

MODERN-DAY ALIEN LAND LAWS' RESURGENCE THROUGHOUT THE SOUTH

A Historical, Cross-State Analysis

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OCTOBER 2023



ASIAN AMERICANS
ADVANCING
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INTRODUCTION



Over the years, Georgia has benefited from welcoming businesses and newcomers from around the world. However, in 2023, the Peach State joined 32 other states that introduced 81 bills to restrict land ownership of target persons and entities from certain non-U.S. countries. All of these bills target people from China, though a number also targeted individuals from other nations such as Iran, Russia, North Korea, Cuba, Syria, Saudi Arabia, and Venezuela. Given these law's historical connection to racist and xenophobic property restriction laws of the early 20th century, we refer to these restrictive laws as "alien land laws." Not only do they reprise racist

laws of the past, but they contribute to the current anti-Asian fervor stemming from COVID-19 and geopolitical tensions. From a legal standpoint, they violate the Federal Fair Housing Act (FHA) of 1968 and Equal Protection Clause under the 14th Amendment. Georgia remains one of a few states in the South that still has the opportunity to decide against implementing a discriminatory and harmful land law that could lead to unintended legal and economic consequences. This report will examine the history of anti-Chinese legislation in the U.S., and compare provisions across states to present a case for policymakers and stakeholders on why the policy has no place in Georgia.

Georgia still has the opportunity to decide against a discriminatory and harmful land law that could lead to unintended consequences.

Even as foreign nationals, people in the United States are protected by the Federal Fair Housing Act and the Equal Protection Clause of the 14th Amendment.

KEY TAKE-AWAYS

- Modern-day alien land laws echo past anti-Asian laws, which have coincided with times of heightened prejudice against people from China and other countries. China owns a fraction of foreign-owned land in the U.S., and the national security concerns over land ownership are incommensurate with any possible threat that is posed.
- The language that prohibits "possessory interest" in U.S. agricultural land by certain foreign nationals has unintended consequences that would be harmful to Georgia's economy and stakeholders.
- Though there is much focus on agricultural land, many of the bills restrict residential property.
- These bills may be violating the Supremacy Clause because states are effectively regulating immigration, which falls squarely under the purview of the federal government.
- Even as foreign nationals, people in the United States are protected by the Federal Fair Housing Act and the Equal Protection Clause of the 14th Amendment, which are violated by these 21st century alien land laws.

UNINTENDED CONSEQUENCES: ANALYZING THE TROUBLING IMPLICATIONS OF GEORGIA'S S.B. 132

Georgia's S.B. 132 contains several concerning provisions that warrant further scrutiny and consideration by state policymakers. The proposed legislation targets certain foreign nationals and entities from China, North Korea, Cuba, Iran, Russia, and Venezuela from having "possessory interest" in agricultural land and land within 25 miles of military installations. The bill contains overly broad definitions and is counterproductive to the interests of various sectors, including educational institutions, private businesses, and the state at large. Here are some of the key points to highlight:

Restricts Freedom of Movement for International Students: "Possessory interest" may also be applied to some international students, preventing them from living in university dormitories. In addition, the bill contains a provision that "nonresident aliens" must not be absent from the United States or Georgia for extended periods, which could

unfairly impact international college students who may leave the U.S. during extended breaks. This could discourage international students from attending Georgia's universities, impacting both cultural diversity and revenue streams for these institutions.

Harms Georgia's Global Economic Interests: The bill's provisions could have negative economic consequences for Georgia and its stakeholders. Foreign entities that conduct trade with businesses in Georgia and receive exports could face restrictions due to their possessory interest in the property where goods are held, potentially disrupting international trade and compromise the state's export-oriented industries.

Possibility for Confusion and Misapplication of "Agricultural Land or Land": Restrictions on the possessory interest of agricultural land, as defined in the bill, could include land not commonly or expressly used for agricultural

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The language of 'possessory interest' in Georgia's S.B. 132 muddles an already complicated issue. Any bill that limits the ability of anyone to own land based on one's national origin is a clear violation of the Federal Fair Housing Act.

- **Tim Hur**,
Broker, Point Honors & Associates, Realtors and
the 2022 National President of Asian Real Estate Association
of America



purposes. Furthermore, the ambiguity of "agricultural land or land" implies the bill applies to property beyond agricultural land, but does not offer further clarification.

25-Mile Radius Restricts Housing Options for Immigrants: The provision that precludes "nonresident aliens" from owning or having possessory interest in land within 25 miles of a U.S. military installation severely hampers certain foreign nationals from purchasing real property, including residential homes. Federal U.S. codes defines military installations as "camp, post, station,

yard, center, or other activity under the jurisdiction of the Secretary of a military department";¹ There are ten military bases in Georgia, but there are many more military installations. Within 65 miles of Atlanta alone, there are seven total military installations. (See Appendix A).

