

THE “NEWEST ‘YELLOW PERIL’”: HOW AMERICAN LEGAL HISTORY SHAPED THE RISE IN ASIAN AMERICAN HATE CRIMES IN THE COVID-19 PANDEMIC

ABSTRACT

The perpetual foreigner stereotype is the misconception that people of Asian descent are inescapably foreign and never truly “American.” This stereotype has plagued Asian Americans since the first Asian immigrants arrived in America and it continues to negatively impact Asian Americans today, regardless of the years, or even generations, that they have lived in the United States.

This Comment first breaks down the perpetual foreigner stereotype into three “pillars”: First, Asian Americans, despite their best efforts to assimilate, are irreducibly foreign and therefore are unentitled to the rights and protections guaranteed to American citizens. Second, because they are unentitled to the rights of American citizens, Asian Americans can be refused American citizenship or removed from America altogether. Finally, because Asian Americans are irreducibly foreign and “un-American,” they are ultimately more loyal to their foreign “country of origin” and are very likely to become enemies of the state.

Next, this Comment examines how the American legal system created, enforced, and perpetuated the pillars of the perpetual foreigner stereotype through a series of exclusionary statutes and racially discriminatory legal decisions. This legal history includes the anti-immigration and anti-labor policies of the Chinese Exclusion Act and the Alien Land Act, case law prohibiting Asian Americans from becoming citizens, and Supreme Court decisions that upheld the incarceration of over 125,000 Japanese Americans.

Finally, this Comment explains that the pillars of the perpetual foreigner stereotype remain pervasive in society today. The catastrophic rise in Asian American hate crimes during the COVID-19 pandemic demonstrates that many people continue to view Asian Americans as perpetual outsiders who threaten the “American way of life.” To overcome its misplaced fear of this “Newest ‘Yellow Peril,’” American society must dismantle the pillars of the perpetual foreigner stereotype by undergoing substantial political, societal, and legal change.

TABLE OF CONTENTS

INTRODUCTION	306
I. THE PERPETUAL FOREIGNER	307
<i>A. The Pillars of the Perpetual Foreigner Construct</i>	307
<i>B. An Overly Broad Categorization</i>	308

II. FOREIGN BY LAW	309
A. <i>Asian Immigrant Discrimination</i>	309
B. <i>Excluding Asians from Naturalization</i>	311
C. <i>Identifying Asian Americans as the Enemy</i>	313
III. THE CONSEQUENCES OF THE PERPETUAL FOREIGNER	
CONSTRUCT	317
A. <i>The Murder of Vincent Chin</i>	317
B. <i>Wen Ho Lee's False Imprisonment</i>	319
IV. THE "NEWEST 'YELLOW PERIL'"	320
A. <i>Asian American Prejudice and the Risk of Contagion</i>	321
B. <i>President Trump's "Chinese Virus" Tweets</i>	322
CONCLUSION.....	323

INTRODUCTION

In January 2021, a nineteen-year-old stranger approached an eighty-four-year-old man and violently shoved him to the ground.¹ The eighty-four-year-old sustained brain hemorrhaging and soon died of his injuries.² A month later, a stranger repeatedly assaulted a sixty-five-year-old woman while a security guard watched and failed to intervene.³ In June 2021, a man was attacked in broad daylight while peacefully walking with his wife at their local park.⁴ And in September of that same year, a group of senior citizens congregated at an event named "Seniors Fight Back" to learn the basics of "how to defend themselves against an attacker."⁵

All these instances reflect a drastic rise in hatred and violence directed at people of Asian descent during the COVID-19 pandemic. The man attacked in the park and the sixty-five-year-old woman were of Filipino descent.⁶ The eighty-four-year-old man was a Thai immigrant.⁷ And the "Seniors Fight Back" class hosted over 200 senior citizens of various Asian backgrounds.⁸ Recently, the New York Police Department reported that anti-Asian hate crimes increased 1,900% in New York City in 2020.⁹ In 2021, the coalition Stop AAPI Hate documented over 6,600 reports of

1. Kyung Lah & Jason Kravarik, *Family of Thai Immigrant, 84, Says Fatal Attack 'was Driven by Hate'*, CNN (Feb. 16, 2021, 6:49 PM), <https://www.cnn.com/2021/02/16/us/san-francisco-vicharanapanakdee-asian-american-attacks/index.html>.

2. *Id.*

3. Nicole Hong, Juliana Kim, Ali Watkins, & Ashley Southall, *Brutal Attack on Filipino Woman Sparks Outrage: 'Everybody Is on Edge'*, N.Y. TIMES (Apr. 6, 2021), <https://www.nytimes.com/2021/03/30/nyregion/asian-attack-nyc.html>.

4. Gordon Tokumatsu, *Man, 70, Attacked on Morning Walk in Cerritos Pleads with Community to Stop Asian Hate*, NBC L.A. (June 11, 2021, 9:22 AM), <https://www.nbclosangeles.com/news/local/stop-asian-hate-cerritos-man-attack/2614989/>.

5. Chris Kuo, *Self-Defense Classes Help Asian Senior Citizens Fight Racist Attacks*, L.A. TIMES (Sept. 21, 2021, 6:00 AM), <https://www.latimes.com/california/story/2021-09-21/asian-american-seniors-learn-martial-arts-to-fight-back>.

6. See Tokumatsu, *supra* note 4; Hong et al., *supra* note 3.

7. Lah & Kravarik, *supra* note 1.

8. Kuo, *supra* note 5.

9. Cady Lang, *Hate Crimes Against Asian Americans Are on the Rise. Many Say More Policing Isn't the Answer*, TIME MAG. (Feb. 18, 2021, 7:00 AM), <https://time.com/5938482/asian-american-attacks/>.

hate incidents targeting the Asian American Pacific Islander (AAPI) community from March 2020 to March 2021.¹⁰

This Comment will examine how this rise in violence against Asian Americans is not only the result of an irrational, racist reaction to the COVID-19 pandemic but also an established history of discriminatory laws and legal decisions that frame Asian Americans as “perpetual foreigners.”¹¹ Part I of this Comment provides a definition of the perpetual foreigner construct and identifies three primary beliefs, or “pillars,” that the construct is built upon. Part II examines how the American legal system created and then promoted the perpetual foreigner pillars through three legal methods: directly targeting and discriminating against Chinese and Japanese immigrants, identifying Asian Americans as unworthy of naturalization, and portraying Asian Americans as a threat to U.S. national security. Part III discusses two high profile incidents highlighting the historical consequences of the perpetual foreigner construct. Finally, Part IV demonstrates how framing Asian Americans as perpetual foreigners continues today as what this paper labels the “Newest ‘Yellow Peril,’” which is exemplified by a drastic rise in hate crimes targeting Asian Americans during the COVID-19 pandemic.

