants Br. at 34) is misplaced. At most, *Terrace* stands for the proposition that States have the power to pass laws that regulate land ownership. *Terrace*, 263 U.S., at 214-18; *Cabell v. Chavez-Salido*, 454 U.S. 432, 437-40 (1982). Although not at issue here, that power has historically been held to include the right to deny land ownership to noncitizens. *See von Kerssenbrock-Praschma v. Saunders*, 121 F.3d 373, 378 (8th Cir. 1997). However, any exercise of that power, as the *Terrace* court recognized, is subject to the Equal Protection Clause and equal protection jurisprudence. *See Terrace*, 263 U.S. at 218.

Crucially, equal protection jurisprudence has evolved considerably since *Terrace*. Defendants-Appellants do not cite or discuss the significant body of case law in the Supreme Court and this Court in the one hundred and two years post-*Terrace* that imposed additional limits based on Equal Protection grounds that are dispositive in this case. *See Von Kerssenbrock-Praschma*, 121 F.3d at 378. Indeed,

subsequent cases have abrogated *Terrace*. *See Graham* v. *Richardson*, 403 U.S. 365 (1971); Leo Yu, *Reviving Exclusion*, 12 Tex. A&M L. Rev. 1683, 1687-88; 1698-1700 (2025) (describing *Terrace* as a "zombie case" because its core rationale has been nullified by *Graham v. Richardson*, 403 U.S. 365, 371 (1971), but the Supreme Court has not overruled that language); Allison Brownell Tirres, *The Unfinished Revolution for Immigrant Civil Rights*, 25 J. Const. L. 846, 847-48; 911-12 (2023) (demonstrating how the courts in the later half of the twentieth century "overturn[ed] decades of [anti-immigrant] constitutional law precedent" and "brought noncitizens into the fold of Fourteenth Amendment protection" by invalidating a wide range of state laws that discriminated based on alienage).

ARGUMENT

I. Acts 636 and 174 Violate Equal Protection

Because Acts 636 and 174 impose special burdens on a suspect class(es), strict scrutiny applies. *See Graham*, 403 U.S. at 372 ("[T]he Court's decisions have established that classifications based on alienage, like those based on nationality or race, are inherently suspect and subject to close judicial scrutiny."); *Fisher v. Univ. of Tex. at Austin*, 570 U.S. 297, 316 (2013) (the State must demonstrate that the legislation is "necessary to further a compelling governmental interest" and "narrowly tailored to that end.") (Thomas, J., concurring) (quoting *Johnson v. California*, 543 U.S. 499, 514 (2005)). *See also Yifan Shen v. Commissioner*, No. 23-12737, 2024 U.S. App. LEXIS 2346, at *8 (11th Cir. Feb. 1, 2024) (Abudu, J., concurring). Acts 636 and 174 are therefore presumptively unconstitutional and the State bears the burden of showing that the Acts are narrowly tailored to meet a compelling government purpose and that they employ the least restrictive means to achieve that purpose. *See City of Cleburne v. Cleburne Living Ctr.*, 473 U.S. 432, 440 (1985). This Defendants-Appellants cannot do. And of course "[i]t does not follow . . . that because the United States regulates immigration and naturalization"

in certain ways, states are free to legislate based on those same categories. *Takahashi*, 334 U.S. at 418.[2]

That the Acts discriminate on the basis of alienage and national origin is plain from the face of Act 636, including Ark. Code § 18-11-802 (Definitions) and 803 (Limitations on Owning Agricultural Land – Violation). As specified in §18-11-802(5)(A), a "prohibited foreign party" is a "citizen or resident of a country subject to [ITAR]." *See* Ark. Act 636, § 3, adding § 18-11-702(5)(A) (2023) (citing 22 C.F.R. § 126.1). App. 17 ITAR prohibits "the export, import, and sale of defense articles and defense services to certain countries" and categorizes them into two tiers— those subject to the most stringent prohibitions and those subject to less stringent prohibitions. For example, China is among the eight countries in the first tier, while Russia is among the 15 in the second tier.[3] The Arkansas Acts, however, make no such distinctions among "ITAR countries." *See* Yu, 12 Tex. A&M L. Rev.