Potential for Legal Challenges: By leaving provisions open to interpretation, Georgia also opens itself to legal challenges on grounds of constitutional, property rights, fair housing, and equal protection principles.

MAP OF THE TEN MILITARY BASES IN GEORGIA

★ Military Base Location
● City



In summary, Georgia's S.B. 132 poses several troubling issues that could have wide-ranging implications for property rights, educational institutions, foreign corporations, and the state's economy. The bill's ambiguous language, broad definitions, and its targeting of

specific foreign nationals could result in unintended consequences and legal challenges. The law has the potential of violating people's fair housing and constitutional rights, and undermining the state's economic interest.

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There are far-reaching ramifications of prohibiting foreign nationals from having “possessory interests” in land. Not only do these laws encourage real estate agents to violate people's fair housing rights, but they could have tremendous negative consequences for Georgia's economic prosperity.



- Jeffrey Ledford,
Chief Advocacy Officer for Georgia Realtors

ANTI-ASIAN CONDITIONS OF THE 19TH AND 20TH CENTURIES: IDEOLOGY, VIOLENCE, AND POLICIES

These modern-day alien land laws reprise the legacy of anti-Asian legislation in the United States from 1850 to 1946, a period which was punctuated by targeted acts of violence against Asian persons. Anti-Asian discrimination generally manifests in three modes: ideological, interpersonal, and institutional. The anti-Asian land laws today mirror many of the same facets of the past. They are steeped in ideological views birthed by “Yellow Peril” and McCarthyism of the mid-twentieth century. “Yellow Peril”, the racist idea that painted Chinese people as a threat to America,² dominated the portrayal of Chinese people since the mid-nineteenth century with exaggerated imagery of a foreign menace. The fears of Chinese foreign nationals also echo the hysteria of the “Red Scare,” which U.S. Senator Joseph McCarthy weaponized in the 1950s to oust government officials he accused of being Communists. Over a hundred years later, these sentiments have been resurrected in the narrative of national security we see today.

The interpersonal form of discrimination occurs in the harassment and violence that Asian persons may face in their daily lives. Though exacerbated since COVID-19 first emerged, anti-Asian violence began with the arrival of Chinese migrants in the 1850s and has recurred in decades since. With the current tensions between the U.S. and China, policies that further antagonize relations can have harmful consequences for individuals of Asian descent regardless of nationality. One notable instance was in June 19, 1982 when two white auto-workers murdered Vincent Chin, who was of Chinese ancestry, in Detroit, Michigan because they blamed Japan for the city’s auto-manufacturing collapse. Institutionalized discrimination—such as anti-Asian land laws—reaffirms ideological hatred and perpetuates interpersonal violence.

The history of institutionalized racism against Asian people also dates back to the first significant arrival of Chinese migrants when Chinese gold miners were

seen as competition for white workers. Fueled by “Yellow Peril” stereotypes, anti-Asian legislation escalated, notably, with the Chinese Exclusion Act, Alien Land Laws, and the Japanese concentration camps. With the Chinese Exclusion Act, there was perceived competition over labor, as Chinese workers were seen as a cheap, industrious alternative to white labor. Similarly, the Alien Land Laws were devised to quash competition with Japanese migrants over farmland.³ It has been argued that Alien Land Laws served as a continuation of anti-Asian hostility of the Chinese Exclusion Act, and a precursor to the Japanese-American concentration camps.⁴

While certain laws targeted particular groups of people, others find themselves feeling the negative repercussions as well. Despite having distinct ethnic heritages and cultures, many Asian people in the United States have the common experience of being marginalized and homogenized, rendering the perception that Asian is Chinese; Chinese is foreign; and foreign is suspect.⁵ The experience

is common among people of Asian descent whether the individual is a natural-born citizen, naturalized, Lawful Permanent Resident (LPR), refugee, asylee, visa-holder, or tourist. The neutral language employed to exclude Japanese farmers from land ownership was “aliens ineligible for citizenship,” which exempted European immigrants. While discriminatory, the impact of these policies can be indiscriminate with whom they harm. Though the Alien Land Laws targeted Japanese farmers, they also precluded Chinese and Punjabi individuals from land ownership. In the aftermath of the 9/11 attack in 2001, entire Muslim, Arab, and South Asian American communities were singled out and targeted by the Department of Justice under the George H.W. Bush administration for a tragedy that they bear no responsibility for. The specter of national security should not grant the government the unrestricted license to violate people’s rights and liberties. A pernicious result of being homogenized is that “looking like the enemy”⁶ was enough to elicit discrimination.