I. THE PERPETUAL FOREIGNER

The idea of the perpetual foreigner, as Elbert Lin explains, “is simple: Non-asian Americans perpetually see asian Americans as foreigners. Upon meeting an asian American, most Americans assume, until proven otherwise, that she is from Asia.”¹² This perception of perpetual foreignness is directed at Asian immigrants and native-born citizens alike.¹³

A. The Pillars of the Perpetual Foreigner Construct

This Comment identifies and examines three primary “pillars” of the perpetual foreigner construct. The first pillar is that Asian Americans, despite their best efforts to assimilate, are irreducibly foreign and therefore

10. DRISHTI PILLAI, AGGIE J. YELLOW HORSE, & RUSSELL JEUNG, STOP AAPI HATE & NAPAWF, THE RISING TIDE OF VIOLENCE AND DISCRIMINATION AGAINST ASIAN AMERICAN AND PACIFIC ISLANDER WOMEN AND GIRLS 2 (2021).

11. *Infra* note 13.

12. Elbert Lin, *Identifying Asian America*, 33 SW. U. L. REV. 217, 252 (2004). As explained in Lin’s article:

Both the noncapitalization of “asian” in “asian America” and the nonhyphenation of “asian America” are intentional. These decisions apply to other such phrases, like “asian American” and “chinese American,” and reflect the belief that the first word, e.g., “asian,” should be an adjective no more important than other adjectives, such as “black,” “white,” or “yellow.”

Id. at 218 n.1.

13. See, e.g., Emily M.S. Houh, *Critical Race Realism: Re-Claiming the Antidiscrimination Principle Through the Doctrine of Good Faith in Contract Law*, 66 U. PITT. L. REV. 455, 512 (2005) (explaining how Asian American women in the workplace are commonly perceived as foreigners, “regardless of whether they are fifth- or first- generation citizens”); Carol Izumi, *New Directions in ADR and Clinical Legal Education: Implicit Bias and the Illusion of Mediator Neutrality*, 34 WASH. U. J.L. & POL’Y 71, 114 (2010) (describing the “perpetual foreigner syndrome,” where Asians living in America, even those born in America, are viewed as foreigners).

are unentitled to the rights and protections guaranteed to American citizens.¹⁴ The second pillar is that because they are unentitled to the rights of American citizens, Asian Americans can be refused American citizenship or removed from America altogether.¹⁵ The third pillar of the perpetual foreigner construct is that because Asian Americans are irreducibly foreign and “un-American,” they are ultimately more loyal to their foreign “country of origin.”¹⁶ Therefore, whenever the United States conflicts with that country of origin, Asian Americans pose an internal threat to the United States.

B. An Overly Broad Categorization

The phrase “Asian American” itself faces much criticism. The continent of Asia consists of forty-eight individual countries, each with its own diverse culture, history, and relationship with the United States.¹⁷ Many race theory scholars criticize this broad categorization because it strips diverse Asian American groups of their identity and fuels the misconception that all people of Asian descent are homogenous.¹⁸ This misconception is a key concept in the “model minority” stereotype, which is the belief that “Asian Americans, through their hard work, intelligence, and emphasis on education and achievement have been successful in American society.”¹⁹ In reality, the economic, educational, and health needs across the diverse Asian American communities are widely varied.²⁰ For example, “[a]lthough only 8.9% of Japanese students obtained less than a high school education according to the 2000 Census, the figures rose to 38.1%

14. See, e.g., Pat K. Chew, *Asian Americans: The “Reticent” Minority and Their Paradoxes*, 36 WM. & MARY L. REV. 1, 34–35 (1994) (“Asian Americans have found it difficult to transcend both their ‘foreignness’ and what many consider the logical corollary that they are ‘not American.’”); Devon W. Carbado, *Yellow by Law*, 97 CALIF. L. REV. 633, 634 (2009) (“[P]eople of Japanese ancestry became in life what the Supreme Court in effect rendered them in law—irreducibly foreign.”).

15. See, e.g., Lin, *supra* note 12, at 252; Chew, *supra* note 14, at 35 (“[E]ven when Asian Americans are born here, have lived here many years, are highly educated and dressed in American attire, and have no distinguishable foreign accent, Americans still may unconsciously perceive them as foreigners.”).

16. See, e.g., Carbado, *supra* note 14, at 640 (“Within the first decade of the twentieth century, people of Japanese descent would replace the Chinese as the new ‘yellow peril,’ a construct that ‘inscribe[d] on Japanese immigrants an image of disloyalty and allegiance to a threatening foreign military power.”); Tan Pham, *Unseen Yellow*, 7 HOW. SCROLL SOC. JUST. L. REV. 1, 27 (2004) (“It is a stereotype with a ‘perception of “other-ness,” inassimilability, and disloyalty.”); Lin, *supra* note 12, at 252.

17. *How Many Countries Are There in Asia?*, WORLD ATLAS, <https://www.worldatlas.com/articles/how-many-countries-are-in-asia.html> (last visited Oct. 9, 2022).

18. See, e.g., Chew, *supra* note 14, at 25–26.

At the very least, three factors—country of origin, length of residence in the United States, and gender—create a three-dimensional matrix which complicates any attempt to classify Asian Americans as a monolithic group. A multi-dimensional matrix with other variables including religion, age, socioeconomic status, occupation, place of residence in their country of origin and in the United States, and reason for immigration further dramatizes the heterogeneous nature of the Asian American population.

Id. at 26.

19. *Id.* at 24.

20. Z.W. Julius Chen, *Diverse Among Themselves: Critiquing Asian Americans’ Supposed Gains Under Percentage Plans*, 14 ASIAN PAC. AM. L.J. 86, 103 (2009).

for Vietnamese, 49.6% for Laotians, 53.3% for Cambodians, and 59.6% for Hmong.”²¹

This Comment addresses this overly broad categorization not only to highlight another issue facing Asian Americans but also to identify that this overly broad categorization manifests in the perpetual foreigner construct, applying to nearly all people of Asian descent despite the individual’s Asian country of origin. Throughout American history, people of Asian descent have endured violent attacks because they are improperly identified and targeted as a member of another Asian subgroup.²² In the United States, the categorization of “Asian American” is attributed to individuals not based on their specific “country of origin” but by their physical attributes such as their epicanthic folds, or “single eyelids.”²³ The phrase “Asian American” in this Comment, therefore, primarily refers to all individuals of Asian descent living in America, apart from those of Russian or Middle Eastern descent.

II. FOREIGN BY LAW

The perpetual foreigner construct is more than a social concept. The American legal system has played a significant role in creating and effecting the perpetual foreigner construct through a combination of exclusionary statutes and racially motivated case law. This Part breaks down the American legal history into three distinct time periods: the period of Asian immigrant discrimination, the period of Asian citizenship “unworthiness,” and the period of the “internal Asian threat” to national security. Each of these time periods chronicles a significant era of Asian American history, exemplifies a pillar of the perpetual foreigner construct, and has utilized a predominant legal method to frame Asian Americans as perpetual foreigners in America.