[2] As noted in the brief of Plaintiff-Appellee, federalism concerns also militate against allowing states to engage in their own acts of discrimination against selected noncitizens; in a polarized era, that could mean that some states might discriminate against Russians or Israelis, while others could choose to disfavor Palestinians or Ukranians. Such decisions are solely for the federal government to make. "If it be otherwise, a single State can, at her pleasure, embroil us in disastrous quarrels with other nations." *Chy v. Freeman*, 92 U.S. 275, 280 (1875).

[3] The list is modified frequently. *E.g.*, 90 FR 29720-01 (Monday, July 7, 2025) (modifying, *inter alia*, pre-notification restrictions on the Democratic Republic of Congo and South Sudan).

at 1717 (finding that the Arkansas Governor specifically targeted China and Chinese immigrants in promoting the enactment of Act 636).

Act 636 (§ 18-11-803) specifies the limitations on ownership and provides that "a prohibited foreign party shall not acquire . . . an interest in agricultural land in this state" regardless of intended use, nor may a party act as an agent for a prohibited party. Ark. Code § 18-11-803(a)(1). Similarly, Act 174, codified at Ark. Code § 14-1-606, *et seq.*, prohibits a "prohibited foreign party" (also defined by general reference to ITAR) from ownership of a "digital assets mining business." Prohibited foreign parties who owned such businesses in operation before the effective date of Act 174 (May 3, 2024) have 365 days from that date to divest all interests in the business. Ark. Code §14-1-606(c)(1).

The burdens imposed upon persons and entities like the Plaintiff-Appellee who are lawfully in the United States are severe. Per Ark. Code § 18-11-804(a)(3) and (e), violations will result in judicial foreclosure and sale of the land (proceeds to lien holders in order of priority), and a felony conviction with a maximum of two years' incarceration or a fine of $15,000 or both. Moreover, as Defendants-Appellants argued before the District Court: "violations of Act 636 may constitute violations under [Act 174] as well." As noted, Act 174 divests legitimate and legal businesses owners of their property by operation of law, requiring sale within 365 days of the Act. In addition to the baseline requirement of having to sell-off

legitimate businesses within 365 days of May 3, 2024, violations of Act 174 are subject to fines up to "one million dollars ($1,000,000) or twenty-five percent (25%) of the fair market value," plus prejudgment and postjudgment interest "at the maximum rates permitted by law," "[c]ourt costs," and "[r]easonable attorney's fees." Ark. Code § 14-1-606(e)(3)(A)-(D).

Both the Complaint and the District Court recited passages of the legislative history of the Acts that give ample evidence that the Acts were specifically targeted at persons and businesses related in some way to China. *See*, *e.g.*, App 15 [Pl. Compl. ¶ 47] (remarks of Senator Johnson, who sponsored the legislation that became Act 636, regarding citizens and residents of China); App 15-16 [Pl. Compl. ¶ 48-52] (remarks of Senator Johnson suggesting that the presence of a balloon flying over land in Arkansas highlights the need to defend the state and restrict landownership); *see also* Office of Governor Sarah Huckabee Sanders, *Sanders Administration Holds China Accountable,* Arkansas Governor's Office (Dec. 13, 2023), https://governor.arkansas.gov/news_post/sanders-administration-holds-china-accountable/ ("China is a hostile foreign adversary and under my administration, we will follow the law and not allow companies controlled by the Chinese Communist Party to buy up and exploit Arkansas land."). The actions of the Sanders' Administration in publicly targeting the plaintiff here and the Attorney General's attempt to enforce a subpoena via contempt sanction against the Plaintiff-

Appellee demonstrate the specific animus behind the legislation.[4] "If the adverse impact on the disfavored class is an apparent aim of the legislature, its impartiality would be suspect." *United States R. Ret. Bd. v. Fritz*, 449 U.S. 166, 181 (1980) (Stevens, J., concurring); *see also Takahashi*, 334 U.S. at 422 (Murphy, J. concurring) ("Even the most cursory examination of the background of the statute demonstrates that it was designed solely to discriminate against [persons of Japanese origin] in a manner inconsistent with the concept of equal protection of the laws. Legislation of that type is not entitled to wear the cloak of constitutionality.")[5]

---

[4] *See also* App 21-22 [Pl. Compl. ¶¶ 96-101] (detailing the Attorney General's additional investigations into owners of businesses suspected of Chinese descent, including a business owned by a Taiwanese national (Taiwan is not an ITAR-listed country) and investigation of a Chinese business that Governor Hutchinson had personally recruited to come to Arkansas and towards which one million dollars of Arkansas taxpayers' money had been pledged.