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TIMELINE OF ANTI-ASIAN VIOLENCE AND POLICIES

HISTORICAL CONTEXT OF

ASIAN-AMERICAN MIGRATION

1848 - 1855

California Gold Rush⁷

1863 - 1869

Transcontinental Railroad¹⁰

Approximately 1,000 Chinese rail workers lose their lives in the course of labor.

1850

First Major Wave of Chinese Migrants Begins⁹

Spurred by domestic conflict in China such as the Opium War, many Chinese migrants flee to America.

1869

First Major wave of Japanese migrants

Japanese immigrants come to America as Japan undergoes rapid industrialization.

1899

First wave of South Asians migrate to North America

By 1915, there were about 7,000 South Asians in America in search of economic opportunities.¹³

1849 - 1906

More than 200 recorded instances of anti-Chinese violence and terrorism⁸

Throughout California's most populated cities and up to the Pacific Northwest, Chinese communities saw the wrath of mobs, being killed, lynched and driven out of their homes.

1871

Chinese massacre of 1871¹¹

After a white man in Los Angeles was accidentally killed in the crossfires between rival Chinese gangs, a mob and terrorizes a small Chinese community, lynching at least 17 Chinese men and boys. None of the people served time for the murders.

1885

Rock Springs Massacre

White coal miners in Rock Springs, Wyoming, attack other Chinese workers, resulting in the death of 28 people and the exodus of hundreds of Chinese people out of town.¹²

1907

The 1907 Bellingham Riots¹⁴

Five hundred white men terrorize South Asian migrant workers in Bellingham, WA, driving every last one of them out of town.

1939 - 1945

World War II

1845

1850

1860

1870

1880

1890

1900

1910

1920

1930

1940

1945

1850

Foreign Miners' Tax Law

Targets Chinese miners with a \$20 yearly fee. Due to the exorbitant fee, many Chinese workers leave mining jobs.

1882

Chinese Exclusion Act

Prohibits people from China from entering the United States under the penalty of imprisonment and deportation.¹⁶

1875

Page Act

Prohibits the entry of "women for the purposes of prostitution", which in practice, restricts the immigration of Chinese women.¹⁵

1892

Geary Act

Renews the Chinese Exclusion Act and requires Chinese migrants to carry on their persons a certificate of residence or be imprisoned.¹⁷

1913

First Alien Land Law of California

Bars "aliens ineligible for citizenship" from owning real property in the state.

It targets Japanese farmers, but applies to almost all persons of Asian descent.

1920

Second Alien Land Law of California

Further restricts land holding. The California Supreme Court strikes down Alien Land Laws in 1952 as unconstitutional.

1940

Congress opened naturalization eligibility to "indigenous to the Western Hemisphere,"

meaning that white, Black, and Indigenous people were permitted to naturalize, but Asians remained racially ineligible.

1942

Executive Order 9066¹⁹

Authorized the forced removal of 122,000 Japanese-Americans into concentration camps.

1944

Korematsu v. United States

The U.S. Supreme Court ruling upheld the conviction of Fred Korematsu, a Japanese-American who refused to submit himself to the Japanese concentration camps. In 1983, the conviction was overturned.

TIMELINE OF

ANTI-ASIAN LEGISLATION

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These modern-day proposals continue the shameful, xenophobic legacy of the Chinese Exclusion Act and Alien Land Laws, as well mob violence. Though national security is an important issue, such legislation simply institutionalizes state-sanctioned racial exclusion and otherness, which often fuels further discrimination such as the anti-Asian hate seen today.

- Dr. Russell M. Jeung,
PhD 張華耀 Professor, Asian American Studies at
San Francisco State University & Co-Founder of Stop AAPI Hate



GEO-POLITICAL TENSION LEADS TO PARANOIA OVER CHINESE LAND HOLDINGS

As a number of events between the United States and China have pervaded the American news cycle within recent years, there has been an acute concern over national security in the U.S. However, professed fears of espionage echo the same narrative about Chinese migrants in the late 1800s; and the slew of land restriction bills harken back to the Alien Land Laws that targeted Japanese migrants in the early 1900s. It is important that policies concerning national security are effective and proportionate with the issue they are ostensibly designed to address.

Existing federal systems already monitor land ownership by foreign entities. The Agricultural Foreign Investment Disclosure Act of 1978 established the national system to collect data on foreign investments in U.S. agricultural land.²¹ The law requires foreign persons who acquire or transfer ownership of agricultural land to report such information to the U.S. Department of Agriculture or face civil penalties.

