

Nos. 24-656 and 24-657

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IN THE

**Supreme Court of the United States**

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TIKTOK INC. AND BYTEDANCE LTD.,

*Petitioners,*

v.

MERRICK B. GARLAND, IN HIS OFFICIAL CAPACITY AS  
ATTORNEY GENERAL OF THE UNITED STATES,

*Respondent.*

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BRIAN FIREBAUGH ET AL.,

*Petitioners,*

v.

MERRICK B. GARLAND, IN HIS OFFICIAL CAPACITY AS  
ATTORNEY GENERAL OF THE UNITED STATES,

*Respondent.*

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**On Writs Of Certiorari  
To The United States Court Of Appeals  
For The D.C. Circuit**

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**JOINT APPENDIX**

**Volume II of II (Pages 517–849)**

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## Table of Contents

### Volume I

Opinion of the United States Court of Appeals for the District of Columbia Circuit (Dec. 6, 2024).....	JA 1
Judgment of the United States Court of Appeals for the District of Columbia Circuit (Dec. 6, 2024).....	JA 93
TikTok Petitioners’ Petition for Review .....	JA 94
Creator Petitioners’ Petition for Review.....	JA 161
BASED Politics Inc.’s Petition for Review.....	JA 193
H.R. Comm. on Energy & Com., <i>Protecting Americans from Foreign Adversary Controlled Applications Act</i> , H.R. Rep. No. 118-417 (2024) .....	JA 210
170 Cong. Rec. S2629 (daily ed. Apr. 8, 2024) (excerpts) .....	JA 228
170 Cong. Rec. S2943 (daily ed. Apr. 23, 2024) (excerpts) .....	JA 231
Draft National Security Agreement (Aug. 23, 2022) (redacted) .....	JA 236
Nicholas Kaufman et al., U.S.-China Econ. & Sec. Rev. Comm’n, <i>Shein, Temu, and Chinese e-Commerce: Data Risks, Sourcing Violations, and Trade Loopholes</i> (Apr. 14, 2023).....	JA 339

Sen. Tom Cotton (@SenTomCotton), X (Mar. 10, 2024) .....JA 348

Sapna Maheshawri et al., *House Passes Bill to Force TikTok Sale from Chinese Owner or Ban the App*, N.Y. Times (Mar. 13, 2024).....JA 349

Transcript of Interview with Sen. Mark Warner, Fox News (Mar. 14, 2024) (excerpts).....JA 356

Transcript of Keynote Conversation Between Secretary of State Antony Blinken and Sen. Mitt Romney, McCain Institute (May 3, 2024) (excerpts) .....JA 363

Declaration of Randal S. Milch .....JA 367

Declaration of Christopher P. Simkins.....JA 412

Declaration of Steven Weber.....JA 451

Declaration of Adam Presser .....JA 481

**Volume II**

Declaration of Talia Cadet .....JA 517

Declaration of Brian Firebaugh.....JA 527

Declaration of Steven King .....JA 537

Declaration of Timothy Martin.....JA 544

Declaration of Chloe Joy Sexton.....JA 553

Declaration of Kiera Spann.....JA 561

Declaration of Christopher Townsend.....	JA 572
Declaration of Paul Tran.....	JA 582
<i>How TikTok recommends videos #ForYou, TikTok</i> (June 18, 2020) .....	JA 590
<i>How TikTok recommends content, TikTok</i> .....	JA 595
Alexandra Garfinkle, <i>TikTok: Are influencers</i> <i>panicking about bans? We asked three to weigh</i> <i>in.</i> , Yahoo! Finance (Jan. 19, 2023).....	JA 601
Steven Lee Myers et al., <i>The Consequences of Elon</i> <i>Musk's Ownership of X</i> , N.Y. Times (Oct. 27, 2023) .....	JA 607
Declaration of Brad Polumbo.....	JA 616
Declaration of Hannah Cox.....	JA 619
Declaration of Casey Blackburn (redacted).....	JA 625
Declaration of Kevin Vorndran (redacted) .....	JA 655
Declaration of David Newman (redacted) .....	JA 668
Reply Declaration of Christopher P. Simkins .....	JA 714
Reply Declaration of Steven Weber .....	JA 747
Declaration of William C. Farrell .....	JA 769
Transcript of Mar. 7, 2024 House Energy & Com. Comm. Hr'g (redacted; excerpts).....	JA 781

Declaration of Blake Chandlee .....	JA 801
Supplemental Declaration of Talia Cadet .....	JA 812
Supplemental Declaration of Brian Firebaugh.....	JA 816
Supplemental Declaration of Steven King .....	JA 821
Supplemental Declaration of Timothy Martin .....	JA 825
Supplemental Declaration of Chloe Joy Sexton.....	JA 829
Supplemental Declaration of Kiera Spann.....	JA 832
Supplemental Declaration of Christopher Townsend .....	JA 837
Supplemental Declaration of Paul Tran.....	JA 842
Supplemental Declaration of Hannah Cox.....	JA 846

IN THE UNITED STATES COURT OF APPEALS  
FOR THE DISTRICT OF COLUMBIA CIRCUIT

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BRIAN FIREBAUGH, CHLOE  
JOY SEXTON, TALIA CADET,  
TIMOTHY MARTIN, KIERA  
SPANN, PAUL TRAN,  
CHRISTOPHER TOWNSEND,  
and STEVEN KING,

*Petitioners,*

v.

MERRICK B. GARLAND, in his  
capacity as United States Attorney  
General,

*Respondent*

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DECLARATION OF TALIA CADET IN SUPPORT OF  
PETITIONERS' BRIEF ON THE MERITS

I, Talia Cadet, declare as follows:

1. I make this declaration from personal knowledge.
2. I live in Capitol Heights, Maryland and work as the chief digital officer at a lobbying firm in Washington, D.C.
3. I started using TikTok in 2020 as a form of entertainment and connection during the isolation of the Covid-19 pandemic. I found the platform to be a joyful and creative space, and was inspired by how some

creators used the platform to uplift others and represent voices that are not always heard. I was able to learn about so many things on the app. For example, TikTok is where I fell in love with #BlackBookTok and reading, planned amazing vacations to Las Vegas, New Orleans, and South Africa, and renewed my enthusiasm for living in the DC Metropolitan area. I love watching content on TikTok—it really is an incredible source of knowledge curated specifically for things that interest me.

4. After about two years, I decided to try creating some videos of my own. These videos often focus on one of my favorite things—books. I love to review books and promote Black authors and independent authors. *See Multimedia Upload at Cadet Video A.*<sup>1</sup> I find it very exciting that I can help others discover books while helping diverse authors to increase their following. In addition to reviewing books, I often review and discuss Black-owned businesses in the D.C. area and nationwide.

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<sup>1</sup> In compliance with the Court's June 3, 2024 Procedures Regarding Submission of Audio or Video Files, the Petitioners have uploaded to the Court's Box.com file repository a set of TikTok videos as part of the record. A public link to this particular video is available here:

[https://www.tiktok.com/@taliacadet/video/7244248168416759082?\\_r=1&\\_t=8n90vITp2OE](https://www.tiktok.com/@taliacadet/video/7244248168416759082?_r=1&_t=8n90vITp2OE).

*See Multimedia Upload at Cadet Video B.*<sup>2</sup> I really enjoy connecting with small and minority business owners and using my platform to help amplify their voices.

5. Additionally, some of my videos focus on my life, including reviewing my international vacations, tips for fun events around the D.C. area, and my goals for each month. These videos provide me a creative outlet, and I love seeing my followers' responses to and interactions with these videos. The community on TikTok is so welcoming that I have even felt comfortable sharing more vulnerable topics with my followers. For example, when I was diagnosed with a specific corneal disease, I shared my journey on TikTok—and several of my followers with the same diagnosis told me that seeing my videos helped them feel less anxious about the process. *See Multimedia Upload at Cadet Video C.*<sup>3</sup> I have also used TikTok to talk about celibacy and self-care—topics that are important to me but not always easy to talk about on other platforms.

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<sup>2</sup> A public link to this video is available here:

[https://www.tiktok.com/@taliacadet/video/7298069835827940654?\\_r=1&t=8n91IyCmhVm](https://www.tiktok.com/@taliacadet/video/7298069835827940654?_r=1&t=8n91IyCmhVm).

<sup>3</sup> A public link to this video is available here:

[https://www.tiktok.com/@taliacadet/video/7283145948199521579?\\_r=1&t=8n91Lfef70g](https://www.tiktok.com/@taliacadet/video/7283145948199521579?_r=1&t=8n91Lfef70g).



*See Multimedia Upload at Cadet Video D.*<sup>4</sup>

6. Around the fall of 2022, I noticed that my TikTok content was resonating with the public and starting to go viral. In response, I started posting more frequently, hoping to grow community on TikTok. I have now amassed over 129,000 TikTok followers, and last year, made about 15 percent of my annual income from brand deals on the app and the Creator Rewards program. This year, I stand to make more. As a first-time homeowner living in an expensive metropolitan area, this supplemental income has given me some financial freedom to enjoy my life and have new experiences.

7. My success on TikTok has also afforded me some incredible and life-changing opportunities. For example, I have been asked to host in-person author talks in my community and in other cities, several for diverse authors. I have also been approached by companies to collaborate with them—for example, Hulu asked me to promote a new series adapting a book that I enjoyed. I have also worked on paid partnerships with some of my favorite Black woman-owned brands, and have even

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<sup>4</sup> A public link to this video is available here:

[https://www.tiktok.com/@taliacadet/video/7188524395273620782?\\_r=1&t=8n91OInCY2h](https://www.tiktok.com/@taliacadet/video/7188524395273620782?_r=1&t=8n91OInCY2h).

been featured in national news media outlets.

8. But even more important to me than the income and other opportunities has been the strong community I created on TikTok. It has been so impactful to connect with book lovers across the country as well as diverse and independent authors and Black-owned and women-owned businesses who are making a difference. I love being able to use my platform to amplify their voices, as well as my own. As a Black woman in her thirties, I know the importance of seeing yourself reflected in culture—and TikTok has created a platform for increased representation. I love following and connecting with other creators who share some of my background and look like me—as well as being a role model for other young Black women on the app. In my experience, TikTok is truly for anyone looking to see people who look and live like them, entertain and educate themselves, and become a better person.

9. I work hard to foster, maintain, and grow this community on TikTok; and enjoy taking advantage of TikTok's tools to do so. For example, I create videos in the TikTok app and also use CapCut to edit my vlogs (video blogs) for posting on TikTok. I enjoy using these products because they feel intuitive and are easy to use to express myself

creatively. CapCut makes it easy to edit videos because the interface is similar to the process in TikTok, so the process feels familiar.

10. I also host a weekly TikTok LIVE every Tuesday night that I call “Talia Talk Tuesdays,” in which my followers tune in for a live conversation with me discussing a list of fun and/or topical issues for the day—everything from what I’m reading and what businesses I’m supporting to sports and entertainment news. During these events, my followers can send in questions and comments that I can respond to in real time. I look forward to this event every week because it gives me a chance to deepen my connection with my followers over topics that are important and entertaining. Thanks to events like these, as well as my consistent posting of TikTok videos, I frequently meet some of my followers in real life—both in Washington, DC and in other U.S. cities and abroad. For example, I met followers in Mexico and South Africa when I was traveling for vacation. That is a testament to the global reach and impact of TikTok. In fact, I am aware that almost ten percent of my TikTok followers live abroad.

11. The kinds of comments that I have received from my TikTok followers remind me every day why I create videos. For example,

followers have told me that my TikTok videos: (1) inspired them and their friends to start a book club; (2) encouraged them to buy products from Black-owned businesses or read books by independent authors that I reviewed; (3) helped them make new friends in DC by following my monthly DC event guides; (4) inspired them as fellow plus-size women; and (5) encouraged them to travel solo after seeing me do it. This is the greatest form of inspiration for me, and makes me so excited to keep creating content on TikTok.

12. I have tried using other social media platforms and have not found the same success or community. For example, while I have over 129,000 TikTok followers, I only have about 9,700 on Instagram, and about 4,100 subscribers to my newsletter. I have found that my success on TikTok has helped fuel some interest in my Instagram account, as well as enabled me to create a weekly newsletter for my fans—but nothing comes close to the organic reach of TikTok to get my content seen by new users who are likely to find it interesting. For example, by using TikTok hashtags like #BlackBookTalk, I am able to instantly tap into a community of followers likely to be interested in my videos reviewing new works by Black authors. Neither Instagram nor the other social media

apps that I have used have had anywhere near the same effect as TikTok.

13. I also find that the nature of my expression is different on TikTok than it is on other apps. The main “For You Page” on TikTok allows longer videos than the main feeds on Instagram (“Reels”) or Facebook (“Stories”), which allows me to have the time to really delve into the details of a good book review or thoughtfully engage in a discussion about celibacy and self-care. For example, Instagram has a 90-second time limit for videos created in Reels, so I could not use this feature to create my longer-form videos. This long-form style of social media encourages me to be a more real and less filtered version of myself and to truly express myself—more so than on the other apps. My experience as a TikTok user is also different than on other apps—on TikTok, I am able to easily discover and learn new things while also personalizing and curating my feed in a manner unique to me.

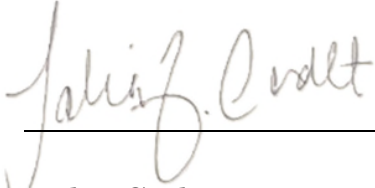
14. A ban on TikTok threatens everything I have built on the platform. There is so much to lose—community, representation, information, livelihoods and freedom of expression. I could not reconstitute my following on other platforms in part because a number of my TikTok followers have told me that they do not use the other leading

social media apps like Facebook or Instagram. Also, despite having posted some similar content on these other apps, I have not seen the same rates of growth and engagement. I am also concerned because, if this can happen to TikTok and its 170 million users, what is next? This law sets a dangerous precedent for the government telling us how to and with whom we can communicate. I cannot stand for that, which is why I'm a part of this lawsuit.

15. Even if TikTok was sold to a U.S. company, I would lose access to my international content and followers, which would limit my reach and shrink my world. I am an avid traveler and have used TikTok in other countries to plan trips and review international destinations and would lose this resource. I do not believe that the experience on the app—that I have come to know and love and which has been fundamental to the community that I built—would stay the same if TikTok was sold to another owner. I have seen how social media products change with new ownership, fundamentally altering both the algorithm and the user experience. For example, when Twitter changed to X, in my opinion, the quality of the advertising decreased and the user experience declined. I have no reason to believe that TikTok would be any different.

I declare under penalty of perjury that the foregoing is true and correct.

Signed in Capitol Heights, Maryland this 18th day of June, 2024.



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Talia Cadet

IN THE UNITED STATES COURT OF APPEALS  
FOR THE DISTRICT OF COLUMBIA CIRCUIT

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BRIAN FIREBAUGH, CHLOE  
JOY SEXTON, TALIA CADET,  
TIMOTHY MARTIN, KIERA  
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CHRISTOPHER TOWNSEND,  
and STEVEN KING,

*Petitioners,*

v.

MERRICK B. GARLAND, in his  
capacity as United States Attorney  
General,

*Respondent*

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DECLARATION OF BRIAN FIREBAUGH IN SUPPORT OF  
PETITIONERS' BRIEF ON THE MERITS

I, Brian Firebaugh, declare as follows:

1. I make this declaration from personal knowledge.
2. I am a first-generation rancher in Hubbard, Texas, where my wife and I own and operate 4F Ranch, where we raise Texas-registered Longhorn cattle for beef and breeding production.
3. After serving in the U.S. Marine Corps from 1999 to 2003, I struggled to find my footing as a civilian. I experienced homelessness and



addiction but eventually obtained treatment through the Department of Veterans' Affairs and got a job working in a hospital. The corporate world, where I spent many hours each day at the hospital, was not for me. From my cubicle, I continued thinking about my lifelong dream to become a rancher.

4. I saved and invested some of the money I earned from the hospital, and in 2015 my wife and I were able to purchase a small plot of land in north Texas. I am the first person in my family to become a rancher, so I was really starting from scratch. In 2020, I had only about 5,000 followers on TikTok and was struggling to develop the business side of the ranch. I was inspired to post about my experiences on the ranch by another TikTok creator who often encouraged people to put energy into their interests and what makes them happy. For me, that is running the ranch, raising cattle, and producing beef.

5. One day, as I was pulling into my driveway, my Longhorns were lying in the road and I could not get through. I decided to start recording, and posted a video on TikTok calling it a "Texas traffic jam." This video generated a lot of views and piqued my interest in creating more content about my ranch. Approximately a year later, I created

another video to dispel the myth that Longhorns are vicious and dangerous—by showing how cuddly one of my cows was and petting her. This video went “viral,” as it was viewed over 72,000 times, which led people to follow me and ask questions about ranching, agriculture, and livestock. *See* Multimedia Upload at Firebaugh Video A.<sup>1</sup> The video and the conversations it sparked fueled an interest in my way of life.

6. From there, I continued to post more content to educate people about maintaining a ranch and raising livestock and to answer my followers’ questions on these topics. *See* Multimedia Upload at Firebaugh Videos B & C.<sup>2</sup> It was easy to learn to create engaging and interesting videos on TikTok, especially using the tools available in the app. I create all of my videos through TikTok because I find the editing experience much easier than on the other social media apps. As a 43-year-old rancher in central Texas, I don’t have time or interest to learn

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<sup>1</sup> In compliance with the Court’s June 3, 2024 Procedures Regarding Submission of Audio or Video Files, the Petitioners have uploaded to the Court’s Box.com file repository a set of TikTok videos as part of the record. A public link to this particular video is available here: <https://www.tiktok.com/@cattleguy/video/6862508558412500230>.

<sup>2</sup> Public links to these videos are available here:  
<https://www.tiktok.com/@cattleguy/video/6995941471702519046>;  
<https://www.tiktok.com/@cattleguy/video/7014165019361348870>.

the more complicated editing tools offered on the other platforms—I like TikTok precisely because it is simple to use.

7. Because of the way TikTok’s algorithm learns about each user’s interests and connects them with new videos and creators, many people with an interest in agriculture and ranching—whether well-established in a long line of family ranchers, just starting out, or not even directly tied to ranching but interested in learning about it as a way of life—end up viewing my content. Videos I post on TikTok will sometimes garner millions of views, while the same video on other platforms may end up with just a few hundred views. For example, I have 443,000 TikTok followers, compared to only about 23,000 on Instagram and only 690 subscribers on YouTube. While I have posted content on each platform, I now focus on TikTok because I have been much more successful there.

8. My wife and I began selling beef to the local community, and particularly in the early stages of the COVID-19 pandemic, I observed that people were very cautious about where their food was coming from. So I used the TikTok platform to show that our ranch was focused on healthy local food production for our community. Marketing and

reputation is everything in ranching, and TikTok allowed us to market our beef and products and build goodwill with customers and the ranching community. For example, when we announce a sale or a new product on the app, TikTok pushes that announcement to people who are interested in the life I live and the products we sell. The alternative on other platforms like Facebook is paid advertising, which is expensive and, in my experience, ineffective.

9. My success on TikTok has also allowed me the opportunity to build community by organizing events to help others—for example, dropping beef off to people in Texas struggling with food security. Similarly, after a series of devastating wildfires in the Texas panhandle, I was able to use the app to raise donations of critical cattle feed and antibiotics to send to ranchers in need. *See Multimedia Upload at Firebaugh Videos D & E.*<sup>3</sup>

10. Being able to connect with the ranching community on TikTok has been incredibly important to me and my family. There are many

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<sup>3</sup> Public links to these videos are available here:

<https://www.tiktok.com/@cattleguy/video/7342261566936501547?q=cattleguy&t=1718323350765>;

<https://www.tiktok.com/@cattleguy/video/7343825772030725418>.

ranches in Texas and elsewhere run by families who have been in the industry for over a hundred years. They tend to close ranks and be wary of outsiders. But I have been able to use TikTok to build connections with many of these ranchers. For example, I have developed a relationship with the family that runs a historic Texas ranch that was breaking colts during the Civil War. We met through following each other's content on TikTok and then met in person. Having that kind of access to this historical group, and being able to receive and pass along mentorship and guidance, has meant everything to me and would not have been possible without TikTok.

11. In addition to building a valuable community on TikTok, I was also able to quit my job at the hospital and focus full-time on running the ranch and creating more content to drive education about the magnificent breed of Longhorn cattle. I now earn most of my income through selling my ranch products promoted on TikTok. I also occasionally host TikTok LIVE videos, which give viewers the opportunity to "tip" me. The visibility I achieve on TikTok cannot be matched elsewhere. For example, when I post on TikTok about farmers' markets that we will be attending, we get people coming from all over the

state and even other states to see us.

12. My success on TikTok has also led to some other life-changing opportunities for me. Recently, producers of a Netflix game show called “The Trust” contacted me because of my presence on TikTok. I ended up going on the show and winning almost \$80,000. With my winnings from the Netflix show, my wife and I were able to pay for the costs associated with adopting our son. We never would have been able to accomplish that without those winnings, and that has resulted in the greatest gift of our lives.

13. We have chosen to care for our young son at home rather than send him to daycare. We value the time and opportunity to teach him at home about our values and our way of life on the ranch. I love that I get to spend so much time with my son. The money that I have been able to earn through TikTok and selling my products marketed on TikTok have allowed me that opportunity, because otherwise, I would be forced to accept jobs off of the ranch.

14. I am extremely worried about how a ban of TikTok would impact me. Without access to TikTok, I would sell our ranch; we do not have any remotely equivalent means to market our products, and while

we have gained a following through TikTok, we do not have the resources of multi-generation ranchers. I fear needing to get a different job, which would take me out of the house and require me to pay for daycare for our son rather than raising him at home and spending time with him. And I would lose the most important tool for helping my community and learning from and mentoring other ranchers. If you ban TikTok, you ban my way of life.

15. Unfortunately, I have already started to see the effects of the Act since President Biden signed it in April of 2024. I noticed I lost some TikTok followers and saw a decline in the rate of new followers. I have had at least one person who was a dedicated follower tell me that he is now convinced that it is dangerous or harmful to keep his TikTok account because the government saw fit to ban it. I have to plan for the worst, and have had to take some preliminary steps to continue the forward momentum of my ranch and prepare for the possibility that I will lose my livelihood.

16. The existence of other social media platforms such as Instagram and Facebook does not make me any less concerned about the Act. Those platforms are fundamentally different, and I have spent years

learning about TikTok and how it operates. As a result, I make videos with TikTok and my TikTok followers in mind. I choose certain structures and editing tools because I know what will best carry my message and resonate with other users. There would be no way for me to simply transfer it to another platform. I would be set back years, forced to learn how to best express myself on a completely different platform—one that is not my choice.

17. I also have followers from all over the world, including other countries with large ranching communities, such as Canada, Australia, New Zealand, and Sweden. I am concerned that the Act will cause me to lose contact with these groups, even if a version of TikTok is permitted to operate in the United States because it would be a separate platform from the one used in other countries.

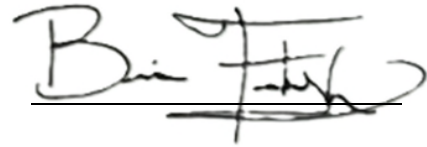
18. Aside from my viewpoint as a rancher, as a citizen and a veteran, I find it really troubling that the government is forcing this ban on TikTok on the American people, which I believe is a gross violation of our First Amendment rights. Our rights will be violated even if the app is sold. First, because TikTok itself is saying that it won't be possible to simply resume operation of the same app and the same algorithm under



new ownership. Also, the culture of the app will heavily depend on its new owner, and in the event the app gets purchased by a party who is interested, for example, in pushing their own narrative instead of running a successful, unbiased, and accessible social media platform, the unique culture of TikTok will be ruined. It will not be the same app.

I declare under penalty of perjury that the foregoing is true and correct.

Signed in Hubbard, Texas this 18th day of June, 2024.

A handwritten signature in black ink, appearing to read "Brian Firebaugh", written over a horizontal line.

Brian Firebaugh

**IN THE UNITED STATES COURT OF APPEALS  
FOR THE DISTRICT OF COLUMBIA CIRCUIT**

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BRIAN FIREBAUGH, CHLOE  
JOY SEXTON, TALIA CADET,  
TIMOTHY MARTIN, KIERA  
SPANN, PAUL TRAN,  
CHRISTOPHER TOWNSEND,  
and STEVEN KING,

*Petitioners,*

v.

MERRICK B. GARLAND, in his  
capacity as United States Attorney  
General,

*Respondent*

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**DECLARATION OF STEVEN KING IN SUPPORT OF  
PETITIONERS' BRIEF ON THE MERITS**

I, Steven King, declare as follows:

1. I make this declaration from personal knowledge.

1. I live in Buckeye, Arizona with my husband.

2. I have a background in healthcare administration and worked for many years running a nursing home and caring for senior citizens.

While I enjoyed this career, I always felt that I was meant to be in a more creative field, such as entertainment—however, this did not feel like a

practical or attainable goal.

3. I started creating videos on TikTok in 2019 and immediately fell in love with the process. TikTok gave me the creative outlet that I had been craving my whole life, and provided me with a powerful platform to connect with and entertain others. My TikTok videos started gaining a lot of audience engagement, and I saw the potential for this hobby to become a career. In order to build and foster this potential, I began posting videos consistently several times a day—often humorous lip-syncing videos or thoughts from my daily life.

