Restrictions on foreign property ownership in the United States

A summary of the contemporary legislation and litigation landscape

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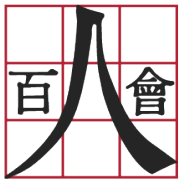
April 1, 2026



Committee of 100

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Executive summary

Property ownership has long served as a cornerstone of economic security and civic belonging in the United States. It has also, at pivotal moments in American history, been a weapon of exclusion. The alien land laws of the late 19th and early 20th centuries – targeting Chinese and Japanese immigrants through facially neutral restrictions on "aliens ineligible for citizenship" – are now widely understood as instruments of racial discrimination, most of them eventually struck down or repealed. A new generation of foreign property ownership (FPO) laws has revived this policy area. The question of whether history is repeating itself, or whether contemporary national security concerns justify a fundamentally different analysis, is now working its way through the courts.

Since 2021, 42 states and Congress have introduced 464 bills restricting foreign ownership of U.S. property; 50 have been enacted at the state level. Every single piece of legislation introduced during this period includes restrictions on Chinese entities in some form. No other country's citizens are singled out individually in any of these bills, only China's. The laws have also grown broader over time, moving beyond foreign government-linked entities to restrict foreign businesses and, increasingly, individual non-citizens. Three-quarters of foreign property ownership laws enacted in 2025 restrict non-U.S. citizens from covered countries from owning some form of property, up from 37% in 2023.

The stated rationale for the current wave of property ownership restrictions by foreign entities is national security. Foreign investment in agricultural land and property near military installations and critical infrastructure poses genuine questions about economic and strategic vulnerability, and the federal government's own review framework, administered by the Committee on Foreign Investment in the United States (CFIUS), reflects longstanding bipartisan consensus that some oversight of foreign property transactions is warranted. State laws increasingly employ federally defined country designations, such as the "Foreign Adversaries" list, that reflect such security concerns.

But the breadth of the current legislative wave also raises serious concerns. Restrictions that sweep in individual non-citizens alongside government entities and state-linked businesses treat people as proxies for the governments of the countries where they were born or currently reside. The growing use of "sensitive land" provisions – restricting ownership near military bases or critical infrastructure – sounds targeted in principle but can operate as a near-total ban in practice: Florida's 10-mile buffer from critical infrastructure and military sites, challenged in *Shen v. Simpson* (2025),[1] covers enough of the state's geography to function, in the words of the plaintiffs, as a de facto state-wide prohibition on property ownership by Chinese citizens.

The litigation landscape remains unsettled and consequential. Courts have been more receptive to state laws framed as routine property regulation and more skeptical of laws that effectively substitute state-level foreign policy for the federal government's case-by-case review process. A central question that the Supreme Court has not yet addressed is whether modern alien land laws should continue to receive the deferential treatment established in the decision reached in *Terrace v. Thompson* (1923),[2] or whether they should be evaluated under the stricter constitutional standards that now govern most classifications based on alienage. As enacted laws increasingly burden individuals rather than governments or government-linked entities, that question is likely to become harder to avoid.

What the data also reveal is a legislative learning curve. Bills that restrict Chinese citizens by name

[1] Shen v. Simpson, 687 F. Supp. 3d 1219 (N.D. Fla. 2023).
[2] Terrace v. Thompson, 263 U.S. 197 (1923).

are actually the least likely to be enacted. Legislators have found broader framing — targeting "Foreign Adversaries" or other federally defined groups — is both more legally defensible and more politically viable. The practical effect is laws that are wider in reach than their national security rationale might seem to require, and that burden a much larger population of individuals than any transaction-specific security review would implicate, appear to be more likely to pass into law.

The legislative landscape of foreign property ownership laws

A brief history

State laws that prohibit or otherwise restrict foreign individuals from owning property in the U.S. date back to the mid-19th century. Most of these initial laws reacted to the influx of Chinese immigrants in Western states. Oregon's constitution (created in 1857), directly targeted foreigners from China: "No Chinaman, not a resident of the state at the adoption of this constitution, shall ever hold any real estate[…]".[3]

Fears of the "Yellow Peril" contributed to the federal Chinese Exclusion Act of 1882, which halted Chinese immigration nationally. The opening of Japan in this same period resulted in large-scale immigration from the country by the early 1900s, yielding another wave of legal restrictions on property ownership, this time targeting Japanese immigrants. The 1870 Naturalization Act made individuals of African descent eligible for citizenship. In turn, states no longer needed to explicitly target Asian immigrants in property ownership bans. Instead, laws like California's Alien Land Law of 1913 banned persons *ineligible for citizenship* from property ownership, which implicitly targeted and almost entirely impacted individuals from Japan and other Asian countries.[4]

By the middle of the 20th century, popular sentiment and the legal landscape shifted; laws like California's Alien Land Law extended through World War II, but most were successfully challenged in court by the 1950s (e.g. *Fuji v. California* (1952)).[5] The Chinese Exclusion Act was repealed in 1943, and the Immigration and Nationality Act of 1952 allowed individuals from Asian countries to become U.S. citizens, effectively eliminating laws like California's Alien Land Law and those of other states.[6] Oregon's constitutional ban on property ownership by people of Chinese heritage was repealed by ballot initiative in 1946.[7]

The next period of legislative activity occurred in the 1970s as foreign investment in U.S. property rapidly increased. A handful of states responded by restricting foreign ownership of agricultural property, such as Minnesota's Alien Farm Law of 1977 and Missouri's SB 685 (1978).[8][9] Pennsylvania and Wisconsin also passed legislation limiting the agricultural acreage that foreign businesses and

[3]Oregon Secretary of State. (1857). 1857 transcribed Oregon Constitution. Oregon Records Management Solution. https://records.sos.state.or.us/ORSOSWebDrawer/Recordhtml/9479967.

[4]Equal Justice Initiative. (2025, May 3). California's alien land laws. https://eji.org/news/californias-alien-land-laws/

[5]Fuji v. California, 38 Cal. 2d 718 (Cal. 1952). https://law.justia.com/cases/california/supreme-court/2d/38/718.html.

[6]Office of the Historian. (n.d.). The Immigration and Nationality Act of 1952 (The McCarran-Walter Act). U.S. Department of State. https://history.state.gov/milestones/1945-1952/immigration-act.

[7]Oregon Secretary of State. (n.d.). Initiative, referendum and recall (p. 13). Oregon Blue Book. https://sos.oregon.gov/blue-book/Documents/elections/initiative.pdf.

[8]Minn. Stat. Ann. § 500.221.

[9]Mo. Rev. Stat. §§ 442.560-442.592.

individuals can own.[10][11] In 1978, Congress passed The Agricultural Foreign Investment Disclosure Act, which requires non-citizens to report ownership of agricultural property to the Secretary of Agriculture.[12] After this period, legislative activity restricting foreign property became relatively dormant until 2021.

The current era

The present wave of laws restricting foreign property ownership, which overwhelmingly restricts Chinese government entities, businesses, and citizens from owning property, is at least partially a product of the federal efforts and public sentiment that precede it. In 2018, the federal government began placing significant tariffs and other barriers on Chinese goods, due in part to accusations of intellectual property theft. In the same year, the Department of Justice launched the China Initiative to investigate and prosecute scientific researchers affiliated with China.[13] In 2020, President Trump's attributions of the COVID-19 pandemic to China, such as branding COVID-19 as the "China virus" and "kung flu" catalyzed widespread violence directed at Chinese Americans and other Americans of Asian descent.[14] These events coincided with historically unfavorable U.S. public opinion toward China and perceptions of China as a critical threat to U.S. interests.[15][16]

In 2021, a new wave of legislative activity restricting foreign property ownership began, owing explicitly to concerns over Chinese influence and investment, economic espionage, and national security, culminating in 464 bills introduced by 42 states (396 bills) and Congress (68 bills) between 2021 and March 26, 2026, 50 of which have been enacted by states (no congressional foreign property ownership bills have been enacted in this current wave). Every piece of foreign property ownership (FPO) legislation that has been introduced since 2021 includes restrictions on Chinese entities, and 64% (297) include provisions that prohibit or otherwise restrict Chinese citizens from owning some form of property. China is the only country whose citizens are singly targeted in such legislation (26 bills), including provisions in Florida's SB 264, which was enacted in 2023.

