

No. 23-12737

**IN THE UNITED STATES COURT OF APPEALS FOR
THE ELEVENTH CIRCUIT**

YIFAN SHEN, et al.,

Plaintiffs-Appellant,

v.

WILTON SIMPSON, in his official capacity as
Florida Commissioner of Agriculture, et al.,

Defendants-Appellees.

On Appeal from the United States District Court for the
Northern District of Florida, No. 4:23-cv-208 (Winsor, A.)

**MOTION FOR LEAVE TO FILE BRIEF OF AMICI CURIAE IN
SUPPORT OF PLAINTIFFS-APPELLANTS BY RACIAL JUSTICE
CENTERS, AFFINITY BAR AND PROFESSIONAL ASSOCIATIONS, AND
CIVIL RIGHTS ADVOCACY ORGANIZATIONS**

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October 10, 2023

CERTIFICATE OF INTERESTED PERSONS

Pursuant to Federal Rule of Appellate Procedure 26.1 and Eleventh Circuit Rules 26.1-1 through 26.1-3, Amici certify that the following individuals and entities may have an interest in the outcome of this case or appeal.

1. 18 Million Rising, *Amicus Curiae supporting Plaintiffs-Appellants*
2. AAPI Equity Alliance, *Amicus Curiae supporting Plaintiffs-Appellants*
3. American Civil Liberties Union Foundation, *Attorney for Plaintiffs-Appellants*
4. American Civil Liberties Union Foundation of Florida, *Attorney for Plaintiffs-Appellants*
5. Anti-Racism Center of LMU Loyola Law School, *Amicus Curiae supporting Plaintiffs-Appellants in proceedings below*
6. Aoki Center for Critical Race and Nation Studies at UC Davis School of Law, *Amicus Curiae supporting Plaintiffs-Appellants*
7. Arkansas, State of, *Amicus Curiae supporting Defendants-Appellees*
8. Asian Americans Advancing Justice – Asian Law Caucus, *Amicus Curiae supporting Plaintiffs-Appellants*
9. Asian Americans Advancing Justice Atlanta, *Amicus Curiae supporting Plaintiffs-Appellants*

10. Asian Americans Advancing Justice – Chicago, *Amicus Curiae supporting Plaintiffs-Appellants*
11. Asian Americans Advancing Justice – Southern California, *Amicus Curiae supporting Plaintiffs-Appellants*
12. Asian American Legal Defense & Education Fund, *Attorney for Plaintiffs-Appellants*
13. Asian American Women’s Political Initiative, *Amicus Curiae supporting Plaintiffs-Appellants*
14. Asian Law Alliance, *Amicus Curiae supporting Plaintiffs-Appellants*
15. Asian Pacific American Bar Association of South Florida, *Amicus Curiae supporting Plaintiffs-Appellants*
16. Asian Pacific American Bar Association of Tampa Bay, *Amicus Curiae supporting Plaintiffs-Appellants*
17. Bailey, Andrew, *Amicus Curiae supporting Defendants-Appellees*
18. Bell, Daniel William, *Attorney for Defendants-Appellees*
19. Boston University Center for Antiracist Research, *Amicus Curiae supporting Plaintiffs-Appellants*
20. Butler, Steve, *Attorney for U.S. Department of Justice*
21. Carr, Christopher M., *Amicus Curiae supporting Defendants-Appellees*

22. Center for Civil Rights and Racial Justice at the University Pittsburgh School of Law, *Amicus Curiae supporting Plaintiffs-Appellants*
23. Center for Immigration Law, Policy, and Justice at Rutgers Law School, *Amicus Curiae, supporting Plaintiffs-Appellants*
24. Center for Race, Inequality, and the Law at New York University School of Law, *Amicus Curiae supporting Plaintiffs-Appellants*
25. Chang, Robert Seungchul, *Attorney for Amici Curiae Racial Justice Centers, Affinity Bar and Professional Associations, and Civil Rights Advocacy Organizations*
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27. Chin, Gabriel J., *Attorney for Amici Curiae Racial Justice Centers, Affinity Bar and Professional Associations, and Civil Rights Advocacy Organizations*
28. Chinese for Affirmative Action, *Amicus Curiae supporting Plaintiffs-Appellants*
29. Clarke, Kristen, *Attorney for U.S. Department of Justice*
30. Conference of Asian Pacific American Law Faculty, *Amicus Curiae supporting Plaintiffs-Appellants*

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34. DeHeng Law Offices, PC, *Attorney for Plaintiffs–Appellants*
35. Fitch, Lynn, *Amicus Curiae supporting Defendants-Appellees*
36. Fitzgerald, Patricia, *Defendant–Appellee*
37. Fitzpatrick, Martin A., *Magistrate Judge for the Northern District of Florida*
38. Florida Attorney General’s Office, *Attorney for Defendants–Appellee*
39. Florida Muslim Bar Association, *Amicus Curiae supporting Plaintiffs-Appellants*
40. Florida Office of the Solicitor General, *Attorney for Defendants–Appellee*
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44. Fred T. Korematsu Center for Law and Equality at Seattle University School of Law, *Amicus Curiae supporting Plaintiffs-Appellants*
45. Georgia, State of, *Amicus Curiae supporting Defendants-Appellees*
46. Greater Orlando Asian American Bar Association, *Amicus Curiae supporting Plaintiffs-Appellants*
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48. Griffin, Tim, *Amicus Curiae supporting Defendants-Appellees*
49. Handberg, Roger B., *Attorney for U.S. Department of Justice*
50. Harwell Jr., Lacy R., *Attorney for U.S. Department of Justice*
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52. Idaho, State of, *Amicus Curiae supporting Defendants-Appellees*
53. Indiana, State of, *Amicus Curiae supporting Defendants-Appellees*
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56. Jacksonville Asian American Bar Association, *Amicus Curiae supporting Plaintiffs-Appellants*
57. Jadwat, Omar, *Attorney for Plaintiffs-Appellants*

58. Japanese American Citizens League, *Amicus Curiae* supporting
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72. Mahfooz, Sidra, *Attorney for Plaintiffs-Appellants*
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74. Missouri, State of, *Amicus Curiae* supporting *Defendants-Appellees*
75. Montana, State of, *Amicus Curiae* supporting *Defendants-Appellees*

76. Moody, Ashley, *Attorney for Defendants–Appellees*
77. Multi-Choice Realty, LLC, *Plaintiff–Appellant*
78. National Asian Pacific American Bar Association, *Amicus Curiae supporting Plaintiffs–Appellants*
79. National Filipino American Lawyers Association, *Amicus Curiae supporting Plaintiffs–Appellants*
80. National Korean American Service & Education Consortium, *Amicus Curiae supporting Plaintiffs–Appellants*
81. New Hampshire, State of, *Amicus Curiae supporting Defendants–Appellees*
82. Nordby, Daniel E., *Attorney for Defendants–Appellees*
83. North Dakota, State of, *Amicus Curiae supporting Defendants–Appellees*
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86. Rather, Shaiba, *Attorney for Plaintiffs–Appellants*
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97. Simpson, Wilton, *Defendant-Appellee*
98. Song, Jian, *Owner of Plaintiff Multi-Choice Realty, LLC*
99. South Asian Bar Association of North America, *Amicus Curiae supporting Plaintiffs-Appellants*
100. South Carolina, State of, *Amicus Curiae supporting Defendants-Appellees*