4. Eventually, my content grew such a large following that I was able to quit my job in healthcare and become a full-time creator. I now have 6.8 million TikTok followers and feel so fortunate to be able to do what I love every day—creating fun, inspiring, and entertaining content, while connecting with others all over the globe. I post videos on a lot of different topics relevant to my daily life, including, for example, fashion and beauty products, travel, food, my relationship, friendships, and dogs. *See, e.g.,* Multimedia Upload at King Video A.<sup>1</sup> It is no exaggeration to

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<sup>1</sup> In compliance with the Court's June 3, 2024 Procedures Regarding Submission of Audio or Video Files, the Petitioners have uploaded to the Court's Box.com file repository a set of TikTok videos as

say that TikTok completely changed my life and opened up my world.

5. TikTok has an astonishing ability to create community. The platform encourages authentic expression—in contrast to many other social media apps that promote fakeness or filtering reality to appear perfect. Because of this encouragement, I have been able to be very vulnerable on TikTok and discuss deeply personal stories about my life—in addition to my more entertaining content.

6. For example, I made a series of TikTok videos about my traumatic childhood, explaining how my parents divorced when I was three, and I grew up on welfare. *See, e.g.,* Multimedia Upload at King Videos B & C.<sup>2</sup> Then, starting at age 12, I was in and out of a boys' home for troubled youth, spent time locked up in a juvenile custody center, and later lived in a group home. The amount of love and support that I received from my TikTok followers in response to these videos was immense and made me feel so grateful to be a part of this community. I

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part of the record. A public link to this particular TikTok video is also available here:

<https://www.tiktok.com/@btypep/video/7358586308920560942>.

<sup>2</sup>Public links to these TikTok videos are also available here:

<https://www.tiktok.com/@btypep/video/6946671894703656198?lang=en>;

<https://www.tiktok.com/@btypep/video/6949560195374648582?lang=en>.

am hopeful that sharing these memories helped educate others about what it is like to live in institutional homes for children.

7. I have also used TikTok to discuss my experience as a gay man living in Arizona, my loving 28-year relationship with my husband, and my sobriety journey. My TikTok followers especially love to ask questions during my TikTok LIVE-streams about my experience coming out as gay and about my marriage. I see it as my responsibility to share my experiences in the hopes that it might help others who may be struggling with certain issues such as embracing their identities and living confident, healthy lives. I have not experienced these same kinds of real and vulnerable conversations on other social media apps—something special about TikTok allows people to be themselves and seek out information that interests them. Additionally, many of the TikTok users asking me questions like these are Gen Z or young millennials—many of whom seem to use TikTok more than Facebook or Instagram.

8. My community on TikTok extends far beyond the United States. For example, I have followers in the United Kingdom, New Zealand, South Africa, and the Philippines. During recent trips to Mexico, Israel, Greece, Morocco, and France, I met many of my fans in

person. I enjoy interacting with my global audience, and meeting some of my fans in person was an incredible experience.

9. I make almost all my income from TikTok, including from the TikTok Creator Rewards Program, LIVE videos, and brand deals. At times, I have earned about \$2,500 for just one LIVE stream. My success on TikTok has also opened up many opportunities for me, such as becoming a published author and being honored at the Cheer Choice Awards, which recognizes creators on social media who are making a positive impact using their platforms.

10. I have not had anywhere near the same success on other social media platforms like Instagram, Facebook, or YouTube, despite posting content on them. While I have approximately 6.8 million followers on TikTok, I only have about 228,000 on Instagram, 137,000 on Facebook, and 16,100 on YouTube. These other apps have not helped my content to go viral in the same way that TikTok has, nor have I been able to establish the same sense of community among my followers. The manner in which TikTok curates content allows for a more real and authentic experience than the other apps, which fosters vulnerability and connection.

11. I also enjoy consuming content on TikTok. For example, I do not watch television, so I get all of my news from TikTok, including both national and global news. I follow certain local and international TikTok creators who are journalists that I trust to produce unbiased and authentic news. I also follow other content creators whom I find creatively inspiring and enjoy using TikTok for entertainment.

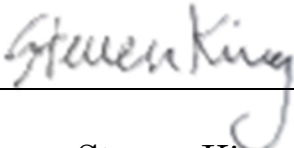
12. If TikTok is banned in the United States, I would immediately lose the career and community that I have worked so hard to build and would probably have to go back to working in healthcare administration. I have not been able to build the same community on other social media platforms, nor have I been able to monetize my content to the same extent. I would be extremely saddened to lose my community and the place where I have come to feel so at home in expressing myself creatively and engaging with others.

13. Even if TikTok was still available in the U.S. but divested from the rest of ByteDance, I would lose my international support and fan base. I love interacting with my international fans and visiting them abroad—it opens my world and exposes me to knowledge and culture outside my own.

14. I do not believe that the TikTok experience would remain the same even if the app were sold. A platform's owner can exert significant control over the user experience. I believe that if TikTok and its algorithm was sold to a U.S. investor, the entire platform will change because the new owner will make decisions that will adversely affect the user experience, just like other apps have done. Right now, TikTok is special and unique precisely because it allows for a free-flowing and authentic user experience, unlike the other apps.

I declare under penalty of perjury that the foregoing is true and correct.

Signed in Buckeye, Arizona this 17th day of June, 2024.



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Steven King



**IN THE UNITED STATES COURT OF APPEALS  
FOR THE DISTRICT OF COLUMBIA CIRCUIT**

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BRIAN FIREBAUGH, CHLOE  
JOY SEXTON, TALIA CADET,  
TIMOTHY MARTIN, KIERA  
SPANN, PAUL TRAN,  
CHRISTOPHER TOWNSEND,  
and STEVEN KING,

*Petitioners,*

v.

MERRICK B. GARLAND, in his  
capacity as United States Attorney  
General,

*Respondent*

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**DECLARATION OF TIMOTHY MARTIN IN SUPPORT OF  
PETITIONERS' BRIEF ON THE MERITS**

I, Timothy Martin, declare as follows:

1. I make this declaration from personal knowledge.
2. I live in Mayville, North Dakota, where I coach football at a state university. I played football as a quarterback at this same university before graduating and becoming a coach.
3. I attended college from 2018 to 2022, and took classes remotely during the Covid-19 pandemic. In 2020, during one of my

technology classes, my professor discussed the integration of social media and sports, which inspired me to try creating videos about sports on TikTok.

4. From the moment I made my first video, I found the process to be extremely fun and fulfilling—giving me an outlet for my creativity and allowing me to connect with people around the world over our love of sports. Especially during the isolation of the pandemic, creating TikTok videos was a way for me to express myself and connect with others virtually when I could not do so in person.

5. My TikTok videos primarily cover news in the world of college and professional football, including game recaps, player trades, coaching updates, team rivalries, stadium tours, sports history, and behind-the-scenes stories about teams or players. I also try to use my videos as an opportunity to spread positivity and joy, focusing on building others up and giving them something to look forward to.

6. Since 2020, I have consistently posted these videos on TikTok and have seen my content gain remarkable traction, to the point I now have one million followers on the app and some of my videos receive millions of views.

7. I have tried posting the same content on Instagram and YouTube, but have not had anywhere near the same success. On Instagram, I have approximately 10,200 followers, and on YouTube I have only 9,160 followers. In my experience, TikTok gets my videos in front of the viewers who are most likely to enjoy it—namely, sports fans—which has allowed me to grow a genuine and supportive following and reach many more people than on the other apps. On Instagram and YouTube, my videos do not seem to reach as many people, especially not new viewers and sports fans.

8. TikTok also seems to be able to get my content in front of different user communities. For example, I noticed that recently some Taylor Swift fans have discovered my TikTok account, which I suspect relates to the singer's relationship with Kansas City Chiefs' star, Travis Kelce, and a video I created to introduce football to Swift fans. *See* Multimedia Upload at Martin Video A.<sup>1</sup> Overall, I think of TikTok's

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<sup>1</sup> In compliance with the Court's June 3, 2024 Procedures Regarding Submission of Audio or Video Files, the Petitioners have uploaded to the Court's Box.com file repository a set of TikTok videos as part of the record. A public link to this particular TikTok video is also available here: <https://www.tiktok.com/t/ZPRKTW5vu/>.

algorithm as a smart TV, compared to the other apps' algorithms as old flat screen TVs, because TikTok seems to know much better than the other apps where to send my videos to allow them to have the most impact.

9. I really enjoy using the video editing app CapCut to create my TikTok videos. CapCut allows me to easily edit my videos and apply certain unique features that create a fun viewing experience. For example, I developed a signature style for sports commentary videos where I play sports footage in the background while using CapCut's green-screen feature to display my head overlaying the footage while I narrate the scene. *See Multimedia Upload at Martin Video B.*<sup>2</sup> I also often use CapCut's real-time text feature (which captures the narration and transforms it into readable text) along with my narration so viewers can read along, which is especially helpful for hearing-impaired users. *See Multimedia Upload at Martin Video C.*<sup>3</sup> CapCut makes the video

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<sup>2</sup> A public link to this TikTok video is also available here:

<https://www.tiktok.com/@timbosliceoflife12/video/7184163936453856554>

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<sup>3</sup> A public link to this TikTok video is also available here:

<https://www.tiktok.com/@timbosliceoflife12/video/7329317079184608554>

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editing process extremely user friendly. I do not believe that I could create the exact same effects—or express myself the same way—using a different application.

10. Because of the success of my TikTok videos, I have been able to earn as much as \$4,000 to \$5,000 each month, primarily from the TikTok Creator Rewards Program as well as some brand deals and gifts from TikTok Live. On average, this more than doubles the income that I am able to make as a new college football coach and allows me to continue doing what I love to do without financial stress.

11. The community I have grown on TikTok is even more valuable than the financial rewards. I have made so many wonderful connections through creating sports videos on the app. For example, a lot of former and current collegiate athletes follow my TikTok account, and I have even inspired some of them to start creating their own content. I try to spend at least a little time on TikTok every day liking or commenting on their videos. I also use the app for news about other sports like baseball and some news about politics, which I find to be more unbiased and authentic than on mainstream media.

12. I have a lot of international TikTok followers, and really enjoy engaging with them. For example, about 3.9% of my followers are from the United Kingdom, 3.5% from Canada, and I also have followers in Australia, Germany, and South Africa. I have some followers in Ireland who are very passionate about American football. Because the sport is not really covered in Ireland, these followers rely on my TikTok account to get their football news. They often watch my evening TikTok LIVE, in which I do a real-time video every night where users can interact with me and ask questions about sports news. Recently, these followers were very excited that two American universities will be playing a college football game in Dublin, and we got to discuss the topic over TikTok.

13. My success as a TikTok creator has also given me life-changing opportunities. For example, because of the following that I have amassed on the platform, I was invited to attend March Madness games—college-level basketball end-of-season playoffs—and make behind-the-scenes videos interviewing players in the locker rooms. I was also invited to attend Media Row—a preview of the Super Bowl—as a member of the press and got to meet a number of players from my favorite team, the Philadelphia Eagles. Some of these players and their family

members now follow me on TikTok. Because of the connections that TikTok has afforded me, I hope to be able to continue my career in the sports world whether through coaching or sports broadcasting.

14. A ban on TikTok would be devastating. As a former athlete, I struggled to define myself after I stopped playing sports—but creating content on TikTok gave me a new sense of purpose and helped strengthen my positivity and resilience. Losing TikTok would detrimentally affect me and many other former athletes who also rely on content creation to help them rediscover their voices after they stop playing sports. I would also lose access to the incredible community that has come to mean so much to me and to the supplemental income and opportunities that TikTok has afforded me over the years.

15. I do not believe that I would be able to replicate the same community on other social media platforms, as my experience on those platforms has been so different. Because my videos do not get anywhere near the same reach on YouTube and Instagram, I would also likely need to spend money to promote my content (*i.e.*, through the “promote” feature on Instagram), which would still probably not reach the same audience. In 2020 when former President Trump attempted to ban

TikTok, I asked my followers to follow me on Instagram and other platforms instead, but to this day, I still only have a fraction of the number of TikTok followers on other apps. Without the same community or financial benefits, I may stop creating content on social media entirely.

16. Even if a U.S. version of TikTok was still available, I would lose my international support and fan base. I really enjoy interacting with my international fans and discussing football with people living all over the world. Additionally, I am aware that the National Football League (“NFL”) is trying to promote American football more internationally—especially in some of the countries where my videos are popular, like the United Kingdom—and I love that my content helps to further that goal. It would be very disappointing if I was no longer able to interact with this global community on TikTok.

17. Other college football coaches and I used to use Twitter (now “X”) to communicate, but we have seen this app become a shell of its former self since Elon Musk acquired it. In particular, X no longer allows the public to see who “likes” certain content, and also limits the number of direct messages that unverified accounts can send per day, restricting the ability to communicate and engage. I worry that even if TikTok was



acquired by another company, my experience on the app and my ability to share information, express myself, and create community would be negatively impacted by decisions made by the new owner. Right now, TikTok is the best platform out there for me to express myself, and I don't want that to change.

18. I also worry about the Act as an American who cares about the First Amendment. While I am not very involved in government, my family ancestors include John Adams and John Quincy Adams, and one of my family members has run for political office. I have been raised with a deep respect for American values and freedom of speech, and the Act seems to violate the fundamental principle that Americans should be allowed to express themselves where and how they choose.

I declare under penalty of perjury that the foregoing is true and correct.

Signed in Mayville, North Dakota this 17th day of June, 2024.

A handwritten signature in black ink, appearing to read 'Timothy Martin', written over a horizontal line.

Timothy Martin

IN THE UNITED STATES COURT OF APPEALS  
FOR THE DISTRICT OF COLUMBIA CIRCUIT

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BRIAN FIREBAUGH, CHLOE  
JOY SEXTON, TALIA CADET,  
TIMOTHY MARTIN, KIERA  
SPANN, PAUL TRAN,  
CHRISTOPHER TOWNSEND,  
and STEVEN KING,

*Petitioners,*

v.

MERRICK B. GARLAND, in his  
capacity as United States Attorney  
General,

*Respondent*

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DECLARATION OF CHLOE JOY SEXTON IN SUPPORT OF  
PETITIONERS' BRIEF ON THE MERITS

I, Chloe Joy Sexton, declare as follows:

1. I make this declaration from personal knowledge.
2. I live in Memphis, Tennessee with my husband, children, and minor sister, of whom I have legal guardianship.
3. In 2020, I was let go from my job after telling my employer that I was pregnant. At the time, I was also struggling to care for my mother, who was dying of brain cancer, and my seven-year-old sister. I

started creating TikTok videos around then as a creative outlet and means to financially support my family.

4. My videos focused on dealing with the grief of seeing a loved one dying from cancer, the joys and struggles of parenting a newborn, and my love of baking. *See, e.g.,* Multimedia Upload at Sexton Video A.<sup>1</sup> I also started talking about my idea of launching a business making giant cookies in all kinds of flavors.

5. While I expected TikTok to be an entertaining creative outlet, I never could have anticipated the overwhelming sense of community and support that I get from interacting with my followers and other TikTok creators during this trying time in my life. My videos went viral, and I eventually amassed over two million followers, including people from all over the world. This community has supported me emotionally, made me laugh when I needed it the most, and given me knowledge to navigate some of my challenges.

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<sup>1</sup> In compliance with the Court's June 3, 2024 Procedures Regarding Submission of Audio or Video Files, the Petitioners have uploaded to the Court's Box.com file repository a set of TikTok videos as part of the record. A public link to this TikTok video is also available here:

<https://www.tiktok.com/@chloebuffcakes/video/7332548686473514286>.

6. For example, when my mother eventually passed away, I connected with followers from all over the world, especially women who were dealing with grief in many forms—losing mothers, children, and livelihoods. Some of my European TikTok followers informed me about bereavement therapy, which I found helpful for coping with my grief.

7. When I took guardianship of my little sister, I turned to my TikTok community for everything from how to cut her bangs to how to throw a tea party. In fact, when I threw my little sister a birthday party (her first birthday without our mom), hundreds of my TikTok followers—whom we had never met—showed up, dropping off gifts, decorations, and even brought a horse for pony rides. *See Multimedia Upload at Sexton Video B.*<sup>2</sup> This event went viral and even caused the famous singer, Kelly Clarkson, to reach out and ask to meet me and my sister. The power that TikTok has to create moments like this never ceases to amaze me.

8. Because of the support I received from my TikTok followers, I was able to open my giant cookie business, Chloe's Giant Cookies. My team and I have now shipped hundreds of thousands of cookies all over

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<sup>2</sup> A public link to this TikTok video is also available here:  
<https://www.tiktok.com/@chloebuffcakes/video/7118846290515201326>.

the world and baked custom orders for celebrities. I was even able to publish a cookbook and open a physical bakery for a few years—although I am now focusing more on online orders. I also generate income from the TikTok Creator Rewards program and brand deals on the app.

9. I continue to create TikTok videos documenting my baking process—everything from explaining how I came up with a new flavor to showing the behind-the-scenes of running a local business. These videos have strengthened my TikTok community and generated incredible brand loyalty for my cookies. I have found that the public wants to connect with the stories of the people who make their products instead of just buying from faceless corporations, and TikTok allows me to get my story out there in front of millions of people.

10. I enjoy creating videos in the TikTok app because the process is simple and intuitive. I use TikTok LIVE several times a week, which allows me to interact with my followers in real time and answer customer questions. I enjoy “going live” to share updates on everything from the cookie business to milestones in my children’s lives to coping with grief and figuring out next steps—and to answer questions and receive feedback from my followers in real time. Because of the close-knit

community that I have developed on TikTok, I feel comfortable being vulnerable and expressing myself on the app, which is not the same experience I have had on other social media platforms, where there is more pressure to filter and sanitize one's life to convey an unrealistic image of perfection.

11. The TikTok app also has certain tools that foster community, such as a separate "Friends Page" for users to connect specifically with people whom they follow. This allows me a unique channel to connect more deeply with other bakers and small-business owners and creators. For example, I have used this page to ask for advice on how to find work-life balance as a fellow creator.

12. I have tried posting my TikTok videos on Instagram, but have not had anywhere near the same success. While I have 2.2 million followers on TikTok, I only have about 85,000 on Facebook, and about 50,000 on Instagram, despite posting content on each platform. In fact, for approximately the past year, I have posted the exact same videos on all three platforms, but they have performed much better on TikTok. For example, I posted a video on June 3, 2024 on TikTok about my attempt to make cookie butter, and it got approximately 5.4 million views,

compared to about 500,000 on Instagram and about 1,900 views on Facebook. *See* Multimedia Upload at Sexton Video C.<sup>3</sup> I believe this success is related to TikTok's ability to get my content in front of new viewers and specific communities that are most likely to resonate with it—such as mothers and other baking aficionados. Instagram and Facebook, by contrast, seem better suited for sharing my content with people I already know—such as friends, family, and neighbors—instead of exposing it to a diverse group of people I have never met from all over the world.

13. A ban on TikTok would greatly impact me. I would be stripped of the vibrant community of TikTok followers who have consistently supported me throughout grief and the early days of parenthood, as well as celebrated my successes. I worked very hard to build this community, and could not replicate it on other platforms, as I have already tried and failed to do.

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<sup>3</sup> A public link to this video is available here: <https://www.tiktok.com/t/ZPRK71Cpj/>. A public link to the same video on Instagram is available here: <https://www.instagram.com/p/C7xUJIUA092/>. The same video is also available on my Facebook page here: <https://www.facebook.com/chloesgiantcookies/>.

14. If TikTok was no longer available, I also would have to find another source of income and a different way of communicating to the public about my cookie company. I cannot think of a replacement for the free platform that TikTok provides me for sharing the intimate details of running my small business (as well as my personal life) that have created such a large and loyal brand following. Because my videos do not get anywhere near the same reach on Instagram or Facebook, I would likely need to rely on spending money to promote my content, which would still probably not get it in front of the same audience. As the owner of a small business, I don't have the capital needed to effectively promote the company through traditional marketing streams to anywhere near the same level that TikTok affords me for free. I worry that, without TikTok, I may well have to close the cookie business that has brought me so much joy and fulfillment these past few years.

15. Even if a U.S. version of TikTok were still available, I would lose access to my international followers. Interacting with women, mothers, and others from other countries has given me valuable insights and information over the years. I also enjoy consuming content from




abroad for entertainment purposes. If I could only interact with other Americans, my world would be much smaller.

16. I do not agree with the government's stated justifications for the Act. I do not feel unsafe when I use TikTok—if anything, this law makes me feel unsafe by directly threatening my future and the community I have worked so hard to build.

I declare under penalty of perjury that the foregoing is true and correct.

Signed in Memphis, Tennessee this 18th day of June, 2024.

A handwritten signature in black ink, appearing to read "Chloe Joy Sexton", is written over a horizontal line.

Chloe Joy Sexton

**IN THE UNITED STATES COURT OF APPEALS  
FOR THE DISTRICT OF COLUMBIA CIRCUIT**

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BRIAN FIREBAUGH, CHLOE  
JOY SEXTON, TALIA CADET,  
TIMOTHY MARTIN, KIERA  
SPANN, PAUL TRAN,  
CHRISTOPHER TOWNSEND,  
and STEVEN KING,

*Petitioners,*

v.

MERRICK B. GARLAND, in his  
capacity as United States Attorney  
General,

*Respondent*

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**DECLARATION OF KIERA SPANN IN SUPPORT OF  
PETITIONERS' BRIEF ON THE MERITS**

I, Kiera Spann, declare as follows:

1. I make this declaration from personal knowledge.
2. I recently graduated from college in Delaware, and moved to Charlotte, North Carolina, where I work in fundraising.
3. In 2020, I was studying political science in college and learning about the American government and political concepts in a more straight-forward way than I had seen presented in the media. I started

creating TikTok videos around this time to share thoughts and insights with the public in a format that was easy to understand. I found it incredibly rewarding to bring bipartisan information to the public in a digestible way so that everyone could understand politics and vote in an informed manner. My content resonated with others, and by the end of 2020, I had acquired approximately half a million TikTok followers.

4. The next year, when I was a sophomore in college, one of my classmates experienced a brutal assault in which she was choked unconscious, blinded with spray paint, and thrown down a flight of stairs by another student. I felt that the university failed to adequately address this crime, so I attended a small protest of about 50 people that some of my classmates organized after the victim was released from the hospital. At the event, I was horrified to see observers laughing and a heavy police presence. I started filming the event and posted it on TikTok.

5. That video received about nine million views and was covered by major national news stations. It brought much-needed attention to an incident that the university—in my opinion—was trying to sweep under the rug. I also organized a second protest that was attended by over 1,000 people in the Newark area. Ultimately, the perpetrator was held

accountable in court and my community undertook meaningful reforms, results which I credit (at least in part) to the exposure flowing from my video and the resulting media coverage. For example, the university repaired broken safety lights on campus, and university law enforcement upgraded the emergency alert system to include off-campus sexual violence. Additionally, some fraternities required their members to have closed cans available at their parties to avoid the possibility of drugging party-goers' beverages. I was also able to start survivor support groups and had conversations with state legislators about potential Title IX safety reforms in Delaware. I was amazed to see the power of TikTok to inspire and accelerate real change in my community.

6. I continue to create videos on TikTok to support survivors of domestic violence and sexual assault and to advocate for reforms in this area. As a survivor of assault myself, this topic is very important to me. I am fulfilled by using TikTok for purposes such as spreading the reforms we enacted at my university to other schools. I also continue to create TikTok videos about news and politics and now partner with a variety of non-profits to spread awareness about issues such as criminal justice

reform and healthcare access. Finally, I use TikTok for entertainment and to post reviews of books that I'm reading.

7. The survivor community that I have found on TikTok is unlike anything I have ever experienced. I have connected with survivors and advocates all over the world—bonding over and grieving our shared experiences while learning from our differences. For example, almost 20 percent of my followers are from outside the United States—many in the United Kingdom, Canada, and Australia. I receive numerous TikTok messages from women in these and other countries, sharing their stories of pain, resilience, and change. Some young women reach out to me to ask for advice about what they can do to make their college campuses safer. And other times, when I post a video on TikTok about a particular assault, my comment section explodes with sympathy and empathy for the survivor and others sharing their own similar experiences.

8. I have not been able to develop this kind of community on any other social media app. Some other apps make it very difficult to talk about issues such as sexual assault by flagging such videos as violating community standards or terms of service—even when they are not graphic or descriptive. This makes it all but impossible to create an

organic community among survivors where they can process their experiences without having to resort to code words or self-censorship. On TikTok, by contrast, I am able to consistently connect with the survivor community, and some of my videos about supporting survivors or changing policies around assault and domestic violence have been my most widely viewed.

9. I have tried posting the same or similar content on other apps, but have not had anywhere near the same success. While I have over 770,000 followers on TikTok, I only have about 9,200 on Instagram and just 741 on YouTube. I consistently get far greater engagement on TikTok and exposure to new viewers who are likely to find my content interesting. TikTok also allows me to monetize my content, which I cannot currently do on Instagram with my number of followers. I make approximately half of my income from creating videos on TikTok (either through the Creator Rewards Program or brand deals), although my first priority has always been helping to grow and strengthen my community.

10. Around the time of former-President Trump's 2020 executive order banning TikTok, I asked my TikTok followers to start following me on other social media platforms. However, I only got a few hundred

additional followers on Instagram, even though I had about half a million followers on TikTok at the time. I know it would be practically impossible to create the same following and community on another platform.