In 2021, foreign persons or entities owned 3.1 percent of U.S. agricultural land. Of that, 62 percent is owned by five countries, none of which is China. While Chinese ownership of

U.S. agricultural land has increased, it still remains significantly less than many other countries that receive less scrutiny. At 383,935 acres, China ranks 18th in agricultural land owned in the U.S. by foreign individuals or entities²²— compared to Canada, which ranks 1st at 12,845,209 acres.²³ Policymakers should be wary of overstating the threat that foreign Chinese land ownership poses.

Dr. Jeung’s great-grandparents who lived in the US for sixty years and could not purchase property:



Jeung Quong Chong



Quock Ti

COVID-19 AND THE RISE OF ANTI-ASIAN RACISM

The COVID-19 pandemic contributed to a resurgence of Anti-Asian sentiments, as Asian people were made out to be scapegoats in the wake of the global crisis. By dubbing it the “China Virus” at the peak of the pandemic, then-President Donald Trump perpetuated association of the virus with Chinese people. Due to America’s tendency to homogenize Asian people, non-Chinese people of Asian descent felt the repercussions as well. Stop AAPI Hate, a nonprofit

organization that tracks instances of hate and discrimination against Asian American Pacific Islanders (AAPI) in the United States, recorded 10,905 reported hate incidents against AAPI persons from March 19, 2020 to December 31, 2021.²⁰ In a tragedy all too close to home, on March 16, 2021, a gunman killed eight people in Atlanta, six of whom were women of Asian descent. Modern alien land laws have the potential of fomenting more instances of violence, compounding the anxiety that both Asian and non-Asian individuals feel with the current geo-political backdrop of distrust and uncertainty.

CROSS-STATE ANALYSIS

We used both the [national state tracker](#) from Asian Americans Advancing Justice-AAJC and a [Property Ownership Restriction Chart](#) from Project South, which identify states that have introduced discriminatory land laws.²⁴

The table below shows a list of Southern states and proposed legislation. Of the ten bills that passed their original chambers, six had been enacted by the time this report was published. South Carolina and Georgia, with their legislative

PROPERTY DISCRIMINATION BILLS IN THE SOUTH²⁵

State	Bill Number	Legislative Status	End of Legislative Session
Georgia	S.B.132	Passed Original Chamber*	4/2/24
Alabama	H.B.379	Enacted	6/6/23
Arkansas	S.B.383	Enacted	5/1/23
Florida	S.B. 264	Enacted	5/5/23
Louisiana	H.B.537	Enacted	6/8/23
South Carolina	S.B.0576	Passed Original Chamber*	6/30/24
Tennessee	H.B.0040	Enacted	4/26/24
Texas	S.B. 147	Passed Original Chamber	5/29/23
Virginia	S.B. 1438	Enacted	2/25/23
West Virginia	H.B. 3493	Passed Original Chamber	3/11/23

**Up-to-date as of August 2023*

sessions ending in 2024, still have a chance of having their bills enacted as law.

The following analysis looks at legislation across ten Southern states: Georgia, Alabama, Arkansas, Florida, Louisiana, South Carolina, Tennessee, Texas, Virginia, and West Virginia. All of the alien land laws in this report have either been enacted or advanced past their original chambers. Here we examine what kinds of property are restricted; what lists of countries are referenced for property restrictions; what are the provisions for

individuals versus companies and other entities; what are the exceptions; and what are the enforcement mechanisms that dictate dispossession and penalties. While no two bills are identical, they inflict varying degrees of harm to certain targeted foreign nationals. One commonality across all of the bills is that none of them establish provisions to protect people's fair housing or civil rights. Some are more punitive than others, but all of them discriminate against particular foreign nationals and entities.

1. RESTRICTIONS ON INTERESTS AND OWNERSHIP OF AGRICULTURE LAND AND REAL PROPERTY

There is a focus on foreign ownership of agricultural land across the bills we studied. However, many apply restrictions to all real property, which includes residential property. Similar to the definition in Georgia's S.B. 132, definitions of "agricultural land" are broad and could include land that is not strictly agricultural. With the exception of a provision in Texas' bill, no other state explicitly exempts residential home buyers and renters.. One state, South Carolina, limits the amount of land certain foreign parties could own at 100,000 acres of land. Of the ten states examined, three had limits on property within a certain radius of a military installation and/or critical infrastructure.