101. South Dakota, State of, *Amicus Curiae supporting Defendants-Appellees*
102. Stop AAPI Hate, *Amicus Curiae supporting Plaintiffs-Appellants*
103. Taitz, Sarah Michelle, *Former Attorney for Plaintiffs-Appellants*
104. Tang, Haiyan, *Attorney for Plaintiffs-Appellants*
105. Tilley, Daniel Boaz, *Attorney for Plaintiffs-Appellants*
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111. Warren, Nicholas, *Attorney for Plaintiffs-Appellants*
112. Whitaker, Henry Charles, *Attorney for Defendants-Appellees*
113. Wilson, Alan, *Amicus Curiae supporting Defendants-Appellees*
114. Winsor, Hon. Allen, *District Court Judge for the Northern District of Florida and District Court Judge in proceedings below*
115. Wofsy, Cody H., *Attorney for Plaintiffs-Appellants*
116. Wold, Theodore J., *Attorney for Amicus Curiae State of Idaho, et al.*
117. Worrell, Monique H., *Defendant*

- 118. Wrigley, Drew H., *Amicus Curiae supporting Defendants-Appellees*
- 119. Xu, Zhiming, *Plaintiff-Appellant*
- 120. Zafar, Noor, *Attorney for Plaintiffs-Appellants*
- 121. Zaman, Razeen J., *Attorney for Plaintiffs-Appellants*
- 122. Zhu, Keliang, *Attorney for Plaintiffs-Appellants*

Dated: October 10, 2023

/s/ Madeleine Rodriguez

Madeleine Rodriguez, Esq.

Foley Hoag, LLP

*Attorney for Amici Curiae Racial Justice
Centers, Affinity Bar and Professional
Associations, and Civil Rights Advocacy
Organizations*

CORPORATE DISCLOSURE STATEMENTS

Consistent with Federal Rules of Appellate Procedure 26.1 and 29(c)(1), undersigned counsel for amici make the following disclosures:

Racial Justice Centers

Fred T. Korematsu Center for Law and Equality at Seattle University School of Law

The Fred T. Korematsu Center for Law and Equality (“Korematsu Center”) is a research and advocacy organization based at Seattle University, a non-profit educational institution under Section 501(c)(3) of the Internal Revenue Code. The Korematsu Center 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 Immigration Law, Policy, and Justice at Rutgers Law School

The Center for Immigration Law, Policy, and Justice at Rutgers Law School (“CILPJ”) 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. CILPJ 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.

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, a non-profit educational institution under Section 501(c)(3) of the Internal Revenue Code. 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 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, 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.

Boston University Center for Antiracist Research

The Boston University Center for Antiracist Research is a research center based at Boston University, a non-profit educational institution under Section 501(c)(3) of the Internal Revenue Code. The BU Center for Antiracist Research 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.

Affinity Bar/Professional Associations:

Asian Pacific American Bar Association of South Florida

The Asian Pacific American Bar Association of South Florida 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 Pacific American Bar Association of Tampa Bay

The Asian Pacific American Bar Association of Tampa Bay 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 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.

Florida Muslim Bar Association

The Florida Muslim Bar Association 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.

Greater Orlando Asian American Bar Association

The Greater Orlando Asian American Bar Association 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.

Hispanic National Bar Association

The Hispanic National Bar Association 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.

Jacksonville Asian American Bar Association

The Jacksonville Asian American Bar Association 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 Asian Pacific American Bar Association

The National Asian Pacific American Bar Association 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 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.

South Asian Bar Association of North America

The South Asian Bar Association of North America 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:

18 Million Rising

18 Million Rising is a nongovernmental corporation with no parent corporation and it does not issue stock, which means that no publicly held corporation owns 10% or more of its stock.

Asian Americans Advancing Justice - Asian Law Caucus

Asian Americans Advancing Justice - Asian Law Caucus does not have a parent corporation and no publicly traded corporation currently owns 10% or more of its stock.

Asian Americans Advancing Justice – Atlanta

Asian Americans Advancing Justice-Atlanta (“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 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.

AAPI Equity Alliance

AAPI Equity Alliance 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 American Women's Political Initiative

The Asian American Women's Political Initiative ("AAWPI") 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 Alliance

The Santa Clara County Asian Law Alliance 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”) 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 does not issue any stock, and thus there is no publicly held corporation that owns 10% or more of its stock. It does not have a parent organization.

National Korean American Service & Education Consortium

National Korean American Service & Education Consortium (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 fiscally sponsored by Chinese for Affirmative Action. Chinese for Affirmative Action (“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.

MOTION FOR LEAVE TO FILE AMICUS BRIEF

The below coalition of racial justice centers, affinity bar and professional associations, and civil rights advocacy organizations (collectively the “Amici”), respectfully move for leave to file a brief as amici curiae (the “Brief”) in support of Plaintiffs-Appellants and their appeal of the District Court’s denial of their Motion for Preliminary Injunction. Amici’s proposed Brief is attached as Exhibit A.

INTEREST OF AMICI CURIAE

Amici are renowned racial justice centers, affinity bar and professional associations, and civil rights advocacy organizations with knowledge and expertise in addressing historical, empirical, and pervasive manifestations of racism and inequality in the legal system and society.

Racial Justice Centers¹

**Fred T. Korematsu Center for Law and Equality at Seattle University
School of Law**

The Fred T. Korematsu Center for Law and Equality at Seattle University School of Law (“Korematsu Center”) is a non-profit organization based at the Seattle University School of Law. The Korematsu Center works to advance justice through research, advocacy, and education. Inspired by the legacy of Fred Korematsu, who defied military orders during World War II that ultimately led to the unlawful

¹ The views represented by the Amici Racial Justice Centers do not represent the views of their home institutions.

incarceration of 120,000 Japanese Americans, the Korematsu Center works to advance social justice for all. The Korematsu Center has a special interest in addressing government action targeted at classes of persons based on race or nationality. Drawing on its experiences and expertise, the Korematsu Center seeks to ensure that courts understand the historical—and, at times, profoundly unjust—underpinnings of arguments asserted to support the exercise of such unchecked executive power. The Korematsu Center does not, in this brief or otherwise, represent the official views of Seattle University.

Center for Immigration Law, Policy, and Justice at Rutgers Law School

Established in 2018, the Center for Immigration Law, Policy, and Justice (“CIPLPJ”) at Rutgers Law School explores contemporary and historical immigration and citizenship laws to better understand the complex ways that law and society determine who belongs in the United States. Through interdisciplinary scholarship, legal, policy and advocacy-based initiatives and public engagement, the Center supports the work of faculty, scholars and students within the law school and the broader Rutgers University Newark community who seek to understand immigration and citizenship law from an interdisciplinary perspective. By examining immigration laws, policies, regulations and practices from different views, including law, history, arts, culture, media, economics, political science, sociology and other fields, the Center aims to provide a broader understanding of the

body of laws that determine who may enter, reside and become full members of the United States polity and the rights to which they are entitled while they are within this country. Importantly, the CILPJ advocates for and supports legal, policy and advocacy initiatives that protect the due process and equal protection rights of immigrants and their families.