11. One of the practical things that I love about TikTok is how easy it is to edit my videos either in the TikTok app or using CapCut, another app that focuses on video editing and features. I can edit and upload a TikTok video in a matter of minutes—whereas it usually takes me hours to edit a YouTube video. Some of the video editing tools in other apps are not user-friendly, but TikTok and CapCut make it very easy to get my speech out there.

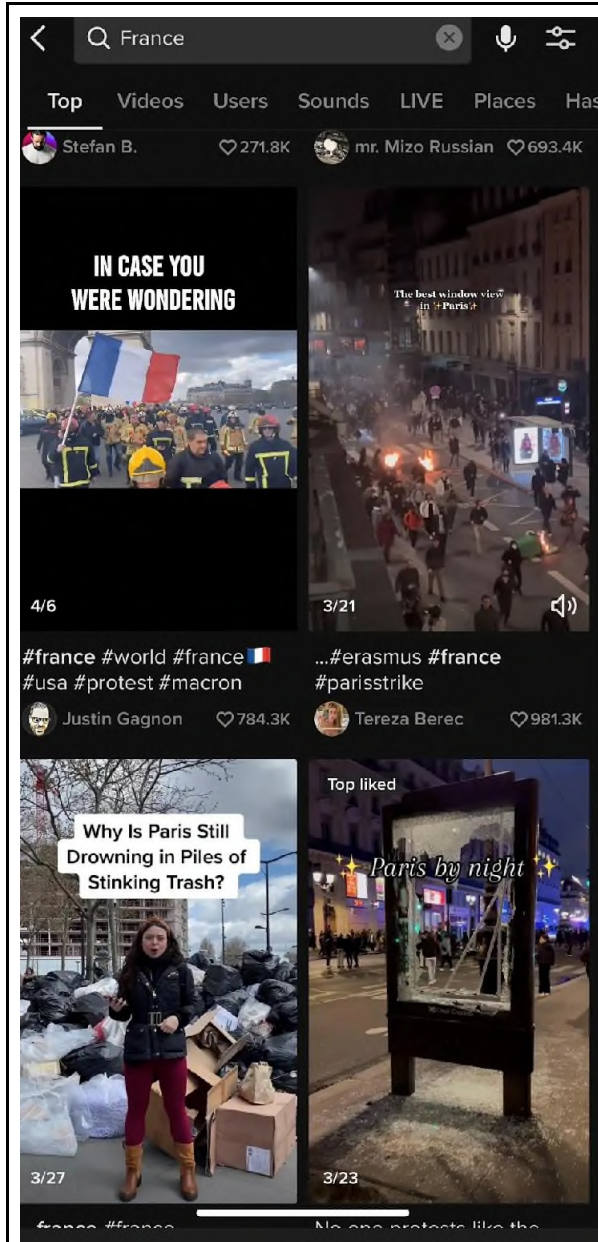
12. I also enjoy using certain TikTok tools like adding pictures and screenshots to my videos (which allows me to reference and comment on them while I narrate in the foreground). *See, e.g.,* Multimedia Upload at Spann Video A.<sup>1</sup> And I sometimes use the TikTok LIVE feature if I want to connect with my followers in real-time over some breaking news.

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<sup>1</sup>In compliance with the Court's June 3, 2024 Procedures Regarding Submission of Audio or Video Files, the Petitioners have uploaded to the Court's Box.com file repository a set of TikTok videos as part of the record. A public link to this particular TikTok video is also available here: <https://www.tiktok.com/@famousblonde/video/7327088157323824427?lang=en>.

13. I also enjoy consuming content on TikTok. I often watch content on TikTok accounts dedicated to covering news, political education, and books, as well as on the accounts of other sexual assault survivors. I find TikTok to be one of the most authentic and timely sources where you can hear diverse and organic perspectives instead of the more curated and potentially biased accounts from mainstream media and even from other social media platforms. For example, during the April 2023 protests in Paris over the retirement age, French TikTok creators shared powerful on-the-ground footage of the protests and interviews with other French citizens about the retirement issue. When I searched for “France” on my TikTok account during this time, this kind of valuable footage popped up. But when I searched for “France” on Instagram during the same time period, the leading results were of the Eiffel Tower and other tourist content. This is just one example of how TikTok provides a more authentic, realistic, and organic experience than the other apps. Below are true and correct screenshots comparing these images that I saw on TikTok (left) as compared to Instagram (right) as of April 21, 2023.





TikTok



Instagram

14. I find TikTok to be the most timely place to learn about current events. I always hear about news from TikTok first—it can

sometimes be days or even longer before news on TikTok trickles down to the other social media platforms. The virality of TikTok and its ability to send speech out to broad audiences with incredible speed is unparalleled.

15. A ban on TikTok would impact me very much, as I would lose my ability to share information and perspectives with hundreds of thousands of people around the country and the world. The Act would thus deprive me of access to a critical forum for connecting with the communities that I have carefully cultivated over the past few years, especially the sexual assault advocacy community. The Act would also be an enormous hindrance to the work I do in advocating for further reform—such as trying to implement the changes from my university at other schools.

16. Even if TikTok was still available in the U.S. but sold to another company, I would still be affected because I would lose my ability to connect with and learn from the international community, which is a big part of my TikTok experience. I also worry that, if forced to divest, TikTok's new owner may make changes to the app that will fundamentally alter my experience—just as we saw happen when Elon


Musk bought Twitter. Twitter used to be a great space to obtain information; now, it is a nightmare to use because the algorithm was altered and I see content on the “For You Page” that I do not like or find interesting. This shows how much a new owner of a platform can change the programming of the product and thus, the public’s experience of the app.

17. For example, right now, TikTok is unique because it does not allow paid advertising by individual politicians—thus, the main political content on the app is created and controlled by users. If TikTok’s new owner started allowing more paid political advertising, then the algorithm would be subject to the agendas of any number of politicians.

18. I do not find the government’s stated justifications for the Act to be compelling. To me, it seems clear that the Act is not about data security—if it was, then Congress would have passed a law affecting all technology platforms, not singling out TikTok. Rather, I think the Act is about control, and the government passed it because they are scared of how much power TikTok gives American citizens to amplify their voices and have their stories and opinions heard. It would be devastating for our democracy to ban such a tool.

I declare under penalty of perjury that the foregoing is true and correct.

Signed in Charlotte, North Carolina this 18th day of June, 2024.



Kiera Spann

IN THE UNITED STATES COURT OF APPEALS  
FOR THE DISTRICT OF COLUMBIA CIRCUIT

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BRIAN FIREBAUGH, CHLOE  
JOY SEXTON, TALIA CADET,  
TIMOTHY MARTIN, KIERA  
SPANN, PAUL TRAN,  
CHRISTOPHER TOWNSEND,  
and STEVEN KING,

*Petitioners,*

v.

MERRICK B. GARLAND, in his  
capacity as United States Attorney  
General,

*Respondent*

---

**DECLARATION OF CHRISTOPHER TOWNSEND IN SUPPORT OF  
PETITIONERS' BRIEF ON THE MERITS**

I, Christopher Townsend, declare as follows:

1. I make this declaration from personal knowledge.
2. I live with my family in Philadelphia, Mississippi.
3. I served in the U.S. Air Force for six years as a cryptologic

language analyst. I am deeply patriotic, and my political views are informed by my time in the Air Force and the respect that I have for others who have done and continue to do the same.

4. Today, I run a registered non-profit called Stay in That Word Ministries, which I founded to promote biblical literacy through fun and interactive quizzes. I am also a successful hip-hop artist, and I write, record, and perform music to express my spiritual beliefs and my conservative political views.

5. I was inspired to join TikTok in 2019 because I was experimenting with video editing and wanted to try making videos with TikTok's green screen feature. From the beginning, I found that TikTok's unique features and tools allowed me to express my ideas creatively. TikTok's editing tools were especially conducive to creating videos sharing my views on politics and current events. For example, one of the first videos I made and shared was a "rebuttal" to a video I saw by another TikTok user discussing then-President Trump's policy proposal to limit food stamps. I believe that TikTok users benefit from hearing differing points of view, so I responded to the video using the "stitch" tool, which allowed me to play a segment of the original video and then add my commentary. I received a lot of positive and encouraging comments from people who agreed with me, so I began to post more videos responding to and commenting on articles, news stories, and current

events. I would not have been able to create such engaging videos on other social media platforms in part because at the time they lacked some of the same editing capabilities. Even today, while other social media apps have tried to mimic TikTok's editing tools, I find the experience on TikTok to be much more natural and intuitive.

6. My experience on TikTok has differed from my experience on other social media platforms in other important ways. I was used to being overwhelmed with vitriol in response to my political posts on other platforms, such as on Facebook and Instagram. But on TikTok, my videos quickly started gaining traction with other users on the app. With TikTok's distinct culture allowing me to speak freely and share my authentic opinions, I began to connect with people from all over the country. This led me to create content specifically for TikTok that I would not share on other platforms. In particular, when I share opinions that might be considered more controversial, I am comfortable sharing those on TikTok, but do not share them on Facebook or Instagram because I know I will just be shouted down. There are also types of content, such as lip-syncing videos or other joke content, that are specific to the TikTok culture, which I enjoy creating with my patriotic, political, and Christian

messages but do not resonate on other platforms. *See, e.g.*, Multimedia Upload at Townsend Video A.<sup>1</sup>

7. On TikTok, I have developed a vast following and community far beyond what I ever attained on Facebook or Instagram. For example, I have approximately 2.5 million followers on TikTok, but only 1.9 million on Facebook, and 298,000 on Instagram, despite sharing some of the same videos on both platforms. Even though I have a lot of Facebook followers, I get more engagement on my videos on TikTok on average than I do on Facebook. I believe this is because TikTok's algorithm ensures that users with similar interests are likely to see my videos in their TikTok "For You Page." I am inspired to continue creating and sharing videos because I know that they are likely to be seen by those most interested and those less likely to be hostile to my work. In that way, TikTok opens the door to build community and connection and exchange ideas with other Christians and conservative-minded people, or

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<sup>1</sup> In compliance with the Court's June 3, 2024 Procedures Regarding Submission of Audio or Video Files, the Petitioners have uploaded to the Court's Box.com file repository a set of TikTok videos as part of the record. A public link to this particular TikTok video is also available here:

<https://www.tiktok.com/@tophertownmusic/video/7350397476077178143?lang=en>.



with people interested in learning more about the Bible and my political point of view.

8. In 2020, I was invited by several other Christian and conservative TikTok creators to help develop the Conservative Hype House, an account run by a collective of creators who discuss and debate views on current events from a conservative perspective and take turns posting videos to the collective's followers. I contributed content to the Conservative Hype House in addition to regularly posting videos on my own.

9. Now, I primarily use TikTok to carry out the mission of Stay in That Word Ministries, which I created to encourage a deeper understanding of the Bible and its relevance in our lives and to inspire a lifelong love of learning and exploration of faith. I developed quizzes about the stories, principles, and teachings of the Bible, and I create videos interviewing and quizzing people (mostly strangers) on their knowledge. I share these lighthearted videos with my TikTok followers. By making biblical literacy accessible and engaging, I aim to foster a community of individuals committed to living out the values and principles taught in the Bible in their daily lives. In my experience,

TikTok is the best platform for this content because, as described above, the algorithm will push it to new and interested users, which is vital to my mission of *increasing* biblical literacy and knowledge of Christian teachings.

10. I started to earn enough income through TikTok to become a full-time creator in August 2020. Since then, I have earned substantial income on TikTok directly, mostly through the Creator Rewards Program and some brand partnerships. I also recently had the chance to co-author a book because of my TikTok presence.

11. TikTok also paved the way for my success in other areas. For example, I am a hip-hop artist, and my music addresses topics such as my faith, patriotism, and political views. My music really took off when I started sharing it on TikTok. Before, my music was much less well-known, even though I had shared it on Instagram, Facebook, and YouTube; one of my songs would not even reach 1,000 streams in a year.

12. Finally, I had my first major commercial success with my song called “The Patriot,” which I released in December 2020. I heavily pushed this song on TikTok, which I believe played a critical role in making it go viral. TikTok allowed me to use song excerpts in my videos

that included information about the musical community's use of that song—which other apps did not allow at the time. The song reached No. 1 on the Billboard Rap Digital Song Sales in February 2021, and has been streamed over 22 million times on Spotify alone. I have also had other songs climb the Billboard Charts, and my music has now been streamed over 100 million times. I earn substantial income every month from music streams. I strongly believe this is partly a result of TikTok helping my music reach the audiences with whom it most resonates. The success of my music is dependent on my ability to share it on TikTok, and I fear that if I no longer have access to the app, my music career will be damaged.

13. I also enjoy collaborating with other musical artists on TikTok. For example, I created a TikTok “duet” on top of a clip from a military cadence theme song that another musical artist, MJ Hanks, had posted on TikTok. *See* Multimedia Upload at Townsend Video B.<sup>2</sup> I then reached out to him over TikTok to collaborate further in creating a new song, which ended up being featured in a film produced by Denzel

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<sup>2</sup> A public link to this TikTok video is also available here:

<https://www.tiktok.com/@tophertownmusic/video/7245424033091620142?lang=en&q=i%20left%20my%20home%20topher&t=1718496326699>.

Washington. In my experience, TikTok fosters collaboration among the musical community in a way that other apps do not.

14. Another reason that I have had a much more positive experience on TikTok than on platforms such as Instagram, Facebook, and YouTube, is that I trust the platform more than I trust others. Facebook and Instagram often suggest content that does not at all align with my interests or values, and my content on these apps does not tend to reach as many people. Those it does reach sometimes respond in an aggressive and angry manner, and I have experienced both spam and harassment. TikTok's algorithm, on the other hand, has allowed me to express myself and communicate with others whose friendship I have come to value greatly, without facing the same aggression, anger, and backlash I have faced on other platforms. I also like that TikTok allows me to use the "Following" page that centers my experience on the creators that I choose to follow.

15. TikTok has also allowed me to dive deeper into other interests and discover new ones. For example, I follow gamers and creators who share their knowledge and tips—even on obscure topics like taking care of a lawn. In addition to getting interesting and valuable information

from these creators, many of them have also begun to engage with my content about religion and values. This kind of cross-pollination of interests on TikTok creates even more opportunities to learn and build communities with multiple overlapping shared interests.

16. I am extremely worried about how a TikTok ban would impact me and my family. TikTok has brought great value to my life—not just financially, but also because it allows me to express myself and share ideas with others to an extent that I have not experienced on any other platform. Because my experience on other platforms has been so different, I do not think it would be possible to replicate my TikTok network elsewhere. I would lose a space for expressing myself that has come to mean so much to me.

17. Even if TikTok is sold to a U.S. company, I am concerned that the Act will cause me to lose the ability to express myself to—and see content from—creators from all over the world. I have followers from all over the world, including in Switzerland, Australia, New Zealand, Scotland, Ireland, Ghana, and South Africa. I also have an especially large following among Christians in Kenya, who engage with my Bible quizzes and other Christian content. I am concerned that the Act will

cause me to lose contact with these groups.

18. As a veteran and an American who values free speech, I find it disturbing that the government is taking such an extreme step to close a forum for expression for so many Americans based on concerns for which they have not shared any evidence. I see the Act as an unacceptable infringement on speech, and it betrays the values that I sought to protect while serving in the armed forces.

I declare under penalty of perjury that the foregoing is true and correct.

Signed in Philadelphia, Mississippi this 17th day of June, 2024.

A handwritten signature in black ink, appearing to read 'C. Townsend', is written over a horizontal line.

Christopher Townsend

IN THE UNITED STATES COURT OF APPEALS  
FOR THE DISTRICT OF COLUMBIA CIRCUIT

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BRIAN FIREBAUGH, CHLOE  
JOY SEXTON, TALIA CADET,  
TIMOTHY MARTIN, KIERA  
SPANN, PAUL TRAN,  
CHRISTOPHER TOWNSEND,  
and STEVEN KING,

*Petitioners,*

v.

MERRICK B. GARLAND, in his  
capacity as United States Attorney  
General,

*Respondent*

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DECLARATION OF PAUL TRAN IN SUPPORT OF  
PETITIONERS' BRIEF ON THE MERITS

I, Paul Tran, declare as follows:

1. I make this declaration from personal knowledge.

2. I live in Atlanta, Georgia with my wife and children.

3. In 2018, my wife and I founded a skincare company called Love and Pebble. My wife struggled with acne as a teenager and experimented with remedies made out of home items like fruit and yogurt, as she did not have enough money for expensive acne products.

This hobby turned into a lifelong interest, and when we met, we combined my background in pharmaceuticals with her passion for healthy and affordable skincare to create a company focused on using powerful plant-based ingredients to invigorate skin. Our most popular product, the “beauty pop,” is made with superfoods like papaya, banana, turmeric, and aloe vera—and then frozen into a small popsicle that is rolled over the face, melting into an innovative face mask.

4. This company means the world to me and my wife, and we have made immense personal, emotional, and financial sacrifices to keep it afloat. For the first few years, the business teetered on the brink of failure, as we struggled to market our products through traditional advertising and other social media apps. Especially in the competitive skincare market, breaking through to the public was very difficult. At several junctures, it seemed inevitable that we would have to shut down the company.

5. Around the spring of 2021, we started making TikTok videos about our story as married small business owners. Our videos are deeply personal—for example, we sometimes show my wife’s mother using the beauty pops or include a fun video featuring our young daughter. *See*



Multimedia Upload at Tran Video A.<sup>1</sup> Eventually, some of these videos went viral on TikTok. Pretty soon, we were selling out of inventory and receiving unbelievable opportunities, such as offers to appear on television shows like “Shark Tank” and “The Today Show.” TikTok truly invigorated our company and saved it from collapse.

6. More recently, in 2023, after losing money on Facebook advertisements for years, we decided to launch our skincare line in TikTok Shop (TikTok’s integrated e-commerce solution that allows sellers to sell products directly on the platform). This move has been life-changing for us. Our sales have gone up substantially, and we now sell approximately 90% of our products through TikTok Shop. We also partner with approximately 2,000 TikTok “affiliates”—other TikTok creators who make videos about our products to share with their audiences on the app in exchange for a share in our revenue. This partnership also accelerated our sales.

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<sup>1</sup> In compliance with the Court’s June 3, 2024 Procedures Regarding Submission of Audio or Video Files, the Petitioners have uploaded to the Court’s Box.com file repository a set of TikTok videos as part of the record. A public link to this particular TikTok video is also available here:  
<https://www.tiktok.com/@loveandpebble/video/6992298700928240902?lang=en>.

7. The TikTok Shop Affiliate Program provides opportunities for the affiliates to create expressive videos about products they love and to generate substantial income. For example, one of our top affiliates supports herself with the income that she earns from creating and posting TikTok videos supporting our and other businesses. These income opportunities are particularly valuable for stay-at-home parents and other caretakers who can support their families from their homes. My wife and I have become very close with some of our affiliates, and get a lot of satisfaction from working together and helping each other.

8. In addition to the product sales, I am very proud of the strong community that my wife and I have found and built on TikTok. We have connected with TikTok users and creators all over the world and bonded over our love of skincare, as well as our experiences as parents, small business owners, and Asian Americans. This community is one of my favorite things about TikTok.

9. We have tried using other platforms to promote our small business and create a similar sense of community, but have not had anywhere near the same success as on TikTok. For example, Love and Pebble has 142,800 followers on TikTok, but only 23,300 on Instagram

and a mere 1,700 on Facebook, despite regularly posting on each platform. Sometimes we post the same content from TikTok on other platforms, but we still get paltry engagement compared to what we see on TikTok. I believe this is because TikTok is able to share our content with more new viewers and specifically to those who are likely to be interested in skincare. We have also tried selling our products through Amazon and our own company website, but no platform has come close to the level of access, visibility, and community that TikTok has provided us.

10. My wife and I create the videos that we post on TikTok. She usually stars in the video while I film and edit. I like to film and edit directly in the TikTok app or using CapCut, as these tools make the process very easy and straightforward. We and our affiliates also enjoy using the “duet” and “stitch” features on the app because they provide ways for us to connect with other creators and followers and strengthen our community. For example, we recently posted a duet with a short film-creator in celebration of Asian American and Pacific Islander Heritage Month, in which one of the Love and Pebble creators is using a beauty pop while watching a short film about powerful intergenerational bonds

between Asian American children and their immigrant parents. See Multimedia Upload at Tran Video B.<sup>2</sup> As a minority-owned company, it is important for us to share our stories—and TikTok provides us with the tools and the platform to do so.

11. In addition to promoting my small business and engaging with my community, I also enjoy using TikTok for personal creative expression and exploration. I created a personal TikTok account to document experiences with my young daughter, and to serve as a kind of chronological scrapbook of memories from her growing up. This account is something that I do just for us; I do not care how many people see it. But this content has provided the unexpected benefit of allowing me to connect with other “girl dads” on TikTok, and I enjoy following their accounts for inspiration on fun things I can do with my daughter as well as to remind me to enjoy the little moments.

12. I also love seeing content on TikTok about martial arts, specifically Brazilian jiu-jitsu—a hobby that I am passionate about. I like to follow other practitioners and fans of the sport to learn techniques

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<sup>2</sup> A public link to this TikTok video is also available here: <https://www.tiktok.com/@loveandpebble/video/7375287727786528046?lang=en>.

and laugh over entertaining memes. Additionally, TikTok is a wonderful resource for researching travel, new restaurants, and other experiences—and I rely on it when I'm planning excursions with my family.

13. A ban of TikTok would greatly impact me and my family. Because we sell 90 percent of our products over TikTok, the small business that we worked so hard to create and sustain would take a devastating blow. We would lose all of the momentum and traction that we have built through TikTok over the years and would need to start from scratch. We tried traditional marketing (and marketing on other social media platforms) for years to no avail; and I see no reason why things would be different now. This change would not only affect my immediate family, but also the TikTok affiliates who rely partly on income from our revenue shares to provide for themselves and their families. Some of these affiliates have already contacted us, expressing concern about what will happen to them if the Act takes effect. In addition to the substantial financial loss, I would be incredibly saddened to lose access to the invaluable community that my wife and I have built

on TikTok—a community that has celebrated our wins and supported us through our lowest moments.

14. Even if a U.S. version of TikTok were available, my wife and I would lose our international followers. We really enjoy learning from and engaging with our foreign followers on TikTok.

I declare under penalty of perjury that the foregoing is true and correct.

Signed in Atlanta, Georgia this 18th day of June, 2024.

A handwritten signature in black ink, appearing to read 'Paul Tran', is written over a horizontal line. The signature is stylized and cursive.

Paul Tran



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# How TikTok recommends videos #ForYou

TikTok's mission is to inspire creativity and bring joy. We're building a global community where you can create and share authentically, discover the world, and connect with others. The For You feed is part of what enables that connection and discovery. It's central to the TikTok experience and where most of our users spend their time.

When you open TikTok and land in your For You feed, you're presented with a stream of videos curated to your interests, making it easy to find content and creators you love. This feed is powered by a recommendation system that delivers content to each user that is likely to be of interest to that particular user. Part of the magic of TikTok is that there's no one For You feed – while different people may come upon some of the same standout videos, each person's feed is unique and tailored to that specific individual.

The For You feed is one of the defining features of the TikTok platform, but we know there are questions about how recommendations are delivered to your feed. In this post we'll explain the recommendation system behind the For You feed, discuss how we work to counter some of the issues that all recommendation services can grapple with, and share tips for how you can personalize your discovery experience on TikTok.

## The basics about recommendation systems

Recommendation systems are all around us. They power many of the services we use and love every day. From shopping to streaming to search engines, recommendation systems are designed to help people have a more personalized experience.

In general, these systems suggest content after taking into account user preferences as expressed through interactions with the app, like posting a comment or following an account. These signals help the recommendation system gauge the content you like as well as the content you'd prefer to skip.

## What factors contribute to For You?

On TikTok, the For You feed reflects preferences unique to each user. The system recommends content by ranking videos based on a combination of factors – starting from interests you express as a new user and adjusting for things you indicate you're *not* interested in, too – to form your personalized For You feed.

Recommendations are based on a number of factors, including things like:

- **User interactions** such as the videos you like or share, accounts you follow, comments you post, and content you create.
- **Video information**, which might include details like captions, sounds, and hashtags.
- **Device and account settings** like your language preference, country setting, and device type. These factors are included to make sure the system is optimized for performance, but they receive lower weight in the recommendation system relative to other data points we measure since users don't actively express these as preferences.

All these factors are processed by our recommendation system and weighted based on



device type. These factors are included to make sure the system is optimized for performance, but they receive lower weight in the recommendation system relative to other data points we measure since users don't actively express these as preferences.

All these factors are processed by our recommendation system and weighted based on their value to a user. A strong indicator of interest, such as whether a user finishes watching a longer video from beginning to end, would receive greater weight than a weak indicator, such as whether the video's viewer and creator are both in the same country. Videos are then ranked to determine the likelihood of a user's interest in a piece of content, and delivered to each unique For You feed.

While a video is likely to receive more views if posted by an account that has more followers, by virtue of that account having built up a larger follower base, neither follower count nor whether the account has had previous high-performing videos are direct factors in the recommendation system.

### Curating your personalized For You feed

#### *Getting started*

How can you possibly know what you like on TikTok when you've only just started on the app? To help kick things off we invite new users to select categories of interest, like pets or travel, to help tailor recommendations to their preferences. This allows the app to develop an initial feed, and it will start to polish recommendations based on your interactions with an early set of videos.