Recent trends in foreign property ownership legislation

Methodological notes

The trends discussed here concern the countries, the particular entities belonging to those countries, and the types of property restricted from ownership in legislation that has been introduced and passed in state legislatures and Congress between 2021 and March 26, 2026, when data was last collected. The findings described in this paper regarding identification and classification of state and federal FPO laws rely on data collected and analyzed by Committee of 100. Throughout this report, "restrict" refers to reducing the ease or ability to own, hold an interest in, lease, and/or

[10] 68 Pa. Stat. Ann. §§ 22-24, 28-31.

[11] Wis. Stat. ch. 710.

[12] Agricultural Foreign Investment Disclosure Act of 1978, 7 U.S.C. §§ 3501-3508.

[13] U.S. Department of Justice, National Security Division. (n.d.). Information about the Department of Justice's China Initiative and a compilation of China-related prosecutions since 2018. https://www.justice.gov/archives/nsd/information-about-department-justice-s-china-initiative-and-compilation-china-related.

[14] National Bureau of Economic Research. (2022). Can social media rhetoric incite hate incidents? (Working Paper No. 30588). https://www.nber.org/system/files/working_papers/w30588/w30588.pdf.

[15] Pew Research Center. (2025, July 15). Spring 2025 global attitudes survey: Topline questionnaire. https://www.pewresearch.org/wp-content/uploads/sites/20/2025/07/pg_2025.07.15_global-views-china-2025_topline.pdf.

[16] Chicago Council on Global Affairs. (2024). 2024 CCS China brief. https://globalaffairs.org/sites/default/files/2024-11/Final%202024%20CCS%20China%20Brief.pdf.

rent property. The vast majority of these bills include provisions that prohibit property purchase and ownership (412 bills introduced), while a small minority are focused on other initiatives like monitoring and reporting requirements (48 bills introduced). Relevant definitions are provided throughout, but complete definitions of all groups and property types appear in the glossary of Committee of 100's FPO interactive database.[17] Because the same legislation may include multiple groups (e.g. Foreign Adversaries and Countries of Particular Concern), percentages may total to more than 100%. And because only the most common groups are provided here to avoid cluttering figures, percentages may also sum to less than 100%. Last, the trends described here are descriptive in nature and do not necessarily imply statistical differences or similarities.

Country group restrictions

The left panel of Figure 1 shows the trend in state and federal legislation introduced each year since 2021 that includes a provision restricting a given group of countries from property ownership, as a proportion of all FPO legislation introduced that year. The five country groups highlighted here are the most common in FPO legislation that has been introduced since 2021 (refer to the Committee of 100 FPO database for an exhaustive list of country groups). In 2021 and 2022, most legislative restrictions encompassed all foreign countries or targeted China. By 2023, the amount of FPO legislation introduced nationally increased sharply from 17 bills in 2022 to 135 bills in 2023 (as seen along the x-axis in the left panel of Figure 1), and states began restricting a variety of federally-defined country groups. The most commonly used federally-defined country group is "Foreign Adversaries:" countries determined by the Secretary of Commerce to have engaged in conduct "significantly adverse" to national security and currently includes China, Cuba, Iran, North Korea, Russia, and the Venezuelan government under Nicolás Maduro.[18]

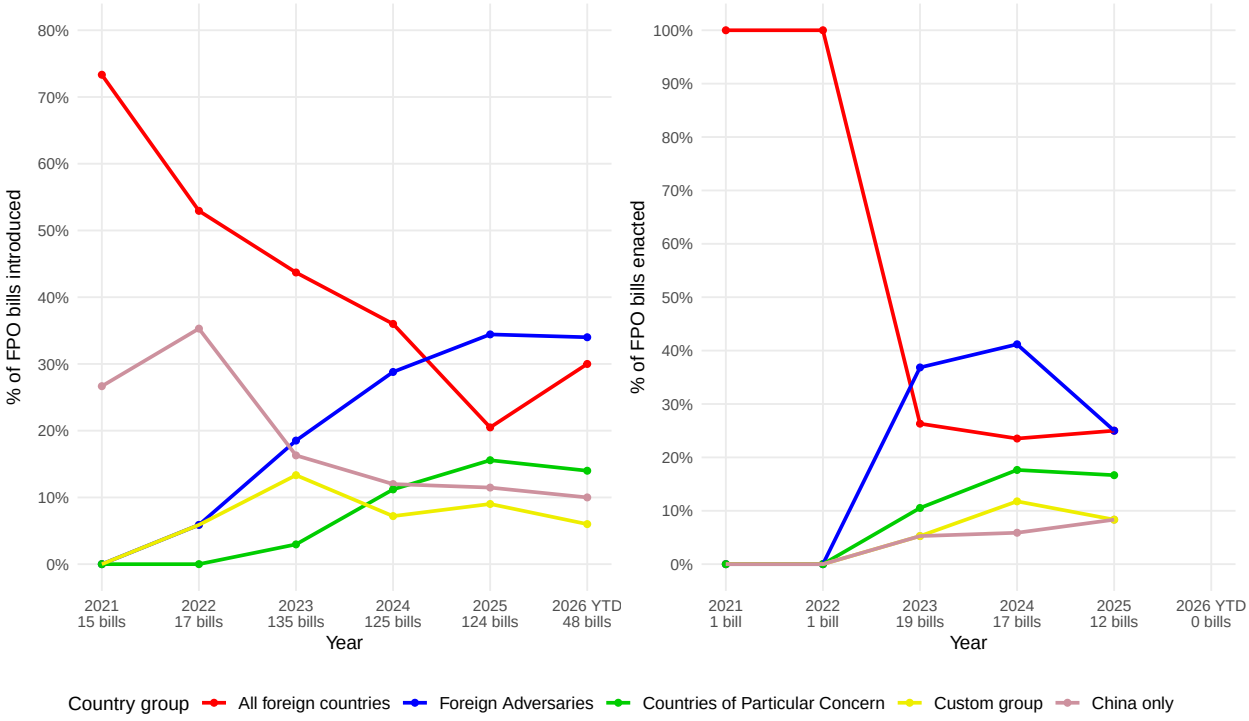
The right panel of Figure 1 shows the trend in legislation that has been passed into law. Only one FPO law was enacted in 2021 and another in 2022. Additionally, as of March 26, no FPO legislation has yet been passed in 2026, so most of the attention on enacted legislation is focused on the period between 2023 and 2025. During this period, legislation that restricts all foreign countries stayed fairly constant at about 25% of all enacted FPO legislation. Laws that restrict Foreign Adversaries from property ownership peaked at 41% of enacted FPO laws in 2024 before declining to 25% in 2025. Laws that restrict Countries of Particular Concern have increased from 10% to 18% between 2023 and 2025. This group is identified by the Department of State as those countries that have engaged or tolerated "particularly severe violations of religious freedom" per the International Religious Freedom Act of 1998 and currently includes Burma, China, Cuba, Eritrea, Iran, North Korea, Nicaragua, Pakistan, Russia, Saudi Arabia, Tajikistan, and Turkmenistan.[19]

[17] Committee of 100. (2026). Federal and state bills prohibiting property ownership by foreign individuals and entities. https://www.committee100.org/our-work/federal-and-state-bills-prohibiting-property-ownership-by-foreign-individuals-and-entities/

[18] 15 C.F.R. § 791.4(a).

[19] U.S. Department of State. (2023). Countries of particular concern, special watch list countries, entities of particular concern. https://www.state.gov/countries-of-particular-concern-special-watch-list-countries-entities-of-particular-concern/.