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.

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

The Center on Race, Inequality, and the Law at New York University School of Law (the “CRIL”) works to highlight and dismantle structures and institutions that have been infected by racial bias, plagued by inequality, and visited harm upon marginalized groups, particularly within communities of color. CRIL fulfills its mission through public education, research, advocacy, and litigation. It has a special

interest in ensuring that courts exercise their broad remedial powers to strike down racially discriminatory laws and vindicate the constitutional and statutory rights of those subjected to harm at the hands of government.

Boston University Center for Antiracist Research

The Boston University Center for Antiracist Research (the “Center”) is a nonpartisan, nonprofit university-based center that seeks to facilitate antiracist social change through research, policy, narrative, and advocacy initiatives. The Center’s animating goal is to eliminate racism through a rigorous, research-based, and integrative approach. Accordingly, the Center has a keen interest in challenging discriminatory property restrictions targeting people based on race or national origin. The Center joins this brief to provide critical context regarding the use of alien land laws as mechanism of anti-Asian racism and exclusion. The Center does not, in this brief or otherwise, represent the official views of Boston University.

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

The Center for Civil Rights and Racial Justice at the University of Pittsburgh School of Law (“CCRJ”) aims to address systemic disparities through a legal contextual lens. The mission of CCRJ is to facilitate community-engaged teaching, research, and service and will serve as a hub and visible manifestation of the Law School’s commitment to legal issues regarding these issues. CCRJ serves as a convener of efforts to advance constitutional, legislative, and regulatory protections

of civil rights at the federal, state, and local levels. CCRJ works closely with community partners, to serve as both a laboratory and a hub for researching and recommending solutions to be adopted by local and national communities facing systemic disparities in police violence, prisons, housing, education, and health.

Affinity Bar/Professional Associations

Asian Pacific American Bar Association of South Florida

The Asian Pacific American Bar Association of South Florida (APABA) is a non-profit, voluntary bar association of attorneys in Miami-Dade, Broward, and Palm Beach counties dedicated to serving as a resource to Asian Pacific Islander American (APIA) attorneys in South Florida. APABA works to eliminate discrimination and prejudice against APIA attorneys, provides impactful programming to meet the needs of the South Florida APIA community, and offers career and academic counseling services to APIA law students. APABA's mission is to promote the common interests of APIA attorneys who are members of The Florida Bar and practice law in South Florida.

Asian Pacific American Bar Association of Tampa Bay

The Asian Pacific American Bar Association of Tampa Bay ("APABA Tampa") is a voluntary bar association of attorneys, judges, and law students, who serve the Greater Tampa Bay area. APABA Tampa is an affiliate member of NAPABA, which represents the interests of over 60,000 Asian Pacific American

(“APA”) attorneys, judges, and law students, working in solo practices, small and large firms, corporations, nonprofit and legal services organizations, law schools, and government agencies. APABA Tampa seeks to carry out the mission statement of NAPABA – promoting “justice, equity and opportunity for Asian Pacific Americans” and fostering “professional development, legal scholarship, advocacy and community involvement.” To further that, APABA Tampa issued a joint statement with NAPABA and affiliated Asian Pacific American bar associations in Florida to oppose the provisions of the Florida Senate Bill 264 or “Conveyances to Foreign Entities Law.”

Conference of Asian Pacific American Law Faculty

The Conference of Asian Pacific American Law Faculty (“CAPALF”) was formed in 1994 with the first national gathering of Asian Pacific American law teachers. The organization has since become a nonprofit corporation with a mission to contribute to the well-being of APA communities, to create a professional network, and to host conferences. CAPALF encourages the participation not only of Asian Pacific Americans, but all those whose work relates to issues significant to APA communities. As a group that was subjected to discriminatory immigration restrictions, naturalization laws, and alien land laws, often based on the perceived threat they posed to certain communities, states, and the nation, Asian Pacific Americans are in a unique position to offer our historical experience as an object

lesson to inform the courts and the public about the dangers posed by laws that single out persons from certain countries for discriminatory treatment.

Florida Muslim Bar Association

The Florida Muslim Bar Association (“FMBA”) is a non-profit organization that represents the interest of Muslim attorneys throughout the state of Florida. FMBA strives to organize and represent Muslim attorneys in Florida, encourage the entry of Muslim men and women into the legal profession, and to improve the position of the Muslim community at large by addressing issues affecting the local and national community about matters affecting the Muslim community.

Greater Orlando Asian American Bar Association

The Greater Orlando Asian American Bar Association (“GOAABA”) is a voluntary bar association consisting of attorneys, judges, law professors, and law students who serve the Greater Orlando, Florida area. GOAABA advocates and represents the interests of the Asian Pacific American (“APA”) community of the Greater Orlando, Florida area; encourages and promotes the professional growth of the members of GOAABA; facilitates client referrals and broadens professional opportunities for APA attorneys; fosters the exchange of ideas and information among and between the members of GOAABA and other members of the legal profession, the judiciary and the legal community; and coordinates legal services to the APA communities in the Greater Orlando area. Since its incorporation in 2009,

GOAABA has served as the leading local voice for promoting justice, equity, and opportunity for Asian Pacific Americans in the Greater Orlando, Florida area.

Hispanic National Bar Association

The Hispanic National Bar Association (“HNBA”) is a non-profit organization that represents the interests of Hispanic legal professionals in the United States and its territories. HNBA has members across the U.S., including in Florida. HNBA is committed to advocacy on issues of importance to the Hispanic community living in the United States.

Jacksonville Asian American Bar Association

The Jacksonville Asian American Bar Association (JAABA) is a voluntary bar association of attorneys, judges, and law students, who serve the Jacksonville and North Florida areas. JAABA is an affiliate member of the National Asian Pacific American Bar Association (the “NAPABA”). NAPABA is the nation's largest Asian Pacific American membership organization, representing the interest of 60,000 attorneys, judges, law professors, and law students, and nearly 90 national, state, and local APA bar associations. JAABA seeks to carry on NAPABA’s mission of promoting justice, equity, and opportunity for Asian Pacific Americans and fostering professional development, legal scholarship, advocacy, and community involvement toward achieving those goals.

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 interest of 60,000 attorneys, judges, law professors, and law students. NAPABA serves as the national voice for the Asian Pacific American legal profession. It promotes justice, equity, and opportunity for Asian Pacific Americans and fosters professional development, legal scholarship, advocacy, and community involvement toward achieving those goals.

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.

South Asian Bar Association of North America

The South Asian Bar Association of North America (“SABANA”) is an international bar association that seeks to strengthen the rapidly growing South Asian legal community with a recognized and trusted forum for professional growth

and development, while also promoting the civil rights and access to justice for the South Asian community and the community-at-large. More specifically, SABANA strives to combat efforts to limit and marginalize South Asian and other immigrant communities.