In addition to ownership, many state bills restrict any interest in agricultural or real property. The implications are similar to those for Georgia, where the language of "possessory interest" impedes the ability for universities and businesses to conduct their usual operations. Louisiana's bill explicitly prohibits leasing of all real property to "foreign adversaries." These provisions have implications beyond ostensible concerns of food or national security, and hinder people's ability to own or rent real property for both residential and agricultural uses.

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It will put all AAPIs as third-class citizens because we will have to prove our current immigration status, and where we come from when we want to purchase housing or real estate property.

- Alice Yi,
Senior Strategy Consultant for Asian Texans for Justice



2. DISPARATE FEDERAL COUNTRIES LISTS REFERENCED FOR EXCLUSION

Many of the laws appeal to an independent authority in order to exclude certain countries from property ownership. These lists include those from the Secretary of Commerce, Department of Treasury, Department of State, International Traffic in Arms Regulations, and a list from U.S. Director of National Intelligence annual reports that generally all have to do with national security. (See “Appendix B” for more). Three state bills reference a list of “Foreign Adversaries” from the United States Secretary of Commerce (15 C.F.R. Section 7.4),²⁶ which includes China (including Hong Kong); Cuba, Iran, North Korea, Russia, and Venezuela. Tennessee contains provisions based on the reciprocity of other countries. That is, foreign parties are prohibited from

owning land if they are from countries where U.S. citizens are prohibited from purchasing property there. Instead of referencing a list, Florida and Alabama define “Countries of concern” in their own respective bills. One state—West Virginia—also references no list, but only names China, which, based on the prevailing narrative, is the target country for most of these bills.

There is little relevance between lists referenced and the issue of ownership or interest in agricultural land or real property. Additionally, the national security concerns addressed by those lists do not enact policies against individuals by conflating them with their nation of origin. What is important for state

policymakers to consider is the fact the lists can fluctuate, which means that more lists can be added, giving international businesses reason to reconsider whether

they want to do business in states with modern-day alien land laws. This can have an adverse effect on the state economies.²⁷

3. INDIVIDUALS FACE AS MANY RESTRICTIONS AS COMPANIES AND OTHER ENTITIES

There is a range of restrictions across various bills on individuals, businesses, governments, and other parties from prohibited countries. All state bills contain some form of restriction on targeted foreign nationals from owning land. Though most states make exceptions for citizens and “legal permanent residents”, this does not explicitly include longer-term visa holders such as U-Visa and T-Visa holders, nor do they address undocumented immigrants. The challenges and complexities of the legal immigration process also leave many long-time residents without alternatives to gain permanent legal status. Without a clear definition and guidance, some people would not be able to purchase or lease residential property because of these restrictions.

In addition to individuals, there are restrictions on companies or corporations from owning real property. Most states place restrictions on businesses that are majority owned by a foreign entity. Some of these same states also restrict businesses that are domiciled in targeted countries. While restrictions on individuals are extremely harmful, we agree with our DC affiliate Asian Americans Advancing Justice-AAJC that restrictions on companies are still ‘very harmful’, and those on corporations are ‘harmful’.²⁸ ‘Companies’ can include sole proprietors. The discriminatory policies would limit entrepreneurs’ ability to sustain their businesses and succeed. It would be best to not subject anyone to restrictions based on their nation of origin.

4. STATE IMMIGRATION POLICIES: EXCLUSIONS AND SHORTCOMINGS

Many state bills exclude U.S. citizens and permanent residents from the harms of these policies. However, as mentioned before, who qualifies as permanent residents is still unclear in most bills, and due to the challenges

and dysfunction of the U.S. immigration system, many individuals fall outside these two categories. Florida exempts visa holders (not including tourist visas) and asylees from some property ownership restrictions, notwithstanding acreage



Community rally and march against Alien Land Laws in Houston, Texas

restrictions and minimum radiuses from military installations and critical infrastructure; it also allows companies with “de minimis indirect interest” (meaning the company has less than 5% interest in a business) to own land. Alabama is the only state that makes an exception for citizens of Taiwan. Overall, the exceptions are few and far between. Few bills make exceptions for residential homes, place acreage restrictions, or

allow people to maintain interest in their property if they acquired it before the enactment of their respective states’ bills. To mitigate harm, more attention should have been paid to various visa-holders to specify who is excluded from these policies. Regardless, deciding which immigration statuses are acceptable or unacceptable is inherently arbitrary and discriminatory.