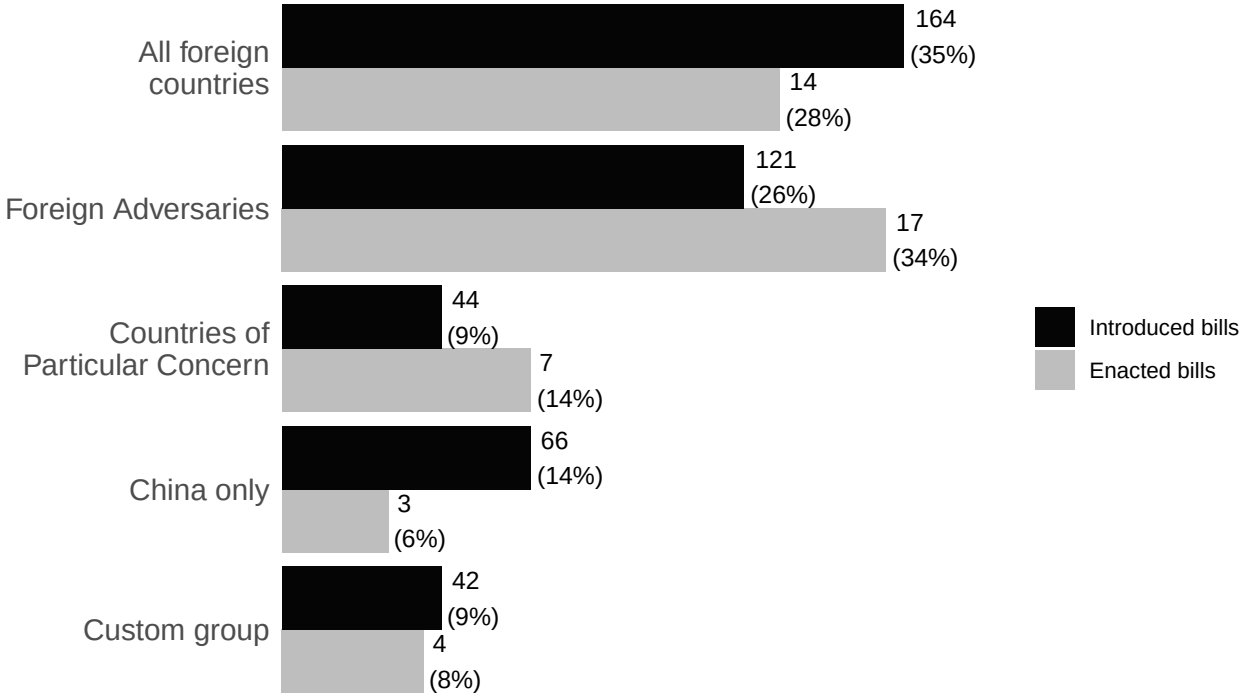
Figure 1: Rise in use of federally defined country groups in FPO legislation



As a descriptive indicator of legislative viability, Figure 2 compares each country group's share of introduced FPO bills with its share of enacted FPO laws from 2021 to 2026. While this does not measure passage rates directly, it provides a useful benchmark for identifying which types of restrictions are over- or underrepresented among enacted laws. Groups that are overrepresented among bills passed into law relative to their presence among introduced bills can be interpreted as relatively more likely to succeed in the legislative process.

Bills that restrict Foreign Adversaries and Countries of Particular Concern are slightly overrepresented in passage relative to their introduction rate, and bills that restrict all foreign countries are slightly underrepresented. Bills that restrict Chinese entities are the most heavily underrepresented in enacted legislation, with an 8% difference between introduced and passed bills.

Figure 2: FPO legislation using federally defined country groups relatively more successful



Entity type restrictions

The left panel of Figure 3 illustrates the trends in particular entities of countries restricted in FPO legislation introduced, including foreign government-related entities (i.e. a government, organizations owned/operated by a government, or government officials); businesses headquartered in, or operating under, the laws of a covered country; and individuals that are not U.S. citizens. Non-U.S. citizens are also broken down into three categories: those that currently reside or are "domiciled" in a covered country, those that may live in the U.S. but are not permanent U.S. residents (i.e. "non-resident aliens"), and all non-U.S. citizens, including those that are permanent residents in the state they reside in. "Any non-U.S. citizen group" refers to legislation that includes any restriction on non-U.S. citizens. The three underlying non-U.S. citizen categories are coded as mutually exclusive. A clear trend is observed between 2023 and 2026 whereby foreign governments, businesses, and individuals are increasingly included in all FPO legislation introduced. Legislation restricting individuals, in particular, has seen the sharpest incline, increasing from 67% of FPO legislation introduced in 2021 to 91% in 2026.

The right panel of Figure 3 shows the trend of entity groups included in bills that have been enacted each year between 2021 and 2026. Between 2023 and 2025, the proportion of FPO legislation that includes provisions restricting businesses and individuals (particularly non-resident aliens) from covered countries increases to approach the high proportion of enacted laws that restrict foreign government and business entities.

Figure 3: Governments, businesses, and individuals increasingly restricted together in FPO legislation