Civil Rights and Other Advocacy Organizations

18 Million Rising

18 Million Rising (“18MR”) was created to be a progressive political home for young Asian Americans. Since 2012, 18MR’s online and offline advocacy and cultural campaigns have highlighted the struggles of Asian American communities while celebrating our resilience. Using digital-first organizing, 18MR responds to issues of the current political moment. 18MR mobilizes its people to speak up against injustice and take action.

AAPI Equity Alliance

AAPI Equity Alliance (formerly, the Asian Pacific Policy and Planning Council) is a coalition of community-based organizations that advocates for the rights and needs of the Asian American and Pacific Islander community in Los Angeles County and beyond. AAPI Equity Alliance is also one of the co-founding partners of the national coalition Stop AAPI Hate. The organization works to raise awareness of anti-AAPI hate and its antecedents in U.S. history and to advocate for policy solutions to prevent and address racism against AAPI communities.

Asian Americans Advancing Justice - Asian Law Caucus

Asian Americans Advancing Justice - Asian Law Caucus (“ALC”) is a nonprofit civil rights organization committed to the pursuit of justice, serving low-income, immigrant, and underserved Asian American 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.

Asian Americans Advancing Justice – Atlanta

Asian Americans Advancing Justice-Atlanta (“Advancing Justice-Atlanta”) is the first nonprofit legal advocacy organization dedicated to protecting the civil rights of Asian Americans, Native Hawaiian, Pacific Islander and Arab, Middle Eastern, Muslim, and South Asian communities in Georgia and the Southeast. It works to promote equity, fair treatment, and self-determination for all communities of color.

Asian Americans Advancing Justice | Chicago

Asian Americans Advancing Justice | Chicago (“Advancing Justice | Chicago”) builds power for the Asian American community through collective advocacy and organizing to achieve racial equity. Advancing Justice | Chicago engages in leadership training, advocacy across Illinois and beyond, and civic engagement by increasing the community’s power and voice in society.

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). Through direct services, impact litigation, policy advocacy, leadership development, and capacity building, AJSOCAL focuses on the most vulnerable members of AAPI communities while also building a strong voice for civil rights and social justice.

Asian American Women’s Political Initiative

The Asian American Women’s Political Initiative (“AAWPI”) is a non-profit organization based in Boston, Massachusetts that works to ensure that AAPI women have a voice in our democracy. After the 2021 mass shooting of 6 AAPI women in Georgia, AAWPI realized how urgent it was to change the invisibility that leaves us so vulnerable to the anti-Asian violence we still see today. In response to such violence, AAWPI scaled nationally and are building a first-of-its kind political pipeline to activate, mobilize and elevate AAPI women.

Asian Law Alliance

The Asian Law Alliance (“ALA”), founded in 1977, is a non-profit public interest legal organization with the mission of providing equal access to the justice system to the Asian and Pacific Islander communities in Santa Clara County,

California. Since 1977, ALA has consistently fought against discriminatory laws impacting the community.

Chinese for Affirmative Action

Chinese for Affirmative Action (“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 is a progressive voice in and on behalf of the broader Asian American and Pacific Islander communities. 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 and beyond.

LatinoJustice PRLDEF

LatinoJustice uses and challenges laws to promote a more just and equitable society. For more than fifty years, LatinoJustice 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. Most recently, LatinoJustice 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 is acutely aware of the sordid history of exclusionary policies against foreign nationals—Mexicans and Asians alike—including dispossessing them of their property interests.

National Korean American Service & Education Consortium

The National Korean American Service & Education Consortium (“NAKASEC”) is an organization working towards a future in which low- and middle-income, immigrant, people of color, and marginalized communities are working together as the change-makers. NAKASEC focuses on expanding Korean and Asian American grassroots and voting power, developing and supporting a new generation of youth and immigrant leaders, and solidifying a robust and sustainable movement organization.

Stop AAPI Hate

Stop AAPI Hate (“SAH”) is a national coalition that tracks and responds to incidents of hate and harassment against Asian Americans and Pacific Islanders in

the United States. Since the COVID-19 pandemic began, AAPIs across the United States have submitted more than 11,000 reports of hate incidents to SAH. Our work addresses the root causes of anti-AAPI hate, such as dismantling the "perpetual foreigner" stereotype that portrays Asians and Asian Americans as forever outsiders who don't belong in the United States, and pushes back on the systemic impacts of anti-AAPI hate including anti-Asian national security scapegoating. SAH's 2022 report, "The Blame Game," spotlights how political rhetoric has been consistently employed, over decades, to hurt Asian communities. For these reasons, SAH advocates against land ban laws which prohibit specific communities from property ownership in Florida, Texas, and beyond.

Amici are 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 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.

REASONS WHY THE MOTION SHOULD BE GRANTED

In this case, Plaintiffs-Appellants seek to enjoin Florida's Conveyances to Foreign Entities Law ("Alien Land Law"), which severely restricts the rights of non-

citizen and non-permanent resident persons domiciled in China to own real property in Florida. The Brief argues that *Terrace v. Thompson*, 263 U.S. 193 (1923) should not have been relied on so heavily by the District Court, as the holding in *Terrace* has been limited such that it does not excuse the explicit discrimination found in Florida's Alien Land Law. The Brief also draws out the national origin animus demonstrated by the Florida Legislature in its consideration and passage of the Alien Land Law, as well as using history to contextualize the likely effect that such a discriminatory law would impose on Asian Americans in Florida. The matters set forth in the Brief are directly relevant to the issues before the Court and serve to assist the Court in resolving them. Accordingly, Amici respectfully request that they be permitted to file the Brief.

CONCLUSION

For the foregoing reasons, the Court should grant leave to file the attached brief as amici curiae.

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

The undersigned counsel certifies as follows:

1. This brief contains 3,273 words, excluding the parts of the document exempted by Rule 32(f), in accordance with Rule 27(d)(2).
2. This brief complies with the typeface and type-style requirements of Rule 27(d)(1)(E).

October 10, 2023

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CERTIFICATE OF SERVICE

I hereby certify that on October 10, 2023, 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.

October 10, 2023

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EXHIBIT A

No. 23-12737

**IN THE UNITED STATES COURT OF APPEALS FOR
THE ELEVENTH CIRCUIT**

YIFAN SHEN, et al.,

Plaintiffs-Appellant,

v.

WILTON SIMPSON, in his official capacity as
Florida Commissioner of Agriculture, et al.,

Defendants-Appellees.

On Appeal from the United States District Court for the
Northern District of Florida, No. 4:23-cv-208 (Winsor, A.)

**BRIEF OF RACIAL JUSTICE CENTERS, AFFINITY BAR AND
PROFESSIONAL ASSOCIATIONS, AND CIVIL RIGHTS
ADVOCACY ORGANIZATIONS AS AMICI CURIAE
IN SUPPORT OF PLAINTIFFS-APPELLANTS**

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CERTIFICATE OF INTERESTED PERSONS
AND CORPORATE DISCLOSURE STATEMENT

Amici's certificate of interested persons and corporate disclosure statements are included in their Motion for Leave to File Amicus Brief Supporting Plaintiffs-Appellants.