[5] Historically, 15 states, including Arkansas, enacted statutes prohibiting non-citizens who were racially ineligible for naturalization from owning land. Gabriel J. Chin, *A Nation of White Immigrants: State and Federal Racial Preferences for White Noncitizens*, 100 B.U. L. Rev. 1271, 1294-95 (2020) (citing, *inter alia*, *Applegate v. Lum Jung Luke*, 291 S.W. 978, 979 (Ark. 1927), invalidating state law under state constitution). In 1948, as the Supreme Court began to give racial classifications greater scrutiny, "the Supreme Court struck down the application of California's Alien Land Law to U.S. citizens." Rose Cuison Villazor, *Rediscovering* Oyama v. California: *At the Intersection of Property, Race, and Citizenship*, 87 Wash. U.L. Rev. 979, 984 (2010). The Arkansas laws at issue in this case are hardly isolated, they are representative of a new generation of targeted restrictions on noncitizen property ownership: "At the state level, there are hundreds of state bills that have been proposed to limit the economic, political, and cultural presence of Chinese parties." Matthew S. Erie, *Property as National Security*, 2024 Wis. L. Rev. 255, 284 (2024).

Acts 636 and 174 sweep far too broadly to satisfy the Defendants-Appellants' strict scrutiny burden. First, it does not follow from the proffered justification of preventing another Chinese spy ballon fly-over or a similar, unspecified event, that citizens of ITAR-identified countries lawfully in the United States cannot purchase agricultural land in Arkansas. Nor does it follow that similar prohibitions on bitcoin mining are justified by analogous security concerns. The purchase of property and the establishment of businesses are activities that are stable, enduring, and capable of oversight. The spy balloon's overflight of Arkansas, if it occurred at all, was transitory in nature and, because it was launched in China, could never have been prevented by legislation like Acts 636 and 174. The complete disconnect between the purported purposes of both Acts and their effect is best illustrated by the fact that the states in which sightings occurred did not include Arkansas, nor was Arkansas even among the likely or possible states that the balloon overflew. [6]

[6] *See* Katharina Buchholz, *Chinese Balloon Flight Path*, Statista, https://www.statista.com/chart/29242/chinese-balloon-flight-path/ (last visited July 26, 2025). The balloon was shot down off the coast of South Carolina having entered the U.S. off the Aleutian Islands. It was not shot down earlier because of safety concerns for civilians on the ground. Todd Lopez, F-*22 Safely Shoots Down Chinese Spy Balloon off South Carolina Coast*, U.S. Dep't of Def., https://www.defense.gov/News/News-Stories/Article/article/3288543/f-22-safely-shoots-down-chinese-spy-balloon-off-south-carolina-coast/ (last visited July 26, 2025).

Second, the proffered concerns about cryptomining also do not logically support discriminatory ownership legislation. This is especially true today, when the President has announced that "[t]he digital asset industry plays a crucial role in innovation and economic development in the United States, as well as our Nation's international leadership." Exec. Order No. 14179 § 1(a), Removing Barriers to American Leadership in Artificial Intelligence, 90 Fed. Reg. 8741 (Jan. 31, 2025) (also revoking Exec. Order No. 14067 § 3(a), *Ensuring Responsible Development of Digital Assets*, 87 Fed. Reg. 14143 (Mar. 14, 2022). Nor could concerns (unexpressed in support of Act 174) about avoiding taxation or spiriting away currency offer even a rational explanation, much less a compelling one, for a wholesale prohibition on real property and business ownership. The tax justification cannot be bolstered by a governmentally-forced alienation of cryptomining businesses; nor are they uniquely subject to digital piracy.

Third, wide restrictions on real property ownership by citizens of 28 other countries who are lawfully in the United States and additional limitations on their business enterprises cannot conceivably have been "narrowly tailored" to achieve security. An absolute prohibition cannot for the same reason be the least restrictive means of achieving the ends of security.