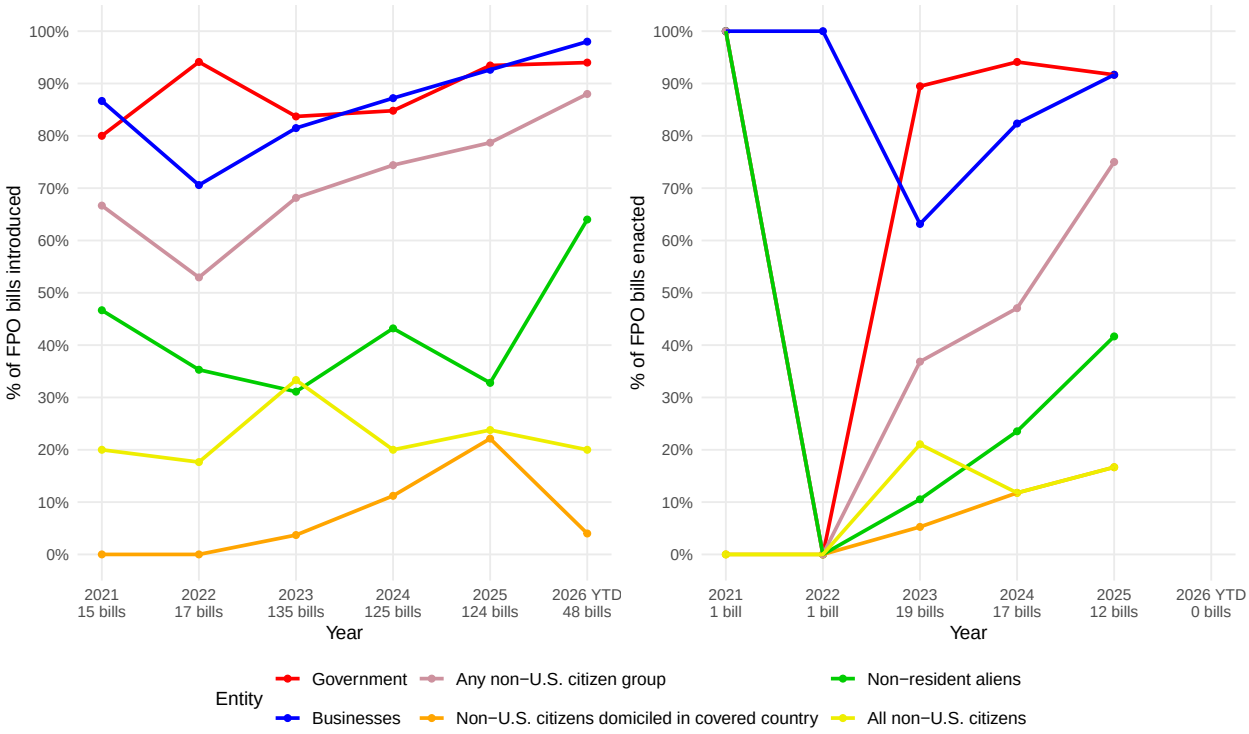
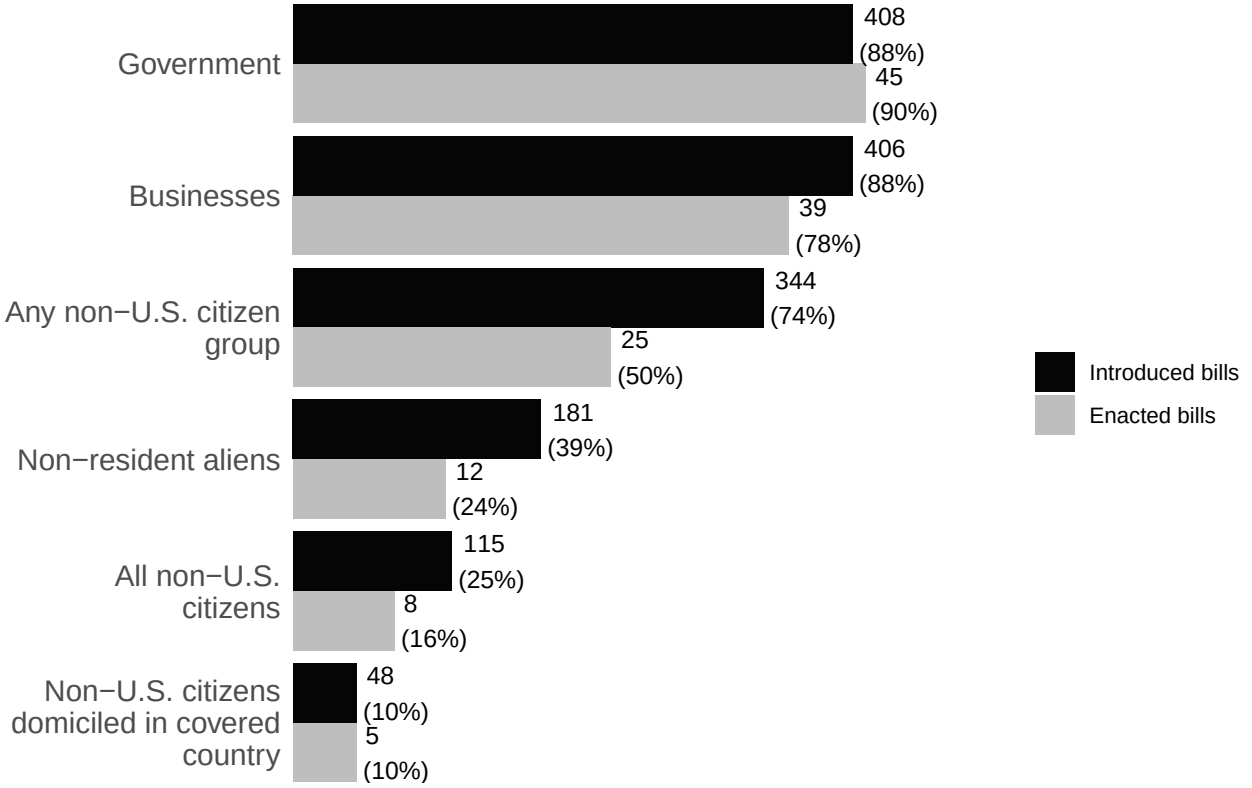


Figure 4, like Figure 2, shows the proportion of legislation introduced and passed that includes provisions restricting property ownership from a given entity group between 2021 and March 26, 2026. Government and business entities dominate both the proportion of legislation introduced and enacted. While non-U.S. citizens in some form are included in 74% of legislation introduced, only 50% of successful legislation includes provisions restricting individuals, indicating a lower success rate relative to business and government entities.

Figure 4: Legislation restricting individuals relatively less successful



Property type restrictions

The left panel of Figure 5 displays the most common types of property restricted from ownership by foreign entities among legislation that has been introduced between 2021 and 2026. The majority of legislation consistently aims at restricting ownership of land zoned for and/or used for agricultural purposes (not including legislation that places restrictions on all real property). About 32% of legislation introduced between 2021 and early 2026 restricts ownership of all real property by covered foreign entities. Because "all property" inherently includes agricultural land, about 86% of legislation, on average, effectively places restrictions on agricultural land. The major legislative innovation that states and Congress have increasingly employed concerns restricting ownership of "sensitive land," which typically includes land on, or some variable distance away from, military bases and critical infrastructure.[20] The percentage of FPO legislation that specifies restrictions on sensitive land increased from 16% in 2023 to 29% in 2026 as of March 26.

The right panel of Figure 5 shows no clear trends in property type restrictions between 2023 and 2025, the period in which the bulk of laws have been enacted. Laws that explicitly restrict agricultural land constitute about half of the laws enacted during this period, and nearly 90% when laws that restrict ownership of all real property are taken into account.

[20]The federal Cybersecurity & Infrastructure Security Agency defines critical infrastructure as "[…] assets, systems, and networks, whether physical or virtual, [that] are considered so vital to the United States that their incapacitation or destruction would have a debilitating effect on security, national economic security, or national public health or safety […]"

Cybersecurity & Infrastructure Security Agency. (n.d.). Critical Infrastructure Sectors. https://www.cisa.gov/topics/critical-infrastructure-security-and-resilience/critical-infrastructure-sectors.