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Keith Aoki, <i>No Right to Own?: The Early Twentieth-Century “Alien Land Laws” As a Prelude to Internment</i> , 40 B.C. L. Rev. 37 (1998).....	23

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INTEREST OF AMICI CURIAE¹

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

Racial Justice Centers:

Fred T. Korematsu Center for Law and Equality at Seattle University School of Law;

Center for Immigration Law, Policy and Justice at Rutgers Law School;

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

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

Boston University Center for Antiracist Research; and

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

Asian Pacific American Bar Association of South Florida;

¹ Complete statements of interest are included in the motion for leave to file 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.

Asian Pacific American Bar Association of Tampa Bay;

Conference of Asian Pacific American Law Faculty;

Florida Muslim Bar Association;

Hispanic National Bar Association;

Jacksonville Asian American Bar Association;

National Asian Pacific American Bar Association;

National Filipino American Lawyer Association; and

South Asian Bar Association of North America.

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:

18 Million Rising;

AAPI Equity Alliance;

Asian Americans Advancing Justice – Asian Law Caucus;

Asian Americans Advancing Justice – Atlanta;

Asian Americans Advancing Justice – Chicago;

Asian Americans Advancing Justice – Southern California;

Asian American Women's Political Initiative;

Asian Law Alliance;

Chinese for Affirmative Action;

LatinoJustice PRLDEF;

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 SB 264 violates the Equal Protection Clause because it (1) carves out a discriminatory classification among aliens based on national-origin and (2) is motivated by racial and national-origin animus.

SUMMARY OF ARGUMENT

Florida’s SB 264 (“Alien Land Law”) is an unconstitutional attack on the fundamental rights of immigrants of Chinese nationality. Under the guise of protecting “national security,” the Florida Legislature enacted this law, which has since come into effect, to impose draconian restrictions on Chinese immigrants’ ability to find a place to live in Florida. Florida’s Alien Land Law makes impermissible classifications among non-citizens by labeling politically unpopular countries as “countries of concern.” Florida’s attempt before the District Court to resurrect century-old precedent from the dustbin of history ignores the intervening legal developments that make its new law unconstitutional. This Court must reject Florida’s Alien Land Law to protect the constitutional rights of non-citizens who have become the latest target of Florida’s government’s racial animus.

Amici rebut various erroneous findings made by the District Court in its Order Denying Plaintiffs’ Motion for Preliminary Injunction. First, the Court dramatically overapplied *Terrace v. Thompson*, 263 U.S. 197 (1923), repeatedly referencing the case as if it were on point precedentially rather than recognizing that subsequent Supreme Court decisions had limited its holdings and rendered it incapable of supporting Florida’s Alien Land Law. Second, the Court ignored the racial and national origin animus demonstrated by the Florida Legislature in the debate and discussions surrounding SB 264. If the Court had properly applied

Terrace and not overlooked the animus demonstrated by the Florida Legislature, it would have applied strict scrutiny to Florida's Alien Land Law and granted Plaintiff's injunction. Amici ask that this Court correct the lower court's errors and enjoin SB 264 from enacting discriminatory restrictions on the purchase of land in Florida.

ARGUMENT

I. *Terrace v. Thompson* is a Discriminatory Decision That Has Been Limited by Subsequent Supreme Court Precedent and Does Not Permit Florida’s Alien Land Law.

The District Court relied on a widely discredited 1923 ruling that upheld a discriminatory land ownership law against Asian immigrants because at the time, the Supreme Court found it “reasonable” that the federal government precluded Asians from becoming citizens, while favoring Europeans. Like the law at issue in *Terrace*, Florida’s Alien Land Law offers explicitly racist restrictions on aliens’ ability to purchase property. Despite this shared history of bigotry, the District Court erred in relying on *Terrace* to uphold Florida’s Alien Land Law because *Terrace*’s holding has been subsequently limited by changes to U.S. immigration policies and the century of case law since that decision.

As an initial matter, the law at issue in *Terrace* is irrelevant and completely foreign to the present day, as the classifications of aliens it used—aliens ineligible for citizenship, which was an overtly racist classification referring primarily to immigrants from Asia—was eliminated by the Immigration and Nationality Act (“INA”) in the 1950s.

Terrace’s only relevance today, and applicability to Florida’s Alien Land Law, is to the more general question of the level of review courts should apply to restrictions on land ownership based on protected classifications. The District

Court incorrectly held that *Terrace* exempts all land ownership restrictions based on alienage from strict scrutiny. App.340-350. The only application *Terrace* has in the modern day is to broadly permit states to restrict land ownership based on alienage, writ large. Subsequent case law has limited *Terrace*'s holding to blanket restrictions on land ownership, not national origin-specific discrimination such as Florida's Alien Land Law. Because *Terrace*'s holding does not shield the law from strict scrutiny, the law should accordingly be overturned.

The District Court's primary justification for broadly applying *Terrace* is that the Supreme Court had not explicitly overturned it. App.349. *Terrace*, however, has been repeatedly limited and abrogated, such that lower courts should not continue to broadly apply its holdings without sufficient scrutiny.

The Supreme Court does not always explicitly overturn each case that would otherwise clearly 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 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).

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 conceded by the Supreme Court’s decision on the same case, where it finally overturned *Korematsu* and recognized it had already “been overruled in the court of history.” *Trump v. Hawaii*, 138 S. Ct. 2392, 2423 (2018).

Turning to *Terrace* itself, the Supreme Court’s subsequent case law has clearly narrowed and abrogated in part key portions of *Terrace* that would otherwise relate to the present case. Almost exactly one hundred years ago, the

Supreme Court upheld a Washington state law that prohibited ownership of real property by “aliens other than those who in good faith have declared intention to become citizens of the United States[.]” *Terrace*, 263 U.S. at 212. This system of classification was explicitly race-conscious, which the Court recognized. *Id.* at 220 (“Generally speaking, the natives of European countries are eligible. Japanese, Chinese and Malays are not.”). In so holding, the Court allowed states to adopt discriminatory classifications to land ownership, so long as those classifications are set by the federal government. *Id.* (“The State properly may assume that the considerations upon which Congress made such classification are substantial and reasonable.”). *Terrace* permitted a two-tier classification system for aliens, which was thereafter adopted by many states: first, the “alien ineligible for citizenship,” which only included those aliens which, by their national origin, could not qualify for citizenship, and second, the “declarant alien,” or alien who had declared their intent to naturalize. Both classifications were permitted to be used to restrict land ownership. *See Porterfield v. Webb*, 263 U.S. 225, 232 (1923) (upholding restriction on land ownership for aliens ineligible for citizenship); *Terrace*, 263 U.S. at 212 (upholding restriction permitting “declarant aliens” to own land).