A. Asian Immigrant Discrimination

One pillar of the perpetual foreigner construct is that because Asian Americans are inexorably foreign, they can be deprived of rights reserved for American citizens. The American legal system established this pillar of the perpetual foreigner construct as exemplified through two pieces of legislation: the Chinese Exclusion Act of 1882²⁴ and the Alien Land Act of 1913.²⁵

21. *Id.*

22. See, e.g., Angela Yang, *From Crime Victims to Politicians, Misidentifying Asians is Part of America’s Racist History*, NBC NEWS (Mar. 1, 2022, 8:42 AM), <https://www.nbcnews.com/news/asian-america/crime-victims-politicians-misidentifying-asians-part-americas-racist-h-rcna17218>; see *infra* Section III.A.

23. See, e.g., Chew, *supra* note 14, at 38.

24. Chinese Exclusion Act of 1882, ch. 126, 22 Stat. 58 (1882) (repealed by the 1943 Magnuson Act).

25. California Alien Land Act, 1913 Cal. Stat. 206 (invalidated by *Fujii v. California*, 242 P.2d 617, 619 n.1 (Cal. 1952)).

The first large group of Asians to make it to America were Chinese immigrants who came to work in gold mines in the West.²⁶ As Chinese immigrants' jobs developed into agricultural, factory, and railroad jobs, anti-Chinese sentiment grew among white laborers who feared that they could not compete with the Chinese workers' low wages,²⁷ resulting in the first "Yellow Peril."²⁸ This fear was followed with "virulent nineteenth-century Sinophobia that culminated in the 1882 Chinese Exclusion Act"²⁹

The Chinese Exclusion Act authorized the "removal of Chinese not lawfully within this country, requiring that all Chinese laborers entitled to remain in the United States [] obtain certificates of residence from persons authorized by the Act to give them, under penalty of removal on failure to do so within one year."³⁰ The Act also barred Chinese laborers from becoming citizens under the Naturalization Act of 1790.³¹ The Chinese Exclusion Act was the first act in American history to place broad restrictions on immigration³² and also remains the only piece of national legislation to bar an entire nationality from immigrating to the United States.³³

The hostility and legal limitations placed on the Chinese left a labor shortage, which a new wave of Japanese immigrants looking for work in America soon filled.³⁴ Initially, white Americans welcomed Japanese immigrants with open arms and perceived Japanese immigrants to be "less culturally and socially threatening than the Chinese."³⁵ However, attitudes towards this new wave of immigrants soon soured, and the Japanese were labeled as the "New 'Yellow Peril.'"³⁶ This anti-Japanese sentiment led to the passage of various discriminatory laws, including an order issued by the San Francisco School Board to segregate Japanese students from the

26. *Chinese Immigration and the Chinese Exclusion Acts*, U.S. OFF. OF THE HISTORIAN, <https://history.state.gov/milestones/1866-1898/chinese-immigration> (last visited Oct. 10, 2022).

27. These low wages were the result of a variety of factors, such as the limited political influence of Chinese Americans at the time. *Id.*

28. Nancy Chung Allred, *Asian Americans and Affirmative Action: From Yellow Peril to Model Minority and Back Again*, 14 *ASIAN AM. L.J.* 57, 58 (2007). These low wages were the result of a variety of factors, such as the limited political influence of Chinese Americans at the time and financial pressures created by the need to send money back to families in China and to repay merchants who paid for their passage to America. *Chinese Immigration and the Chinese Exclusion Acts*, *supra* note 26.

29. See Keith Aoki, *No Right to Own?: The Early Twentieth-Century "Alien Land Laws" as a Prelude to Internment*, 19 *B.C. L. REV.* 37, 37–38 (1998).

30. *Constitutional Law—Geary Act—Chinese Exclusion*, 7 *HARV. L. REV.* 183, 183 (1893).

31. *Id.*

32. Yuning Wu, *Chinese Exclusion Act*, *ENCYC. BRITANNICA* (Feb. 9, 2021), <https://www.britannica.com/topic/Chinese-Exclusion-Act>.

33. *Id.*

34. See Carbado, *supra* note 14, at 638 ("A significant 'pull' factor for Japanese immigration to the United States in the late 1860s was the labor shortage created by increasing hostility among white Californians toward Chinese immigrants.").

35. *Id.* at 639.

36. Aoki, *supra* note 29, at 46–47; Carbado, *supra* note 14, at 640.

white schools and send all Japanese students to the city’s “Oriental schools.”³⁷

Eventually, this “New ‘Yellow Peril’” led to the California Alien Land Act of 1913, a law which prohibited “aliens ineligible to citizenship” from acquiring, possessing, enjoying, transmitting, and inheriting real property.³⁸ The Act’s use of the phrase “‘aliens ineligible to citizenship’ was a disingenuous euphemism designed to disguise the fact that the targets of such laws were first-generation Japanese immigrants, or ‘Issei.’”³⁹ The Alien Land Act, therefore, was a thinly veiled “direct attack on the Japanese agricultural community within California.”⁴⁰ This attack on the Japanese community continued seven years later when the California legislature passed the California Land Law of 1920.⁴¹ This new law closed many of the 1913 Act’s loopholes, further preventing Japanese Americans from acquiring land and wealth.⁴²

Although only individuals “ineligible to citizenship” were subject to the Exclusion Act and Alien Land Act’s limitations, the American legal system would soon make the status of “Asian American” legally synonymous with individuals “ineligible to citizenship.”⁴³ As a result, the Chinese Exclusion Act and the California Alien Land legislation did more than strip Asian immigrants of the right to own land and work in America. These laws established a legal reality fundamental to understanding Asian Americans as perpetual foreigners: Asians living in America could be lawfully removed from the United States or stripped of the fundamental American right to own property and acquire wealth.

B. Excluding Asians from Naturalization

The second pillar of the perpetual foreigner construct is that, despite their best efforts to assimilate and demonstrate character traits that exemplify the ideal “American,” Asian Americans will never truly be American. The U.S. legal system established this pillar of the perpetual foreigner construct by barring Asian Americans from the most fundamental aspect of being “American”: becoming an American citizen.

Originally, the Naturalization Act of 1790 limited the ability to gain U.S. citizenship to “free white person[s].”⁴⁴ Although Congress enacted

37. Carbado, *supra* note 14, at 642–43. This law was met with vigorous opposition from the Japanese government. *Id.* at 643. In attempt to appease Japan, President Theodore Roosevelt entered into the “Gentleman’s Agreement,” in which the Japanese government agreed to screen and limit the emigration of Japanese immigrating to America in exchange for rescinding the segregation order. *See* Aoki, *supra* note 29, at 49–50.

38. California Alien Land Act, 1913 Cal. Stat. 206 (invalidated by *Fujii v. California*, 242 P.2d 617, 619 n.1 (Cal. 1952)).

39. Aoki, *supra* note 29, at 38–39.

40. *Id.* at 56.

41. *Id.* at 57–59.

42. *Id.* at 57.