Fourth, Arkansas's exception to the prohibition for residents of Arkansas who would otherwise be prohibited (§ 18-11-804) does not save the statute. It might, in

theory, serve the State's security interests if there were monitoring or reporting provisions, but in fact there are none. In reality, there is no practical difference between an owner who resides outside of Arkansas and an owner who resides in Arkansas with respect to security or responsibility because the *res*, the real property, and the business are within Arkansas's borders and subject to inspection in a host of different ways. Instead, Arkansas's exception only creates further constitutional problems in the form of dormant commerce clause concerns. *See* App 34 [Pl. Compl. ¶¶ 172-176]

II. ***Terrace v. Thompson*, 263 U.S. 197 (1923) Provides No Support for Acts 636 and I74**

The State relies on *Terrace* and its progenitors for the proposition that the State's authority to control ownership and use of real property is broad. *See* Defendants-Appellants Br. 34-36. But the State and others ignore *Terrace*'s successors, which placed significant Equal Protection Clause limits on the states' powers. *Terrace*'s holding that States could borrow federal classifications (as Arkansas has done here in Act 636's reliance upon ITAR) in order to bolster the purported reasonableness of limitations was first challenged in *Takahashi* v. *Fish & Game Comm'n*, 334 U.S. 410 (1948), and further abrogated in *Graham* v. *Richardson*, 403 U.S. 365 (1971). *See Toll* v. *Moreno*, 458 U.S. 1, 10-13 (1982) ("Read together, *Takahashi* and *Graham* stand for the broad principle that 'state regulation not congressionally sanctioned that discriminates against aliens lawfully

admitted to the country is impermissible *if it imposes additional burdens not contemplated* by Congress.'") (quoting *De Canas* v. *Bica*, 424 U.S. 351, 358, n.6 (1976)) (emphasis added). The Court has also limited state power to discriminate in favor of citizens with regard to its own activities. *See Examining Bd. of Eng'rs, Architects & Surveyors v. Flores de Otero*, 426 U.S. 572, 604 (1976) ("Recently the Court has taken a more restrictive view of the powers of a State to discriminate against noncitizens with respect to public employment, and with respect to the distribution of public funds and the allocation of public resources.") (citations omitted). The Fourteenth Amendment and the laws adopted under its authority embody a general policy that all persons lawfully in this country shall abide "in any state" on an equality of legal privileges with all citizens under nondiscriminatory laws. *See Takahashi*, 334 U.S. at 420.

Moreover, the law at issue in *Terrace* is completely foreign to the present day, as the classifications of aliens it used—aliens ineligible for citizenship, which expressly included Asians but excluded Europeans—was an overtly racist classification that Congress subsequently eliminated with the Immigration and Nationality Act ("INA") in 1952.[7] The only application *Terrace* has in the modern

[7] *See* Villazor, *supra* note 5, at 1011. To be sure, the category "aliens ineligible for citizenship" remains in the Immigration and Nationality Act. *See* 8 U.S.C. § 1101(a)(19). However, this category no longer discriminates on the basis of race. Rather, it primarily refers to "an individual who is, or was at any time permanently debarred from becoming a citizen of the United States under section 3(a) of the

day is to broadly recognize that states have the power to regulate land ownership based on a number of factors, which historically has included citizenship status. But as already noted, the exercise of such power—as acknowledged by *Terrace* and cases decided since *Terrace*—does not, and cannot, shield Acts 636 and 174 from strict scrutiny. *See* Matthew S. Erie, *Property as National Security,* 2024 WIS. L. REV. 255, 309 (2024) (discussing post-*Terrace* state supreme court cases in which the courts abrogated the part of the *Terrace* holding that ignored the unlawful "immigration classification scheme").

It is no answer that the Supreme Court has not explicitly overruled *Terrace*. The Supreme Court does not always explicitly overturn each case from the Jim Crow era that would plainly be decided differently today. For example, the Supreme Court has never directly overturned *Williams v. Mississippi*, 170 U.S. 213 (1898), which held that a Black man may be indicted for murder by a grand jury of all White men, even though such a practice would be held unconstitutional today. *See Hernandez v. Texas,* 347 U.S. 475, 477 (1954) ("In numerous decisions, this Court has held that it is a denial of the equal protection of the laws to try a defendant of a particular race or color under an indictment issued by a grand jury, or before a petit jury, from which

---

Selective Training and Service Act of 1940 [ ] or under section 4(a) of the Selective Service Act of 1948, as amended [ ] or under any section of this chapter, or any other Act, or under any law amendatory of, supplementary to, or in substitution for, any of such sections or Acts." *Id.*

all persons of his race or color have, solely because of that race or color, been excluded by the State, whether acting through its legislature, its courts, or its executive or administrative officers.").