Figure 5: Increasing restrictions on critical infrastructure and military bases

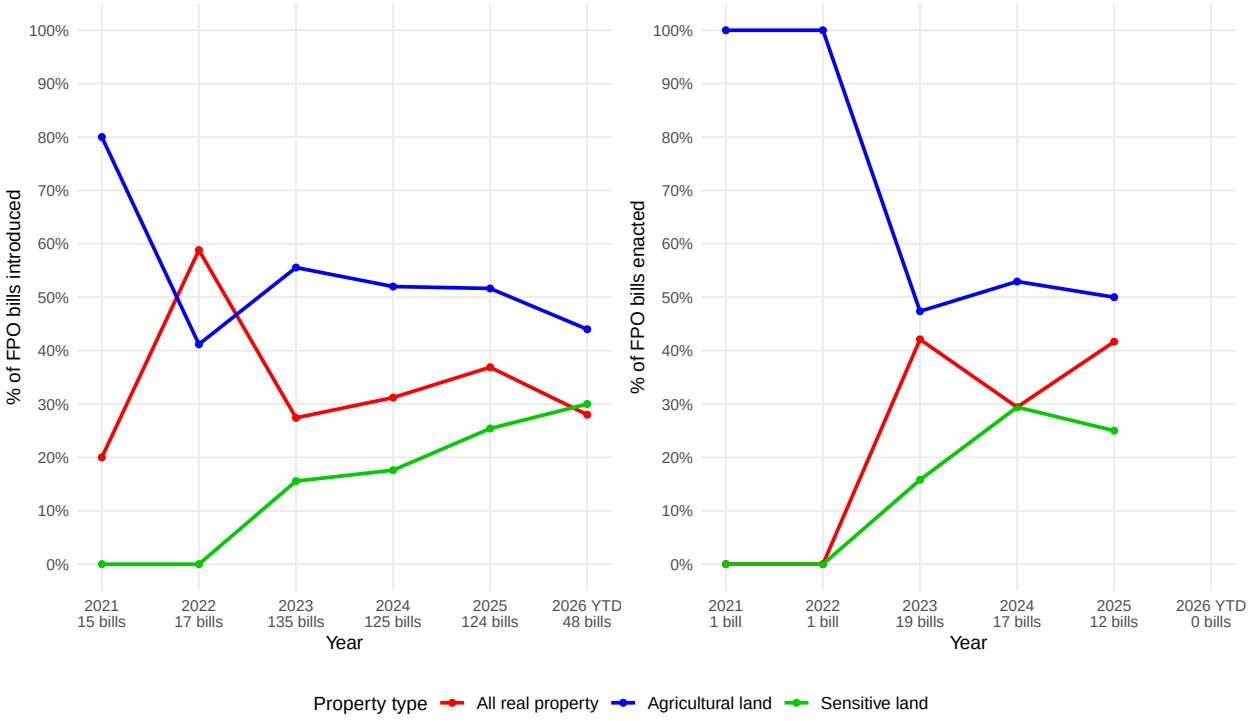
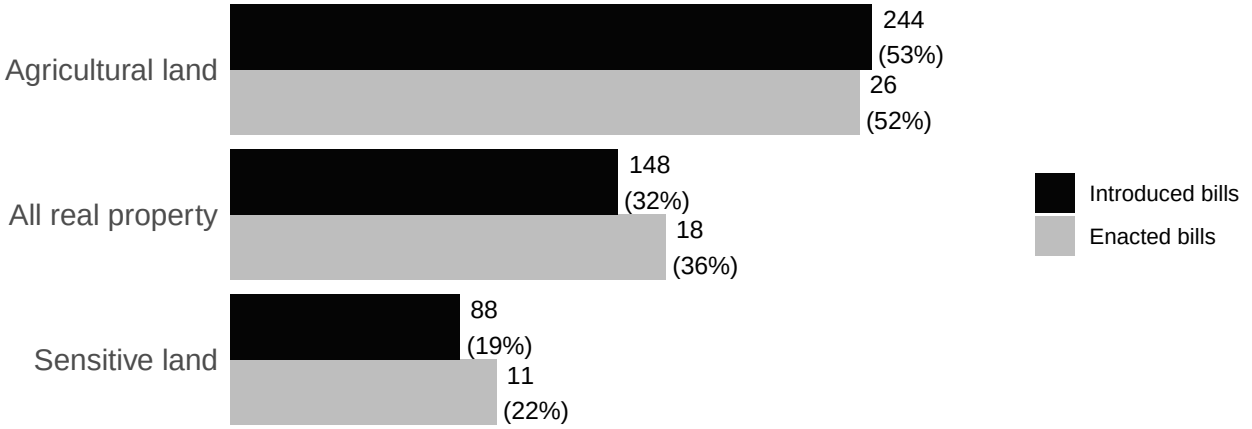


Figure 6 reveals no significant disparities in the success rate of legislation based on the property types restricted from ownership; the proportion of introduced legislation across each property type restriction closely mirrors the proportion of passed legislation for each.

Figure 6: Most legislation places restrictions on agricultural land



Trends and future legislative activity

Since the third and current wave of state and federal efforts to restrict foreign property ownership began in 2021, a few notable trends have been observed. First is the use and increasing popularity of country groups defined by federal agencies. Some of these country groups appear sensible at face value; if the stated goal of much FPO legislation is to limit the ability of foreign threats to adversely affect national security, then relying on the Secretary of Commerce's Foreign Adversaries list of countries that have "engaged in a long-term pattern or serious instances of conduct significantly adverse to the national security of the United States [...]."[21] closely follows this goal. However, use of the State Department's list of countries that have engaged in religious freedom violations (Countries of Particular Concern) does not appear to directly align with the stated purpose of protecting national security interests. In particular, Arkansas' use of countries denied defense articles and services under International Traffic in Arms regulations[22] has been successfully challenged in the courts (detailed in the following section).

Second, enacted FPO laws increasingly restrict all three major entity types: government entities, businesses, and non-U.S. citizens. Seventy-five percent of FPO legislation enacted in 2025 restricts non-U.S. citizens from covered countries from owning some form of property, up from 37% of FPO laws enacted in 2023. This trend is particularly concerning because it reflects an increasingly blunt policy tool for achieving the stated goal of protecting national security. Citizens of other countries should not be held responsible for the actions of their government and should not be treated in policy as equally threatening to national security.

Third, the proportion of legislation that restricts foreign property ownership on "sensitive land" has increased markedly over time. In 2021 and 2022, no legislation concerned such property, and as of March 26, 2026 29% of legislation introduced specifically places restrictions on land near critical infrastructure or military bases. Correspondingly, 27% of FPO legislation enacted in 2025 specifically restricts sensitive land ownership, up from 16% in 2023 (not including laws that place restrictions on all types of property). As there is no federally defined list of "critical infrastructure," states designate a variety of structures, resources, and land as "critical" to the country's security,

[21] U.S. Department of State. (2023). Countries of particular concern, special watch list countries, entities of particular concern. https://www.state.gov/countries-of-particular-concern-special-watch-list-countries-entities-of-particular-concern/.

[22] 22 C.F.R. § 126.1(d)(2).

public health, or economy. Critical infrastructure is sometimes already a part of the state's code (e.g. Montana's SB 203 (2023))[23] or is defined in the legislation for the purpose of restricting property ownership (e.g. Alabama's HB 379 (2023))[24]. The concern is that restrictions on sensitive land may, in practice, function as restrictions on nearly all land in a state, depending on how widely critical infrastructure is defined and how large the required buffer zone is. In fact, *Shen v. Simpson* challenged Florida's SB 264 (2023) in that the law's ban on property within 10 miles of critical infrastructure and military bases amounts to a near-de facto ban on property ownership in the state by Chinese citizens domiciled in China.[25]

Although states have introduced only 48 bills in 2026 as of March 26, recent model legislation suggests that these types of restrictions are likely to remain active, such as from the American Legislative Exchange Council (ALEC)[26] (published Dec. 4, 2025), which is identical in language and scope to Texas' SB 17 (2025).[27] The America First Policy Institute (AFPI)[28] (published Aug. 21, 2025), and the Heritage Foundation (published May 15, 2024)[29] have also recently published model FPO legislation. This model legislation closely follows state and federal legislation that seeks to restrict Foreign Adversaries (with particular contextual language[30] focused on China) that include government, businesses, and non-U.S. citizens from owning agricultural land and property near critical infrastructure and military installations.

A few of the 50 pieces of FPO legislation that have been enacted between 2021 and 2026 have met eight separate challenges to these laws. The following section highlights and identifies patterns in key legal battles against FPO legislation enacted in Texas' SB 17 (2025), Arkansas' SB 383 (2023) and SB 79 (2024), and Florida's SB 264 (2023).

Litigation against foreign property ownership laws

The contemporary resurgence of state laws restricting foreign property ownership has not gone unchallenged. In 2023, members of Texas's growing Asian American community urged state legislators to consider the substantial economic and societal harms posed by Texas Senate Bill 147, which, as introduced, prohibited citizens of China and certain other countries from purchasing all real property within the state. That bill ultimately failed to pass during the legislative session.

That year Florida passed a similar FPO law (SB 264). Although community advocates were unable to prevent its passage, affected individuals and organizations soon challenged the law in court. Since

[23]Montana S.B. 203, 68th Leg., Reg. Sess. (2023). https://legiscan.com/MT/text/SB203/id/2782279/Montana-2023-SB203-Enrolled.pdf

[24]Alabama H.B. 379, Reg. Sess. (2023). https://legiscan.com/AL/text/HB379/id/2816815/Alabama-2023-HB379-Enrolled.pdf

[25]Complaint, Shen v. Simpson, No. 4:23-cv-00208 (N.D. Fla. 2023). https://assets.aclu.org/live/uploads/2023/05/Complaint-Shen-v-Simpson-4-23-cv-208.pdf.

[26]American Legislative Exchange Council. (2025, December 4). Act prohibiting the purchase or acquisition of real property by certain foreign entities. https://alec.org/model-policy/the-homeowners-right-to-choose-inspection-and-review-services-act-4/.