43. *See infra* notes 44–61.

44. Naturalization Act of 1790, ch. 3, § 1, 1 Stat. 103 (1790).

this law to eliminate Black people and Native Americans from obtaining citizenship, it did not establish guidelines for whether Asians with “yellow” skin were considered “white” or “black” under the Naturalization Act.⁴⁵

In 1914, a Japanese immigrant named Takao Ozawa applied for U.S. citizenship.⁴⁶ At the time, Ozawa had been living in the United States for twenty years.⁴⁷ The U.S. District Attorney denied his petition, and Ozawa appealed this decision to the U.S. District Court of Hawaii.⁴⁸ The district court affirmed the denial and held that Ozawa, “having been born in Japan and being of the Japanese race,” was not eligible for naturalization under the Naturalization Act.⁴⁹

Ozawa’s goal of becoming a U.S. citizen began as a personal one.⁵⁰ However, Ozawa pursued citizenship during the Alien Land Act’s passage, which prevented many Japanese immigrants from purchasing and possessing agricultural land.⁵¹ Because the Land Act applied only to those ineligible for citizenship, “Japanese naturalization became a significant political issue for leaders within the Japanese community.”⁵² Japanese American leaders recognized that if Ozawa could successfully appeal the district court’s decision, “Japanese naturalization” would free Japanese Americans from the Act’s restrictions.⁵³ As a result of the high legal stakes, by the time the Ninth Circuit Court of Appeals referred Ozawa’s case to the U.S. Supreme Court, Ozawa found himself represented by a former U.S. attorney general and amid a “media frenzy includ[ing] immigrant newspapers . . . arguing that the civil rights of the entire Japanese community were at stake.”⁵⁴

On November 13, 1922, the Supreme Court issued a decision on Ozawa’s permit for naturalization.⁵⁵ The Court held that Ozawa’s permit was subject to the Naturalization Act of 1790, which only permitted naturalization for “free white person[s].”⁵⁶ The Court then contemplated the question: “Who are comprehended within the phrase ‘free white persons?’”⁵⁷ The Court held that “[t]he provision is not that Negroes and Indians shall be excluded but it is, in effect, that only free white persons shall

45. See *Go Deeper: Race Timeline*, PBS: RACE—THE POWER OF AN ILLUSION, https://www.pbs.org/race/000_About/002_03_d-godeeper.htm (last visited Oct. 10, 2022); Takao Ozawa v. United States, 260 U.S. 178, 194–95 (1922).

46. *Ozawa*, 260 U.S. at 189.

47. *Id.*

48. *Id.*

49. *Id.* at 189–90.

50. See Carbado, *supra* note 14, at 674.

51. *Id.* at 672.

52. *Id.* at 672–73.

53. *Id.* (“Because the prohibition applied to ‘aliens ineligible for citizenship,’ the right to naturalize was the solution.”).

54. *Id.* at 674.

55. Takao Ozawa v. United States, 260 U.S. 178, 190, 194–99 (1922).

56. *Id.* at 192.

57. *Id.* at 196.

be included.”⁵⁸ Furthermore, the Court held that people with “yellow” skin fell within the zone of people “clearly ineligible for citizenship,” meaning that they did not qualify under the law as “white persons.”⁵⁹ Therefore, Ozawa and all other Japanese Americans with yellow skin were ineligible for naturalization.

The Court made this decision despite conceding that Ozawa “was well qualified by character and education for citizenship”⁶⁰ Furthermore, the Court acknowledged that “[t]he briefs filed on behalf of appellant refer in complimentary terms to the culture and enlightenment of the Japanese people, and with this estimate we have no reason to disagree; but these are matters which cannot enter into our consideration of the questions here at issue.”⁶¹ By choosing to disregard Ozawa’s character and “the culture and enlightenment of the Japanese people”⁶² as a whole, the Supreme Court chose to judge American citizenship, and inherently “Americanness,”⁶³ solely through the lens of race rather than merit. Furthermore, by determining that Japanese Americans did not pass this test of race, the American legal system established a fundamental pillar of the perpetual foreigner construct: that despite all efforts to assimilate to American culture and expectations, Asian Americans are not, and never can become, true Americans. As Professor Devon Carbado explained:

In setting forth a test for whiteness, the Ozawa Court helped to create both a racial category and a racial people—or, in other words, both a racial classification and a racial experience. By the end of Justice Sutherland’s opinion, Ozawa was not only non-white, he was also a non-citizen—irreducibly foreign.⁶⁴

The *Ozawa* opinion applied only to Japanese Americans, but court decisions soon followed that labeled other Asian American groups as ineligible for naturalization. For example, just months after the Supreme Court decided *Ozawa*, it held that “a high caste Hindu of full Indian blood, born at Amrit Sar, Punjab, India,” was not a “white person” under the Naturalization Act of 1790.⁶⁵

C. Identifying Asian Americans as the Enemy

The third pillar of the perpetual foreigner construct is the belief that because Asian Americans are inescapably foreign, they are ultimately loyal to their foreign “country of origin.” This view of inescapable foreignness is often why people confront Asians with the awkward question:

58. *Id.* at 195.

59. *Id.* at 198.

60. *Id.* at 189.

61. *Id.* at 198.

62. *Id.*

63. See Victor Jew, *George Sutherland and American Ethnicity: A Pre History to “Thind” and “Ozawa”*, 41 CENTENNIAL REV. 553, 553–54 (1997).

64. Carbado, *supra* note 14, at 691–92.

65. *United States v. Bhagat Singh Thind*, 261 U.S. 204, 206 (1923).

“Where are you *really* from?”⁶⁶ With this perception comes an inherent presumption that Asian Americans’ loyalties ultimately lie with a foreign country over the United States.⁶⁷ This presumed loyalty implies the threat of disloyalty to the United States, particularly when the United States is in political, economic, or military conflict with an Asian “country of origin.”⁶⁸ In turn, this assumption, paired with the other perpetual foreigner pillar—that Asian Americans are inescapably foreign—creates a unique avenue for discrimination against Asian Americans.⁶⁹ As explained by Frank H. Wu, “[a] consensus has developed that discrimination on the basis of race is improper. A consensus remains, however, that discrimination on the basis of citizenship is proper. Citizens may enter the country; foreigners must seek permission.”⁷⁰ Because Asian Americans are often perceived as perpetual foreigners, their access to civil rights becomes a privilege rather than an inherent right. This belief, coupled with a fear of Asian American “disloyalty,” can be used as an excuse to strip Asian Americans of their civil rights.⁷¹ This Section explores how the U.S. legal system, particularly the Supreme Court during World War II, created and perpetuated this perception of Asian American “disloyalty” that is fundamental to the perpetual foreigner construct.