For users who don't select categories, we start by offering you a generalized feed of popular videos to get the ball rolling. Your first set of likes, comments, and replays will initiate an early round of recommendations as the system begins to learn more about your content tastes.

#### *Finding more of what you're interested in*

Every new interaction helps the system learn about your interests and suggest content – so the best way to curate your For You feed is to simply use and enjoy the app. Over time, your For You feed should increasingly be able to surface recommendations that are relevant to your interests.

Your For You feed isn't only shaped by your engagement through the feed itself. When you decide to follow new accounts, for example, that action will help refine your recommendations too, as will exploring hashtags, sounds, effects, and trending topics on the Discover tab. All of these are ways to tailor your experience and invite new categories of content into your feed.

#### *Seeing less of what you're not interested in*

TikTok is home to creators with many different interests and perspectives, and sometimes you may come across a video that isn't quite to your taste. Just like you can long-press to add a video to your favorites, you can simply long-press on a video and tap "Not Interested" to indicate that you don't care for a particular video. You can also choose to hide videos from a given creator or made with a certain sound, or report a video that seems out of line with our guidelines. All these actions contribute to future recommendations in your For You feed.

### Addressing the challenges of recommendation engines

One of the inherent challenges with recommendation engines is that they can inadvertently limit your experience – what is sometimes referred to as a "filter bubble." By optimizing for personalization and relevance, there is a risk of presenting an increasingly homogenous stream of videos. This is a concern we take seriously as we maintain our recommendation system.

#### *Interrupting repetitive patterns*

To keep your For You feed interesting and varied, our recommendation system works to







By optimizing for personalization and relevance, there is a risk of presenting an increasingly homogenous stream of videos. This is a concern we take seriously as we maintain our recommendation system.

#### ***Interrupting repetitive patterns***

To keep your For You feed interesting and varied, our recommendation system works to intersperse diverse types of content along with those you already know you love. For example, your For You feed generally won't show two videos in a row made with the same sound or by the same creator. We also don't recommend duplicated content, content you've already seen before, or any content that's considered spam. However, you might be recommended a video that's been well received by other users who share similar interests.

#### ***Diversifying recommendations***

Diversity is essential to maintaining a thriving global community, and it brings the many corners of TikTok closer together. To that end, sometimes you may come across a video in your feed that doesn't appear to be relevant to your expressed interests or have amassed a huge number of likes. This is an important and intentional component of our approach to recommendation: bringing a diversity of videos into your For You feed gives you additional opportunities to stumble upon new content categories, discover new creators, and experience new perspectives and ideas as you scroll through your feed.

By offering different videos from time to time, the system is also able to get a better sense of what's popular among a wider range of audiences to help provide other TikTok users a great experience, too. Our goal is to find balance between suggesting content that's relevant to you while also helping you find content and creators that encourage you to explore experiences you might not otherwise see.

#### ***Safeguarding the viewing experience***

Our recommendation system is also designed with safety as a consideration. Reviewed content found to depict things like graphic medical procedures or legal consumption of regulated goods, for example – which may be shocking if surfaced as a recommended video to a general audience that hasn't opted in to such content – may not be eligible for recommendation. Similarly, videos that have just been uploaded or are under review, and spam content such as videos seeking to artificially increase traffic, also may be ineligible for recommendation into anyone's For You feed.

#### ***Improving For You***

Developing and maintaining TikTok's recommendation system is a continuous process as we work to refine accuracy, adjust models, and reassess the factors and weights that contribute to recommendations based on feedback from users, research, and data. We are committed to further research and investment as we work to build in even more protections against the engagement bias that can affect any recommendation system.

This work spans many teams – including product, safety, and security – whose work helps improve the relevance of the recommendation system and its accuracy in suggesting content and categories you're more likely to enjoy.

Ultimately, your For You feed is powered by your feedback: the system is designed to continuously improve, correct, and learn from your own engagement with the platform to produce personalized recommendations that we hope inspire creativity and bring joy with every refresh of your For You feed.

*Note: At the [TikTok Transparency Center](#) in Los Angeles, invited experts will have the opportunity to learn how our algorithm operates along with reviewing TikTok source code, which will be made available at the center for testing and evaluation.*



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Jun 18, 2024





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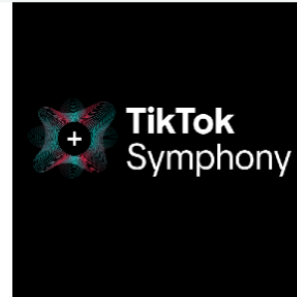


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## Getting started

## Using TikTok

- Creating videos
  - AI Self
  - Making a post
  - Camera tools
  - Effects
  - Sounds
- Editing, posting, and deleting
- TikTok Studio
- Editing TikTok videos and photos
- Duets
- Stitch
- TikTok Stories
- TikTok Notes
- Create playlists of your videos
- Credit a video
- Add Yours
- Movies and TV shows
- Accessibility for your videos
- About AI-generated content
- Tools for creators
- Effect Creator Center
- Support nonprofits on TikTok

## Exploring videos

- For You
- Friends Tab
- TikTok Now
- Liking
- Sharing
- Accessibility for watching videos
- Your favorite books
- Your favorite movies and TV shows
- Add songs from TikTok

# How TikTok recommends content

## Jump to a section

[What are recommender systems?](#) • [How content is recommended across TikTok](#) • [Other factors that influence how TikTok recommends content](#) • [How you can influence what you see on TikTok](#)

## What are recommender systems?

TikTok's mission is to inspire creativity and bring joy. We have a wide variety of content and we want you to discover interesting and relevant videos. That's why we use recommender systems to offer you a personalized experience. These systems suggest content based on your preferences as expressed through interactions on TikTok, such as following an account or liking a post.

When you first sign up for TikTok, we may invite you to select categories of interest, like pets or travel, which help us form your For You and LIVE feeds. If you don't select any categories of interest, we start by offering you a feed of recent videos that are popular with others on TikTok. When selecting your initial set of videos, the recommender system looks for popular videos that are appropriate for a broad audience and influenced by your location and language settings. In addition to categories, we'll suggest popular creators for you to follow. If you don't select any followers or have any friends on TikTok, then you may not see content in your Friends Tab or Following feed.

Once you start interacting on the app, your interactions act as signals that help the recommender system predict content you're more likely to be interested in as well as the content you might be less interested in and may prefer to skip. Your interactions across TikTok can impact how the system ranks and serves you content.

## How content is recommended across TikTok

We recommend content based on several factors to predict how relevant and interesting content might be to a user. The three main factors are user interactions, content information, and user information.

Each recommender system selects from a large collection of eligible content and ranks them based on the system's prediction of how likely you'll be interested in each one. In certain recommender systems, these predictions are also influenced by the interactions of other people on TikTok who appear to have similar interests. For example, if User A likes videos 1, 2, and 3 and User B likes videos 1, 2, 3, 4, and 5, the recommender system may predict User A will also like videos 4 and 5. While some may see the same content, features like the For You, Following, Friends, and LIVE feeds are unique to each person.

You can view content through several feeds and features, which we continually improve and expand over time. Below, we've provided some popular examples.



Home

Search

- Your favorite books
- Your favorite movies and TV shows
- Add songs from TikTok
- Watch videos in a Series
- Donations on TikTok
- Watch videos in a playlist
- How TikTok recommends content**
- Cast TikTok to a TV
- Video downloads
- Discover and search
- Messaging and notifications
- Comments
- Direct messages
- Mentions on TikTok
- Notifications
- TikTok stickers
- Followers and Following
- Following and unfollowing
- Finding friends from your contacts
- Removing followers
- Blocking users
- Finding your blocked list
- Growing your audience
- How to grow your audience
- Verified accounts on TikTok
- Personal and Business Accounts on TikTok
- Government, Politician, and Political Party Accounts
- My videos aren't getting views
- How can creators earn on TikTok?
- Use Promote to grow your TikTok audience
- Report a problem

Account and privacy settings

some may see the same content, features like the For You, Following, Friends, and LIVE feeds are unique to each person.

You can view content through several feeds and features, which we continually improve and expand over time. Below, we've provided some popular examples.

**For You**

The For You feed displays a stream of content just for you, so you can find content and creators you love.

Factors that may influence your For You feed include:

- **User interactions:** Content you like, share, comment on, and watch in full or skip, as well as accounts of followers that you follow back.
- **Content information:** Sounds, hashtags, number of views, and the country the content was published.
- **User information:** Device settings, language preference, location, time zone and day, and device type.

These factors help us predict how relevant and interesting content might be to a user. Different factors can play a larger or smaller role in what's recommended, and the importance—or weighting—of a factor can change over time. For many users, the time spent watching a specific video is generally weighted more heavily than other factors.

**Following**

The Following feed displays content from creators you follow. Each Following feed is unique—even when two users follow the same set of creators, each feed will rank and serve content in a way that is tailored to how you use TikTok.

Factors that may influence your Following feed include:

- **User interactions:** Visits to the user profiles you follow and the content you like, share, comment on, and watch in full or skip.
- **Content information:** Sounds, hashtags, number of video views, and the country the content was published.
- **User information:** Device settings, language preference, location, time zone and day, and device type.

These factors help us predict how relevant and interesting content might be to a user. Different factors can play a larger or smaller role in what's recommended, and the importance—or weighting—of a factor can change over time. For many users, the time spent watching specific videos is generally weighted more heavily than other factors.

**Friends**

The Friends Tab displays content from followers that you follow back (your friends), accounts you follow, and other [suggested accounts](#). Even when two users follow the same set of creators, their Friends Tab will rank and serve content in a way that is unique to each person.

Factors that may influence the Friends Tab include:

- **User interactions:** Visits to the profiles of your friends or people you may know and the content you like, share, comment on, and watch in full or skip.
- **Content information:** Sounds, hashtags, number of video views, and the country the content was published.
- **User information:** Device settings, contacts (with your permission), language preference, location, time zone and day, and device type.

These factors help us predict how relevant and interesting content might be to a viewer. Different factors can play a larger or smaller role in what's recommended, and the importance—or weighting—of a factor can change over time. For many users, likes and comments on a video are generally weighted more heavily than other factors.

LIVE





Home

Search

audience

Report a problem

Account and privacy settings

Safety

Log in and troubleshooting

TikTok LIVE, Gifts, and wallet

Monetize on TikTok

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LIVE

The LIVE feed displays a stream of LIVE videos that allows you to find content and creators you love. You can view LIVE videos by selecting the LIVE button at the top of the For You feed, or you may see recommended LIVE videos in your For You Feed.

Factors that may influence your LIVE feed include:

- **User interactions:** LIVE videos you like and comment on, creators you follow, watch time, and Gifts sent.
- **Content information:** Hashtags, number of LIVE views, number of likes, number of Gifts sent, number of followers of that creator, and the country in which the LIVE is taking place.
- **User information:** Device settings, language preference, location, time zone and day, and device type.

These factors help us predict how relevant and interesting content might be to a user. Different factors can play a larger or smaller role in what's recommended, and the importance—or weighting—of a factor can change over time. For many users, the time spent watching a specific LIVE is generally weighted more heavily than other factors.

Search

Our search feature allows you to search for content on TikTok. It also recommends search terms for you to discover content.

Factors that may influence your search results include:

- **User interactions:** Your past search behavior and the content you like, share, comment on, and watch in full or skip.
- **Content information:** How relevant the content is to your search, hashtags, and the sound used.
- **User information:** Device settings, language preference, and location.

These factors help us predict how relevant and interesting content might be to a viewer. Different factors can play a larger or smaller role in what's recommended, and the importance—or weighting—of a factor can change over time. For many users, how relevant the content is to the specific term entered is generally weighted more heavily than other factors.

Comments

We recommend comments on posts that we think you'll be interested in and to build connections within the TikTok community.

Factors that may influence what comments we show you:

- **User interactions:** Comments you like, reply to, and if you follow the video creator or author of the comment.
- **Content information:** Number of likes and the language of the comment.
- **User information:** Your location and language preference, and device settings.

Different factors can play a larger or smaller role in what's recommended, and the importance—or weighting—of a factor can change over time. For many users, the language of the comment and how many likes it has are generally weighted more heavily than other factors.

Notifications

We'll send you notifications to recommend content you might like, people you might know, or search terms you might be interested in.

Factors that may influence what notifications we send you:

- **User interactions:** How active you've been on TikTok and your previous interactions with notifications.
- **Content information:** Creator of the content, hashtags, number of views, and the country the



terms you might be interested in.

Factors that may influence what notifications we send you:

- **User interactions:** How active you've been on TikTok and your previous interactions with notifications.
- **Content information:** Creator of the content, hashtags, number of views, and the country the content was published.
- **User information:** Your location, language preference, and device type.

Different factors can play a larger or smaller role in what's recommended, and the importance—or weighting—of a factor can change over time. For many users, the number of notifications you receive and open is generally weighted more heavily than other factors.

#### Account recommendations

On TikTok, you can connect with people you may know and creators that might interest you, based on who you're already engaging with.

Factors that may influence your account recommendations include:

- **User interactions:** Your activity on TikTok, such as the types of accounts you follow, like, or share content with.
- **Content information:** Number of followers and views an account has, account location, and the likelihood that you know another user, for example if they're in your contacts (with your permission).
- **User information:** Device settings, language preference, and location.

Different factors can play a larger or smaller role in what's recommended, and the importance—or weighting—of a factor can change over time. For many users, the number of mutual connections between two accounts is generally weighted more heavily than other factors.

### Other factors that influence how TikTok recommends content

#### Diversifying recommendations

When you view content in your Friends Tab, For You, Following, and LIVE feeds, our goal is to find a balance between suggesting content that's relevant to you while also allowing you to discover new and diverse content and creators, and experience new perspectives and ideas. That's why you may come across content in your For You and LIVE feeds that doesn't appear to be relevant to your expressed interests. We typically don't recommend content you've already seen and we'll encourage you to explore different categories of content and creators through recommendations.

Similarly with your Friends Tab and Following feed, you may see multiple videos from the same creator, but we generally won't recommend two videos in a row from that creator. If you follow only them, then we may recommend multiple videos in a row. If you run out of videos to watch on your Friends Tab or Following feed, then we'll suggest for you to explore videos on your For You feed.

#### Safeguarding your experience

Our recommender systems are designed with safety as a key consideration and we remove any content identified as violating our [Community Guidelines](#).

Our safety team takes additional precautions to review content as they rise in popularity to reduce the likelihood of recommending content that may not be suitable for everyone on TikTok. For example, we strive to not recommend—or to limit the recommendation of—certain categories of content that may not be suitable for a general audience, even if that content is not removed from TikTok altogether. [We continually review LIVE videos](#) to interrupt and stop LIVE content that violates our Community Guidelines. We may also restrict creators from going LIVE who violate our Community Guidelines. Users under the age of 18 are not permitted to host a LIVE or to send Gifts, and are restricted from watching certain LIVE videos. Learn more about [age-restricted content on LIVE](#).

You can learn more about our standards on content eligibility in our [Community Guidelines](#).





Home

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You can learn more about our standards on content eligibility in our [Community Guidelines](#).

## How you can influence what you see on TikTok

### For You

In addition to selecting categories of interest when you sign up for TikTok, you can use the following features to help shape your For You feed:

- [Not interested](#): If you don't enjoy a specific piece of content you can let us know by sharing feedback that you're not interested in and we'll show you fewer content like it.
- [Filter video keywords](#): Filter out specific words or hashtags from the content recommended to you in your For You and Following feeds.

If the recommendations on your For You feed don't feel relevant to you anymore, or you're looking for more variety in your feed, you can [refresh your For You feed](#) to view a new set of popular content, as if you've just signed up for TikTok.

### Following

Use the following features to help shape your following feed:

- [Unfollow](#): Unfollowing a creator can directly remove the creator's posts in the Following feed.
- [Filter video keywords](#): Filter out specific words or hashtags from the content preferences section in your settings to stop seeing content with those keywords in your For You and Following feeds.

### Friends

Use the following features to help shape your Friends Tab:

- [Unfollow](#): Unfollowing the creator or friend could remove the posts from that account in the Friends Tab.
- [Not interested](#): If you don't enjoy recommended content from people you may know based on suggested accounts, you can let us know by sharing feedback that you're not interested and we'll show you fewer content from that creator.

### LIVE

In addition to selecting categories of interest when you sign up for TikTok, you can use the following features to help shape your LIVE feed:

- [Not interested](#): If you don't enjoy a specific piece of LIVE content, you can let us know by sharing feedback that you're not interested and we'll show you fewer content from that creator.

### Comments

Let us know if you're not interested in a comment by disliking it within the comments section of a post.

### Notifications

[Manage notifications](#) in your settings to choose what type of notifications you'd like to receive for suggested posts. Turn all notifications off or choose which interactions you'd like to receive notifications for.

### Account recommendations

Use the following features to help shape your account recommendations:

- [Unsync your contacts](#): Remove previously synced contacts or turn off synced contacts in your privacy settings.
- Remove suggested accounts: When we recommend accounts for you to follow, you can remove it from the suggested list to let us know you're not interested.







Home

Search

features to help shape your LIVE feed:

- **Not interested:** If you don't enjoy a specific piece of LIVE content, you can let us know by sharing feedback that you're not interested and we'll show you fewer content from that creator.

**Comments**

Let us know if you're not interested in a comment by disliking it within the comments section of a post.

**Notifications**

**Manage notifications** in your settings to choose what type of notifications you'd like to receive for suggested posts. Turn all notifications off or choose which interactions you'd like to receive notifications for.

**Account recommendations**

Use the following features to help shape your account recommendations:

- **Unsync your contacts:** Remove previously synced contacts or turn off synced contacts in your privacy settings.
- **Remove suggested accounts:** When we recommend accounts for you to follow, you can remove it from the suggested list to let us know you're not interested.

Was this helpful?



**Helpful links**

- [Creating an account](#)
- [Setting up your profile](#)
- [Creating a TikTok video](#)



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- [Contact](#)
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# TikTok: Are influencers panicking about bans? We asked three to weigh in.



**Alexandra Garfinkle** · Senior Reporter  
Updated Thu, Jan 19, 2023 · 5 min read

In This Article:

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As talk of banning TikTok grows, the so-called influencers whose livelihoods are linked to the platform aren't panicking – at least, not yet.

Yahoo Finance spoke to three of those influencers, with nearly 5.5 million followers between them. The topic of conversation: How they're thinking about the escalating series of bans on state and university devices, as well as the fiery rhetoric coming out of Washington. For the most part, though they're concerned, they haven't yet seen their

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<b>Nasdaq</b> 17,622.62 -44.95 (-0.25%)	<b>Russell 2000</b> 2,005.89 -33.26 (-1.63%)		
<b>Crude Oil</b> 78.31 -0.31 (-0.39%)	<b>Gold</b> 2,343.30 +25.30 (+1.09%)		

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fiery rhetoric coming out of Washington. For the most part, though they're concerned, they haven't yet seen their businesses affected so far.

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"The current bans do not have a direct impact on our business," influencer and digital marketer [Chase Chappell](#) told Yahoo Finance. "If they were to ban TikTok for everyone in the U.S., that'd be a cause for concern, as 50% of all our clients come from TikTok specifically. This is also my biggest platform in terms of followers and views, and our business does rely on this platform as a source of growth."

Chappell's business focuses on helping others grow their social media reach and TikTok is a major part of his life. He spends two to four hours a day on the platform, and his business isn't the only one on TikTok that he's apprehensive about. He's worried about the fate of the businesses he deals with as well.

"If TikTok were to be banned, thousands of our clients would be impacted financially as this platform has become a major source of their customer base and revenue," he said. "Not only that, this would have a major economic impact across the U.S., as millions of users are buying items from U.S. companies that they discovered specifically on TikTok."

**chase\_chappell**  
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Chase Chappell's TikTok page, taken on Jan. 19, 2023.

There's only so much data on the growing role of small

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Chase Chappell's tiktok page, taken on Jan. 19, 2023.

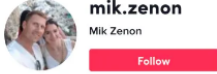
There's only so much data on the growing role of small businesses on TikTok and, candidly, it's worth taking what we have with a grain of salt – but what we do have shows a picture of a platform where the influencer economy is thriving.

Data from digital marketer Higher Visibility suggests that as much as 65% of the most prominent, full-time online creators are using TikTok as their primary platform going into this year. The 'why' is pretty simple – creators and small businesses, which are often one and the same, are frequently drawn to TikTok's now-storied [organic reach](#). Additionally, TikTok itself has been studying small businesses on its platform, [gathering](#) data based on 7,000 responses. Bottom line: As many as 78% of small businesses currently on the platform are planning to increase investment in it.

So, as influencers wait for the Washington-TikTok standoff to play out, what are they doing to protect themselves? For one, many have been diversifying away from TikTok. [Mik Zenon](#), whose TikTok presence focuses on products and "life hacks" like finding the most useful home gadgets on Amazon ([AMZN](#)), has been building out on other platforms for years now.

"If the bans were to ever extend to personal devices, then the impact would be significant," he said. "There was talk of something like this happening in summer 2020 under Trump's presidency. Back then, 100% of my business was on TikTok. I learned quickly the need to have a presence on as many platforms as possible... I have a substantial following now on Instagram, Facebook, and YouTube and I have collected tens of thousands of emails over the years. I no longer feel like I am over-leveraged on one platform."

Still, about 25% of Zenon's livelihood is entwined with TikTok.



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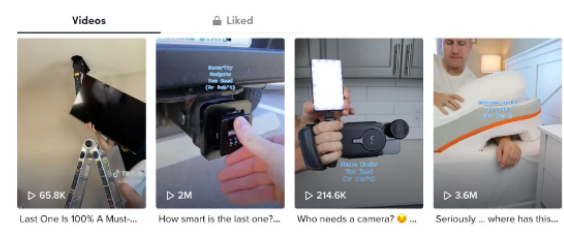
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Page 3 of 6

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Mik Zenon's TikTok page, taken on Jan. 19, 2023.

**Security concerns?**

As far as data security is concerned, our Yahoo Finance influencers were mixed on the problem. For Zenon, he's no more worried about TikTok, which is owned by Beijing-based ByteDance, than any other platform.

"I've come to accept that all social media platforms collect our personal data to some degree when we use their apps," he said.

Chappell, meanwhile, said the government's concern makes him question the long-term ramifications.

"It certainly makes me question how this could be used against the U.S. in a future scenario, [but] as of right now, I have no specific personal reasons to be worried about," he said. "My only concerns are around potential 'what ifs,' but I can't worry about 'what ifs' all the time, otherwise I'd always be in a worry and that's not good for anyone."

For TikTok's part, the company is in the midst of a negotiation with the Committee on Foreign Investment in the United States (CFIUS) to address the government's security concerns. "We believe that the proposal under review by CFIUS—made up of our country's top national security agencies—will address all national security concerns about TikTok so that our community can feel confident in their safety, privacy, and security," a company spokesperson said.

**'My followers are everything'**

The prospects of the ban aside, TikTok is clearly important to the small businesses on the platform.

For Fafa Araujo, who runs [Fafa Fitness](#) and frequently goes by her first name, the platform has done nothing short of changing her life, she said. She joined TikTok in 2021, and

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US	Europe	Asia	Rates
<b>S&amp;P 500</b> 5,415.65 -18.09 (-0.33%)	<b>Dow 30</b> 38,501.17 -145.93 (-0.38%)		
<b>Nasdaq</b> 17,622.62 -44.95 (-0.25%)	<b>Russell 2000</b> 2,005.89 -33.26 (-1.63%)		
<b>Crude Oil</b> 78.31 -0.31 (-0.39%)	<b>Gold</b> 2,343.30 +25.30 (+1.09%)		

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TRENDING TICKERS

<b>ADBE</b> Adobe Inc.	525.04 +66.30 (+14.45%)
<b>NFLX</b> Netflix, Inc.	671.40 +18.14 (+2.78%)
<b>RH</b> RH	228.40 -48.65 (-17.56%)
<b>KAVL</b> Kaival Brands Inn...	5.33 +3.97 (+292.17%)
<b>CCL</b> Carnival Corporatio...	15.11 -1.40 (-8.45%)

TOP ECONOMIC EVENTS

United States

**U Mich Sentiment Prelim**  
Jun 14, 2024, 10:00 AM EDT  
P: 69.1 N: 65.6

**MBA 30-Yr Mortgage Rate**  
Jun 20, 2024, 7:00 AM EDT  
P: 7.02 N: -

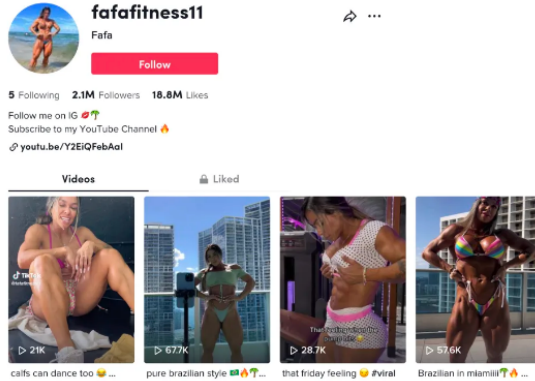
**Mortgage Market Index**  
Jun 20, 2024, 7:00 AM EDT  
P: 208.5 N: -

**Initial Jobless Clm\***  
Jun 20, 2024, 8:30 AM EDT  
P: 242 N: -

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by her first name, the platform has done nothing short of changing her life, she said. She joined TikTok in 2021, and has gained her 2.1 million followers in the short time since.