[27]Texas S.B. 17, 89th Leg., Reg. Sess. (2025) (enrolled version). https://capitol.texas.gov/tlodocs/89R/billtext/html/SB00017F.htm.

[28]America First Policy Institute. (2025, August 21). Protecting Land from Overseas Threats Act (PLOT Act): Model state policy. https://www.americafirstpolicy.com/assets/uploads/files/Model_State_Policy_-_Foreign_National_Land_Purchase_Ban.pdf.

[29]Heritage Foundation. (2024, May 15). An act to scrutinize foreign adversary real estate purchases. https://www.heritage.org/model-legislation/act-scrutinize-foreign-adversary-real-estate-purchases.

[30]America First Policy Institute. (n.d.). Prohibiting America's adversaries from owning sensitive land. https://www.americafirstpolicy.com/issues/prohibiting-americas-adversaries-from-owning-sensitive-land

that time, multiple lawsuits have been filed challenging the legality and constitutionality of foreign property ownership restrictions.

These cases generally advance four principal legal theories: federal preemption, equal protection, due process, and violations of the Fair Housing Act. Plaintiffs often seek preliminary injunctive relief to enjoin enforcement of the challenged statutes. Defendants, in turn, frequently argue that plaintiffs lack standing or that the claims are not yet ripe for adjudication.

Federal Preemption (Foreign Affairs and National Security)

Courts Weighing In: The Eleventh Circuit (*Shen v. Simpson* (2025))[31], the Northern District of Florida (*Shen v. Simpson* (2023)), and the Eastern District of Arkansas (*Jones Eagle v. Ward* (2024)).[32]

Federal preemption flows from the Supremacy Clause, under which federal law is "the supreme Law of the Land." When state law interferes with or is contrary to federal law, the state law is invalid. Courts typically recognize three types of preemption:

1. Express preemption - when Congress explicitly states that federal law displaces state law.
2. Conflict preemption - when compliance with both federal and state law is impossible or when the state law obstructs Congress's objectives.
3. Field preemption - when federal regulation is so comprehensive that Congress is understood to have occupied an entire regulatory field.

Challenges to foreign property ownership restrictions rely primarily on conflict and field preemption, rather than express preemption. The strength of a preemption claim often depends on whether the regulated subject is traditionally within state authority, such as property law, or within an area of uniquely federal responsibility, such as foreign affairs.

Conflict Preemption

In these cases, conflict preemption analysis focuses on whether state restrictions frustrate federal objectives embedded in the national security review system governing foreign investments.

That federal framework centers on the Committee on Foreign Investment in the United States (CFIUS) process, codified at 50 U.S.C. § 4565 and expanded by the Foreign Investment Risk Review Modernization Act of 2018 (FIRRMA).[33] The statute authorizes the Executive Branch to review certain transactions involving foreign persons and to mitigate, suspend, or prohibit them when national security concerns arise. Importantly, the federal regime uses a transaction-specific, case-by-case approach and includes several carve-outs—such as purchases of single housing units and property in urbanized areas. These carve-outs played an important role in the analysis of whether state measures sweep more broadly than the federal framework, negate federal carve-outs, or constrain federal discretion in reviewing foreign investments.

In *Jones Eagle v. Ward,* the Eastern District of Arkansas concluded that the state's foreign property ownership restrictions were likely preempted because the state law conflicts with CFIUS and

[31]Shen v. Simpson, No. 23-12737, slip op. (11th Cir. Nov. 4, 2025).

[32]Jones Eagle LLC v. Ward, No. 4:24-cv-00990-KGB (E.D. Ark. 2024).

[33]Foreign Investment Risk Review Modernization Act of 2018, Pub. L. No. 115-232, tit. XVII, subtit. A, 132 Stat. 2173 (2018).

FIRRMA. The court reasoned that while the federal government utilizes a cautious, transaction-specific approach that grants the President discretion to approve or deny foreign investments, the state's wholesale ban on certain nationalities deprives the President of that discretion and disrupts the carefully crafted federal balance between national security and foreign investment. The court also identified several additional conflicts:

- Definition mismatches that could classify individuals as foreign persons under state law even when federal law would not.
- Potential situations where a transaction approved through CFIUS review could still violate Arkansas state law.
- Arkansas's use of International Traffic in Arms Regulation (ITAR) designations, expanding a defense-export-control listing into a broader ownership prohibition goes beyond the purpose Congress and the State Department assigned to those lists.

Taken together, the court found that the features of the state law created an obstacle to federal objectives.

In contrast, the Eleventh Circuit majority and the Northern District of Florida found no substantial likelihood of preemption in *Shen v. Simpson*. At the district level, the court reasoned that the Florida statute did not function as a state-level foreign-policy sanction akin to the laws struck down in *Crosby v. National Foreign Trade Council* (2000)[34] and *Odebrecht Construction, Inc v. Prasad* (2012).[35] Instead, the court characterized it as a domestic, national-security-oriented regulation of real property, an area traditionally governed by states. The court also stressed that CFIUS authority over stand-alone real-estate transactions is relatively recent and limited in scope. Because of this, the court held that the plaintiffs failed to show that Florida state law posed a clear obstacle to federal objectives.

On appeal, the Eleventh Circuit also rejected the preemption claim, but only as to Florida's SB 264 registration and affidavit provisions. The court did not consider the statute's purchase ban provision because it concluded that the plaintiffs lacked standing to challenge that provision. Focusing on the provisions before it, the court reasoned that they did not prohibit transactions or interfere with CFIUS review. Instead, the majority suggested that the information generated by the registration requirement could potentially assist federal screening efforts. This posture and framing – administrative information-gathering rather than categorical prohibitions – led the court to determine there was no conflict with federal law.

A dissenting judge disagreed, arguing that Florida's law is preempted because it intrudes into areas Congress intentionally excluded from federal review such as single-home purchases, effectively substituting a state-level system of economic pressure for the federal one.

Key Takeaway: States that impose blanket ownership bans are on shakier legal ground than states that use more targeted approaches. The federal CFIUS framework deliberately exempts certain transactions – like single-home purchases – and state laws that eliminate those exemptions risk being struck down as interfering with federal authority.

[34] Crosby v. National Foreign Trade Council, 530 U.S. 363 (2000).

[35] Odebrecht Construction, Inc. v. Prasad, 876 F. Supp. 2d 1305 (S.D. Fla. 2012).

Field Preemption

Field preemption asks whether federal regulation is so comprehensive that Congress is understood to have occupied an entire regulatory field. In foreign-affairs contexts, courts sometimes invoke the foreign affairs doctrine, under which state laws affecting international relations may be invalid even without a direct statutory conflict. The doctrine reflects the principle that the United States must speak with one voice in foreign policy.

In *Shen v. Simpson*, the Northern District of Florida found that CFIUS did not so pervasively regulate real-estate ownership as to occupy the field and displace state authority. The court underscored the historically local character of property law. In the court's view, plaintiffs had not shown that Congress intended to shut states out of this domain or that the Florida statute amounted to a state-level foreign policy. The Eleventh Circuit reached a similar conclusion, viewing the provisions as routine property-administration measures rather than foreign policy actions.

The Eastern District of Arkansas, however, reached a different conclusion, finding that Arkansas' country-targeted, categorical ownership bans have more-than-incidental effects on foreign relations and thus intrude on the federal government's exclusive authority. In *Jones Eagle v. Ward*, the court viewed the Arkansas laws as establishing a state-level foreign policy, which undermined national uniformity. The court also noted that Arkansas's reliance on ITAR designations, a federal export-control list, exacerbated the intrusion by expanding those federal designations beyond their intended purpose.

Key Takeaway: Courts reach different outcomes depending on whether a statute is framed as ordinary property regulation or as a nation-targeted policy with direct foreign-relations implications. The scope and framing of the challenged provisions often prove decisive.