On December 7, 1941, Japanese bombers ambushed Pearl Harbor, killing 3,435 Americans and destroying hundreds of American planes, battleships, and vessels.⁷² Soon after the attack, the United States declared war against Japan and brought America into World War II.⁷³ Non-Asian Americans, particularly those living along the West Coast of the United States, considered Asian Americans “incurably foreign” and viewed them with paranoia and suspicion.⁷⁴ On February 19, 1942, President Franklin Delano Roosevelt signed Executive Order 9066, which granted the Secretary of War and military commanders the authority to create “military areas” along the West Coast “from which any or all persons may be excluded, and with respect to which, the right of any person to enter, remain in, or leave shall be subject to whatever restrictions the Secretary of War or the appropriate Military Commander may impose in his discretion.”⁷⁵

66. See, e.g., Frank H. Wu, *Foreword Profiling Principle: The Prosecution of Wen Ho Lee and the Defense of Asian Americans*, 7 UCLA ASIAN PAC. AM. L.J. 52, 54 (2001); Pham, *supra* note 16, at 27; Lin, *supra* note 12, at 252.

67. Pham, *supra* note 16, at 27.

68. *Id.* at 27–28 (noting the difference of treatment between Japanese Americans, German Americans, and Italian Americans during World War II).

69. *Id.* at 27.

70. Wu, *supra* note 66, at 53.

71. See *infra* notes 73–99.

72. *Attack on Pearl Harbor*, NAT’L ARCHIVES, <https://www.archives.gov/legislative/features/pearl-harbor> (last visited Oct. 10, 2022).

73. *Take a Closer Look: America Goes to War*, NEW ORLEANS NAT’L WWII MUSEUM, <https://www.nationalww2museum.org/students-teachers/student-resources/research-starters/america-goes-war-take-closer-look> (last visited Oct. 10, 2021).

74. Arvin Lugalay, “In Defense of Internment”: *Why Some Americans Are More “Equal” than Others*, 12 ASIAN L.J. 209, 212–13 (2005).

75. Exec. Order No. 9,066, 7 Fed. Reg. 1,407 (Feb. 19, 1942).

Initially, enforcement of Order 9066 subjected all persons of Japanese ancestry, even those born in America, to a curfew.⁷⁶ Japanese Americans were confined to their homes from 8 p.m. to 6 a.m.⁷⁷ Those who violated the curfew were guilty of a misdemeanor and subject to a fine or imprisonment.⁷⁸ Eventually, Order 9066 granted military authorities the power to imprison approximately 120,000 people of Japanese ancestry in prison camps, most of whom were American citizens.⁷⁹

On March 28, 1942, a young Japanese American lawyer named Minoru Yasui approached a policeman in downtown Portland to inform the officer that he was breaking curfew.⁸⁰ After the officer told the young man to return home, Yasui walked into the Portland police station and demanded his own arrest for breaking the Japanese curfew.⁸¹ This time, the officer at the police station obliged.⁸²

In May of 1942, another Japanese American man named Gordon Hirabayashi received orders to register for “relocation” to the Japanese prison camps.⁸³ Instead, Hirabayashi turned himself into the Federal Bureau of Investigation (FBI) to challenge the constitutionality of the Japanese relocation order.⁸⁴ Upon his arrest and further investigation, the FBI found Hirabayashi’s diary, which revealed his efforts to deliberately violate the Japanese curfew.⁸⁵

That same month, a twenty-three-year-old Japanese American man named Fred Korematsu received orders to report for detainment.⁸⁶ He refused, choosing instead to stay behind with his Italian American girlfriend.⁸⁷ Korematsu even had plastic surgery on his eyes to avoid detection as a Japanese American, but authorities ultimately discovered and arrested him.⁸⁸

Yasui, Hirabayashi, and Korematsu’s cases were all eventually brought before the Supreme Court. The Court considered Hirabayashi and Yasui’s cases as companion cases challenging the constitutionality of the Japanese curfew,⁸⁹ while Korematsu’s case challenged the

76. See *Hirabayashi v. United States*, 320 U.S. 81, 88 (1943); *Korematsu v. United States*, 323 U.S. 214, 217 (1944).

77. See *Korematsu*, 323 U.S. at 217; *Hirabayashi*, 320 U.S. at 88.

78. Act of March 21, 1942, ch. 191, 56 Stat. 173 (1942).

79. *Japanese Internment Camps*, HISTORY, <https://www.history.com/topics/world-war-ii/japanese-american-relocation> (last visited Oct. 10, 2022).

80. *Minoru Yasui*, DENSHO ENCYCLOPEDIA, <https://encyclopedia.densho.org/Minoru%20Yasui/> (last visited Oct. 10, 2022).

81. *Id.*

82. *Id.*

83. *Gordon Hirabayashi*, DENSHO ENCYCLOPEDIA, https://encyclopedia.densho.org/Gordon_Hirabayashi/ (last visited Oct. 10, 2022).

84. *Id.*

85. *Id.*

86. Nathan P. Eberline, *The Strength of a Story*, J. KAN. BAR ASS’N., Nov.–Dec. 2016, at 7.

87. *Id.*

88. *Id.*

89. See *Hirabayashi v. United States*, 320 U.S. 81, 83 (1943); *Yasui v. United States*, 320 U.S. 115, 116–17 (1943).

constitutionality of the Japanese American incarceration in the prison camps.⁹⁰ The legal conclusions of these cases would determine the fate of over 120,000 Japanese Americans that had been relocated and detained for the sole “crime” of having Japanese blood.⁹¹

In *Hirabayashi v. United States*,⁹² the Supreme Court upheld the curfew placed on Japanese Americans on the grounds that “the danger of espionage and sabotage to our military resources was imminent, and . . . the curfew order was an appropriate measure to meet it.”⁹³ To hold that the danger of Japanese espionage and sabotage was “imminent,” the Court pointed to Japanese Americans’ inability to assimilate with their nearby white communities.⁹⁴ The Court held that:

There is support for the view that social, economic and political conditions which have prevailed since the close of the last century, when the Japanese began to come to this country in substantial numbers, have intensified their solidarity and have in large measure prevented their assimilation as an integral part of the white population.⁹⁵

Interestingly, the Court acknowledged that it was the very acts of Congress and previous Supreme Court decisions that prevented assimilation in the first place.⁹⁶ The Court pointed to its previous *Ozawa* decision, state legislation barring Japanese from owning land, and widespread job discrimination against Japanese workers as reasons Japanese Americans had been unable to successfully assimilate.⁹⁷ Additionally, the Court acknowledged that because of this discrimination, it would be rational for Japanese Americans to be disloyal to America.⁹⁸ The Court held that “[t]he restrictions, both practical and legal, affecting the privileges and opportunities afforded to persons of Japanese extraction residing in the United States, have been sources of irritation and may well have tended to increase their isolation, and in many instances their attachments to Japan and its institutions.”⁹⁹ As a result, the Court deprived Japanese Americans of legal protection. Paradoxically, Asian Americans were considered a threat to the American community because they never assimilated, but they were never able to assimilate because the American legal system prevented them from becoming a part of American society.