Another example is *Lum v. Rice*, 275 U.S. 78, 81 (1927), where an elementary school student of Chinese descent was denied entry to a "White" school because she was "a member of the Mongolian or yellow race." Although it has been cited with disdain by subsequent court opinions, *see Students for Fair Admissions, Inc. v. President & Fellows of Harv. Coll.,* 143 S. Ct. 2141, 2200 (2023) (Thomas, J., concurring), the Court has never explicitly held it invalid despite its clear anachronistic holding being rendered obsolete by *Brown v. Board of Education*, 347 U.S. 483 (1954).

Counsel are aware of no court decisions upholding the alien land laws at issue in *Terrace* since the classification was invalidated in *Takahashi*, and one aspect of the California law struck down in *Oyama*. To the contrary, the Supreme Courts of California, Montana and Oregon struck them down on equal protection grounds. *See Fujii v. State*, 242 P.2d 617, 624 (Cal. 1952); *State v. Oakland*, 287 P.2d 39, 42 (Mont. 1955); *Namba v. McCourt*, 204 P.2d 569, 579 (Or. 1949).

Further, circuit courts have also looked past antiquated Supreme Court decisions that have been subsequently limited or partially abrogated. In *Hawaii v. Trump*, 859 F.3d 741, 774 (9th Cir. 2017), the 9th Circuit cited Justice Murphy's

dissenting opinion in *Korematsu v. United States*, 323 U.S. 214, 233 (1944) (Murphy, J., dissenting). This citation was affirmed by the Supreme Court's subsequent decision in *Trump v. Hawaii*, where the Court finally overturned *Korematsu* and recognized it had already "been overruled in the court of history." *Trump v. Hawaii*, 585 U.S. 667 (2018).

CONCLUSION

For the reasons stated above, Amici respectfully urge this Court to affirm the preliminary injunction on the alternative ground set forth herein, as well as the preemption ground that was the holding of the District Court.

Respectfully submitted,

/s/ Jeffrey T. Green
Green Lauerman Chartered PLLC
1050 30th Street, NW
Washington, DC 20007
(240)-286-5686
jeff@glclaw.net
Counsel for Amici Curiae

Gabriel J. Chin*
Aoki Center for Critical Race
and Nation Studies
UC Davis School of Law
400 Mrak Hall Dr.
Davis, CA 95616
(530) 752-3112
gjchin@ucdavis.edu

Rose Cuison-Villazor*
Center for Immigrant Justice
Rutgers Law School
123 Washington Street
Newark, NJ 07102
(973) 535-3159
rose.villazor@law.rutgers.edu

Matthew S. Erie
American University
Washington College of Law
4300 Nebraska Ave NW
Washington, DC 20016
merie@american.edu

Pei "Leo" Yu
c/o University of Massachusetts
School of Law
333 Faunce Corner Road
Dartmouth, MA 02747-1252
pyu@umassd.edu

CERTIFICATE OF COMPLIANCE

The undersigned counsel certifies as follows:

1. This brief and appendix contain 6,557 words, excluding the parts of the document exempted by Rule 32(f), in accordance with Rule 32(a)(7)(B) and Rule 29(a)(5).
2. This brief complies with the typeface requirements of Rule 32(a)(5) and the type-style requirements of Rule 32(a)(6).

August 19, 2025

/s/ Jeffrey T. Green
Green Lauerman Chartered PLLC
Green Lauerman Chartered PLLC
1050 30th Street, NW
Washington, DC 20007
(240)-286-5686
jeff@glclaw.net

CERTIFICATE OF SERVICE

I hereby certify that on August 19, 2025, the foregoing was filed electronically with the Clerk of Court through the appellate CM/ECF system. I further certify that all parties required to be served have been served.

August 19, 2025

/s/ Jeffrey T. Green
Green Lauerman Chartered PLLC
Counsel for Amici Curiae

APPENDIX

CORPORATE DISCLOSURE STATEMENTS

Pursuant to Federal Rules of Appellate Procedure 26.1, all proposed amici certify that they do not have parent corporations and that there exists no publicly held corporation which owns 10 percent or more of their stock.