5. ENFORCEMENT, DISPOSSESSION, AND PENALTIES

States have engineered a range of mechanisms for the enforcement of alien land laws. The most harmful bills are the ones that force divestment. Pre-existing land owners targeted by new alien land laws may be required to forfeit or sell their property within a number of years. Attorney generals may bring civil action in district courts to seek the forfeiture of land. Some states allow pre-existing property owners to keep their property, but have reporting requirements and penalties for noncompliance. A few states

penalize sellers and closing agents for knowingly selling property to a targeted foreign individual or entity. Last, some states require affidavits from purchasers attesting that they are not a targeted foreign party as defined by the state. These diverse and sometimes divergent approaches highlight the complexity and inconsistency within the regulatory landscape across different states regarding the ownership of property by targeted foreign parties.

FEDERAL RESPONSE TO ANTI-CHINA SENTIMENT: LAND LAWS AND PREEMPTION ACT

With anti-China paranoia seeping into the American psyche and political discourse, federal lawmakers have also filed discriminatory land law bills. Of the eight bills filed, H.R.1 - Lower Energy Costs Act has passed the House as of August 2023. The omnibus bill contains a section that prohibits foreign Chinese individuals from having ownership interests in a variety of land, including agricultural land and land used for the production of oil and gas.

As a response to the growing number of states targeting particular foreign nationals, U.S. Representatives Judy Chu of California and Al Green of Texas, introduced the Preemption of Real Property Discrimination Act, which preempts, at the federal level, the prohibition or restriction of real property that is based on citizenship.²⁹ An injured party may take civil action against the state in federal court. Representatives Chu and Green both stress the harm



U.S. Capitol Building

that these laws inflict on immigrants and refugees, as well as the xenophobia that these bills embody.³⁰

FLORIDA LEGISLATION SINGLES OUT CHINA, RESULTING IN LAWSUIT

Among the troubling legislation to have come out of Florida in 2023, S.B. 264 fits in as a racist and xenophobic law that targets Chinese foreign nationals. In fact, it was only in 2018 that Florida became the last state to repeal its last iteration of an alien land law that prohibited Asian persons from owning property.³¹ In the five years since removing a vestige of anti-Asian land laws, Florida has now summoned the spirit of the law with S.B. 264. Florida places restrictions on China and other “foreign countries of concern” (i.e., Cuba, Iran, North Korea, Russia, and Venezuela), from purchasing agricultural land and real property, but prohibits individuals and entities from almost China entirely from doing so with the exception of one residential property that is under two acres and not within five miles of a military installation or critical infrastructure. Furthermore, it targets Chinese individuals and entities with elevated punishments for violations: a third-degree felony for the purchaser, and a first-degree misdemeanor for anyone knowingly facilitating the purchase to a Chinese national or entity. In contrast, the bill imposes a second-degree

misdemeanor for purchasers from other “foreign countries of concern” and a second-degree misdemeanor for anyone who knowingly made the sale.

Due to the law’s distinct discriminatory provisions against Chinese nationals, a group of plaintiffs have filed suit with the U.S. District Court for the Northern District of Florida against S.B. 264. In *Shen et al v. Simpson et al*, plaintiffs sue the state of Florida on the basis that the newly enacted policy violates the Fair Housing Act (FHA) and the Equal Protection Clause of the Fourteenth Amendment. Asian Americans Advancing Justice-Atlanta joined 18 other groups in filing an [Amicus Brief against S.B. 264](#)—as did the U.S. Department of Justice, which also asserted in its Amicus Brief that the law violates both the Fair Housing Act and the Equal Protection Clause of the Fourteenth Amendment.³² On August 18, 2023, a federal judge in Florida rejected an injunction to the bill.³³ The following are a few of the legal issues highlighted in the case that are shared among the bills that we studied.

LEGAL PROBLEMS FOR LAND LAWS



The new alien land laws have implications that leave states vulnerable to legal challenges. In our analysis, three critical issues emerge: conflicts with the Supremacy Clause, fair housing violations, and Equal Protection under the Fourteenth Amendment. Together, they illuminate the problematic dimensions of enacting these bills.

SUPREMACY CLAUSE AND CONFLICTS WITH FEDERAL LAW AND POWERS

The Supremacy Clause establishes that the Constitution and federal law supersede any conflicting state laws, meaning that federal law may preempt state law in areas where the U.S. Congress has exclusive authority. Thus, any state law that conflicts or interferes with federal law is rendered invalid. Instances of conflict between state and federal law occur across alien land law bills with provisions that establish their own foreign policy programs by creating special classes of people such as those

from “foreign countries of concern.” In a notable Texas case, the City of Farmers Branch, in 2008, enacted Ordinance 2952, which effectively prohibited undocumented immigrants from renting residential property. In 2012, the United States Court of Appeals for the Fifth Circuit preempted the law, ruling it unconstitutional by interfering with the federal government’s ability to carry out international relations.³⁴ In 2014, the United States Supreme Court declined to hear the case.³⁵ It is clear, then, that any municipal or state actions seeking to regulate immigration risk treading on prerogative powers of the federal government.