In *Yasui and Korematsu*, the Supreme Court relied heavily on the same reasoning in *Hirabayashi*. Because the *Yasui* case was tied to the decision in *Hirabayashi*, the Court also struck down *Yasui*’s constitutional

90. *Korematsu v. United States*, 323 U.S. 214, 216 (1944).

91. HISTORY, *supra* note 79.

92. *Hirabayashi*, 320 U.S. at 104.

93. *Id.*

94. *Id.* at 96.

95. *Id.*

96. *Id.* at 96 n.4.

97. *Id.*

98. Carbado, *supra* note 14, at 658.

99. *Hirabayashi*, 320 U.S. at 98.

challenge.¹⁰⁰ In *Korematsu*, the Court held that “[i]n the light of the principles we announced in the *Hirabayashi* case, we are unable to conclude that it was beyond the war power of Congress and the Executive to exclude those of Japanese ancestry from the West Coast war area at the time they did.”¹⁰¹ Additionally, the Court held that the relocation of approximately 120,000 Japanese Americans was justified because the military believed that there was “an unascertained number of disloyal members” within the Japanese American community.¹⁰² Because the Court accepted the argument that the disloyal members were “impossible” to segregate from the loyal Japanese Americans, the Court held that the military was justified in deciding to remove and imprison all 120,000 Japanese Americans.¹⁰³

The Supreme Court’s decisions in *Hirabayashi*, *Yasui*, and *Korematsu* cemented all three pillars of the perpetual foreigner construct into the American legal system. First, by upholding the curfew and incarceration of all Japanese Americans, the Court legally validated the belief that all Japanese Americans, despite their character or even their citizenship, were inescapably foreign. Second, by stripping Japanese Americans of their due process rights, their homes, and their freedom, the Court legally established that Japanese Americans were not entitled to fundamental American rights. And finally, these three cases established that when there is a conflict between a foreign Asian country and the United States, it is reasonable—even responsible—to view Asian Americans as the enemy.

III. THE CONSEQUENCES OF THE PERPETUAL FOREIGNER CONSTRUCT

Although it was by far the most large-scale and extreme example, the World War II Japanese incarceration is far from the only consequence of the perpetual foreigner construct. This Part will discuss other racially driven incidents that have resulted from the perpetual foreigner construct and further cemented the beliefs behind the perpetual foreigner construct.

A. The Murder of Vincent Chin

In 1982, twenty-seven-year-old Vincent Chin, who was an American citizen of Chinese descent, went out to celebrate his bachelor party at a club just outside of Detroit, Michigan.¹⁰⁴ During the night, two white men, who had recently lost their jobs in the auto industry, confronted Vincent

100. *Yasui v. United States*, 320 U.S. 115, 117 (1943) (“Since we hold, as in the *Hirabayashi* case, that the curfew order was valid as applied to citizens, it follows that appellant’s citizenship was not relevant to the issue tendered by the Government and the conviction must be sustained for the reasons stated in the *Hirabayashi* case.”).

101. *Korematsu v. United States*, 323 U.S. 214, 217–18 (1944).

102. *Id.* at 218–19; HISTORY, *supra* note 79 (noting that the approximately 120,000 Japanese Americans were impacted by relocation orders).

103. *Korematsu*, 323 U.S. at 218–19.

104. Denny Chin & Kathy Hirata Chin, *Asian Americans and the Law*, 11 JUD. NOTICE 6, 21 (2016).

and his friends.¹⁰⁵ The two men started yelling racial slurs at Vincent and his friends, calling them “Nips,” a racist term used to disparage people of Japanese descent.¹⁰⁶ After Vincent and one of his friends ran off, the two white men got in a car, chased Vincent down, and beat him to death with a baseball bat while shouting, “[y]ou Japs are taking all our jobs.”¹⁰⁷ After murdering Vincent in cold blood, both men were arrested but were only sentenced to three years’ probation and given a fine of less than \$4,000.¹⁰⁸ The presiding judge justified the minimal punishment with his belief that the men would not commit such a crime again in the future.¹⁰⁹ In a letter response to protests following his decision, the judge simply argued that “[t]hese weren’t the kind of men you send to jail”¹¹⁰

This senseless murder came at a time of great anti-Asian hostility, particularly directed at Japanese Americans.¹¹¹ This hostility “was particularly acute in Detroit, Michigan, where the heart of the American auto industry was economically depressed and Japanese auto imports gained in sales and popularity in this country.”¹¹² Vincent, an American citizen, was identified as a foreigner on the sole account of his race. Vincent was therefore recognized as an enemy to America, particularly to American workers and the American auto industry, because of his race and presumed connection to his “Asian homeland.”¹¹³ Ultimately, the two men felt justified in murdering Vincent because they perceived him as an enemy to America.¹¹⁴ Furthermore, this sentiment was once again affirmed by the American legal system, which ensured that both men did not see a day behind prison bars for their crime.¹¹⁵

105. Jeeho Lee, *One Step Closer: Understanding the Past and Potential Work and Influence of Asian American Interest Groups in Claiming a Space for Asian Americans in America’s Democracy*, 14 ASIAN AM. L.J. 123, 152–53 (2007).

106. Chin & Chin, *supra* note 104, at 21.

107. *See id.*; Lee, *supra* note 105, at 153.

108. Lee, *supra* note 105, at 153.

109. *See id.* at 153. (“The presiding judge justified the visibly lenient sentence by stating that, in Michigan, punishments are tailored to fit the criminal and not the crime. Thus, the rationale was that because the two murderers were not likely to kill again, a heavy punishment was not merited.”).

110. Frances Kai-Hwa Wang, *Who Is Vincent Chin? The History and Relevance of a 1982 Killing*, NBC NEWS (June 15, 2017, 6:43 AM), <https://www.nbcnews.com/news/asian-america/who-vincent-chin-history-relevance-1982-killing-n771291>.

111. *See* Terri Yuh-lin Chen, *Hate Violence as Border Patrol: An Asian American Theory of Hate Violence*, 7 ASIAN L.J. 69, 93 (2000).

112. Paula C. Johnson, *The Social Construction of Identity in Criminal Cases: Cinema Verite and the Pedagogy of Vincent Chin*, 1 MICH. J. RACE & L. 347, 399–400 (1996).

113. *See* Chen, *supra* note 111, at 93–94.

114. *See id.* at 94.

115. Becky Little, *How the 1982 Murder of Vincent Chin Ignited a Push for Asian American Rights*, HISTORY (May 5, 2020), <https://www.history.com/news/vincent-chin-murder-asian-american-rights>.