STATEMENT OF INTEREST

Racial Justice Centers

Aoki Center for Critical Race and Nation Studies at UC Davis School of Law

The Aoki Center for Critical Race and Nation Studies at UC Davis School of Law ("Aoki Center") is a program of the University of California, Davis, School of Law. It was formed to critically examine legal issues through the lens of race, ethnicity, citizenship, and class. The Aoki Center seeks to advance civil rights, critical race theory, and immigration issues through furthering scholarly research on the intersection of race and the law, and thus has a significant interest in the outcome of the instant dispute. University of California, Davis does not have any parent corporation or issue stock and consequently there exists no publicly held corporation which owns 10 percent or more of its stock.

Center for Civil Rights and Racial Justice at the University of Pittsburgh School of Law

The University of Pittsburgh School of Law Center for Civil Rights and Racial Justice mission is to facilitate community-engaged teaching, research, and service in the area of civil rights. It is based at the University of Pittsburgh, a non-profit educational institution under Section 501(c)(3) of the Internal Revenue Code. The University of Pittsburgh does not have any parent corporation or issue stock and consequently there exists no publicly held corporation which owns 10 percent or more of its stock.

Center for Immigrant Justice

The Center for Immigrant Justice at Rutgers Law School ("CIJ") is a policy-based center that advocates for the adoption of equitable and more inclusive laws, regulations, policies, and practices for all people – citizens and non-citizens alike. CIJ is based at Rutgers University, a non-profit educational institution under Section 501(c)(3) of the Internal Revenue Code. Rutgers University does not have any parent corporation or issue stock and consequently there exists no publicly held corporation which owns 10 percent or more of its stock.

Center on Race, Inequality, and the Law at New York University School of Law

The Center on Race, Inequality, and the Law ("CRIL") is a research and advocacy organization based at New York University School of Law, a non-profit educational institution under Section 501(c)(3) of the Internal Revenue Code. CRIL does not have any parent corporation or issue stock and consequently there exists no publicly held corporation which owns 10 percent or more of its stock. This submission has been joined by CRIL, but does not purport to present the school's institutional views, if any.

Affinity Bar/Professional Associations

National Asian Pacific American Bar Association

The National Asian Pacific American Bar Association ("NAPABA") is the nation's largest Asian Pacific American membership organization, representing the interests of over 80,000 Asian American, Native Hawaiian, and Pacific Islander (AANHPI) attorneys, judges, law professors, and law students. NAPABA's mission is to raise the visibility of, and advocate for, AANHPI legal professionals and the communities they represent. Since its inception in 1988, NAPABA has served as the national voice for AANHPIs in the legal profession, promoting justice, equity, and opportunity for Asian Pacific Americans. NAPABA does not have any parent corporation or issue stock and consequently there exists no publicly held corporation which owns 10 percent or more of its stock.

National Filipino American Lawyers Association

The National Filipino American Lawyers Association ("NFALA") is a national associate organization of NAPABA. NFALA is the national voice for the Filipino American legal profession and is an advocate for justice, civil rights, and equal opportunity for the Filipino American community. NFALA is a family, comprised of members throughout the United States, with the shared goal of increasing its national growth, impact, and visibility while also celebrating its members' cultural heritage. NFALA does not have any parent corporation or issue stock and consequently there exists no publicly held corporation which owns 10 percent or more of its stock.

Civil Rights and Other Advocacy Organizations

Asian American Legal Defense and Education Fund

The Asian American Legal Defense and Education Fund (AALDEF), founded in 1974, is a non-profit organization based in New York City that protects and promotes the civil rights of Asian Americans. By combining litigation, advocacy, education, and organizing, AALDEF works with Asian American communities across the country to secure human rights for all.

AALDEF has a particular interest in challenging laws that expand discrimination against immigrants and people of Asian descent. It has long fought against government scapegoating and racial profiling of many diverse Asian American communities under the guise of national security. Drawing on its

experiences and expertise, AALDEF filed suit in *Shen v. Simpson*, a lawsuit challenging a discriminatory Florida law that bans many Chinese immigrants from buying property in large swaths of the state. AALDEF does not have any parent corporation or issue stock and consequently there exists no publicly held corporation which owns 10 percent or more of its stock.