Fafa's TikTok page, taken on Jan. 19, 2023.

"I would be really hard for me to move forward right now or even be where I am without TikTok," she told Yahoo Finance.

"TikTok brings me what I'm looking for—people that I can help," she added. "I know it's only been two years for me on TikTok, but it's helped me find my happiness helping others. TikTok is the love of my life."

For Araujo, who is based in Miami, the fear of a ban comes down to her connection with those followers – she doesn't want to lose them, professionally and especially on a personal level.

"My followers are everything," she said. "Without them, what am I?"

Allie Garfinkle is a Senior Tech Reporter at Yahoo Finance. Follow her on Twitter at @agarfinks.

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Quote Lookup

U.S. markets close in 4h 17m

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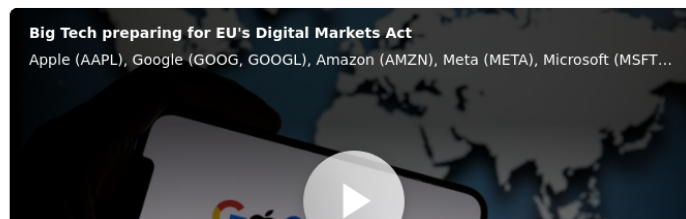
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## How Meta, TikTok, and the social media industry are changing to survive



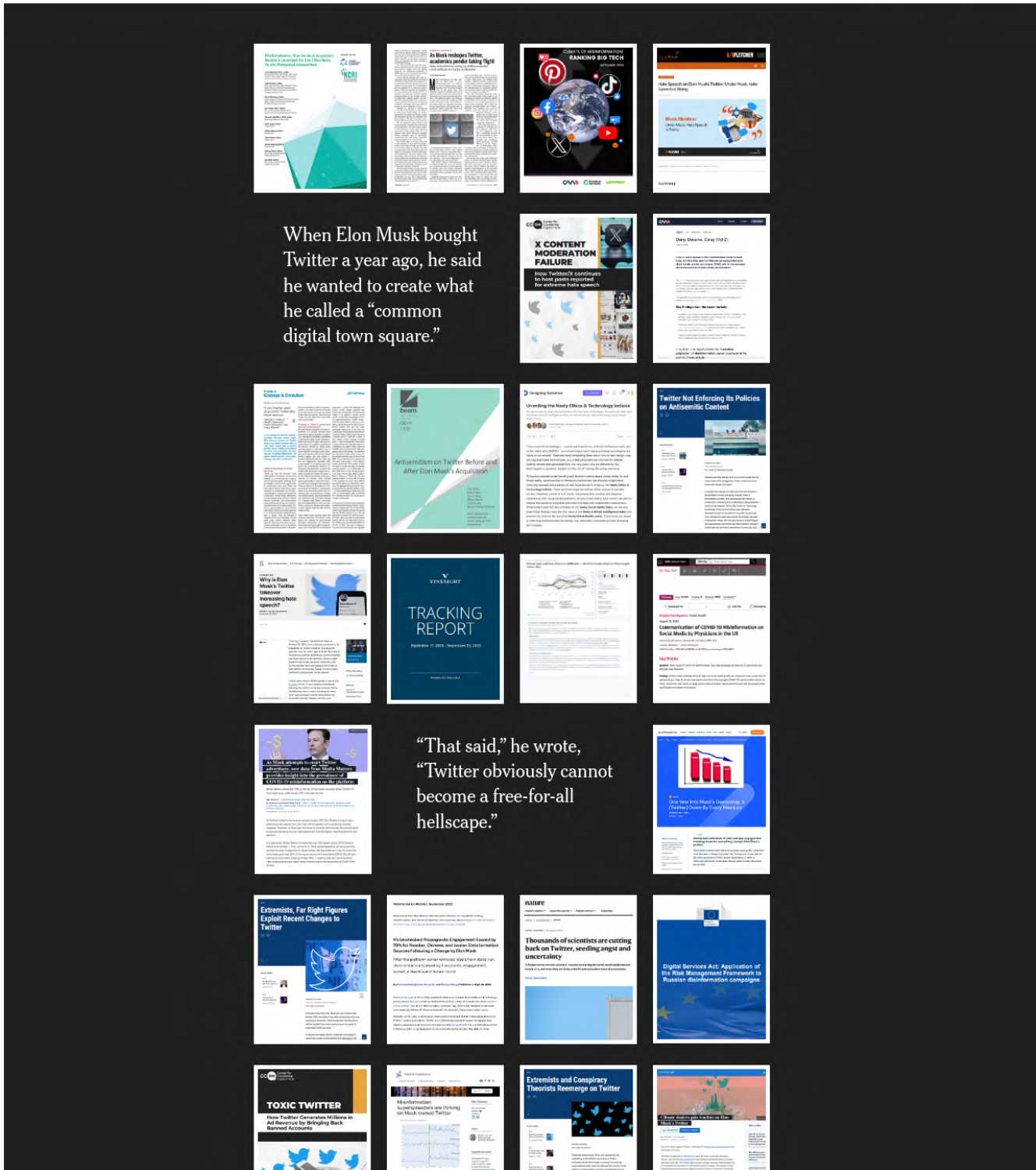
Document title: TikTok: are influencers panicking about bans? We asked three to weigh in.

Capture URL: <https://finance.yahoo.com/news/tiktok-are-influencers-panicking-about-bans-we-asked-three-to-weigh-in-205625085.html?guccounter=1>

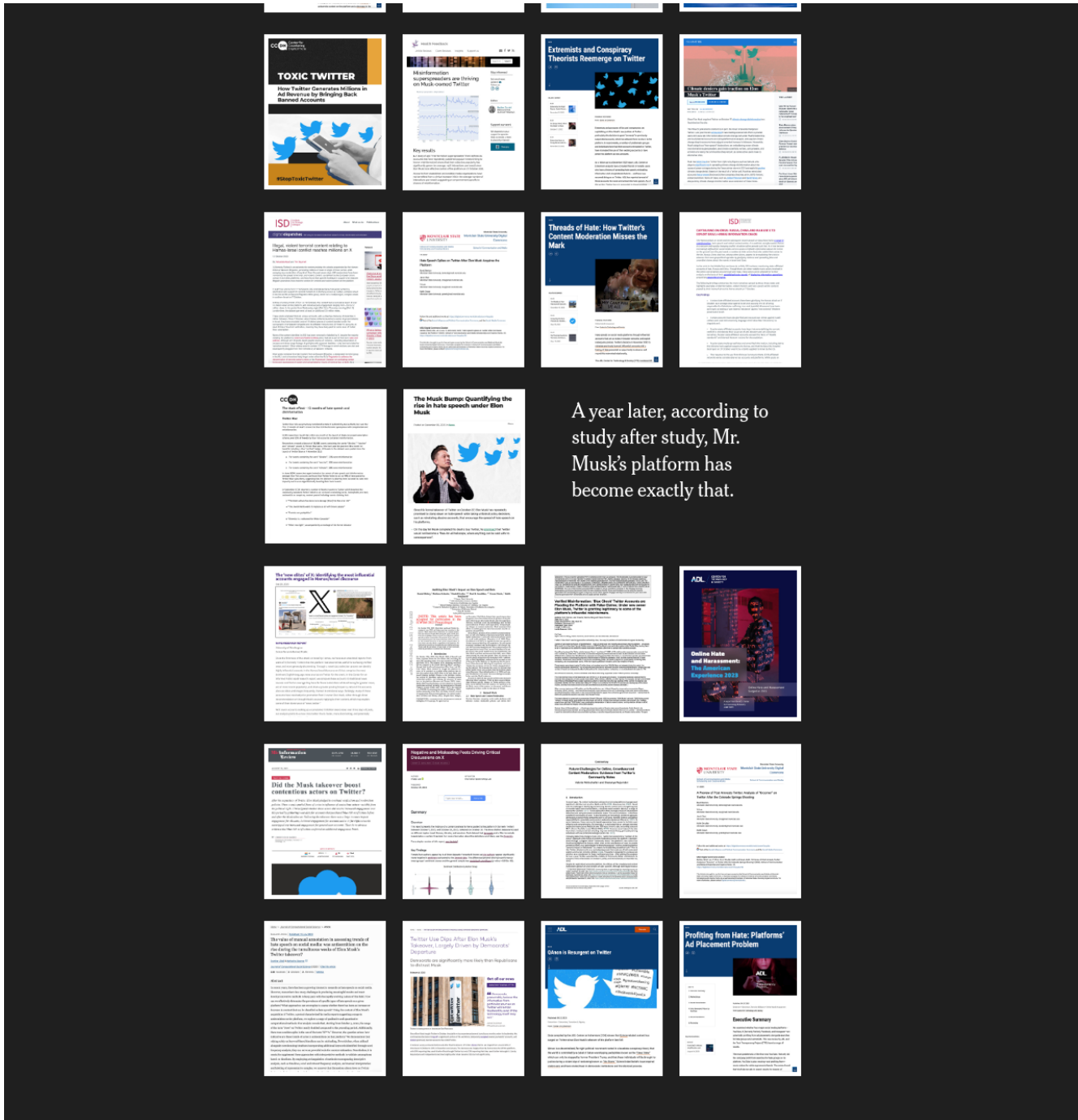
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Page 6 of 6

Addendum - 233  
**JA 606**







# The Consequences of Elon Musk's Ownership of X

By Steven Lee Myers, Stuart A. Thompson and Tiffany Hsu Oct. 27, 2023

Document title: The Consequences of Elon Musk's Ownership of X - The New York Times

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Page 2 of 9

Addendum - 306  
**JA 608**

# The Consequences of Elon Musk's Ownership of X

By Steven Lee Myers, Stuart A. Thompson and Tiffany Hsu Oct. 27, 2023

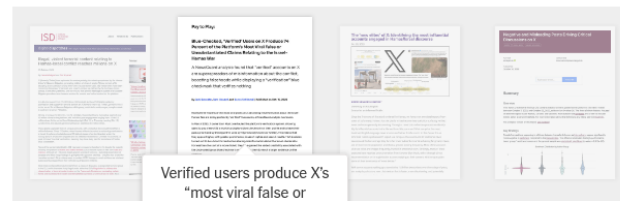
Now rebranded as X, the site has experienced a surge in racist, antisemitic and other hateful speech. Under Mr. Musk's watch, millions of people have been exposed to misinformation about climate change. Foreign governments and operatives — from Russia to China to Hamas — have spread divisive propaganda with little or no interference.

Mr. Musk and his team have repeatedly asserted that such concerns are overblown, sometimes [pushing back aggressively](#) against people who voice them. Yet dozens of studies from multiple organizations have shown otherwise, demonstrating on issue after issue a similar trend: an increase in harmful content on X during Mr. Musk's tenure.

The war between Israel and Hamas — the sort of major news event that once made Twitter an essential source of information and debate — has drowned all social media platforms in false and misleading information, but for Mr. Musk's platform in particular the war has been seen as a watershed. The conflict has captured in full how much the platform has descended into the kind of site that Mr. Musk had promised advertisers he wanted to avoid on the day he officially took over.

“With disinformation about the Israel-Hamas conflict flourishing so dramatically on X, it feels that it crossed a line for a lot of people where they can see — beyond just the branding change — that the old Twitter is truly gone,” Tim Chambers of Dewey Square Group, a public affairs company that tracks social media, said in an interview. “And the new X is a shadow of that former self.”

## Reports on X's role during the Israel-Hamas war



Sources: [The Institute for Strategic Studies](#), [Center for an Informed Public at the University of Washington](#), [InfoEpi Lab](#).

The growing sense of chaos on the platform has already hurt Mr. Musk's investment. While it remains one of the most popular social media services, people visited the website nearly 5.9 billion times in September, down 14 percent from the same month last year, according to the data analysis firm Similarweb.

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Advertisers have also fled, leading to a sizable slump in sales. Mr. Musk noted this summer that ad revenue had fallen [50 percent](#). He blamed the Anti-Defamation League, one of several advocacy groups that have cataloged the rise of hateful speech on X, for "trying to kill this platform."

Most of the problems, however, stem from changes that Mr. Musk instituted – some intentionally, some not. Studies about the state of X have been conducted over the past year by researchers and analysts at universities, think tanks and advocacy organizations concerned with the spread of hate speech and other harmful content.

Research conducted in part by the [Institute for Strategic Dialogue](#) concluded that anti-Semitic tweets in English more than doubled after Mr. Musk's takeover. A report from [the European Commission](#) found that engagement with pro-Kremlin accounts grew 36 percent on the platform in the first half of this year after Mr. Musk lifted mitigation measures.

Mr. Musk [disbanded an advisory council](#) focused on trust and safety issues and [laid off](#) scores of employees who addressed them. For a monthly fee, he offered users a blue checkmark, a label that once conveyed that Twitter had verified the identity of the user behind an account. He then used algorithms to promote accounts of uncertain provenance in users' feeds. He removed labels that identified government and state media accounts for countries like Russia and China that censor independent media.

"The entire year's worth of changes to X were fully stress tested during the global news breaking last week," Mr. Chambers said, referring to the conflict in Israel. "And in the eyes of many, myself included, it failed utterly."

The company did not respond to a request for comment beyond a stock response it regularly uses to press inquiries: "Busy now, please check back later."

X trails only Facebook's 16.3 billion monthly visits and Instagram's 6.4 billion visits, according to [Similarweb](#). TikTok, which is rising in popularity among certain demographic groups, has roughly two billion visits each month. Despite voluble threats by disgruntled users to move to alternative platforms – Mastodon, BlueSky or Meta's new rival to Mr. Musk's, Threads – none of them have yet reached the critical mass to replicate the public exposure that X offers.

Keeping X at the center of public debate is exactly Mr. Musk's goal, which he describes at times with a messianic zeal. The day after

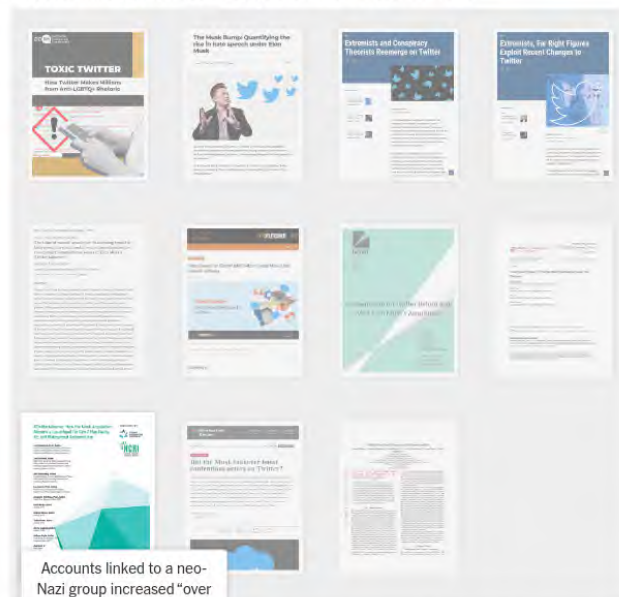
Meta's new rival to Mr. Musk's, Threads – none of them have yet reached the critical mass to replicate the public exposure that X offers.

Keeping X at the center of public debate is exactly Mr. Musk's goal, which he describes at times with a messianic zeal. The day after Hamas attacked Israel, Mr. Musk urged his followers to follow "the war in real time."

He then cited two accounts that are notorious for spreading disinformation, including a false post in the spring that an explosion had occurred outside the Pentagon. Faced with a flurry of criticism, Mr. Musk deleted the post and later sounded chastened.

He urged his followers on X to "stay as close to the truth as possible, even for stuff you don't like. This platform aspires to maximize signal/noise of the human collective."

Reports linking Mr. Musk's acquisition to hateful content



[Hate](#); [The Anti-Defamation League](#); [Journal of Computational Social Science](#); [The Fletcher School's Institute for Business in the Global Context at Tufts University](#); [Institute for Strategic Dialogue](#); [Montclair State University](#); [Network Contagion Research Institute and Combat Anti-Semitism Movement](#); [Harvard Kennedy School's Misinformation Review](#); [International AAAI Conference on Web and Social Media](#).

Mr. Musk, the prominent, outspoken executive behind Tesla and Space X, had been an avid Twitter user for years before taking it over, promoting his ventures and himself, at times with crude, offensive comments. During the Covid-19 pandemic, he sharply criticized lockdowns and other measures to slow the virus's spread and began to warn of a "woke" culture that silenced dissent.

Among his first acts as the site's owner was to reverse the bans on thousands of accounts, including those of users who had promoted

over, promoting his ventures and himself, at times with [crude, offensive comments](#). During the Covid-19 pandemic, he sharply criticized lockdowns and other measures to slow the virus's spread and began to warn of a "woke" culture that silenced dissent.

Among his first acts as the site's owner was to reverse the bans on [thousands of accounts](#), including those of users who had promoted the [QAnon conspiracy theory](#) and spread disinformation about Covid and the 2020 presidential election.

The impact was instantaneous. Researchers at [Tufts](#), Rutgers and [Montclair State](#) universities documented spikes in the use of racial and ethnic slurs soon after Mr. Musk's acquisition. One research institute found that a campaign on 4chan, a notorious bulletin board, encouraged [the use of a particular slur](#) within hours of his arrival, in what seemed to be a coordinated test of the new owner's tolerance for offensive speech.

The prevalence of such offensive language has, according to numerous studies, continued unabated. "The Musk acquisition saw a sustained rise in hateful speech on the platform," an article in The Misinformation Review, a peer-reviewed journal published by the Harvard Kennedy School, [said](#) in August.

Even worse, the article argued, Mr. Musk's changes appear to be boosting the engagements of the most contentious users.

A month into Mr. Musk's ownership, the platform stopped enforcing its policy against Covid-19 misinformation. The liberal watchdog group [Media Matters](#) later identified 250 accounts with high engagement on Covid-related tweets. Nine of the top 10 accounts were known anti-vaccine proponents, several of whom promoted unproven and potentially harmful treatments and attacked top public health officials.

Mr. Musk's first summer as X's boss also coincided with a [rash of climate-related disasters](#) around the world, including deadly heat waves, rampaging wildfires, torrential rains and intense flooding. Last month, a [scorecard](#) evaluating social media companies on their defenses against climate-related falsehoods awarded X a single point out of a possible 21 (Meta, which owns Facebook and Instagram, was given eight points).

#### How the discussion over climate change changed under Mr. Musk



The platform was "lacking clear policies that address climate



The platform was “lacking clear policies that address climate misinformation, having no substantive public transparency mechanisms, and offering no evidence of effective policy enforcement,” said the accompanying report from Climate Action Against Disinformation, an international coalition of more than 50 environmental advocacy groups.

This year, hundreds of [researchers pushed back](#) against a decision by X to end free access to software that would allow them collect and analyze data about the site.

Perhaps the most impactful change under Mr. Musk has been the evolution of his subscription plans. The blue checkmark that once conveyed veracity and denoted verified accounts, often those of government agencies, companies and prominent users, was now available to any account for \$8 a month.

#### Reports on X bolstering foreign disinformation



In April, Mr. Musk [began removing](#) the blue badges from verified accounts. New ones impersonating public officials, government agencies and celebrities proliferated, causing confusion about which were real. The platform went on to reward those who paid for their blue labels by amplifying their posts over those without the badge.

Reset, a nonprofit research organization, discovered that dozens of anonymous accounts linked to the Kremlin received the checkmark, pushing Russian narratives on the war in Ukraine. This spring, the platform also removed the labels that identified official state media of countries like Russia, China and Iran. In the 90 days after the change, engagement with posts from the English-language accounts of those outlets soared 70 percent, NewsGuard, a company that tracks online misinformation, [reported](#) in September.

Mr. Musk has now run afoul of the European Union's [newly enacted Digital Services Act](#), a law that requires social media platforms to restrict misinformation and other violative content within the union's 27 nations.

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A [report](#) commissioned by the union's executive body warned in August that Mr. Musk's dismantling of guardrails on the platform had resulted in a 36 percent increase in engagement with Kremlin-linked accounts from January through May, mostly pushing Russia's justifications for its illegal invasion of Ukraine last year.

After war erupted between Israel and Hamas, Thierry Breton, a European Commissioner who oversees the law's implementation, warned Mr. Musk in [a letter](#) that was posted on X, saying the company needed to address "violent and terrorist content that appears to circulate on your platform."

Reset, the research organization, reported recently that it had documented 166 posts that its researchers considered antisemitic. Many appeared to violate laws in several European countries, including calls for violence against Jews and denying the historical facts of the Holocaust. They accumulated at least 23 million views and 480,000 engagements.

Mr. Musk sounded incredulous, even as the company scrambled to delete accounts linked to Hamas and other terrorist groups. He responded two days later to an account identified by the Anti-Defamation League as one of the most prominent purveyors of disinformation. The account, which had been removed from Twitter but was restored last December after Mr. Musk took over, had claimed that the European Union was trying to police the truth.

"They still haven't provided any examples of disinformation," Mr. Musk replied.

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## The World of Elon Musk

The billionaire's portfolio includes the world's most valuable automaker, an innovative rocket company and plenty of drama.

- **Tesla:** The electric car maker's shareholders reaffirmed a [pay award of more than \\$45 billion for Elon Musk](#), in a strong sign of support for Tesla's chief executive.
- **SpaceX:** [Eight former employees sued the rocket company](#), saying they were wrongfully fired for raising concerns about sexual harassment and discrimination.
- **Starlink:** The satellite-internet service has connected the Marubo people, an isolated tribe in the Amazon, to the outside world — [and divided it from within](#).
- **X:** Musk has increasingly been using his social media platform to [criticize President Biden](#) for his health and immigration policies, according to a New York Times analysis.

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- **X:** Musk has increasingly been using his social media platform to [criticize President Biden](#) for his health and immigration policies, according to a New York Times analysis.
- **Neuralink:** Musk's first human experiment with a computerized brain device developed significant flaws, but the subject, who is paralyzed, [has few regrets](#).

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Ohmi Lisle

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Zhidong Zhang for The New York Times

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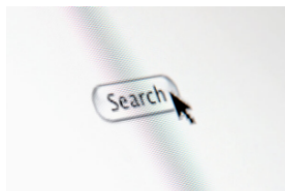
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Clara Moskoi for The New York Times

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First Came 'Spam.' Now, With A.I., We've Got 'Slop'



20th Century Fox, via Everett Collection

Remo Saraceni, 89, Dies; Inventor of the Walking Piano Seen in 'Big'

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A Hollywood Heavyweight Is Biden's Secret Weapon Against Trump

The Woman Who Could Smell Parkinson's

Ancient Genomes Reveal Which Children the Maya Selected for Sacrifice

Putin Makes Cease-Fire Offer With Sweeping Demands on Ukraine's Territory

A Rustic Cabin in the Woods Was His Dream. Not Hers.

Late Night Pounces on Trump's First Meeting With Probation Officer

#### Editors' Picks





**IN THE UNITED STATES COURT OF APPEALS  
FOR THE DISTRICT OF COLUMBIA CIRCUIT**

<p>BASED POLITICS, Inc., <i>Petitioner,</i></p> <p>v.</p> <p>MERRICK B. GARLAND, in his official capacity as Attorney General of the United States, <i>Respondent.</i></p>	<p>No. 24-1183</p>
--	--------------------

**DECLARATION OF BRAD POLUMBO IN SUPPORT OF  
PETITIONER’S BRIEF ON THE MERITS**

I, Brad Polumbo, declare as follows:

1. I make this declaration from personal knowledge.
2. I am a journalist and a co-founder and employee of BASED Politics, Inc. (“BASED Politics”), the Petitioner in the above-captioned case.
3. My work for BASED Politics includes posting content on social media platforms through my personal accounts, particularly content that promotes free markets and individual liberty, with the intent to appeal to members of “Gen Z,” particularly users under 25 years of age.

4. My TikTok account has nearly 18,000 followers.

5. Many of my TikTok videos have been viewed tens of thousands of times, and one of them has been viewed more than two million times.

6. My popular TikTok videos have addressed topics such as “misgendering,”<sup>1</sup> identity politics,<sup>2</sup> crime,<sup>3</sup> “Bidenomics,”<sup>4</sup> and government waste.<sup>5</sup>

7. My TikTok videos often receive hundreds of comments from viewers, agreeing or disagreeing with the video’s point of view, or making additional points on the topic.

8. I also use TikTok to research topics and find videos with opinions that I disagree with that I can react to in my own TikTok videos.

---

<sup>1</sup> Publicly available at:

<https://www.tiktok.com/@bradpolumbo0/video/7283535625914027307>

<sup>2</sup> Publicly available at:

<https://www.tiktok.com/@bradpolumbo0/video/7288482293318946091>

<sup>3</sup> Publicly available at:

<https://www.tiktok.com/@bradpolumbo0/video/7283973630411836718>

<sup>4</sup> Publicly available at:

<https://www.tiktok.com/@bradpolumbo0/video/7256874479362526510>

<sup>5</sup> Publicly available at:

<https://www.tiktok.com/@bradpolumbo0/video/7236395237331995947>

9. I have found that there are subcommunities on TikTok based on a wide range of topics, from the serious to the lighthearted, which make it easy for me to find content on topics that are of interest to me (such as politics and LGBT content) and to share my content with others who might find it of interest.