B. Wen Ho Lee’s False Imprisonment

In 1999, Wen Ho Lee, a naturalized citizen from Taiwan, was fired from his job and arrested.¹¹⁶ Prior to his arrest, Lee had been living in America for over thirty years where he studied to become a mechanical engineer and earned a position at the top secret “X” Division of Los Alamos National Laboratories, a facility operated by the Department of Energy.¹¹⁷ He was arrested on suspicion that he had stolen and leaked top secret information on “source codes” for triggering hydrogen bombs.¹¹⁸

Even though the FBI had no evidence of Lee’s espionage after three years of investigating Lee’s department, the Secretary of Energy, Bill Richardson, personally fired Lee.¹¹⁹ After his termination, it was discovered that Lee had illegally downloaded secure files to a less secure computer.¹²⁰ Although Lee contested that this practice was “very common” among Lee’s fellow scientists,¹²¹ a grand jury returned a fifty-nine-count indictment alleging that Lee “acted with the intent to injure the United States and with the intent to secure an advantage to a foreign nation.”¹²² Although Lee fully cooperated with the FBI, a magistrate judge, district judge, and the Tenth Circuit, all denied Lee bail and held him in solitary confinement until his trial.¹²³

Subsequent pretrial and bail hearings soon revealed that many of the charges against Lee were either based on lies or false accusations. For example, Lee was accused of stealing “‘crown jewels’ of the nation’s nuclear secrets,”¹²⁴ but it was soon discovered that a vast majority of the information that Lee downloaded was already accessible to the public.¹²⁵ Additionally, it was discovered in Lee’s first bail hearing that an FBI agent tied to Lee’s investigation falsely testified about an interaction that he had with Lee.¹²⁶

Lee’s lawyers entered into a plea agreement with the government soon after these facts were revealed.¹²⁷ Under this plea agreement, “Lee would plead guilty to one of the fifty-nine felony counts, receive a

116. Paul Farhi, *U.S., Media Settle with Wen Ho Lee, News Organizations Pay to Keep Sources Secret*, WASH. POST (June 3, 2006), <https://www.washingtonpost.com/wp-dyn/content/article/2006/06/02/AR2006060201060.html>.

117. Spencer K. Turnbull, *Wen Ho Lee and the Consequences of Enduring Asian American Stereotypes*, 7 *ASIAN PAC. AM. L.J.* 72, 73 (2001).

118. *Id.*

119. *Id.* at 74.

120. *Id.*

121. *Id.*

122. *Id.*

123. Miriam Kim, *Discrimination in the Wen Ho Lee Case: Reinterpreting the Intent Requirement in Constitutional and Statutory Race Discrimination Cases*, 9 *ASIAN L.J.* 117, 129 (2002).

124. *Id.*

125. *Id.* at 129–30 (“Former [Los Alamos National Laboratory (LANL)] scientists testified that Lee’s ‘offenses’ were not ‘serious infractions’ but were commonly committed by LANL scientists. Further, John Richter testified that ‘99 percent of [the downloaded information] was unclassified in the open literature.’”).

126. *Id.* at 130.

127. *Id.*

sentence of time served (278 days), and submit to sixty hours of government debriefing.”¹²⁸ The judge who oversaw Lee’s case apologized profusely for Lee’s unfair trial and reprimanded the Executive Branch for “embarrass[ing] our entire nation and each of us who is a citizen of it.”¹²⁹

Lee’s termination, accusations, and imprisonment once again exhibit the pillars of the perpetual foreigner construct against Asian Americans. Despite his status as an American citizen and a “long list” of other possible suspects in Lee’s department who shared similar jobs, responsibilities, and access to security, Lee was singled out as a suspect on account of his ethnicity and presumed disloyal to his home nation.¹³⁰ Additionally, in its coverage of Lee’s accusation and arrest, the American press “highlight[ed] Lee’s Asian heritage and ignor[ed] his long-time United States citizenship [to] reinforce societal perceptions that Asian Americans have divided loyalties.”¹³¹ An article published by the *New York Times* described Lee as a “Taiwan-born scientist” but failed to disclose that Lee had been a citizen of the United States for the past twenty-five years, further emphasizing that Lee was inescapably foreign despite his actual citizenship status.¹³² Once again, because the American legal system and American society viewed Lee as unquestionably foreign and disloyal to America, Lee was stripped of his fundamental American rights and locked away for nearly a year.

Vincent Chin’s murder and Wen Ho Lee’s false imprisonment are just two of the higher profile cases that highlight the three pillars of the perpetual foreigner myth. There are numerous examples demonstrating the negative consequences of the perpetual foreigner construct, including the “Newest ‘Yellow Peril’” discussed in the next Part of this Comment.

IV. THE “NEWEST ‘YELLOW PERIL’”

In late 2019, a mysterious illness swept over the inhabitants of Wuhan, China.¹³³ By January 7, 2020, scientists identified the illness as a novel coronavirus, later named COVID-19.¹³⁴ On January 20, 2020, the U.S. Centers for Disease Control and Prevention reported the first laboratory-confirmed COVID-19 case in the United States.¹³⁵ By March 15, “states [began] to implement shutdowns in order to prevent the spread of COVID-19. The New York City public school[] system—the largest

128. *Id.*

129. *See* Kim, *supra* note 123, at 130 n.108.

130. *See* Turnbull, *supra* note 117, at 76 (“Vrooman contends that ‘[t]he short list missed people on the long list who were almost exact clones of Lee,’ including an individual who worked with Lee, was entitled to the same access as Lee, and had even traveled to China with Lee. ‘The only difference was ethnicity,’ Vrooman concluded.”).

131. *Id.* at 75.

132. *Id.*

133. *CDC Museum COVID-19 Timeline*, CTRS. FOR DISEASE CONTROL & PREVENTION, <https://www.cdc.gov/museum/timeline/covid19.html> (last visited Oct. 11, 2022).

134. *Id.*

135. *Id.*

school system in the [United States], with 1.1 million students—shut down, while Ohio call[ed] for restaurants and bars to close.”¹³⁶

Since the start of COVID-19 shutdowns in the United States, there have been over 9,000 reports of racially motivated attacks directed at Asian Americans.¹³⁷ In April 2021, a Pew Research Center poll revealed that nearly one-third of Asian Americans “have feared someone might threaten or physically attack them.”¹³⁸ Another Pew Research Center poll conducted in 2020 indicated that nearly one in three Asian Americans “have been subject to slurs or jokes because of their race or ethnicity since the outbreak began”¹³⁹

As this Comment shows, this discrimination and hatred did not arise out of a void. The rise in racially motivated attacks against Asian Americans during the COVID-19 pandemic fits neatly within the pillars of the perpetual foreigner construct in unique ways. First, the rise in discrimination and hate crimes against Asian Americans is still rooted in the perception that Asian Americans are inescapably and universally foreign. A 2021 Pew Research Center Poll demonstrates that 16% of Asian adults have been told to “go back to their home country” since the start of the pandemic.¹⁴⁰ However, instead of the belief that foreignness makes Asian Americans more likely to be disloyal, the rise of what this Comment calls the “Newest ‘Yellow Peril’” is rooted in the belief that Asian Americans’ foreignness makes them more likely to be infected with the COVID-19 virus.¹⁴¹ The “threat” that Asian Americans pose is the threat of contaminating “real” Americans with COVID-19.