These laws encourage real estate brokers to discriminate based on national origin.

FEDERAL FAIR HOUSING

ACT VIOLATIONS

The FHA protects all persons in the United States from discrimination in the sale, rental or financing of a home based on race, color, religion, sex, sexual orientation, familial status, disability, and national origin.³⁶ Because a number of states contain provisions that restrict foreign nationals from certain countries from purchasing residential property, this constitutes a fair housing violation by encumbering a non-citizen resident's ability to purchase residential property based on their national origin. These laws tacitly encourage real estate brokers to inquire about a person's national origin and/or alienage, which is a clear federal fair housing violation. Furthermore, provisions that dictate radial distances from military installations essentially mandate that brokers steer certain home buyers away from those areas, which would amount to illegal housing segregation.

EQUAL PROTECTION AND DISCRIMINATION

The Equal Protection Clause of the Fourteenth Amendment states that "[n]o State shall...deny to any person within its jurisdiction the equal protection of the laws."³⁷ It prohibits states from passing laws that infringe upon the equal protection of any person in the United States based on their race, ethnicity,

or national origin, which includes foreign nationals no matter their country of origin or alienage. These new alien land laws have not met the level of strict scrutiny necessary to infringe on persons' fundamental rights. What is blatant about these bills is that no matter what list they reference, they all include China. Public discourse makes it clear that these bills target Chinese entities and individuals, and discriminate against individuals based on their national origin.³⁸ Furthermore, the constitutionality of alien land laws have already been adjudicated and ruled unconstitutional. In 1952, the California Supreme Court struck down California's 1920 Alien Land, citing its violation of the Fourteenth Amendment by discouraging Japanese migrants from coming to the United States.³⁹

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I hope that the general public can learn to separate a person from narratives surrounding their race, ethnicity, or nationality.



- **Letzter Zhang**,
Georgia resident since 2019
and Former Advancing Justice-Atlanta
Legal Fellow

CONCLUSION

By looking at the history of the Chinese Exclusion Act, Alien Land Laws, and the Japanese concentration camps, policymakers should be cautious that history does not repeat itself. Similar to the treatment of Japanese-Americans, Chinese nationals now face discriminatory policies and automatic exclusion despite not committing a single act of provocation. While this report has focused on the anti-Chinese facet of the new iterations of alien land laws, these laws also impact people from numerous other countries who have similarly done nothing to warrant institutionalized discrimination.

With the enactment of S.B. 132, or any law like it, Georgia opens itself up to legal challenges due to constitutional and fair housing violations and makes itself vulnerable to adverse economic outcomes. By equivocating individuals with agents of foreign governments, Georgia state lawmakers deny people their humanity, creating a class of people ineligible for land ownership. It is pivotal in Georgia's growth and prosperity that it does not perpetuate injustices of the past.

APPENDIX A

7 Military Installations within 65 miles of Atlanta, Georgia:⁴⁰

- 1) National Guard Atlanta United Avenue (2.35 miles)
- 2) National Guard Oglethorpe Armory (9.97 miles)
- 3) Dobbins Air Reserve Base (11.95 miles)
- 4) Air Force Plant 6 (12.65 miles)
- 5) Lucious D. Clay National Guard Center (13.65 miles)
- 6) National Guard Cumming (36.49)
- 7) Camp Frank D. Merrill (62.26 miles)