These classifications were widespread until the dawn of the Civil Rights Era, when the Court, Congress, and state courts and legislatures began moving in a more equitable direction. In *Takahashi v. Fish & Game Com.*, 334 U.S. 410, 418–

19 (1948), the Court ruled that states can no longer adopt discriminatory classifications such as “aliens ineligible for citizenship” simply because they are used for immigration purposes. In overturning the California law barring aliens ineligible for citizenship from obtaining a commercial fishing license, the Court held that although “the United States regulates immigration and naturalization in part on the basis of race and color classifications, a state can[not] adopt one or more of the same classifications to prevent lawfully admitted aliens within its borders from earning a living in the same way that other state inhabitants earn their living.” *Id.* Similarly, in 1952, the Immigration and Naturalization Act was passed, which eliminated the racial bar to naturalization, as well as the “declaration” requirement to the naturalization process. *See* 8 U.S.C. § 1445(f). The very categories, aliens ineligible for citizenship and good faith declarants, upheld by the Supreme Court in *Terrace* and *Porterfield* as legitimate bases upon which states could deny land ownership were eliminated by the 1952 Act. Instead, what is left of *Terrace* is that “[s]tate legislation *applying alike and equally to all aliens*, withholding from 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 due process clause.” 263 U.S. at 218 (emphasis added). Following the elimination of the categories upon which Washington’s alien land law relied, *Terrace* cannot be

said to authorize the kind of *selective* alienage discrimination embodied in Florida’s law.

Continuing the trend away from selective alienage discrimination, states acted to repeal their alien land laws. For example, following a Washington State Senate Joint Resolution that proposed a constitutional amendment, Washington’s voters approved the repeal of Washington’s law restricting land ownership by certain aliens in 1966.² Moreover, state supreme courts overturned prior opinions that upheld their state’s discriminatory alien laws. *See, e.g., Namba v. McCourt*, 204 P.2d 569, 582 (Or. 1949); *Fujii v. California*, 242 P.2d 617, 624–25, 630 (1952); *Montana v. Oakland*, 287 P.2d 39 (Mont. 1955). Notably, the U.S. Supreme Court in *Nyquist v. Mauclet*, 432 U.S. 1 (1977) addressed a state requirement that, to qualify for certain educational benefits, an alien must apply for citizenship or declare an intent to apply for citizenship. 432 U.S. at 3–4. The Court applied strict scrutiny to the state’s decision to “discriminate [] within the class of aliens” and found that it violated the Fourteenth Amendment. *Id.* at 8–9. The District Court in the present matter attempted to dismiss *Nyquist* by grouping it with other alienage discrimination cases such as *In re Griffiths*, 413 U.S. 717 (1973), *Examining Bd. Of Eng’rs v. Flores de Otero*, 426 U.S. 572 (1976), and

² See Nicole Grant, *White Supremacy and the Alien Land Laws of Washington State* (2008), https://depts.washington.edu/civilr/alien_land_laws.htm.

Sugarman v. Dougall, 413 U.S. 634 (1973). App.349. The District Court ignored the key difference between these cases, in that the statute analyzed in *Nyquist* involved the state distinguishing between different classes of alien, while *Griffiths*, *Flores de Otero*, and *Sugarman* all involved blanket bans on aliens from participating in various licenses or employment. *Nyquist*, therefore, applies particularly in cases such as the one here, where states seek to enforce disparate treatment between different subclasses of aliens, as opposed to treating all aliens in the same manner.

This question is, of course, different when it is a restriction on a subclass of aliens imposed by the federal government. The Court in *Mathews v. Diaz*, 426 U.S. 67 (1976) permitted the federal government to limit aliens’ ability to participate in federal medical insurance programs to those who satisfied a durational residency requirement. 426 U.S. at 87. This authority, however, was strictly limited to the “political branches of the Federal Government.” *Id.* at 81; *see also Nyquist*, 432 U.S. at 7 n.8. The Court has subsequently reaffirmed the holding that “[t]he States enjoy no power with respect to the classification of aliens.” *Plyler v. Doe*, 457 U.S. 202, 225 (1982) (citing *Hines v. Davidowitz*, 312 U.S. 52 (1941)). Although the federal government may “take into account the character of the relationship between the alien and this country, only rarely are such matters relevant to legislation by a State.” *Id.* (citing *Mathews*, 426 U.S. at 80, 84–85).

The Supreme Court’s subsequent decisions have limited the holding of *Terrace* and its companion cases such that it does not protect classifications of specific subclasses of aliens regarding issues of land ownership. Although *Terrace*’s general proposition that states retain the authority to limit who may own land in its territory has not been overturned, its specific holding that aliens “who in good faith have declared intention to become citizens of the United States” may be barred from land ownership has been abrogated. *See* 263 U.S. at 213, 217. The very classification on which Washington’s law was based was eliminated with the INA’s passage in 1952, and *Nyquist* subsequently held that states may not discriminate based on an alien’s intention to naturalize. 432 U.S. at 7-8. *Plyler* subsequently held that states “enjoy no power with respect to the classification of aliens,” which is precisely what Florida does with its Alien Land Law. 457 U.S. at 225.³ By classifying its own “countries of concern,” and then singling out the People’s Republic of China for particularly draconian restrictions, Florida improperly assumes powers that are “committed to the political branches of the Federal Government.” *Mathews*, 426 U.S. at 81; *see also Terrace*, 263 U.S. at 220

³ In instances such as these, where discrimination against protected classes overlaps with issues of national security and foreign relations, the doctrines of equal protection and federal preemption overlap and become the same. *See Plyler*, 457 U.S. at 226 (holding that a state’s improper usurpation of federal authority in the immigration realm made its classification “suspect” such that the 14th Amendment rendered the state law unconstitutional).

(holding that Washington’s law was not “arbitrary or unsupported by reasonable considerations of public policy” because “[t]he State properly may assume that the considerations upon which Congress made such classification are substantial and reasonable”). *Terrace*’s holding has therefore been limited by subsequent case law to only permit restrictions on land ownership by aliens *vel non*, not within specific subclasses of aliens as Florida attempts to do here.

II. **Racial and National-Origin Animus Motivated Florida’s Alien Land Law.**

The Supreme Court confronted our country’s long history of discrimination by looking beyond the written words of laws and unveiling their invidious discriminatory effect on protected groups. The mere fact that a classification is not technically based on race or national origin does not exempt it from equal protection scrutiny, when it closely correlates with race, particularly when it appears to have been employed as a stratagem of making constitutional what would otherwise be invalid. As the Court expressed in *Village of Arlington Heights v. Metro. House. Dev. Corp.*, “Sometimes a clear pattern, unexplainable on grounds other than race, emerges from the effect of the state action even when the governing legislation is neutral on its face.” 429 U.S. 252, 266 (1977); *see also Santamaria v. Dallas Indep. Sch. Dist.*, 2006 U.S. Dist. LEXIS 83417, at *113 (N.D. Tex. 2006) (recognizing clear patterns, unexplainable on grounds other than

national origin); *League of Women Voters of Fla., Inc., v. Detzner*, 314 F. Supp. 3d 1205, 1222 (N.D. Fla. 2018) (same).