Equal Protection

Courts Weighing In: The Eleventh Circuit (*Shen v. Simpson*), the Northern District of Florida (*Shen v. Simpson*), and the Southern District of Texas (*Wang v. Paxton* (2025)).[36]

The Equal Protection Clause of the Fourteenth Amendment prohibits states from denying any person within their jurisdiction equal protection of the laws. This guarantee requires states to treat similarly situated persons alike and protects against invidious discrimination. It applies to both U.S. citizens and noncitizens. Courts evaluating such claims first determine the type of classification at issue and then apply the appropriate level of scrutiny. Classifications based on race, national origin, or alienage typically trigger strict scrutiny, while most other classifications are reviewed under the highly deferential rational basis standard.

The Northern District of Florida held in *Shen v. Simpson* that Florida's SB 264 did not classify individuals by race or national origin. Instead, the statute refers only to domicile in particular foreign countries and applies equally to individuals of any race or ancestry who are domiciled there. The plaintiffs argued that use of "domiciled in China" in the law was merely a proxy for Chinese national origin, but the court found insufficient evidence supporting that claim.

The court then addressed the role of the Supreme Court's 1923 decision in *Terrace v. Thompson.* In the century-old decision, the Supreme Court held that each state has the power to deny non-U.S. citizens the right to own land within its borders, reasoning that the quality and allegiance of those who use a state's land are matters of the highest importance that affect the safety and

[36] Wang v. Paxton, No. 4:25-cv-03103 (S.D. Tex. Aug. 18, 2025).

power of the state itself. The district court concluded that the case remains binding precedent and therefore required application of rational basis review. The court reasoned that the Supreme Court has repeatedly declined to overrule *Terrace* even while expanding strict-scrutiny protection in other alienage contexts. As a lower court, it was obligated to apply *Terrace* until the Supreme Court says otherwise.

Applying rational basis, the court held that Florida's stated interests – protecting state and national security, preventing foreign influence, and guarding food and land resources – were legitimate. The court also rejected plaintiffs' claim of discriminatory intent under the *Arlington Heights* framework. In *Village of Arlington Heights v. Metropolitan Housing Development Corp.* (1977),[37] the Supreme Court held that laws motivated by intentional discrimination based on race, national origin, or alienage are subject to heightened scrutiny. Here, the court found no such intent. Statements by legislators and the governor focused on geopolitical and national security concerns, rather than hostility toward people of Chinese descent or any protected group.

On appeal, the Eleventh Circuit majority reached the same conclusion with respect to the registration and affidavit requirements, the only provisions for which the plaintiffs had standing. Like the district court, the majority held that the statute did not facially discriminate based on national origin and that the plaintiffs failed to provide evidence that "domiciled in China" served as a proxy for Chinese ethnicity or ancestry. The majority reaffirmed that *Terrace* directly controls state restrictions on non-U.S. citizens' rights to own land and therefore mandates rational basis review. The court emphasized that only the Supreme Court may overrule its own precedents and that *Terrace* has never been overturned. Moreover, even under modern alienage jurisprudence, classifications that apply only to non-lawful-permanent residents, as SB 264 does, are reviewed under rational basis rather than strict scrutiny under circuit precedent. The majority therefore held that the state's national-security justification satisfied rational basis review. It separately affirmed the district court's finding that plaintiffs had not shown discriminatory intent under *Arlington Heights*, again noting the absence of direct or circumstantial evidence of animus.

In contrast, the dissent would have applied strict scrutiny and argued that *Terrace* is a "moth-eaten" relic from a "shameful" era of discrimination against Asian immigrants that has been "overruled in the court of history". *Terrace*, according to the dissent, rests on outdated assumptions tied to early 20th-century racial exclusions and had been undermined by subsequent Supreme Court cases applying strict scrutiny to alienage classifications. The dissent contended that SB 264's selective targeting of non-U.S. citizens domiciled in specific countries intensifies, rather than reduces, equal protection concerns and that Florida failed to demonstrate the narrow tailoring required to support a compelling state interest.

Meanwhile, in *Jones Eagle v. Ward*, the Eastern District of Arkansas did not reach the plaintiffs' equal protection claim because it resolved the case on federal preemption grounds. The court noted, however, that on the limited record, plaintiffs "had the better of the argument" on the constitutional issues, signaling skepticism about the constitutionality of Arkansas's foreign property ownership restrictions.

Key Takeaway: The constitutional status of these laws hinges on a question the Supreme Court has not resolved: should modern alien land laws be judged by a lenient 1923 standard that broadly permits states to restrict non-citizens' property rights, or by the stricter scrutiny courts now apply to most laws that classify people by alienage? Until the Supreme Court weighs in, lower courts are reaching different answers and the outcome of future cases may turn on which circuit they land in.

[37] Village of Arlington Heights v. Metropolitan Housing Development Corp., 429 U.S. 252 (1977).

Fair Housing Act (FHA)

Courts Weighing In: The Eleventh Circuit (*Shen*) and the Northern District of Florida (*Shen*).

The Fair Housing Act (FHA)[38] prohibits refusing to sell, rent, or negotiate housing—or otherwise making housing unavailable—because of race, color, religion, sex, familial status, or national origin.[39] It also contains an express invalidation clause: any state law that "purports to require or permit any action that would be a discriminatory housing practice under this subchapter shall to that extent be invalid."[40] Thus, an FHA challenge typically proceeds in two steps—first, whether the challenged conduct constitutes a "discriminatory housing practice" under § 3604; second, if so, whether § 3615 renders any contrary state law invalid.

In *Shen v. Simpson*, the district court rejected the plaintiffs' FHA theory at the preliminary-injunction stage. The court emphasized that Florida's statute draws distinctions not on any FHA-protected trait, but on alienage/citizenship and related domicile criteria; because alienage and citizenship are not FHA-protected categories, plaintiffs' facial theory failed as a matter of statutory coverage. The court analogized to *Espinoza v. Farah* (1973),[41] where the Supreme Court held that Title VII's ban on discrimination "because of … national origin" does not itself prohibit discrimination on the basis of citizenship; by parallel reasoning, the FHA's "national origin" language could not be stretched to reach alienage-based lines drawn by Florida. The court also rejected plaintiffs' purpose-based FHA claim for essentially the same reasons it rejected their Equal Protection intent theory—namely, the record did not show a likelihood of proving discriminatory purpose as to national origin. Finally, the district court added that a "disparate impact" claim under the FHA would fail because the plaintiffs provided no statistical evidence that the law creates an "artificial, arbitrary, and unnecessary barrier" to housing for a protected group.

On appeal, the Eleventh Circuit likewise concluded the registration and affidavit provisions at issue were not "discriminatory housing practices" under § 3604(a). The panel reasoned that those provisions neither bar an owner from selling nor a buyer from purchasing a dwelling, nor do they "otherwise make unavailable or deny" a dwelling; instead, they impose a registration duty on certain owners and require affidavits from all purchasers. Because § 3604(a) targets refusals, denials, and practices that make housing unavailable "because of" protected traits, and because the challenged provisions do not require or permit such conduct, plaintiffs failed to show a likelihood of success on their FHA claim at the preliminary-injunction stage.

No FHA ruling was issued in *Jones Eagle v. Ward*, as the court granted relief on preemption grounds and, in keeping with constitutional avoidance, expressly declined to reach other claims, while noting that plaintiffs appeared to "have the better of the argument" on several remaining theories on the limited record.

Key Takeaway: Fair Housing Act challenges have not gained traction so far, because courts have found that these laws restrict ownership based on alienage and domicile, neither of which is a protected category under the FHA. Unless plaintiffs can show that alienage restrictions are being used as a proxy for national origin discrimination, this legal avenue is likely to remain difficult.

[38] Fair Housing Act, 42 U.S.C. §§ 3601–3619 (2024).
[39] 42 U.S.C. § 3604(a).
[40] 42 U.S.C. § 3615.
[41] Espinoza v. Farah Mfg. Co., 414 U.S. 86 (1973).