APPENDIX B: States and Source of Prohibited Countries List

- **Georgia** - *U.S. Secretary of Commerce, "Foreign Adversaries" List*: China, including Hong Kong; (2) Cuba; (3) Iran; (4) North Korea; (5) Russia; and (6) Venezuela.
- **Alabama** - "Foreign Country of Concern" (1) China—not including Taiwan, (2) Iran, (3) North Korea, and (4) Russia.
- **Arkansas** - *U.S. Department of State: Countries Subject to International Traffic in Arms Regulations*: (1) Afghanistan, (2) Belarus, (3) Burma, (4) Cambodia, (5) Central African Republic, (6) China, (7) Cuba, (8) Cyprus, (9) Democratic Republic of Congo, (10) Ethiopia, (11) Eritrea, (12) Haiti, (13) Iran, (14) Iraq, (15) Lebanon, (16) Libya, (17) North Korea, (18) Russia, (19) Somalia, (20) South Sudan (21) Sudan, (22) Syria, (23) Venezuela, (24) Zimbabwe.
- **Florida** - (1) *China and "Foreign Country of Concern"*: (2) Cuba, (3) Iran, (4) North Korea, (5) Russia, (6) Syria, (7) Venezuela.
- **Louisiana** - *U.S. Secretary of Commerce, "Determination of Foreign Adversaries" List*: (1) China, (2) Hong Kong, (3) (Cuba), (4) Iran, (5) North Korea, (6) Russia, and (7) Venezuela; & *U.S. Department of Treasury, Office of Foreign Assets Control*: (8) Afghanistan, (9) Balkans, (10) Belarus, (11) Burma, (12) Central African Republic, (13) Darfur, [China], [Cuba], (14) Congo, (15) Ethiopia, [Hong Kong], [Iran], (16) Lebanon, (17) Libya, (18) Mali, (19) Nicaragua, [North Korea], [Russia], (20) Somalia, (21) South Sudan, (22) Sudan, (23) Syria, [Venezuela], (24) Yemen, (25) Zimbabwe.
- **Tennessee** - *U.S. Department of Treasury, Office of Foreign Assets Control*: (1) Afghanistan, (2) Balkans, (3) Belarus, (4) Burma, (5) Central African Republic, (6) China, (7) Cuba, (8) Congo, (9) Ethiopia, (10) Hong Kong, (11) Iran, (12) Lebanon, (13) Libya, (14) Mali, (15) Nicaragua, (16) North Korea, (17) Russia, (18) Somalia, (19) South Sudan, (20) Sudan, (21) Syria, (22)Venezuela, (23) Yemen, (24) Zimbabwe; & *based on reciprocity*.
- **Texas** - *Countries identified by the U.S. Director of National Intelligence as a concern to national security that are in each of the three most recent Annual Threat Assessments of the U.S. Intelligence Community*: China, Iran, North Korea, Russia from reports in 2021, 2022, and 2023.
- **South Carolina** - *U.S. Secretary of Commerce, "Foreign Adversaries" List*: (1) China, including Hong Kong; (2) Cuba; (3) Iran; (4) North Korea; (5) Russia; and (6) Venezuela.
- **Virginia** - *U.S. Secretary of Commerce, "Foreign Adversaries" List*: China, including Hong Kong; (2) Cuba; (3) Iran; (4) North Korea; (5) Russia; and (6) Venezuela.
- **West Virginia** - China

ENDNOTES

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- ³ Phone Conversation with Dr. Russell Jeung on August 16, 2023.
- ⁴ Aoki, K. (1998). *No Right to Own?: The Early Twentieth-Century "Alien Land Laws" as a Prelude to Internment*. Boston College Law.
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ACKNOWLEDGMENTS

This report benefited from the research assistance, analysis, and support from multiple staff at Asian Americans Advancing - Justice. We would like to thank Letzter Zhang, former GAPABA Trinh Huynh Voting Rights Attorney Fellow; Khushi Niyyar, Summer Policy Intern; Meredyth Yoon, Litigation Director; and James Woo, Communications Director.

Additionally, we would like to thank the many experts who have been working on this issue whose insight and work contributed to the report: Joanna YangQing Derman and Dennis Jing at Asian Americans Advancing Justice-AAJC, who have been monitoring alien land laws

across the country, Alice Yi and Lily Trieu from Asian Texans for Justice, who shared with me their experience in Texas with S.B. 147; Tim Hur, 2022 National President of the Asian Real Estate Association of America; Jeffrey Ledford, Chief Advocacy Officer for Georgia Realtors, who offered great insight into aspects of Georgia's S.B. 132; and Dr. Russell M. Jeung, Professor of Asian American Studies at San Francisco State University, for providing historical and conceptual context.

Your collective contributions have made this project possible, and we are truly grateful for the assistance from each and every one of you.



Asian Americans Advancing Justice-Atlanta is the first nonprofit legal advocacy organization dedicated to protecting the civil rights of Asian Americans, Native Hawaiian, Pacific Islander (AANHPI) and Arab, Middle Eastern, Muslim, and South Asian (AMEMSA) communities in Georgia and the Southeast.

Through our work, we envision a social movement in which communities of color are fully empowered, active in civic life, and working together to promote equity, fair treatment, and self determination for all.

Founded in 2010 as the Asian American Legal Advocacy Center (AALAC), our organization became part of the Asian Americans Advancing Justice affiliation in 2014. Since then, we have re-organized our focus areas more specifically into four groups: Policy Advocacy, Civic Engagement & Organizing, Impact Litigation, and Legal Services.

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