In *Guinn v. United States*, for example, the Court pulled the curtains back from an ostensibly neutral device—literacy tests with a grandfather clause—which exempted persons whose ancestors could vote on January 1, 1866. 238 U.S. 347, 363 (1915). The Court invalidated the statute, recognizing it deprived Black voters of their Fifteenth Amendment rights and “embod[ied] no exercise of judgment and rest[ed] upon no discernible reason” other than to discriminate on the basis of race. *Id.* at 364. Similarly, while the words of the Alien Land Law may appear facially neutral, the Law was designed for, and has the intended effect of, discriminating against Chinese persons and Asians more broadly, triggering equal protection analysis.

A. Florida’s Legislature Designed its Alien Land Law With Chinese Persons in Mind.

The District Court found the Alien Land Law “would apply to a person of Chinese descent domiciled in China the same way it would apply to a person *not* of Chinese descent domiciled in China. And its application would never turn on a person’s race.” App.339. Even if the Law’s classification—an alien’s domicile—is ostensibly neutral on its face, Florida’s legislature crafted it “with a mind so unequal and oppressive as to amount to a practical denial by the State of that equal protection of the laws.” *Yick Wo v. Hopkins*, 118 U.S. 356, 373 (1886). The Alien

Land Law’s legislative history shows its classification was carved out with a specific ethnic minority group in mind: Chinese persons.⁴

On multiple occasions, bill analyses refer to Chinese persons specifically. On March 14, 2023, the bill “clarifie[d] that notwithstanding the general prohibition in the bill, a *Chinese person* or entity can still acquire real property in the state on or after July 1, 2023 . . . but must sell, transfer, or otherwise divest itself of such real property within 2 years . . .” App.238 (emphasis added). On March 22, 2023, the Rules Committee revised the category of “*Chinese persons* and entities” to exclude lawful permanent residents. App.284 (emphasis added). On May 2, 2023, a House amendment allowed “certain *Chinese persons* legally present in the state for purposes other than tourism to purchase a single primary residence.” App.176 (Ex. 51) (emphasis added). On each of these occasions, the legislature failed to record their clarifications and revisions in the sanitized category “person who is domiciled in the People’s Republic of China”⁵ and, perhaps inadvertently, revealed their targeting of Chinese persons.

⁴ See *Arlington Heights*, 429 U.S. at 268 (“The legislative or administrative history may be highly relevant, especially where there are contemporary statements by members of the decision-making body, minutes of its meetings or reports.”); see also *Territory of Alaska v. Am. Can Co.*, 358 U.S. 224, 226–27 (1959) (federal courts may take judicial notice of legislative history).

⁵ Fla. Stat. § 692.204(4).

The tendency to equate domiciliaries of China with Chinese persons bleeds outside of the four corners of the bill analyses. In a Senate Judiciary Committee Meeting, Senator Yarborough said, “[J]ust to be clear, is it correct that the bill draws a distinction between Chinese citizens who live here and Chinese investors who reside overseas?” App.171(18)(a) at 16:10-16:23. The Senator’s question focused squarely on Chinese persons without consideration or concern for persons domiciled in China of other ethnicities or national origins. The legislature’s view of domiciliaries of China and Chinese persons as different sides to the same coin is not surprising, because the overwhelming majority—about 91%—of people in China are, in fact, ethnically Chinese.⁶

But Appellees deflect from the Alien Land Law’s discriminatory impact on Chinese persons and go so far as to assert that “the ethnicity of individuals domiciled in China who wish to invest in Florida” is a “tiny and possibly unrepresentative fraction of those domiciled in China.”⁷ Doubling down on their argument, Appellees explain to the Court that people from a “wide range of

⁶ CIA World Factbook, <https://www.cia.gov/the-world-factbook/countries/china/#people-and-society> (last updated Sept. 26, 2023); see *Dippin' Dots, Inc. v. Frosty Bites Distribution, LLC*, 369 F.3d 1197, 1204 (11th Cir. 2004) (allowing judicial notice of facts with a “high degree of indisputability”).

⁷ Defendant’s Corrected Memorandum in Opposition to Plaintiff’s Motion for Preliminary Injunction, *Shen v. Simpson*, 4:23-cv-00208-AW-MAF, ECF No. 60, at 23 (“Defendant’s Brief”).

ethnicities and nations origins” could theoretically fall under the ambit of SB 264, including “white, British-born, Dutch citizens who are domiciled in Hong Kong.”⁸ But a vanishingly small proportion of Chinese domicilaries—0.06%—are actually foreign-born.⁹ Moreover, Appellees’ speculations about who would “possibly” be covered by the Law are a distraction, and conspicuously absent from the legislative record is any concern for non-Chinese persons domiciled in China. For example, the Senate Judiciary and Rules Committees’ bill analyses contain various references to actions by the Chinese government, such as the “spy balloon” incident or reports of secret police stations being established by Chinese agents on American soil, as well as allegations that “Confucius Institutes” established on American college campuses were responsible for recruiting “influence agents” and engaging in “cyber espionage and intellectual property theft.” App.196-97.

Furthermore, even if “white, British-born, Dutch citizens” could fall under the purview of SB 264, analysis under *Arlington Heights* never required perfect targeting—animus is found even when a statute could impact persons outside of

⁸ Defendant’s Brief, at 23.

⁹ Frank Bickenback & Wan-Hsin Liu, *Goodbye China: What Do Fewer Foreigners Mean for Multinationals and the Chinese Economy?*, 57 *Intereconomics* 306 (2022), <https://www.intereconomics.eu/contents/year/2022/number/5/article/goodbye-china-what-do-fewer-foreigners-mean-for-multinationals-and-the-chinese-economy.html>.

the targeted group.¹⁰ When the Court in *Guinn* recognized the grandfather clause’s discriminatory impact on Black voters; the Court did not venture whether all Black voters were excluded based on the grandfather clause or whether non-Black voters were also harmed. *See Guinn*, 238 U.S. at 363. Similarly here, Appellees’ contention that “white, British-born, Dutch citizens” domiciled in China could face the Alien Land Law’s prohibition does not minimize the legislature’s obvious targeting of ethnically Chinese individuals and entities.¹¹ Considering the legislature’s focus on Chinese persons alongside the Alien Land Law’s specific prohibition against “any person who is domiciled in the People’s Republic of China and who is not a citizen or lawful permanent resident of the United States”¹² begs the question: What “discernible reason” is there to exclude United States citizens and lawful permanent residents domiciled in China from the Law, without explanation or analysis as to whether their domiciliary may trigger purported “national security” concerns, and maintain a blanket prohibition against Chinese

¹⁰ *See* Stephen Rich, *Inferred Classification*, 99 Va. L. Rev. 1525, 1536 (2013) (“The Court did not concern itself with possible imperfection or inconsistencies in the equation of ancestry with race, such as whether the statute in practical effect excluded numerous racial groups from the franchise and not just the descendants of slaves or whether the grandfather clause might include some African Americans with white ancestors within the franchise.”).

¹¹ Defendant’s Brief, at 23.

¹² Fla. Stat. § 692.204(4).

nationals domiciled in China, other than to evade a national origin and race discrimination claim? *See Guinn*, 238 U.S. at 364.