Due Process (Vagueness)

Courts Weighing In: The Eleventh Circuit (*Shen v. Simpson*) and the Northern District of Florida (*Shen v. Simpson*).

The Fourteenth Amendment's Due Process Clause requires laws to provide clear notice of prohibited conduct and guard against arbitrary enforcement. A statute is unconstitutionally vague if it fails to "define the criminal offense with sufficient definiteness that ordinary people can understand what conduct is prohibited," or if it is so indeterminate that it invites arbitrary enforcement. When a vagueness challenge does not implicate the First Amendment, courts analyze it as applied, and there is a strong presumption of constitutionality. Close cases or factual difficulties in application do not establish vagueness; the question is whether the statute sets the incriminating fact with sufficient clarity.

In *Shen v. Simpson*, plaintiffs challenged the terms "critical infrastructure facility," "military installation," and "domicile" as impermissibly vague. The Northern District of Florida rejected the challenge, concluding that the statute provides detailed definitions of "critical infrastructure facility" and "military installation," which set clear boundaries. As to "domicile," the court noted it is a settled legal term of art under Florida law – presence plus intent to remain permanently or indefinitely – and the absence of an explicit statutory definition did not render the law unclear. The court also observed that plaintiffs' asserted uncertainty stemmed from facts (e.g., measuring distances to installations), which is not the same as indeterminacy of the legal standard. On that record, plaintiffs had not shown a likelihood of success on their void-for-vagueness claim.

The Eleventh Circuit affirmed, emphasizing that "critical infrastructure facility" and "military installation" are defined in detail in the statute, ending the inquiry as to those terms. And while "domiciled" is not specifically defined, it is a standard legal concept readily ascertainable from "common understanding and practice" and Florida case law; therefore, the provisions were not unconstitutionally vague as applied. The court rejected arguments for "heightened" vagueness scrutiny based on an asserted lack of *mens rea*, explaining that normal due-process principles govern even for strict-liability offenses and, in any event, Florida courts presume a knowledge element absent an express contrary indication. The court further clarified that difficulty in identifying particular facilities on the ground does not render the definitions vague; what matters is that the statute adequately defines the facts that must exist before a site qualifies.

In *Jones Eagle v. Ward,* the district court did not reach Due Process because it disposed of the case on preemption and abstention grounds, but noted, *in dicta*, that plaintiffs appeared to have the better arguments on non-reached claims.

Key Takeaway: States can rely on established legal definitions and do not need to define every term in the statute. Uncertainty involving factual questions (e.g., determining distances) does not trigger a Due Process (vagueness) claim. In practice, this means the terms states have used – "critical infrastructure," "military installation," "domicile" – have so far withstood legal challenge.

Standing, Ripeness, and Injury

Courts Weighing In: The Eleventh Circuit (*Shen v. Simpson*), the Fifth Circuit (*Wang v. Paxton*), the Eastern District of Arkansas (*Jones Eagle v. Ward*), and the Western District of Texas (*Huang v. Paxton* (2025)).[42]

[42]Huang v. Paxton, No. 1:25-cv-01509 (W.D. Tex. Sept. 16, 2025).

Article III of the U.S. Constitution limits federal courts to resolving actual cases and controversies. Plaintiffs must demonstrate a concrete, particularized, and actual or imminent injury. In the context of pre-enforcement challenges to state land laws, courts generally apply a three-part test:

1. Intent to engage in conduct affected by the statute
2. That the conduct is arguably prohibited by the statute
3. A credible threat of future enforcement

The Eleventh Circuit Court of Appeals in *Shen v. Simpson* and the Fifth Circuit Court of Appeals in *Wang v. Paxton* both emphasized that general or indefinite plans to purchase property are insufficient to establish standing.

While the District Court for the Northern District of Florida initially found standing for purchase restrictions based on a forgiving standard, the Eleventh Circuit reversed this in part, ruling that plaintiffs who already owned property or lacked specific upcoming transactions could not challenge those provisions. However, the Eleventh Circuit held that plaintiffs do have standing to challenge registration and affidavit requirements because the time and financial costs associated with regulatory compliance constitute a concrete injury.

In *Wang v. Paxton*, both the District Court for the Southern District of Texas and the Fifth Circuit held that plaintiff, a Chinese citizen who had lived in Texas for 16 years and intended to remain there was not "domiciled" in China and therefore, not subject to the law. Further, the courts found no substantial threat of enforcement because the Texas Attorney General explicitly disavowed applying the law to Wang or anyone similarly situated.

In contrast, the District Court for the Eastern District of Arkansas in *Jones Eagle v. Ward* found a concrete injury because the state had publicly targeted the company by name in press releases and issued an investigative subpoena that caused a land deal to collapse.

Finally, while constitutional protections apply to both U.S. citizens and noncitizens, the Western District of Texas in *Huang v. Paxton* held that foreign citizens living outside U.S. territory lacked standing because they do not possess constitutional rights under U.S. law.

Conclusion and key takeaways

The current wave of FPO legislation revives a policy area long associated with some of the most exclusionary chapters in American legal history. Since 2021, states have introduced and enacted laws that increasingly target foreign governments, foreign businesses, and non-U.S. citizens together, with China at the center of nearly all enacted restrictions. Although these measures are typically justified in the language of national security, the legislative trends documented here show a move away from narrow, transaction-specific regulation and toward categorical restrictions that sweep together government entities, businesses, and individuals. The increasing inclusion of non-U.S. citizens in FPO legislation reflects a markedly blunter policy tool, one that raises the unresolved equal protection question at the center of the current case law: whether modern alien-land laws should still receive the deferential treatment of *Terrace v. Thompson*, or whether they should be evaluated under the more demanding strict-scrutiny principles that now govern most alienage-based classifications. As more states adopt laws that more directly burden individuals rather than governments or government-linked entities, that constitutional question is likely to become more salient.

States are also increasingly placing restrictions on an ostensibly narrower property type that follows the stated national security interests of this legislation: land near critical infrastructure and military bases. However, legislation like Florida's SB 264 (2023) reveals that a 10-mile distance from such property, evenly distributed throughout the state, amounts to a de facto ban on property ownership by the covered entities and individuals. Even so, in *Shen v. Simpson*, the court appeared deferential to Florida's defense of restricting this type of property as a domestic, national security-oriented regulation rather than state-level foreign policy that conflicts with federal objectives.

The growing use of federally defined country categories to restrict property ownership, such as Foreign Adversaries, may make these laws appear more administrable or more closely tethered to national security language, but litigation demonstrates that states must be selective. The court in *Jones Eagle v. Ward* found Arkansas' use of a list that denies export of defense goods and services to the listed countries (ITAR countries) to be beyond the scope intended by Congress and the State Department. Three states have collectively enacted five laws that include provisions restricting property ownership by entities or individuals from ITAR countries, and may face similar scrutiny in time. Use of other federally defined lists may face similar challenges; six states have enacted seven laws that use a federal list of countries where the government has been found to have engaged in violations of religious freedom (Countries of Particular Concern), which, at face value, does not appear to relate to protecting national security interests through property ownership restrictions any more than the use of the ITAR country list. The court's decision in *Shen v. Simpson* indicates that states may be on firmer legal ground by targeting individuals domiciled in particular countries, as the court found no equal protection violation by Florida's property restriction of non-U.S. citizens domiciled in China.

The central takeaway is that the contemporary resurgence of FPO laws is both a story of rapid legislative diffusion and a test of how far states may go in using national security rationales to regulate property ownership by foreign entities. The more these laws move toward broad ownership bans, sweeping non-U.S. citizen restrictions, and expansive property restrictions, the more likely they are to sharpen the preemption, equal protection, and foreign-affairs concerns now dividing courts. For now, the legislative momentum is clear. What remains unsettled is how much of that momentum will withstand judicial review.