10. I consider TikTok essential to communicate with BASED Politics's target audience of members of Gen Z. I do not know of any other way that BASED Politics could reach the same audience, or even a comparable audience.

I declare under penalty of perjury that the foregoing is true and correct.

Signed this 27th day of June, 2024.



---

Brad Polumbo

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FOR THE DISTRICT OF COLUMBIA CIRCUIT**

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--	--------------------

**DECLARATION OF HANNAH COX IN SUPPORT OF  
PETITIONER’S BRIEF ON THE MERITS**

I, Hannah Cox, declare as follows:

1. I make this declaration from personal knowledge.
2. I am the president and co-founder of BASED Politics, Inc. (“BASED Politics”), the Petitioner in the above-captioned case.
3. BASED Politics, Inc. is a Georgia 501(c)(3) nonprofit corporation.
4. A central part of BASED Politics’s mission is to reach members of “Gen Z”—particularly users under 25 years old—with social media content that promotes free markets and individual liberty.

5. BASED Politics publishes its content on various internet platforms, including TikTok, primarily through the accounts of its founders, namely journalist Brad Polumbo and myself.

6. My TikTok account has approximately 43,000 followers.

7. My TikTok videos on topics such as systemic racism and the gender pay gap have reached hundreds of thousands, and as many as one million, people at a time.

8. My TikTok videos include commentary on pending legislation—for example, supporting Tennessee school choice legislation<sup>1</sup> and criticizing federal vehicle “kill switch” legislation.<sup>2</sup>

9. I consider the ability to comment contemporaneously on current events on TikTok to be essential to BASED Politics’s efforts to participate in and influence public discourse.

10. Other topics I have discussed in my TikTok videos include, among others, how the government manipulates numbers in labor

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<sup>1</sup> Publicly available at:

<https://www.tiktok.com/@hannahdcox/video/7332928861916777770>

<sup>2</sup> Publicly available at:

<https://www.tiktok.com/@hannahdcox/video/7299546301702688042>

reports,<sup>3</sup> economic policies,<sup>4</sup> whether communism is better than capitalism,<sup>5</sup> the Federal Trade Commission's efforts to bring antitrust proceedings against Amazon,<sup>6</sup> public school curricula,<sup>7</sup> and government-funded animal torture.

11. As one can observe at the links included in the footnotes to this declaration, my videos often receive hundreds of comments from viewers, agreeing or disagreeing with the video's point of view or making additional points on the topics.

12. I also use TikTok to research issues that affect Americans, to gather information about people's reactions to various policies, and to craft messaging designed to help viewers connect their problems to existing solutions.

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<sup>3</sup> Publicly available at:

<https://www.tiktok.com/@hannahdcox/video/7332551282449861930>

<sup>4</sup> Publicly available at:

<https://www.tiktok.com/@hannahdcox/video/7323653964791057710>

<sup>5</sup> Publicly available at:

<https://www.tiktok.com/@hannahdcox/video/7313999271353863470>

<sup>6</sup> Publicly available at:

<https://www.tiktok.com/@hannahdcox/video/7269394647267413290>

<sup>7</sup> Publicly available at:

<https://www.tiktok.com/@hannahdcox/video/7243088899973598507>

13. In that way, I find TikTok to be a valuable tool to understand the correct public-policy approaches, the opposition they face, and the demographics with which they most resonate.

14. I find TikTok more valuable than other social media platforms because of the content I receive through its content-recommendation engine.

15. It appears to me that, based on what I view, the platform knows my core interests—economics, civil liberties, and women’s issues—because it gives me nonstop content from others on those subjects.

16. Viewing the content that TikTok provides in my “For You” feed allows me to see how people are experiencing the impacts of public policy in their everyday lives, learn more about their perspectives, and develop messaging for BASED Politics that is more attuned to their concerns.

17. I also use TikTok to make a video podcast series for BASED politics called *Histrionics*, which examines women’s and “gender war” issues from a centrist, individual liberty point of view.

18. For each *Histrionics* episode, I pull videos I have saved on TikTok that speak to issues that concern women—for example, whether women are actually treated fairly in divorce court, whether there are dangers in the “trad wife” lifestyle, and whether women should have children.

19. I then structure my own long-form video podcast around the TikTok videos, adding facts that I find through research, counterpoints, and other perspectives (which are often also taken from others’ TikTok videos).

20. I have found it easier to gain a following—and therefore to spread BASED Politics’s ideas—on TikTok than on Instagram.

21. My TikTok following is approximately double my following on Instagram, even though I have used Instagram for more than a decade and have only used TikTok since approximately 2021.

22. I often comment on the President’s State of the Union address and would like to comment on the ideas in the President’s inaugural address in a TikTok video as soon as possible after it occurs on January 20, 2025.

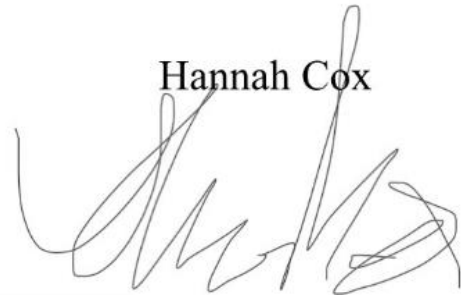


23. I consider TikTok essential to communicate with BASED Politics's target audience of members of Gen Z. I do not know of any other way that BASED Politics could reach the same audience, or even a comparable audience.

I declare under penalty of perjury that the foregoing is true and correct.

Signed this 27th day of June, 2024.

Hannah Cox

A handwritten signature in black ink, appearing to read 'Hannah Cox', written over the printed name.



UNITED STATES COURT OF APPEALS  
FOR THE DISTRICT OF COLUMBIA CIRCUIT

TIKTOK INC., *et al.*,  
*Petitioners*,  
  
v.  
  
MERRICK B. GARLAND, in his official capacity  
as Attorney General of the United States,  
*Respondent*.

Case No. 24-1113, 24-1130, 24-1183

**FILED IN CAMERA, EX PARTE,  
AND UNDER SEAL**

**(U) IN CAMERA, EX PARTE CLASSIFIED DECLARATION OF CASEY BLACKBURN,  
ASSISTANT DIRECTOR OF NATIONAL INTELLIGENCE**

(U) I, Casey Blackburn, declare as follows:

1. (U) I am an Assistant Director of National Intelligence and the Director of the Office of Economic Security and Emerging Technologies (“OESET”) at the Office of the Director of National Intelligence (“ODNI”). I have held these positions since October 2023.

2. (U//~~FOUO~~) As the Director of OESET, I seek to integrate the Intelligence Community, non-Intelligence Community government partners, and industry to enable consolidated understanding of the trends and comparative advantages in emerging technologies to better inform U.S. policymakers. I also oversee OESET’s Investment Security Group, which



[REDACTED]

has played a leading role in the Intelligence Community’s efforts to assess the national security risks posed by ByteDance Ltd. (“ByteDance”) and TikTok Inc. (“TikTok US”).<sup>1</sup>

3.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

4. (U) In the course of my official duties at ODNI, I have been advised of these lawsuits and the allegations at issue in the above-captioned Petitions for Review. The statements made in this declaration are based on my personal knowledge, as well as on information provided to me in my official capacity, and on my personal evaluation of that information.

5. (U) Two intelligence officers assigned to OESET’s Investment Security Group, in concert with representatives from the Department of Justice and the FBI, provided several briefings to Congress, including numerous members of the Senate and House of Representatives and their staffs, in January, February, and March 2024, regarding the national security threat

<sup>1</sup> (U) In general, I use the term “TikTok” in this declaration to broadly refer to the worldwide TikTok entities and TikTok application. Where relevant, I use the more specific term “TikTok US” to refer to the U.S.-based entity that operates the TikTok application within the United States. And I use the term “TikTok Global” to refer to TikTok Limited and the constellation of other entities that own, operate, or otherwise control the TikTok application outside of the United States. Finally, I use the term “ByteDance” to refer to that entity in its capacity both as TikTok’s parent and as the operator of Douyin, the Chinese version of the TikTok application.

[REDACTED]

[REDACTED]

posed by ByteDance and TikTok. These included a House Energy and Commerce full committee markup hearing on March 7, 2024; an all-member classified briefing of the House of Representatives on March 12, 2024, that included more than 100 Members; and a classified briefing for members of the Senate Select Committee on Intelligence and the Senate Commerce, Science, and Technology Committee on March 20, 2024.

6. [REDACTED]

[REDACTED]

7. (U) My declaration complements declarations provided by other agencies in support of the government’s defense in this matter. This includes the Declaration of David Newman, Principal Deputy Assistant Attorney General, Department of Justice, National Security Division, and the Declaration of Kevin Vorndran, Assistant Director, FBI. I make this declaration in support of the U.S. government’s responses to the Petitions.

8. (U) This declaration contains classified national security information under Executive Order 13526, *Classified National Security Information*, 75 Fed. Reg. 707 (Dec. 29, 2009), and applicable regulations. Consistent with those authorities, the unauthorized disclosure

[REDACTED]

[REDACTED]

of the information discussed herein could cause serious, or in some cases exceptionally grave, damage to U.S. national security, as well as damage to intelligence sources and methods. As a result, I am submitting this declaration solely for the Court's *in camera, ex parte* review.

**(U) Summary Of National Security Risks Associated with TikTok**

9. (U) The U.S. Intelligence Community assesses that ByteDance and TikTok pose a potential threat to U.S. national security because they could be used by the PRC against the United States in two principal ways: malign foreign influence targeting U.S. persons, and collection of sensitive data of U.S. persons.<sup>2</sup> First, while we have no information that the PRC has done so with respect to the platform operated by TikTok in the United States, there is a risk that the PRC may coerce ByteDance or TikTok to covertly manipulate the information received by the millions of Americans that use the TikTok application every day, through censorship or manipulation of TikTok's algorithm, in ways that benefit the PRC and harm the United States. Second, there is a risk that the PRC may coerce ByteDance or TikTok to provide the PRC access to sensitive and personally identifying U.S. user data collected by the TikTok application, so that the PRC can use that data in ways that are harmful to U.S. national security. I elaborate on these risks below.

10. [REDACTED]

[REDACTED]

[REDACTED]

---

<sup>2</sup> [REDACTED]

[REDACTED]

[REDACTED]

11. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

12. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

13. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

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<sup>3</sup> (U) Douyin is the version of the TikTok application that operates within China.

[REDACTED]

[REDACTED]

14. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

**(U) Background**

***(U) Threats And Challenges to The United States Posed by The People's Republic of China***

15. (U) The PRC engages in competitive behavior that directly threatens U.S. interests, including in national security, military, economic, social, cyber, and technological domains.

16. (U) The Chinese Communist Party, through the PRC (which it controls), seeks to make the PRC the preeminent power in East Asia and a major power on the world stage. In pursuit of that goal, the PRC seeks to undercut U.S. influence, drive wedges between the United States and its partners, surpass the United States in comprehensive national power, and foster norms that favor the PRC's authoritarian system.

17. (U) The PRC combines its economic heft with its growing military power and its diplomatic and technological dominance for a coordinated approach to strengthen Chinese Communist Party rule, secure what it views as its sovereign territory and regional preeminence, and pursue global power.

18. (U) The PRC has attempted to expand its influence through projects like the Belt and Road Initiative, Global Development Initiative, and Global Security Initiative, to promote a

[REDACTED]

PRC-led alternative to U.S.- and Western-led international development and security frameworks.

19. (U) The PRC seeks to undercut U.S. military superiority, particularly in East Asia. Taiwan, in particular, is a significant potential flashpoint for confrontation between the PRC and the United States as the PRC claims that the United States is using Taiwan to undermine China's rise. The PRC will continue to apply military and economic pressure as well as public messaging and influence activities in pursuit of forced unification with Taiwan.

20. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

21. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

22. [REDACTED]

[REDACTED]

[REDACTED]



[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

23. (U) The PRC has undertaken, undertakes, and will undertake overt and covert actions to undermine U.S. interests, public and private. The PRC uses whole-of-government tools to compel other countries to acquiesce to its preferences, including its assertions of sovereignty over Taiwan.

24. (U) The threat from the PRC manifests in many ways, including the following categories:

25. (U) *Technology*. The PRC targets key sectors and proprietary commercial and military technology from U.S. and allied companies and institutions. The PRC has shown a willingness to use various methods, including economic espionage and cyber theft, to give its firms a competitive advantage against the United States and its companies. China seeks to become a world science and technology superpower and to use this technological superiority for economic, political, and military gain.

26. (U) *Cyber*. The PRC is the most active and persistent cyber espionage threat to U.S. government, private-sector, and critical infrastructure networks. The PRC's cyber espionage pursuits and its industry's export of surveillance, information, and communications technologies increase the threats of aggressive cyber operations against the United States and the suppression of the free flow of information in cyberspace. The PRC's cyber espionage includes not just traditional targeting of the U.S. government but extensive and broad-ranging economic espionage aimed at stealing U.S. technology, commercial information, and trade secrets from many different sectors to benefit the PRC and Chinese companies. The PRC has stolen

technology and information worth billions of dollars from the United States through cyber and other means. Moreover, PRC-sponsored hackers have pre-positioned for potential cyber-attacks against U.S. critical infrastructure by building out offensive weapons within that infrastructure, poised to attack whenever the PRC decides the time is right. The United States has found persistent PRC access in U.S. critical telecommunications, energy, water, and other infrastructure. PRC hackers known as “Volt Typhoon” hide within our networks, lying in wait to use their access to harm U.S. civilians. China’s hacking program, which spans the globe and thus affects U.S. partners as well, is larger than that of every other major nation, combined.

27. (U) *Censorship and transnational repression.* The PRC leads the world in applying surveillance and censorship to monitor its population and suppress dissent. In addition, the PRC conducts cyber intrusions targeted to affect U.S. and non-U.S. citizens beyond its borders—including journalists, dissidents, and individuals it views as threats—to counter and suppress views it considers critical of Chinese Communist Party narratives, policies, and actions.

28. (U) For example, in 2023, the United States indicted dozens of PRC officials for a campaign of harassment against pro-democracy dissidents in the United States. The officials created and maintained thousands of fake social media accounts to spread PRC propaganda in the United States and to identify and harass dissidents who objected to the propaganda. PRC officials also conspired with an employee at a videoconferencing company to disrupt meetings by U.S.-based dissidents commemorating the 1989 Tiananmen Square massacre. And a PRC official attempted to derail the candidacy of a person seeking elected office in the United States, who was critical of the PRC government, by attempting to find and release compromising information on the candidate

29. (U) *Malign influence operations.* The PRC is expanding its global covert influence posture to better support the Chinese Communist Party's goals. The PRC aims to sow doubts about U.S. leadership, undermine democracy, and extend the PRC's influence abroad. Through its online influence operations, the PRC seeks to promote pro-PRC narratives, refute U.S.-promoted narratives, and counter other countries' policies that threaten the PRC's interests. In particular, the PRC is intensifying its efforts to mold U.S. public discourse or magnify U.S. societal divisions in ways favorable to the PRC.

30. (U) *Intelligence operations.* The PRC seeks to expand its global intelligence posture to advance the Chinese Communist Party's ambitions, challenge U.S. national security and global influence, and steal trade secrets and intellectual property to bolster the PRC's domestic industry. PRC intelligence officials will try to expand their use of digital monitoring, data collection, and advanced analytic capabilities against political security targets beyond the PRC's borders. The PRC is rapidly expanding and improving its artificial intelligence and big data analytics capabilities for intelligence operations.

31. (U) *Data Collection on U.S. Persons.* The PRC has engaged in extensive and years-long efforts to accumulate structured datasets, in particular on U.S. persons, to support its intelligence and counterintelligence operations.

32. (U) The PRC uses a number of methods to obtain data. For example, cyber actors associated with the PRC obtained reams of data on U.S. government personnel from the Office of Personnel Management's systems and PRC intelligence services stole financial data on over 147 million Americans from a U.S. credit-reporting agency and were almost certainly responsible for the theft of health data on nearly 80 million Americans from a U.S. health insurance provider.

[REDACTED]

33. (U) The PRC also tries to leverage access through its relationships with Chinese companies, strategic investments in foreign companies, and by purchasing large data sets. For example:

a. (U) The PRC, and Chinese companies, have sought to acquire sensitive health and genomic data on U.S. persons through, for example, investment in U.S. firms that handle such data or by partnering with healthcare or research organizations in the United States to provide genomic sequencing services.

b. [REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

34. [REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

35. [REDACTED]  
[REDACTED]

a. [REDACTED]  
[REDACTED]

[REDACTED]

[Redacted]

[Redacted]

[Redacted]

b.

[Redacted]

[Redacted]

[Redacted]

[Redacted]

c.

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

d.

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

e.

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

36. (U) As set forth at greater length below, ByteDance and TikTok present powerful platforms by which the PRC could take actions falling in many of the foregoing categories.

**(U) TikTok Background**

37. (U) TikTok is a social media application (with corresponding mobile and web applications) on which users can create, share, and watch short videos.

38. (U) An estimated 170 million Americans use TikTok monthly.

39. (U) ByteDance Limited is a holding company founded in 2012 and incorporated in the Cayman Islands, primarily operating out of offices in the PRC. ByteDance owns or controls several subsidiary and affiliated entities that, collectively, play various roles in operating Douyin, the version of the TikTok application that exists within China.

40. (U) ByteDance also owns TikTok Limited, an entity also registered in the Cayman Islands and primarily operating out of offices in the PRC. TikTok Limited owns or controls various subsidiary and affiliated entities that collectively operate the TikTok application throughout the world outside China.

41. (U) Among the TikTok subsidiaries and affiliates owned or controlled by TikTok Limited is TikTok LLC, a Delaware limited liability company based in California.

42. (U) TikTok Inc. operates the TikTok application in the United States. TikTok Inc. is a wholly owned subsidiary of TikTok LLC.

[REDACTED]

43. (U) The predominant manner by which users view content on TikTok is through the “For You Page.” This feed presents users with a practically endless stream of videos that are selected for users by ByteDance and TikTok’s proprietary content recommendation algorithm.

44. (U) When presented with a video on the For You Page, users may watch the video for as little or as long as they want. At any time, the user may scroll up to view the next video selected for them by the application’s algorithm. The user may also engage with the video by liking it, sharing it, commenting on it, or subscribing to its creator. TikTok offers users an option of viewing a feed composed of only videos from creators to which the user is subscribed.

45. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

46. (U) TikTok’s algorithm constantly updates its users’ preference profiles with more data collected through the application.

**(U) Risks Of PRC-Directed Censorship and Algorithmic Manipulation**

47. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

48. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

49. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

50. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]



[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

51. (U) Nonetheless, the Intelligence Community’s concern is grounded in the actions ByteDance and TikTok have already taken overseas, and in the PRC’s malign activities in the United States that, while not reliant on ByteDance and TikTok to date, demonstrate its capability and intent to engage in malign foreign influence and theft of sensitive data.

***(U) ByteDance and TikTok’s History of Censorship and Content Manipulation at PRC Direction***

52. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

a. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

b. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

c. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

53.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

a.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

b.

[REDACTED]

[REDACTED]

[REDACTED]

54. (U) Intelligence reporting further demonstrates that ByteDance and TikTok

Global have taken action in response to PRC demands to censor content *outside* of China.

a.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

b. [REDACTED]

[REDACTED]

55. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

56. [REDACTED]

[REDACTED]

[REDACTED]

a. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

b. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

57. [REDACTED]

[REDACTED]

[REDACTED]

a. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

b. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

c. [REDACTED]

[REDACTED]

[REDACTED]

58. (U) In sum, ByteDance and TikTok Global have a demonstrated history of manipulating the content on their platforms, including at the direction of the PRC.

[REDACTED]

59. [REDACTED]

[REDACTED]

60. [REDACTED]

[REDACTED]

[REDACTED]

a. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

b. [REDACTED]

[REDACTED]

61. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

62. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

63. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

64. (U) A recent December 2023 academic study using TikTok’s own data underscores the concern. *See A Tik-Tok-ing Timebomb: How TikTok’s Global Platform Anomalies Align with the Chinese Communist Party’s Geostrategic Objectives*, Network Contagion Research Institute (Dec. 2023). This study examined the volume of posts on TikTok containing certain hashtags and compared that to the number of posts with the same hashtags on Instagram. Based on the platform’s respective user base sizes, one would expect approximately

[REDACTED]

[REDACTED]

1.5 to 2 times more posts on Instagram with each hashtag, something that largely held true on average as to certain pop culture hashtags. But the study detected sizable anomalies in the prevalence of both pro- and anti-Chinese Communist Party narratives when compared to Instagram, with topics in line with Chinese Communist Party priorities having outsized prevalence on TikTok and posts on sensitive topics being far less prevalent than expected. For example, various Uyghur-related and Tibet-related hashtags appeared approximately 11 times and 37 times more on Instagram, respectively, than TikTok.

65. [REDACTED]

[REDACTED]

66. (U) Notably, the study writers report that TikTok eliminated the research mechanism underlying this study shortly after it was published. Specifically, the writers indicate the elimination of certain search capabilities to analyze hashtag trends on TikTok, including the elimination of trend data on all China-sensitive hashtags that the researchers relied on. The company did not publicize this action.

67. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

***(U) If the PRC Directed ByteDance or TikTok US to Censor Content or Manipulate Its Algorithm, The Firms Would Likely Comply***

68. (U) As discussed above, the PRC has a strong interest in manipulating the American information space and a demonstrated history of successfully tasking ByteDance and TikTok Global to censor discourse on their platforms outside of the United States.

69. (U) We believe ByteDance and TikTok similarly would try to comply if the PRC asked for specific actions to be taken to manipulate content for censorship, propaganda, or other malign purposes on TikTok US. As currently structured, ByteDance could accomplish the PRC's goals either by acting unilaterally to manipulate the platform or by compelling the cooperation of TikTok US.

70. [REDACTED]

[REDACTED]

[REDACTED]

71. (U) ByteDance is subject to the National Security Law of the PRC, which imposes broad obligations on citizens and corporations to assist and cooperate with the Chinese government in protecting what it broadly defines as national security. Among other things, the law requires Chinese citizens and organizations to comply with relevant PRC departments to assist national security efforts. Furthermore, the law prohibits those who comply with the PRC's requests from disclosing such cooperation publicly.

72. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]



[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

73. (U) The PRC can also leverage the Chinese Communist Party committee embedded in ByteDance to exert its will on the company. ByteDance has a Communist Party committee that, as of 2022, was headed by the company’s chief editor and comprised at least 138 employees at its Beijing office, including senior company managers. Party Committees—which are legally required for domestic firms and many foreign firms operating in China—are grassroots units of the party responsible for advancing party priorities and ideology, but the committees also have become involved in business decisions. Since 2020, some Party Committees in private firms, including multinational firms, have pushed to put party members on their boards and have influenced hiring decisions, despite Chinese government officials’ claims that the cells serve a primarily social function.

74. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

75.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

76. (U) To begin, the content recommendation algorithm at the core of the TikTok application—and thus TikTok’s success—resides within China and is largely maintained and controlled by ByteDance. This fact alone provides ByteDance with extremely powerful leverage over TikTok US.

77.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

78. (U) Altogether, TikTok US is heavily reliant on its corporate parent in numerous ways—operational and technological. Despite TikTok’s efforts to publicly distance itself from the PRC, the PRC is well-positioned to maintain some degree of access or influence over TikTok in the future. As a prominent example, Chinese law prohibits the export of the TikTok application’s source code, including to the United States, without government authorization (which is unlikely).

[REDACTED]

[REDACTED]

79.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

80. (U) In conclusion, TikTok poses a potential risk of serving as a powerful tool of information operations that could be used by an adversary, China, with a demonstrated commitment to shaping the information landscape in this country and around the world.

[REDACTED]

81.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

82.

[REDACTED]

[REDACTED]

[REDACTED]

83.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

84. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

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86. [REDACTED]

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87.

[REDACTED]

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4 [REDACTED]

[REDACTED]

[REDACTED]

89.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

a.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

b. (U) In 2024, former TikTok employees told Western media outlets that TikTok Global employees share U.S. user data on PRC-based internal communication systems that China-based ByteDance employees can access, and that TikTok US also approved sending U.S. data to China several times.

c.

[REDACTED]

[REDACTED]

d.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

90. [REDACTED]

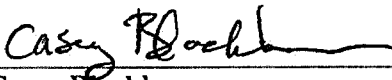
[REDACTED]

91. [REDACTED]

[REDACTED]

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct.

Executed on July 26, 2024

  
\_\_\_\_\_  
Casey Blackburn  
Director  
Office of Economic Security and Emerging Technologies  
Assistant Director of National Intelligence  
Office of the Director of National Intelligence

**UNITED STATES COURT OF APPEALS  
FOR THE DISTRICT OF COLUMBIA CIRCUIT**

TIKTOK INC., *et al.*,  
*Petitioners,*

v.

MERRICK B. GARLAND, in his official capacity  
as Attorney General of the United States,  
*Respondent.*

Case No. 24-1113, 24-1130, 24-1183

**FILED IN CAMERA, EX PARTE,  
AND UNDER SEAL**

**(U) IN CAMERA, EX PARTE DECLARATION OF  
KEVIN VORNDRAN, ASSISTANT DIRECTOR,  
COUNTERINTELLIGENCE DIVISION,  
FEDERAL BUREAU OF INVESTIGATION**

(U) I, Kevin Vorndran, hereby declare the following:

1. (U) I am the Assistant Director, Counterintelligence Division, Federal Bureau of Investigation (FBI), United States Department of Justice (DOJ), a component of an Executive Department of the United States Government. I am responsible for, among other things, directing the conduct of the FBI's counterintelligence investigations. As Assistant Director, I have official supervision and control over the files and records of the Counterintelligence Division, FBI, Washington, D.C.