Asian Americans Advancing Justice – Asian American Justice Center

Asian Americans Advancing Justice – Asian American Justice Center ("AAJC") is a national 501(C)(3) nonprofit organization based in Washington, D.C. Founded in 1991, AAJC works to advance and protect civil and human rights for Asian Americans and to promote an equitable society for all. AAJC is a leading expert in combatting long-standing anti-Asian and xenophobic laws, policies, and practices. For example, in *National Fair Housing Alliance v. Kelly*, AAJC brought a challenge to Florida's S.B. 264, a law that unlawfully and discriminatorily restricts the property rights of particular aliens—one of the latest attacks on the rights of Asians, Asian Americans, and immigrants. AAJC does not have any parent corporation or issue stock and consequently there exists no publicly held corporation which owns 10 percent or more of its stock.

Asian Americans Advancing Justice – Atlanta

Asian Americans Advancing Justice-Atlanta ("Advancing Justice-Atlanta") is a nonprofit organization operating under Section 501(c)(3) of the Internal

Revenue Code. Advancing Justice-Atlanta does not have any parent corporation or issue stock and consequently there exists no publicly held corporation which owns 10 percent or more of its stock.

Asian Americans Advancing Justice | Chicago

Asian Americans Advancing Justice | Chicago ("Advancing Justice |Chicago") does not have any parent corporation or issue stock and consequently there exists no publicly held corporation which owns 10 percent or more of its stock.

Asian Americans Advancing Justice Southern California

Asian Americans Advancing Justice Southern California (AJSOCAL) is the nation's largest legal and civil rights organization for Asian Americans and Pacific Islanders (AAPIs). Founded in 1983, AJSOCAL supports over 15,000 individuals and organizations annually. By offering free legal help, engaging in impact litigation and advocating for policy change, AJSOCAL prioritizes the most vulnerable members of AAPI communities while fostering a robust advocacy for civil rights and social justice. AJSOCAL does not have any parent corporation or issue stock and consequently there exists no publicly held corporation which owns 10 percent or more of its stock.

Asian Law Caucus

Asian Law Caucus ("ALC") is a nonprofit civil rights organization committed to the pursuit of justice, serving low-income, immigrant, and underserved Asian and Pacific Islander and Arab, Middle Eastern, Muslim and South Asian communities. ALC has a longstanding record of protecting those immigrant communities targeted by discriminatory policies justified under national security concerns, including the Muslim Ban and the China Initiative. ALC does not have any parent corporation or issue stock and consequently there exists no publicly held corporation which owns 10 percent or more of its stock.

Chinese American Legal Defense Alliance

The Chinese American Legal Defense Alliance (CALDA) is a 501(c)(3) nonprofit organization dedicated to protecting the civil rights of Chinese Americans through strategic litigation, public advocacy, and community education. Founded in 2021 by attorneys who successfully challenged the Trump administration's WeChat ban, CALDA is the only national organization focused exclusively on civil rights litigation for the Chinese American community. CALDA has led or co-led multiple civil rights cases, including constitutional challenges to state laws that restrict land ownership based on national origin, and litigation arising from the federal government's former "China Initiative." CALDA has also represented international students and scholars in cases involving

immigration and equal protection under the law. CALDA's legal efforts continue to shape civil rights protections nationwide for Chinese Americans and other marginalized groups. CALDA does not have any parent corporation or issue stock and consequently there exists no publicly held corporation which owns 10 percent or more of its stock.

Chinese for Affirmative Action

Chinese for Affirmative Action ("CAA") is a community-based civil rights organization established under Section 501(c)(3) of the Internal Revenue Code. CAA does not have any parent corporation or issue stock and consequently there exists no publicly held corporation which owns 10 percent or more of its stock. CAA was founded in 1969 to protect the civil and political rights of Chinese Americans and to advance multiracial democracy in the United States. Today, CAA advocates for systemic change that protects immigrant rights, promotes language diversity, and remedies racial and social injustice. CAA has long fought against government scapegoating of Asian American communities because racial profiling, under the guise of national security, is unjust. For CAA, this work includes ending the U.S. Department of Justice's practice of targeting Chinese Americans for espionage-related crimes by raising community awareness, providing support for affected individuals and their families, and building bridges and solidarity across all affected communities. CAA also opposes land laws which target specific communities and bars them from property ownership and has

worked with other grassroots organizations to advocate against such bills in Texas, Florida, and beyond. CAA does not have any parent corporation or issue stock and consequently there exists no publicly held corporation which owns 10 percent or more of its stock.