A. Asian American Prejudice and the Risk of Contagion

In 2020, a study was conducted to determine which factors most strongly contributed to the stigmatization of Asian Americans in the context of COVID-19.¹⁴² Along with other societal factors such as age, sex, race, political orientation, and education, “prejudice against Asian

136. *Id.*

137. *Asian American Attacks: More than 9,000 Incidents Reported Nationwide Since Pandemic Began*, CBS S.F. BAY AREA (Aug. 12, 2021, 11:09 AM), <https://sanfrancisco.cbslocal.com/2021/08/12/asian-american-attacks-9000-since-covid-19-pandemic-began/>.

138. Neil G. Ruiz, Khadijah Edwards, & Mark Hugo Lopez, *One-Third of Asian Americans Fear Threats, Physical Attacks and Most Say Violence Against Them Is Rising*, PEW RSCH. CTR. (Apr. 21, 2021), <https://www.pewresearch.org/fact-tank/2021/04/21/one-third-of-asian-americans-fear-threats-physical-attacks-and-most-say-violence-against-them-is-rising/> [hereinafter *One-Third of Asian Americans*].

139. Neil G. Ruiz, Juliana Menasce Horowitz, & Christine Tamir, *Many Black and Asian Americans Say They Have Experienced Discrimination Amid the COVID-19 Outbreak*, PEW RSCH. CTR. (July 1, 2020), <https://www.pewresearch.org/social-trends/2020/07/01/many-black-and-asian-americans-say-they-have-experienced-discrimination-amid-the-covid-19-outbreak/>.

140. *One-Third of Asian Americans*, *supra* note 138.

141. Ruiz et al., *supra* note 139.

142. Jeff Grabmeier, *Study Reveals Why Some Blame Asian Americans for COVID-19*, OHIO STATE NEWS (Oct. 20, 2020), <https://news.osu.edu/study-reveals-why-some-blame-asian-americans-for-covid-19/>.

Americans” was measured as a factor.¹⁴³ This “prejudice” factor was identified by measuring six common Asian American stereotypes and peoples’ level of agreement with those stereotypes.¹⁴⁴ Those stereotypes were:

1. “In our society Asians are generally in low status.”
2. “Asians have an inferior status than other groups in the U.S.”
3. “Generally, Asians do not understand American culture.”
4. “Generally, Asians are outside of American identity.”
5. “Asian Americans seem to be striving to become number one.”
6. “In order to get ahead of others, Asian Americans can be overly competitive.”¹⁴⁵

These six stereotypes are all rooted in either the perpetual foreigner construct or the model minority myth.¹⁴⁶ The study showed that out of all the factors measured, “prejudice against Asian Americans . . . was most strongly linked to beliefs that Asians were responsible for the pandemic and most at risk for spreading it”¹⁴⁷ The results of this study indicate that the perpetual foreigner construct is still alive and well in the twenty-first century and continues to be the primary contributor to Asian American discrimination.

B. President Trump’s “Chinese Virus” Tweets

The COVID-19 pandemic and this “Newest ‘Yellow Peril’” share two more traits reminiscent of the historical consequences of the perpetual foreigner myth. Both the American government, presently through the Executive Branch, and the American media, now via social media, have significantly propagated the pillars of the perpetual foreigner construct.

During his presidency, Donald Trump faced a lot of criticism for how he dealt with the spread of the virus, particularly on how he framed the virus to the public. On March 16, 2020, President Trump sent out a tweet using the phrase “Chinese virus,” a phrase that health officials had warned the President to avoid.¹⁴⁸ Shortly after Trump sent this tweet, a study was conducted, examining approximately 700,000 tweets containing about 1.3 million hashtags “to see whether his use of the term ‘Chinese virus’ . . .

143. Hyunyi Cho, Wenbo Li, Julie Cannon, Rachel Lopez, & Chi (Chuck) Song, *Testing Three Explanations for Stigmatization of People of Asian Descent During COVID-19: Maladaptive Coping, Biased Media Use, or Racial Prejudice?*, 26 ETHNICITY & HEALTH 94, 99, 106 (2021).

144. *Id.* at 99.

145. *Id.*

146. Chew, *supra* note 14, at 24.

147. Grabmeier, *supra* note 142.

148. Laura Kurtzman, *Trump’s ‘Chinese Virus’ Tweet Linked to Rise of Anti-Asian Hashtags on Twitter*, UNIV. CAL., S.F. (Mar. 18, 2021), <https://www.ucsf.edu/news/2021/03/420081/trumps-chinese-virus-tweet-linked-rise-anti-asian-hashtags-twitter>.

may have led others to use anti-Asian language on Twitter.”¹⁴⁹ The study showed that there was a strong correlation between the timing of the President’s tweet and a rise in anti-Asian tweets published online.¹⁵⁰ On October 3, 2021, *Politico* and *Morning Consult* conducted a poll revealing that 71% of Asian Americans “blame Donald Trump for the discrimination against the community—the highest blame directed toward an individual.”¹⁵¹

CONCLUSION

The perpetual foreigner construct is deeply rooted in American history. From laws excluding early Asian immigrants from working on the western railroads to scapegoating citizens through online social media, Asian Americans suffer from the same three perpetual foreigner assumptions: that Asians Americans are inescapably foreign, are not entitled to American civil rights, and at any moment can become “the enemy.”

Although discrimination and misconceptions are still prevalent today, there are promising signs that the perpetual foreigner construct, along with other labels and stereotypes plaguing Asian Americans, is being recognized and addressed. On May 20, 2021, President Joe Biden signed the COVID-19 Hate Crimes Act, a bill “intended to expedite the review of pandemic-related hate crimes and make grants available to help local law enforcement improve reporting of bias-driven incidents.”¹⁵² Additionally, news organizations across the country and the world are covering the rise in Asian American hate crimes and are starting to critically examine how misconceptions of Asian Americans perpetuate hate, fear, and violence.¹⁵³ This progress is slow and gradual, but it is about time that both American society and the law start treating Asian Americans as genuine and essential members of this country.

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149. *Id.*

150. *Id.*

151. Rishika Dugyala & Beatrice Jin, *Trauma and Trump Make Asian American Voters a More Cohesive Bloc, New Poll Reveals*, POLITICO (Oct. 3, 2021, 5:00 AM), <https://www.politico.com/interactives/2021/asian-american-community-voting-trends-polling/>.

152. Libby Cathey, *Biden Signs Anti-Asian Hate Crime Bill Marking ‘Significant Break’ in Partisanship*, ABC NEWS (May 20, 2021, 1:21 PM), <https://abcnews.go.com/Politics/biden-sign-anti-asian-hate-crime-bill-law/story?id=77801857>.

153. See, e.g., Lang, *supra* note 9; *Covid ‘Hate Crimes’ Against Asian Americans on Rise*, BBC NEWS (May 21, 2021), <https://www.bbc.com/news/world-us-canada-56218684.ai>.

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