2. (U) In the course of my official duties at the FBI, I have been advised of these lawsuits and the allegations at issue in the above-captioned Petitions for Review. I understand that TikTok Inc. (TikTok US),<sup>1</sup> ByteDance Ltd. (ByteDance), and several TikTok application users filed

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<sup>1</sup> In general, I use the term "TikTok" in this declaration to broadly refer to the worldwide TikTok entities and TikTok application. Where relevant, I use the more specific term "TikTok US" to



Petitions for Review of Constitutionality of the Protecting Americans from Foreign Adversary Controlled Applications Act. The matters stated herein are based on my personal knowledge, my review and consideration of documents and information made available to me in my official capacity, and on information furnished to me by Special Agents, Intelligence Analysts, and other employees of the FBI and the DOJ. My conclusions have been reached in accordance therewith.

3. (U) My declaration complements declarations provided by other agencies in support of the government's defense in this matter. This includes the Declaration of David Newman (Department of Justice, National Security Division) and the Declaration of Casey Blackburn (Office of the Director of National Intelligence). I make this declaration in support of the U.S. government's responses to the Petitions.

4. (U) This Declaration specifically addresses Hybrid Commercial Threats; risks posed by TikTok; limitations in the FBI's ability to monitor and investigate TikTok and its operations; and the FBI's role in the Committee on Foreign Investment in the United States mitigation monitoring.

5. (U) This declaration contains classified national security information under Executive Order 13526, *Classified National Security Information*, 75 Fed. Reg. 707 (Dec. 29, 2009), and applicable regulations. Consistent with those authorities, the unauthorized disclosure of the information discussed herein could cause serious, or in some cases exceptionally grave, damage to U.S. national security, as well as damage to intelligence sources and methods. As a result, I am submitting this declaration solely for the Court's *in camera*, *ex parte* review.

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refer to the U.S.-based entity that operates the TikTok application within the United States. And I use the term "TikTok Global" to refer to TikTok Limited and the constellation of other entities that own, operate, or otherwise control the TikTok application outside of the United States. Finally, I use the term "ByteDance" to refer to that entity in its capacity both as TikTok's parent and as the operator of Douyin, the Chinese version of the TikTok application.

**(U) Hybrid Commercial Threats**

6. (U) Hybrid Commercial Threats are businesses whose legitimate commercial activity can facilitate foreign government access to U.S. data, critical infrastructure, and emerging technologies that enable adversaries to conduct espionage, technology transfer, data collection, and other disruptive activities under the guise of an otherwise legitimate commercial activity. Hybrid Commercial Threats are a global phenomenon that allow foreign governments—and the PRC in particular—to take advantage of legitimate business operations and leverage commercial access to pursue strategic national goals.



10. (U) The PRC's ability to exploit Hybrid Commercial Threats stems from a fundamental asymmetry between the relationships such U.S.-based subsidiaries have with the PRC and the U.S. government, respectively. U.S. subsidiaries of Chinese parent corporations remain subject to PRC jurisdiction and laws, which are outlined in paragraphs 16-25 of the Declaration of David Newman

(Newman Decl.). In exerting control over Chinese parent companies through formal legal means and, more frequently, the informal business culture that surrounds the PRC's legal framework, the PRC can access information from and about U.S. subsidiaries and compel their cooperation with PRC directives. In contrast, in the United States, U.S. subsidiaries are generally treated as U.S. persons and afforded robust legal and constitutional protections.

12. (U) Because Chinese laws enable the PRC to exert control over Chinese companies' U.S. subsidiaries, *see* Newman Decl. ¶¶ 16-25, the PRC has and can benefit from those companies' commercial successes as the Chinese government can leverage its legal regime and other tools to co-opt those companies for geopolitical gain. The use of prepositioning is a part of the PRC's broader geopolitical and long-term strategy to undermine U.S. national security. The PRC's prepositioning tactics can occur over the span of several years of planning and implementation. For example, the PRC, via its investment in Hybrid Commercial Threats in the emerging technology sector, has assumed leadership roles and active participation in international standards organizations.

14. (U) I am also aware of public reporting that Chinese hackers have considered exploiting U.S. legal protections for their own gain. In March 2021, a Microsoft executive noted in a U.S. press interview that the Chinese actors behind the 2021 Microsoft Exchange breach "apparently spent the

time to research the legal authorities and recognized that if they could operate from inside the United States, it takes some of the government's best threat-hunters off the field."

**(U) Risks Posed by TikTok**

15. (U) I am aware that ByteDance is a limited liability company based in Beijing, China, and that ByteDance is the parent company of TikTok Global and its U.S. subsidiary, TikTok US.

17. (U) While many of the TikTok application's functions and data collection practices are used for legitimate commercial purposes, those same functions and practices can also be used at the PRC's direction in ways that threaten U.S. national security.

18. (U) The FBI assesses ByteDance and TikTok could facilitate the PRC's access to U.S. users' data, which could enable PRC espionage, technology transfer, data collection, and influence activities.

19. (U) The following three examples illustrate how otherwise legitimate commercial activities can be used to harm the United States' national security.

20. (U) First, I am aware that TikTok US requests access to its millions of American user's contact list upon installation of the application (app) on the user's phone. I am aware that TikTok uses contact list information for legitimate business purposes, such as suggesting contacts to follow on the app.

21. (U) However, the FBI assesses this information can also be used for illegitimate and malign purposes.

22. (U) Once a user approves, the TikTok app has access to any data stored in the user's contact list, from names and contact information to job titles, contact photos, and notes. TikTok also periodically syncs contact lists, obtaining any updated and new information in user's contact lists.

[REDACTED]

This gives TikTok access to extensive information about users and non-users, including U.S. Government and U.S. intelligence community employees, U.S. political dissidents, and other individuals of interest to the PRC.

[REDACTED]

24. (U) Modern software applications can parse, centralize, and aggregate even disparate data that can facilitate targeting and operational activities.

[REDACTED]

[REDACTED]

27. (U) Second, TikTok US can access its users' physical locations through geolocation data.

I am aware that TikTok US can use users' geolocations for legitimate commercial purposes, such as targeting advertisements or content to TikTok US users.

28. (U) However, the PRC could also require ByteDance to share this data, which the PRC can use to locate, track, or monitor targeted persons.

29. (U) I am aware of reporting that ByteDance has improperly used TikTok US's geolocation data as a surveillance tactic in the past. I am aware that in October 2020, Forbes reported that ByteDance employees used IP address locations to track multiple journalists covering the company.

30. (U) Third, I am aware that TikTok's recommendation algorithm is used for legitimate business purposes to promote and demote certain content, such as showing users videos consistent with their interests or promoting advertising content.

31. (U) However, the FBI assesses TikTok's algorithm can also be used for illegitimate and malign purposes, posing risks to U.S. national security.

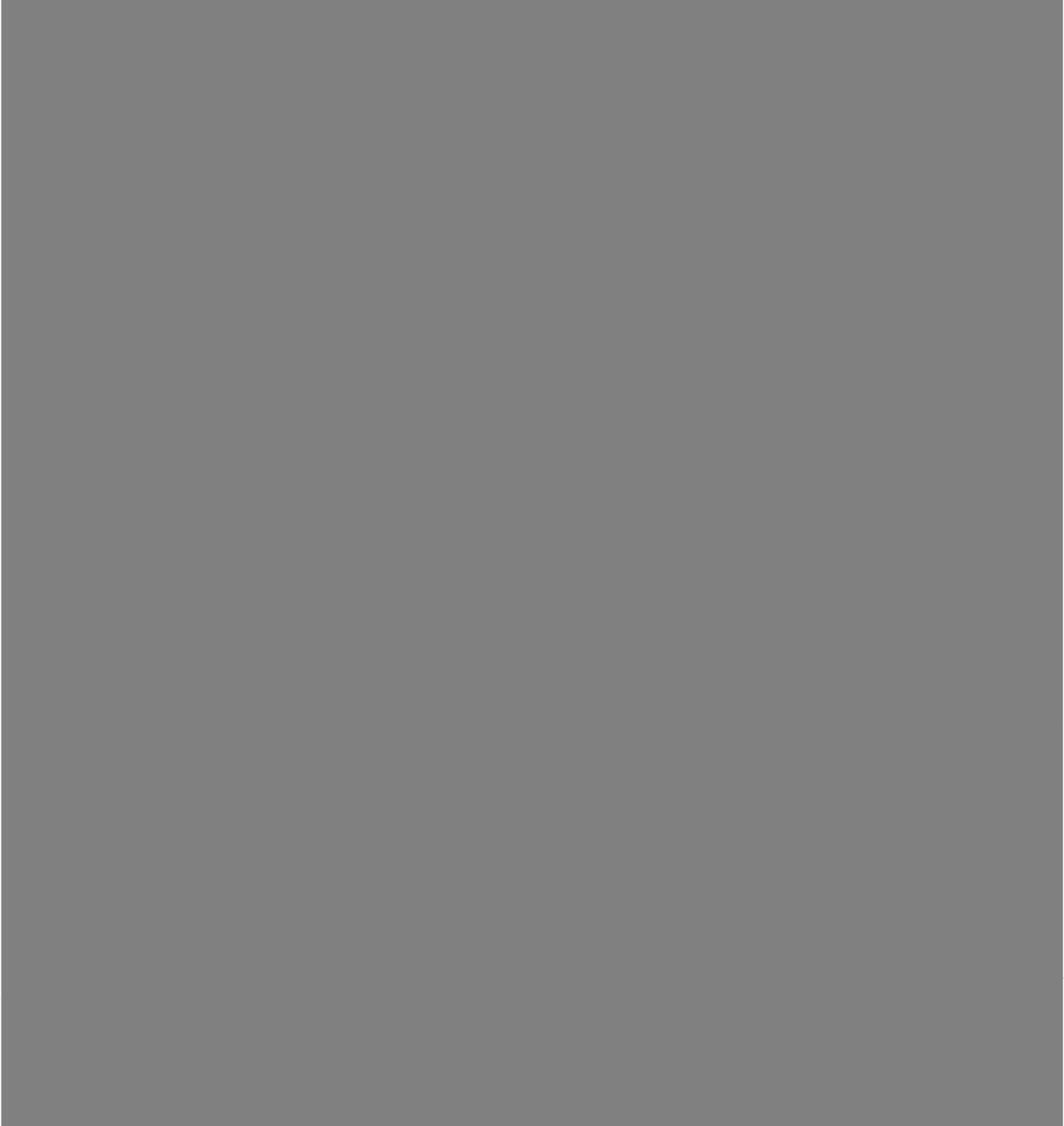
32. (U) For example, the PRC's artificial intelligence capabilities are greatly enhanced by the collection of U.S. person data, which could include users' data collected by TikTok. The FBI assesses that the PRC could use its AI capabilities to augment its influence campaigns, such as amplifying preexisting social divisions, and targeting U.S. audiences through TikTok's algorithm by promoting and suppressing particular videos. The FBI assesses that this would occur covertly, with little, if any, outward sign of PRC control.

33. (U) Similarly, the PRC has exerted control over the content shown on other ByteDance-managed apps and has reprimanded ByteDance when its apps showed content inconsistent with PRC socialist values. For example, in April 2018, China's State Administration of Radio and Television publicly chastised ByteDance for hosting vulgar and insensitive content on two of its social media apps, Neihan Duanzi and Toutiao, and temporarily ordered their removal from app stores in China. In response, ByteDance discontinued Neihan Duanzi altogether and ByteDance's Founder and then-CEO, Zhang Yiming, issued a public apology for failing to acknowledge that "technology must be led by the socialist core value system." Zhang further pledged to "deepen cooperation with authoritative media" and "elevate distribution of authoritative media content." ByteDance announced plans to educate its employees about socialist core values and committed to hiring 4,000 additional employees to monitor and censor content, also calling upon PRC government representatives to supervise ByteDance's platforms.

**(U) Limitations to FBI's Ability to Monitor and Investigate TikTok**

34. (U) There are several challenges that the FBI faces in monitoring and investigating TikTok. One challenge is if a seemingly legitimate commercial activity is being used for illegitimate national security purposes, this would be difficult—if not impossible—to detect, both by TikTok users and by law enforcement personnel. The Chinese government can, in secret, compel or coerce ByteDance to share TikTok's data or utilize the TikTok application to harm the national security interests of the United States.

36. (U) It is difficult for the FBI to assess whether the algorithmic outputs, which display videos to users, are the result of a legitimate commercial algorithmic input or the result of covert malicious algorithmic input at the direction of the PRC.





(U) **FBI's Role in the Committee on Foreign Investment in the United States Mitigation Monitoring**

41. (U) In addition to providing timely intelligence and analysis to the Committee on Foreign Investment in the United States (CFIUS), the FBI's Foreign Investment Unit provides mitigation monitoring support to CFIUS Monitoring Agencies in three key areas.

42. (U/ ) First, in support of a CFIUS derived National Security Agreement (NSA) or Letter of Assurance, a CFIUS Monitoring Agency may request a vendor or person name check (name check) related to the parties of the CFIUS transaction. In this case, the FBI typically conducts an (1) open source review, (2) criminal background check, (3) internal FBI file review and in transactions that are co-lead by DOJ (4) other government databases. The FBI provides their findings back to the CFIUS Monitoring Agency for their assessment and suitability determination.

43. (U/ ) Second, at the request of the CFIUS Monitoring Agencies, the FBI may provide operational and/or intelligence support to CFIUS Monitoring Agency led site visits of parties under an existing NSA or Letter of Assurance. Typically, FBI support to a site visit may include (1) conducting a threat briefing on a certain topic (e.g., threats from foreign cyber actors), (2) providing subject matter expertise opinions, or (3) acting in a liaison capacity with the parties. Additionally, FBI's Foreign Investment Unit may leverage its U.S. based field offices and/or international based offices to provide support to a site visit within their area of responsibility.

44. (U/ [REDACTED]) Third, in limited situations, a CFIUS transaction may touch upon law enforcement equities, to include DOJ and/or the FBI. In these situations, the FBI may provide subject matter expertise to the CFIUS Monitoring Agencies in order to draft an NSA and/or Letter of Assurance that attempts to protect the identified equities.

45. (U) If the CFIUS Monitoring Agencies identify a violation of an NSA, the FBI could review any information or materials required by the NSA. Depending on the extent of the violation, the FBI could also seek to further investigate using legally appropriate law enforcement authorities.

46. (U) The FBI does not independently monitor compliance with CFIUS NSAs. It does not have agents or analysts devoted to monitoring these agreements and instead would only get involved when one of the co-lead agencies seeks FBI review.

47. (U) Any previous, current, or future investigations of TikTok on national security or criminal matters would be unrelated to monitoring of a potential NSA. The FBI would require sufficient information regarding potential violations of an NSA by monitoring agencies to determine whether it would have the predication to open an investigation on the matter.

#### Conclusion

[REDACTED]



Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct.

Executed on July 25, 2024



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**Kevin Vorndran**  
Assistant Director  
Counterintelligence Division  
Federal Bureau of Investigation

UNITED STATES COURT OF APPEALS  
FOR THE DISTRICT OF COLUMBIA CIRCUIT

TIKTOK INC., *et al.*,  
*Petitioners,*

v.

MERRICK B. GARLAND, in his official capacity  
as Attorney General of the United States,  
*Respondent.*

Case No. 24-1113, 24-1130, 24-1183

**FILED *IN CAMERA*, *EX PARTE*,  
AND UNDER SEAL**

**(U) *IN CAMERA*, *EX PARTE* CLASSIFIED DECLARATION OF DAVID NEWMAN,  
PRINCIPAL DEPUTY ASSISTANT ATTORNEY GENERAL, NATIONAL SECURITY  
DIVISION, DEPARTMENT OF JUSTICE**

(U) I, David Newman, declare as follows:

1. (U) I am the Principal Deputy Assistant Attorney General of the National Security Division (“NSD”) of the Department of Justice (“DOJ”). I have held this position since October 2022 after previously serving as Associate Deputy Attorney General (for National Security Affairs) between January 2021 and October 2022. Earlier in my career, I served in various roles on the National Security Council staff, as Special Assistant to the President and Associate White House Counsel in the Office of the White House Counsel, and as a career attorney in the DOJ’s National Security Division.

2. (U) In my current role as the second-highest ranking official in the DOJ’s National Security Division, I regularly lead and supervise all aspects of the National Security Division’s work, including overseeing investigations and prosecutions involving espionage,



terrorism, national security cyber threats, sanctions and export control violations, and foreign malign influence. In addition, I supervise and am regularly engaged in the work of the National Security Division's Foreign Investment Review Section ("FIRS"). I also regularly serve as DOJ's lead representative at the Assistant Secretary-level meetings of the Committee on Foreign Investment in the United States.

3. (U) In the course of my official duties in NSD, I am familiar with the petitions filed in the D.C. Circuit challenging the Protecting Americans from Foreign Adversary Controlled Applications Act, Pub. L. No. 118-50, Div. H (April 24, 2024) ("Act") and of the allegations at issue in those cases. The statements made in this declaration are based on my personal knowledge, as well as on information provided to me in my official capacity (including about time periods predating my current tenure at DOJ), and on my personal evaluation of that information.

4. (U) My declaration complements declarations provided by other federal agencies in support of the government's position in these cases. Those declarations include the Declaration of Casey Blackburn, Office of the Director of National Intelligence ("ODNI"); and the Declaration of Kevin Vorndran, Federal Bureau of Investigation ("FBI"). I make this declaration in support of the government's responses to the Petitions.

5. (U) My declaration describes the following topics: (1) background on TikTok and ByteDance; (2) the formal legal regime and informal practices applicable to private enterprise in the People's Republic of China ("PRC"); (3) a review, investigation, and presidential referral by the Committee on Foreign Investment in the United States ("CFIUS" or "Committee") of ByteDance Ltd.'s ("ByteDance") 2017 acquisition of the social media application Musical.ly; (4) subsequent Presidential orders against TikTok under the Defense

Production Act (“DPA”) and International Emergency Economic Powers Act (“IEEPA”) and litigation stemming therefrom; (5) the subsequent negotiations between the Executive Branch<sup>1</sup> and ByteDance<sup>2</sup>; (6) ByteDance’s final proposal<sup>3</sup> to mitigate the national security risk posed by the continued operation of the TikTok platform in the United States; (7) the fundamental inadequacies of that proposal in addressing national security risks; (8) further discussions between the Executive Branch and ByteDance; (9) additional information about TikTok & ByteDance practices; and (10) the parallel legislative efforts by Congress (including briefings in which I participated) to address similar risks to national security posed by TikTok.

6. (U) In brief, over the course of my tenure at the Department, I have observed and been personally involved in the Executive Branch’s good faith negotiations with ByteDance to reach an agreement to address the national security risks posed by TikTok’s operation in the United States under Chinese ownership. Notwithstanding such extensive negotiations, the Executive Branch was ultimately unable to reach a national security agreement with ByteDance because senior Executive Branch officials concluded that the terms of ByteDance’s final proposal would not sufficiently ameliorate those risks. Specifically, Byte Dance was unwilling

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<sup>1</sup> (U) My references in this declaration to the “Executive Branch” denote the officials charged with negotiating with ByteDance to address the national security risks posed by the TikTok platform’s operation in the United States, as described in detail below.

<sup>2</sup> (U) For simplicity, I refer to ByteDance and TikTok US collectively as “ByteDance” in the context of the Executive Branch’s negotiations with both companies.

<sup>3</sup> (U) In its Petition, TikTok refers to portions of this proposal as “Project Texas.” Because “Project Texas” was ByteDance’s public label for a voluntary effort of ByteDance’s own making and does not appear to capture the full set of risk mitigation measures that ByteDance proposed to the Executive Branch and that was carefully evaluated by the Executive Branch, I will not use the term “Project Texas” in this declaration to avoid any confusion.

to agree to a proposal that would adequately mitigate the risks of (1) PRC access to sensitive U.S. user data and (2) the PRC's ability to drive state-sponsored malign narratives without public visibility into their role in promoting such narratives. In its Petition, ByteDance claims that the agreement it had put forward during the negotiations would have been sufficient because it would have made a "Trusted Technology Partner," Oracle, the guarantor of ByteDance's compliance. As described below, however, the proposed role for Oracle under ByteDance's proposal would not have resolved the Executive Branch's national security concerns because, among other things, the proposed agreement contemplated extensive data flows of U.S. users back to ByteDance and thus to China and because the agreement sought to maintain extensive engagement between TikTok's U.S. operations and the leadership at ByteDance.

7. (U) Furthermore, the Executive Branch review found that the only feasible way to resolve these national security concerns was for ByteDance to divest TikTok's operations in the United States in favor of a more trusted owner, severing the link between Beijing and the U.S. platform.

8. (U) This declaration contains classified national security information under Executive Order 13526, *Classified National Security Information*, 75 Fed. Reg. 707 (Dec. 29, 2009), and applicable regulations. Consistent with those authorities, the unauthorized disclosure of the information discussed herein could cause serious, or in some cases exceptionally grave, damage to U.S. national security, as well as damage to intelligence sources and methods. As a result, I am submitting this declaration solely for the Court's *in camera*, *ex parte* review.

**(U) Background: TikTok and ByteDance**

9. (U) ByteDance Ltd. is a privately-owned Cayman Islands company founded by PRC nationals with headquarters in Beijing, China, founded in 2012 by PRC national Yiming



Zhang. ByteDance develops machine learning-driven mobile applications, and offers a variety of mobile applications through both in-house development and acquisitions that broadly fall into two categories: (1) news aggregation platforms and (2) entertainment video sharing platforms.

10. (U) In September 2016, ByteDance launched Douyin—an entertainment video-sharing app—in China; in May 2017, the company launched the TikTok platform, a counterpart to Douyin for the global, non-Chinese market.

11. (U) Upon its launch, in May 2017, the TikTok platform operated under one of ByteDance’s Chinese subsidiaries, Beijing Shaking Youth Technology Co., Ltd., but around October 2017 ByteDance moved the principal offices of the TikTok platform—and the related User Data—from China to Singapore, and ByteDance subsidiary TikTok Pte. Ltd. then served as the TikTok platform’s operator.

12. (U) ByteDance controls the wholly owned subsidiary TikTok Ltd., which is responsible for operating the TikTok platform globally. Through TikTok Ltd., ByteDance also controls TikTok, Inc., a company with operations in Singapore and the United States and which operates the TikTok platform.<sup>4</sup>

13. (U) TikTok United States Data Security (“TTUSDS”) is a Delaware corporation, formed in May 2022, and is a wholly owned subsidiary of TikTok, Inc.

14. (U) Musical.ly was a social media application on which users could create, share, and watch short-form videos.

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<sup>4</sup> (U) In general, I use the term “TikTok” in this declaration to broadly refer to the worldwide TikTok entities and the TikTok application. Where relevant, I use the more specific term “TikTok US” to refer to the U.S.-based entity that operates the TikTok application within the United States. I use the term “TikTok platform” to refer to the application (on iOS, Android, and computer operating systems) and that application’s underlying software.

15. (U) The TikTok platform is predominantly a mobile application (also accessible via a computer internet browser, through which its users access it) that permits users to create, view, and share videos. TikTok's success rests in large part on its proprietary algorithm, owned by ByteDance and engineered and stored in the PRC, which drives the platform's Recommendation Engine. The Recommendation Engine, and beneath it the algorithm, rely on TikTok's Source Code to function. ByteDance frequently updates the Source Code.

***(U) The Formal Legal Regime and Informal Norms Applicable to Private Enterprise in the PRC***

16. (U) China has enacted the world's most comprehensive set of laws, regulations, and national plans to broadly define its national and public security interests in data and to govern data collection, sales, sharing, and storage. This regime provides the PRC with broad control of large datasets hosted in China—controlled by both Chinese and non-Chinese companies—allowing it to restrict and suppress data that it deems could harm its national security or benefit international competitors.

17. (U) Because of the authoritarian structures and laws of the PRC regime, Chinese companies lack meaningful independence from the PRC's agenda and objectives. As a result, even putatively "private" companies based in China do not operate with independence from the government and cannot be analogized to private companies in the United States.

18. (U) I am aware that the PRC's legal code contains several laws that, in concert, allow the Chinese government to access sensitive personal data possessed by Chinese companies. These laws include the National Security Law, the Cybersecurity Law, the Anti-Terrorism Law, the National Intelligence Law, and the Counter-Espionage Law.

19. (U) *The National Security Law of the People's Republic of China* (promulgated by the Standing Committee of the National People's Congress, July 1, 2015, effective July 1,

2015) (attached hereto as Exhibit A) imposes broad obligations on corporations as well as citizens to assist and cooperate with the Chinese government in protecting what it defines as national security. China's National Security Law broadly defines national security as "the state where the country's political power, sovereignty, unity and territorial integrity, people's well-being, sustainable economic and social development, and other major national interests are relatively free from danger and internal and external threats" and "the ability to maintain a continuous state of security." *Id.* art. 2. Under the law, tasks to preserve national security include "maintain[ing] the socialist system with Chinese characteristics," "strengthen[ing] mechanisms for restricting and supervising the exercise of power," "control[ing] the ideological field," and "enhanc[ing] overall cultural strength and competitiveness." *Id.* arts. 15, 23. The law also imposes duties on citizens and Chinese organizations, including obligations to promptly report any clues and provide evidence of any activities endangering national security and to assist military agencies and relevant departments with national security efforts. *Id.* arts. 54, 77; *see also id.* art. 11.