Committee of 100

Committee of 100 is a leadership organization composed of American citizens of Chinese descent who are leaders in business, government, academia, science, technology, and the arts. Rooted in American democratic values and public service, the organization is committed to strengthening the fabric of American society through advocacy, research, and public education. Committee of 100 does not have any parent corporation or issue stock and consequently there exists no publicly held corporation which owns 10 percent or more of its stock.

Conference of Asian Pacific American Law Faculty

The Conference of Asian Pacific American Law Faculty ("CAPALF") is a non-profit organization under Section 501(c)(3) of the Internal Revenue Code. CAPALF does not have any parent corporation or issue stock and consequently there exists no publicly held corporation which owns 10 percent or more of its stock.

LatinoJustice PRLDEF

LatinoJustice PRLDEF uses and challenges laws to promote a more just and equitable society. For more than fifty years, LatinoJustice PRLDEF has litigated

cases, and advanced policy initiatives to counteract marginalization due to intersecting characteristics, such as race, ethnicity, and immigration status, in areas such as housing, economic justice, and voting. For example, LatinoJustice PRLDEF and other amici filed a brief in *Francis v. Kings Park Manor, Inc*., 992 F. 3d 67 (2d Cir. 2021) explaining the legislative and historical backdrop of the Fair Housing Act, which proscribes national origin and race-based discrimination in housing. LatinoJustice PRLDEF is acutely aware of the sordid history of exclusionary policies against foreign nationals-- Mexicans and Asians alike-- including dispossessing them of their property interests. LatinoJustice PRLDEF does not have any parent corporation or issue stock and consequently there exists no publicly held corporation which owns 10 percent or more of its stock.

National Iranian American Committee

Founded in 2002, the National Iranian American Council is a nonpartisan, nonprofit 501(c)(3) organization dedicated to giving voice to the Iranian-American community in civic life. This work has proven immensely important in the more than 22 years since its founding, as it has worked to educate and engage the Iranian-American community to advance peace & diplomacy, secure equitable immigration policies, and protect the civil rights of all Americans.

On civil rights, NIAC has long warned against geopolitical threats abroad fueling violations of civil rights at home, and has been at the forefront of efforts to oppose discriminatory policies like travel bans based on religion and national origin. Likewise, NIAC has been part of a coalition of organizations warning against new 21st-century "alien land laws" that seek to bar individuals from purchasing various forms of property on the basis of their national origin, which threaten both immigrant communities and civil rights for all Americans. NIAC does not have any parent corporation or issue stock and consequently there exists no publicly held corporation which owns 10 percent or more of its stock.

National Korean American Service & Education Consortium

The National Korean American Service & Education Consortium (NAKASEC) is a nonprofit advocacy organization founded in 1994 with the mission of organizing Korean and Asian Americans and immigrants to achieve social, racial, and economic justice. NAKASEC builds grassroots power through civic engagement, policy advocacy, and coalition building. With affiliates and chapters in New York, Pennsylvania, Virginia, Illinois, California, and Texas, NAKASEC centers the voices of low- and middle-income, immigrant, and people of color communities to drive progressive change at the local and national levels. NAKASEC does not have any parent corporation or issue stock and consequently

there exists no publicly held corporation which owns 10 percent or more of its stock.

Stop AAPI Hate

Stop AAPI Hate is a national nonprofit coalition dedicated to fighting racism and discrimination against Asian Americans and Pacific Islanders (AAPI) in the United States. As the nation's largest reporting center tracking anti-AAPI hate acts, Stop AAPI Hate has received more than 12,000 reports of hate incidents since 2020. Stop AAPI Hate's work addresses the root causes of hate, such as dismantling "perpetual foreigner" stereotypes and counteracting the systemic impacts of hate, including national security scapegoating of AAPIs. Stop AAPI Hate's 2022 report, "The Blame Game," spotlights how political rhetoric has been consistently employed, over decades, to hurt AAPI communities. Stop AAPI Hate does not have any parent corporation or issue stock and consequently there exists no publicly held corporation which owns 10 percent or more of its stock.