B. Florida’s Legislature Foresaw and Knew the Alien Land Law Had Discriminatory Impact.

Not only does the Alien Land Law have a discriminatory impact, but such discriminatory impact was foreseeable and known to the Florida legislature. Though the District Court found, “[A]s to race and national origin, the [legislative] reports do not even show any awareness of consequences for those of Chinese descent or those born in China,” App.353, Florida’s legislature in fact discussed the discriminatory consequences of the Alien Land Law. As Senator Book acknowledged before the Senate Judiciary Committee, “[this bill] could be creating a situation for individuals who are here in this country who want to purchase property and could create discriminatory practices.” App.171(18)(a) at 14:11-14:36. Representative Driskell likewise expressed in a House Session that the “bill has national origin discrimination. There is no definition of what it means to be a member of the ... [People’s] Republic of China. As best as I can tell, it probably just means being a Chinese citizen.” App.176(29)(a) at 2:56:37-2:56:52. As Representative Driskell further highlighted, “It’s possible for this bill to have discrimination built into it, and it does. And you’ve received the warning.” *Id.* at 2:59:58-3:00:07. In the same House Session, Representative Eskamani warned that the legislature “could potentially be creating an environment where someone does

not want to sell to someone because they are Asian American that will create a discriminatory environment for anyone who looks Asian American.” *Id.* at 2:54:31-2:54:46. Barreling through explicit warnings concerning the Law’s discriminatory impact, the Senate and House nevertheless passed this bill. The District Court’s failure to consider these statements is clear error.

C. The Alien Land Law Legitimizes Discrimination Against Asian Americans.

Cloaked with legitimacy of government authority and the rule of law, the Alien Land Law sanctions fear and suspicion against not just Chinese persons, but Asians broadly.¹³ The historical background of the Alien Land Law reveals Florida legislators wielded the Law as a shield against “foreign enemies.” Senator Simpson said, “The bill that we’re putting forward is saying that our foreign enemies will not be able to buy land in the state of Florida.” App. 163 (Ex.9). Moreover, Governor DeSantis claimed that “[Senator Collins and Representative Borrero] did a great job not allowing our foreign enemies to buy our agriculture lands . . .” App.167 (Ex. 23).

¹³ *The Federal Response to Anti-Asian Racism in the United States*, U.S. Commission on Civil Rights (Sept. 27, 2023), <https://www.usccr.gov/files/2023-09/fy-2023-se-report.pdf> (“Since Asian stereotypes often ignore the ethnic diversity that exists within Asian communities, perpetrators of anti-Asian violence may see all Asians as “foreign,” “other,” or “threatening,” regardless of whether “the person is from China, or Chinese origin, or simply looks Asian,” which in turn makes all Asian people vulnerable to becoming a victim of a hate crime.”)

Unsurprisingly, century-old alien land laws used the same rhetoric and rationale to deny Asians property ownership. See *Webb v. O'Brien*, 263 U.S. 313, 316 (1923) (upholding California's Alien Land Law on grounds that "[t]he allegiance of the farmers to the State directly affects its strength and safety").¹⁴ The discriminatory consequences that emerged from antiquated alien land laws offer insight on the foreseeable consequences that will flow from Florida's modern Alien Land Law. Like a double-edged sword, alien land laws harm Asians by not only economically depriving them from property ownership¹⁵ but also subordinating them into a "caste of less-than-worthy persons occupying land."¹⁶ As the Court in *Hirabayashi* acknowledged, it was the discriminatory impact from state legislations—including the denial of property ownership—that normalized society's further ostracization and dehumanization of Japanese persons. 320 U.S. 81, 96 n.4 (1943). With human consequences that extended beyond the sphere of

¹⁴ See also Keith Aoki, *No Right to Own?: The Early Twentieth-Century "Alien Land Laws" As a Prelude to Internment*, 40 B.C. L. Rev. 37, 37 n.4 (1998) ("These [alien land] laws were passed in response to growing numbers of Japanese immigrants as they began to compete in the agricultural land markets and were increasingly viewed as a threat to valuable "American" natural resources.")

¹⁵ See Rose Cuison Villazor, *Rediscovering Oyama v. California: At the Intersection of Property, Race, and Citizenship*, 87 Wash. U. L. Rev. 979, 1005 (2010) ("When compared to other U.S. citizens, many Japanese Americans were unable to benefit from the transfer of wealth typically associated with land ownership that was available to other American child as a result of their parents' inability to purchase property.").

¹⁶ Aoki, *supra* note 14, at 67 (internal quotations omitted).

property ownership,¹⁷ alien land laws “ideologically affirmed the “foreign-ness” [of Japanese persons] . . . position[ing] them to be racial scapegoats in the wake of Pearl Harbor” and “la[ying] the ideological, legal, and cultural foundation for the mass physical dispossession, evacuation, and internment of Japanese and Japanese Americans[.]”¹⁸

Here, Florida’s rationale to discriminate against Chinese persons through its Alien Land Law will open the doors to further race-based animosity and violence against Asians— an already vulnerable group that has been weathering attacks across the country. In the aftermath of government officials scapegoating Chinese people for the spread of COVID-19, including calling it the “Chinese virus,”¹⁹ 81% of Asian adults reported increased violence against them.²⁰ Florida’s Alien Land

¹⁷ Cf. Gabriel J. Chin & Anna Ratner, *The End of California’s Anti-Asian Alien Land Law: A Case Study in Reparation and Transitional Justice*, 20 Asian Am. L. J. 17, 22 (2022) (“While the [a]lien [l]and [l]aws and the judicial opinions that upheld them were an important component of the nativist fervor that gripped the American legal imagination during the 1920s, they were merely a prelude to the enactment of the severe Federal Immigration Act of 1924 that excluded immigration from Japan[.]”).

¹⁸ Aoki, *supra* note 14, at 66–68.

¹⁹ Katie Rogers, Lara Jakes, & Ana Swanson, *Trump Defends Using ‘Chinese Virus’ Label, Ignoring Growing Criticism*, N.Y. Times (Mar. 18, 2020), <https://www.nytimes.com/2020/03/18/us/politics/china-virus.html>

²⁰ Neil G. Ruiz, Khadijah Edwards, & Mark Hugo Lopez, *One-Third of Asian Americans Fear Threats, Physical Attacks, and Most Say Violence Against Them is Rising*, Pew Research (Apr. 21, 2021), <https://www.pewresearch.org/short-reads/2021/04/21/one-third-of-asian-americans-fear-threats-physical-attacks-and-most-say-violence-against-them-is-rising/>

Law fans flames of division with a pretextual concern for national security. Stigmatizing Asians as foreign enemies will inevitably worsen the already alarming resurgence of anti-Asian violence.

CONCLUSION

Allowing Florida's Alien Land Law to remain in effect would ignore decades of Supreme Court precedent and the racial animus exhibited by Florida's Legislature. For the foregoing reasons, Amici request this Court reverse the District Court's decision and enjoin the Alien Land Law.

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

The undersigned counsel certifies as follows:

1. This brief contains 5,148 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).

October 10, 2023

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CERTIFICATE OF SERVICE

I hereby certify that on October 10, 2023, 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.

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