20. (U) *The Cybersecurity Law of the People's Republic of China* (promulgated by the Standing Committee of the National People's Congress, Nov. 7, 2016, effective June 1, 2017) (attached hereto as Exhibit B) requires Chinese companies<sup>5</sup> to store their data within China, *id.* art. 37, to cooperate with crime and security investigations, *id.* arts. 28, 49, and to allow full access to data to Chinese authorities, *id.* arts. 9, 28, 49. The law was developed, in part, to "promote the healthy development of economic and social informatization." *Id.* art. 1.

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<sup>5</sup> (U) The Law applies to "the construction, operation, maintenance, and use of networks, as well as the supervision and management of cybersecurity within" China. *Cybersecurity Law of the People's Republic of China, supra* ¶ 20, art 2.

The law requires network operators to, among other things, “respect social morals” and “accept supervision from the government.” *Id.* art. 9.

21. (U) *The Anti-Terrorism Law of the People’s Republic of China* (promulgated by the Standing Committee of the National People’s Congress, Dec. 27, 2015, effective January 1, 2016, amended Apr. 27, 2018) (attached hereto as Exhibit C) authorizes the government to conduct “terrorism” investigations and requires individuals and organizations to comply, in secret, with such investigations. The law defines “terrorism” as “propositions and actions that . . . create social panic, endanger public safety, infringe on personal and property rights, or coerce state organs or international organization to achieve their political, ideological, and other objectives.” *Id.* art. 3. The law authorizes “electronic monitoring” and “irregular inspections.” *Id.* art. 53. All organizations and individual have “the obligation to assist and cooperate with relevant departments in anti-terrorism work.” *Id.* art. 9.

22. (U) *The National Intelligence Law of the People’s Republic of China* (promulgated by the Standing Committee of the National People’s Congress, June 27, 2017, effective June 28, 2017, amended Apr. 27, 2018) (attached hereto as Exhibit D) also required companies to share information with the PRC. *Id.* art. 7. The law also authorizes “national intelligence work agencies” to use any “necessary methods, means, and channels” to carry out “intelligence work both domestically and abroad,” *id.* art. 10, including by establishing “cooperative relationships with relevant individuals and organizations” and “entrust[ing] them with related tasks, *id.* art. 12.

23. (U) *The Counter-Espionage Law of the People’s Republic of China* (promulgated by the Standing Committee of the National People’s Congress, Nov. 1, 2014, amended Apr. 26, 2023, effective July 1, 2023) (attached hereto as Exhibit E) authorizes “national security agency

staff” to “enter restricted areas, locations, and units,” *id.* art. 43 and to “inspect the electronic devices, facilities, and relevant procedures and tools of concerned individuals and organizations,” *id.* art. 25. The Law requires “citizens and organizations” to “support and assist” such efforts. *Id.* art. 8.

24. (U) Significantly, these laws contain provisions that prohibit individuals and organizations from revealing when and if the Chinese government has requested any assistance or information from them. *See* National Security Law of the People’s Republic of China, *supra* ¶ 19, art. 77; Cybersecurity Law of the People’s Republic of China, *supra* ¶ 20, art. 47; Anti-Terrorism Law of the People’s Republic of China, *supra* ¶ 21, art. 48; National Intelligence Law of the People’s Republic of China, *supra* ¶ 22, art. 7; Counter-Espionage Law of the People’s Republic of China, *supra* ¶ 23, art. 8.

25. (U) Through these comprehensive laws, the PRC effectively blurs the line between the private and public sector, in a way that is very different from the way private companies in the United States operate.

**(U) CFIUS Review, Investigation, & Presidential Referral of ByteDance’s Acquisition of Musical.ly**

26. (U) As detailed below, I have been advised and am aware that prior to my current tenure at DOJ, the Committee on Foreign Investment in the United States (“CFIUS” or “Committee”) reviewed, investigated, and ultimately referred to the then-President the 2017 acquisition by ByteDance of the social media platform Musical.ly.

***(U) ByteDance’s Acquisition of Musical.ly***

27. (U) On November 23, 2017, a subsidiary of ByteDance acquired Musical.ly (the “Transaction”).

28. (U) In August 2018, ByteDance re-launched the TikTok platform in the United States, converting most of the Musical.ly users into TikTok users.

**(U) CFIUS Review**

29. (U) On October 15, 2019, CFIUS sent an extensive questionnaire to ByteDance in furtherance of evaluating whether CFIUS had national security concerns relating to the Transaction and potential authority to review it.

30. (U) On November 12, 2019 and March 27, 2020, CFIUS and ByteDance held two meetings to discuss CFIUS's concerns regarding the Transaction.

31. (U) On May 27, 2020, at CFIUS's request, ByteDance filed a Joint Voluntary Notice regarding the Transaction with CFIUS, pursuant to 31 C.F.R. § 800.501.

32. (U) On June 16, 2020, CFIUS began a 45-day formal review of ByteDance's acquisition of Musical.ly pursuant to 31 C.F.R. § 800.503(b). As part of the ensuing consultative process between CFIUS and ByteDance, the company submitted two mitigation proposals on July 15, 2020 and July 29, 2020.

33. (U) During this time, CFIUS agencies had extensive internal discussions about the size, scope, and potential mitigation of the national security risk identified by the Committee.

**(U) CFIUS Investigation**

34. (U) On July 30, 2020, at the close of its formal review, CFIUS sent a letter informing ByteDance that the Committee would initiate a 45-day investigation of the Transaction pursuant to 31 C.F.R. § 800.505. CFIUS explained that ByteDance's two mitigation proposals were insufficient to address the national security risk CFIUS had identified. The letter also informed ByteDance that the Committee anticipated referring the Transaction to the

President for decision, but invited ByteDance to submit additional information for CFIUS's consideration.

**(U) Presidential Referral**

35. (U) At the conclusion of its investigation, CFIUS's view remained that ByteDance's mitigation proposals were insufficient to address the national security threat posed by the TikTok platform's operation in the United States. Accordingly, CFIUS referred the Transaction to the President for action on August 1, 2020. CFIUS's referral to the President marked the conclusion of the CFIUS's action vis-à-vis the Transaction. *See* 50 U.S.C. § 4565(l)(2). This referral to the President "complete[d] the action of [CFIUS]," *see id.*, with respect to the ByteDance-Musical.ly transaction, meaning that future interactions between the Executive Branch and ByteDance were not subject to CFIUS's statutory procedures (including, for example, the confidentiality protections at 50 U.S.C. § 4565(c)).

**(U) CFIUS Divestment Order and Prohibitions Under the International Emergency Economic Powers Act; Subsequent Litigation**

36. (U) On August 14, 2020, the President took action under 50 U.S.C. § 4565(d) by issuing an order requiring ByteDance to divest all interests and rights in property used to enable or support its operation of TikTok in the United States, and to divest all interests and rights in any data obtained or derived from users of the TikTok platform or Musical.ly in the United States ("Divestment Order"). *Regarding the Acquisition of Musical.ly by ByteDance Ltd.*, 85 Fed. Reg. 51,297 (Aug. 14, 2020).

37. (U) The CFIUS Divestment Order was issued soon after the publication of an August 6, 2020 Presidential order under IEEPA (50 U.S.C. §§ 1701 et seq.) ("IEEPA Order") prohibiting certain transactions in the United States involving ByteDance and TikTok, and

authorizing the Department of Commerce to promulgate rules and regulations to implement the order.

38. (U) ByteDance and other parties sought to enjoin the IEEPA Order in several federal district courts. Three of those courts enjoined the Department of Commerce from implementing the IEEPA Order, holding that the Order exceeded the President's authority under IEEPA.

39. (U) ByteDance also filed a petition for review of the Divestment Order in the United States Court of Appeals for the District of Columbia Circuit on November 10, 2020.

40. (U) The parties jointly moved to place the D.C. Circuit litigation in abeyance while they engaged in the negotiations described below. The government did not enforce the order pending those negotiations. On February 19, 2021, the D.C. Circuit placed the case in abeyance. Since that date, the parties have filed joint status reports every 60 days, and the matter remains administratively stayed.

**(U) Negotiations to Address National Security Risk**

41. (U) After the Divestment Order, ByteDance and TikTok offered further mitigation proposals in an effort to address the Executive Branch's national security concerns and had multiple discussions with Executive Branch agencies. ByteDance and TikTok submitted to Executive Branch agencies a "National Security Agreement/Term Sheet" on November 6, 2020, which for the first time identified a potential restructuring to create a new potential entity under ByteDance and TikTok responsible for trust and safety in the United States.

42. (U) TikTok sent an updated mitigation proposal to the Executive Branch on January 4, 2021, thus renewing negotiations to potentially resolve identified national security risks.



43. (U) Following a Presidential transition in January 2021, the leadership at DOJ and at other Executive Branch Departments and Agencies undertook their own intensive evaluation of the risk presented by TikTok's operation in the United States, as well as of the adequacy of potential mitigation and remedial options available.

44. (U) Notwithstanding demands associated with a global pandemic and Presidential transition, Executive Branch personnel in 2021 and 2022 reviewed dozens of proposed draft mitigation terms and held a series of meetings on this topic with both the parties and within the Executive Branch. These discussions frequently included extensive discussions driven by subject matter experts in data storage, source code and software review, content review, lawful process, content moderation, and trust and safety.

45. (U) Over a two-year period from 2020 to 2022, in conjunction with their negotiations with ByteDance, Executive Branch negotiators engaged in extensive, in-depth discussions with Oracle, the proposed Trusted Technology Provider, whose responsibility under the proposed mitigation structure included storing data in the United States, performing source code review, and ensuring safety of the operation of the TikTok platform in the United States.

46. (U) The length of these negotiations reflected both the complexity of the task and the iterative nature of the negotiation process. The Executive Branch's discussions with ByteDance and TikTok personnel and counsel, as well its discussions with the proposed Trusted Technology Provider, would sometimes result in new or revised proposed mitigation measures that, in turn, required additional Executive Branch review and discussion, often involving personnel with highly technical backgrounds and expertise.

47. (U) In total, Executive Branch negotiators conducted dozens of meetings and video conferences and exchanged scores of drafts of proposed mitigation terms. Throughout

these negotiations, the Executive Branch continued meeting internally to evaluate the national security risk, analyze the parties' proposals to address the risk, and determine whether the proposals would be effective and monitorable.

48. (U) Executive Branch negotiators conducted the negotiations with TikTok and ByteDance in good faith, expending significant time and attention to achieve a mutually acceptable national security agreement that would resolve the U.S. government's national security concerns without the need for contested litigation or the enactment of new legislation. ByteDance's willingness to make certain concessions over the lifetime of those negotiations supplied a basis for the Executive Branch to continue to believe that the negotiations could ultimately succeed. As a senior DOJ official, I received repeated briefings on the status and progress of these negotiations as did other senior officials across the Executive Branch. It was well understood by those involved in the negotiations that any agreement would require review and approval at very senior levels of the Executive Branch before it could take effect.

**(U) ByteDance's Proposal**

49. (U) On August 23, 2022, TikTok submitted to the Executive Branch what the company portrayed as final proposed national security agreement ("Final Proposed NSA"), which represented the culmination of years of negotiations and discussions, following significant analysis by TikTok, presumptively ByteDance (or entities representing ByteDance's interests), and the Executive Branch. The Executive Branch extensively reviewed the Final Proposed NSA to determine whether the terms would sufficiently address the identified national security risks.

50. (U) As elaborated in greater detail below, the Final Proposed NSA would have made several organizational and technical changes affecting the operation of the TikTok platform in the United States<sup>6</sup>:

**(U) Proposed Measures to Achieve Operational Independence for TikTok USDS**

51. (U) The Final Proposed NSA purported to introduce operational independence from the decisional influence of TikTok US. and ByteDance for personnel managing operation of the TikTok platform<sup>7</sup> in the United States, under the auspices of the newly created TTUSDS.

52. (U) Article III of the Final Proposed NSA specified that TTUSDS's Board would consist of three directors, none with ByteDance or TikTok US. affiliations, to be approved by the Executive Branch, with ostensibly no duty to report to TikTok US. or to ByteDance.

53. (U) Article V of the Final Proposed NSA specified that key management personnel at TTUSDS would be subject to Executive Branch approval, and that all personnel could only be hired subject to Executive Branch approval that ensured new employees had no prior relationship with ByteDance.

54. (U) TTUSDS would have been responsible for the following functions, among others:

- a. (U) Overall compliance with the Final Proposed NSA;
- b. (U) Oversight over the storage and protection of Protected Data, including all data that TTUSDS maintained on U.S. persons; and

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<sup>6</sup> (U) ByteDance has voluntarily implemented some components of the Final Proposed NSA, although the agreement was never signed.

<sup>7</sup> (U) Petitioners refer to relevant operations of the TikTok platform as "CFIUS functions." *See, e.g.,* Simkins Decl. ¶ 53.

c. (U) Day-to-day operations of the TikTok platform in the United States.

55. (U) The composition of the TikTok US. board of directors would change. Under the Final Proposed NSA, the board of TikTok US would have five members—two from ByteDance, two outside directors (citizens of the United States, Australia, Canada, New Zealand, or the United Kingdom), and the chair of TTUSDS.

**(U) Proposed Data Protection Measures**

56. (U) The Final Proposed NSA purported to offer certain protections for U.S. users' data.

57. (U) Article XI of the Final Proposed NSA would have established three tiers of data: Protected Data, Excepted Data, and Public Data.

58. (U) "Protected Data" would have included "any data collected from a TikTok U.S. user," but excluded data whose sharing was authorized by users of the TikTok platform who affirmatively chose to share more data with TTUSDS.

59. (U) Protected Data would be stored in the United States in a "cloud" storage facility operated by Oracle Corporation.

60. (U) Protected Data stored overseas would be deleted.

61. (U) Protected Data would be deleted no later than 18 months after creation.

62. (U) ByteDance's access to Protected Data would purportedly be limited to certain scenarios that would have been identified in advance, such as sharing IP addresses to mitigate a global cybersecurity incident.

**(U) Proposed Third-Party Oversight Mechanisms**

63. (U) The Final Proposed NSA purported to introduce trusted third-party oversight of operation of the TikTok platform in the United States.

64. (U) Under Articles XIII and IX of the Final Proposed NSA, a “Trusted Technology Partner” (also referred to as a “TTP”) would be appointed, with the consent of the U.S. government, to support TTUSDS in the performance of its functions and purportedly to verify its compliance with its obligations under the Final Proposed NSA. TikTok indicated they continued to contemplate Oracle Corporation would serve as the TTP, at least at the outset.

- a. (U) Personnel hired by the TTP would be subject to the same limitations applicable to TTUSDS staff.
- b. (U) The TTP would manage the storage of Protected Data.
- c. (U) The TTP would be responsible for initially inspecting, and monitoring changes to, Source Code developed by ByteDance.
- d. (U) The TTP would regularly report to the U.S. government on TTUSDS’s compliance with the Final Proposed NSA.

65. (U) Additional third-party monitoring would have taken place, facilitated by the TTP, through a Third-Party Monitor, a Third-Party Auditor, and a Cybersecurity Auditor.

***(U) Proposed Source Code Inspection and Verification Measures***

66. (U) The Final Proposed NSA purported to guarantee the safety of the TikTok platform’s Source Code.

67. (U) Article IX of the Final Proposed NSA would have permitted the TTP, as well as a Source Code Inspector, to inspect the TikTok platform’s Source Code.

68. (U) All Source Code for the TikTok platform in the United States would be stored in TTP servers in the United States.

69. (U) Updates and changes to the Source Code from ByteDance would be pushed to Dedicated Transparency Centers operated by the TTP, where they would not be synched with the TikTok platform in the United States until the TTP had reviewed the changes.

**(U) *Proposed Additional Compliance Measures***

70. (U) The Final Proposed NSA contemplated various compliance measures.

71. (U) In particular, under Article XXI of the Final Proposed NSA, the U.S. government would have had the authority under the Final Proposed NSA to instruct the TTP to stop permitting downloads of, and updates to, the TikTok platform in the United States. TikTok has referred to this as the “kill switch.”

72. (U) The Final Proposed NSA would have allowed the U.S. government to impose monetary penalties for noncompliance.

**(U) Insufficiencies of TikTok’s Proposal**

73. (U) Between August 2022 and February 2023, the Executive Branch scrutinized, evaluated, and discussed the Final Proposed NSA, including through a robust interagency process with substantial, personal involvement at senior levels of the Executive Branch.

a. (U) During the Executive Branch’s internal deliberations concerning the Final Proposed NSA, the Executive did not stop engaging with ByteDance.

b. (U) To the contrary, the period between August 2022 and February 2023 saw numerous communications between the two sides, including multiple requests by the Executive Branch for additional written updates and answers to follow-up questions.

[REDACTED]

74. (U) Though the Executive Branch and ByteDance made progress in their negotiations, culminating in the Final Proposed NSA, the resulting proposal did not mitigate the risks posed to U.S. national security interests to a degree acceptable to the Executive Branch.

75. (U) Most fundamentally, the Final Proposed NSA still permitted certain data of U.S. users to flow to China, still permitted ByteDance executives to exert leadership control and direction over TikTok’s US operations, and still contemplated extensive contacts between the executives responsible for the TikTok U.S. platform and ByteDance leadership overseas. Moreover, the Final Proposed NSA would ultimately have relied on the Executive Branch trusting ByteDance to make day-to-day business decisions that enforce the mitigation measures even as the Executive Branch lacked the resources and capabilities to fully monitor and verify ByteDance’s compliance with the Final Proposed NSA. For the reasons described below, this model was deemed to pose an unacceptable risk of national security harm.

**(U) *Lack of Visibility into PRC Activity or Influence***

76. (U) Certain inherent features of the PRC, ByteDance and the TikTok platform would have greatly inhibited the U.S. government’s ability to detect violations of the Final Proposed NSA.

77. [REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

78. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

- a. (U) *Data*. The flow of U.S. user data into TTUSDS's servers, and from there to other locations, would not be subject to direct U.S. government monitoring under the Final Proposed NSA. Moreover, PRC-based companies like ByteDance are compelled to cooperate with PRC law enforcement requests and are prohibited from disclosing that cooperation. *See* Blackburn Decl. ¶ 71. Even absent a formal request from the PRC, it is inherent in the nature of a commercial hybrid threat that ByteDance would cooperate with PRC efforts to obtain U.S. user data, with the U.S. government none the wiser.
- b. (U) *Limitations of Source Code Analysis*. Even assuming every line of Source Code could be monitored and verified by the TTP, the PRC could exert malign influence through the very same features that have made the TikTok platform globally successful. For example, the TikTok platform includes a feature known as "heating," by which employees may manually boost certain content for viewing on users' For You Pages. Users cannot see that a video has been "heated" when they view it. Heating is useful from a commercial perspective, as it enables TikTok to curate popular content and disseminate that content widely on the platform, potentially increasing user engagement and increasing the value



[REDACTED]

of advertising it sells. But it may also be used to drive views of content of the PRC's choosing. A review of the Source Code, in other words, would not and could not satisfy that the platform's features would be used for benign commercial ends, not malicious ones, thus inhibiting the government from detecting noncompliance with the Final Proposed NSA.

c. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

- d. (U) *Content: Outputs.* The outputs of a Recommendation Engine influenced by the PRC are superficially indistinguishable from what would appear on the TikTok platform in the absence of malign influence. For example, in the event of a global conflict involving a foreign adversary that invades an ally of the United States, videos criticizing the United States' relationship with the ally might appear to users because they are organically popular among Americans, because they are deemed newsworthy by TikTok's content curators, or because the PRC directed TTUSDS (through ByteDance) to make those videos appear more frequently. The Executive Branch thus would have limited means of observing and verifying with certainty such manipulation by the PRC.

**(U) *Additional Challenges for Monitoring Compliance***

79. (U) Because of the size and technical complexity of the TikTok platform and its underlying software, attempting to ensure ByteDance's, TikTok US.'s, and TTUSDS's

compliance with the Final Proposed NSA would require resources far beyond what the U.S. government and Oracle possess.

80. (U) *Source Code Review Limitations.* Though varying over time, ByteDance's representations as to the size of the TikTok platform's Source Code leave no doubt that a complete review of each line would be a monumental undertaking. Most recently, ByteDance represented to the Executive Branch in 2022 that the Source Code contained 2 billion lines of code. For comparison, the Zoom application contains 10 million lines of code, and Windows Operating System contains approximately 50 million. Even if static, Oracle estimated it would require three years to review this body of code. But the Source Code is not static; ByteDance regularly updates it to add and modify TikTok's features. Even with Oracle's considerable resources, perfect review would be an impossibility.

81. (U) *Data Limitations.* While the Final Proposed NSA theoretically envisioned robust protections for Protected Data, it also specified that Protected Data could and would be transmitted to the PRC at regular intervals to update the Source Code. This included data from content creators operating on the TikTok platform, data necessary for business metrics, engineering data, interoperability data, E-Commerce data, and data to identify whether a user should be protected as a U.S. user. Oracle's role as TTP was insufficient to prevent this harm because it would rely on precision in source code review and access controls that were by definition incomplete, with significant volumes of excepted information able to travel to the PRC for engineering and commercial reasons.

82. (U) As a result, NSD assessed that even under the Final Proposed NSA, such transmissions would expose U.S. users' data to malign purposes.

[REDACTED]

*(U) Inability of Executive Branch or Third Parties to Verify Compliance*

83.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

84.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

8

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

85. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

- a. (U) First, the Trusted Technology Provider would be faced with the challenge of the massive scale of data that could be transported back to Beijing for ostensibly legitimate purposes. The TTP would be required to sift through such data, using both untested and experimental tools to try to ascertain whether information was routed for legitimate commercial reasons or nefarious reasons at the request of PRC actors.
- b. (U) Second, the TTP and others faced a challenge with the scope of data, as the Final Proposed NSA was designed so that ByteDance and its engineers would continue to have access to data for some purposes and would continue to be involved in engineering, source code and algorithm development, code testing, and user testing. The TTP and other independent monitors and auditors would

[REDACTED]

have theoretically been able to see that data left the U.S. storage regime to go back to ByteDance, but those independent monitors and auditors would have no way (that the Executive Branch is aware of) to be able to distinguish legitimate transfers of U.S. person data from nefarious transfers of U.S. person data.

- c. (U) Third, these private parties also lack insight into ByteDance's communications with PRC officials, ByteDance's use of U.S. user data, and ByteDance's other TikTok-related activities. The Executive Branch thus determined that the Final Proposed NSA presented too great a risk because the TTP and other monitors faced massive scope and scale hurdles that could not be overcome.

**(U) *Lack of Trust***

86. (U) In the absence of sufficient visibility and resources to monitor the agreement, the government's confidence in the agreement's efficacy would necessarily require a significant level of trust that ByteDance and TTUSDS would comply in good faith with the agreement. In the Executive Branch's assessment, the requisite trust did not exist. As a result, the entire framework of the Final Proposed NSA presented an unacceptable challenge to the Executive Branch: a potential agreement with a party that it did not trust, and a lack of confidence that it had either the resources or capability to catch violations.

87. (U) To be effective, verifiable, and enforceable in the real world, an agreement to mitigate national-security risks involving the private sector requires a baseline level of trust between the U.S. Government and the parties. The sensitive technologies, data, and other assets that are vulnerable to exploitation by foreign adversaries (and that form the basis of any risk) are in the private sector outside of the U.S. Government's direct control and oversight. On a day-to-

[REDACTED]

day basis, the U.S. Government must rely on the mitigation parties to be the gatekeepers of those assets and must trust that they will make business decisions that enforce, rather than undermine, the measures that mitigate the national-security risks. Without that baseline level of trust, the U.S. Government lacks the confidence that the oversight mechanisms to monitor compliance would be adequate to detect efforts to violate mitigation measures, either through the parties' intentional actions or through their failure to report actions by state-sponsored actors with whom the companies have relevant ties.

88. [REDACTED]

[REDACTED]

89. (U) Similarly, in the context of mitigation agreements under the Foreign Ownership, Control, or Influence (“FOCI”) regulations of the Department of Defense’s Defense Counterintelligence and Security Agency (“DCSA”), the Department of Defense enters into mitigation agreements only with companies it assesses are motivated to comply solely by

[REDACTED]

[REDACTED]

business incentives: retaining their U.S. Government contracts in order to maximize profits. For these businesses, maximizing profit is their primary motivation, and failure to comply with a FOCI mitigation agreement exposes them to losing significant profits from classified contracts. On the other hand, for companies that are controlled by a hostile foreign power seeking to penetrate the United States, national objectives may outweigh business incentives. This is true even for otherwise legitimate companies.

90. (U) Likewise, the Department of Justice, Department of Homeland Security, Department of Defense, and other agencies, in their roles as members of CFIUS, enter mitigation agreements only where there is a baseline level of trust that enables the mitigation agreements to be monitorable, verifiable, and enforcement.

91. (U) The Executive Branch concluded that ByteDance lacked the baseline trust required of parties to mitigation agreements.

92. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

93. (U) In my recent experience, these concerns have been particularly difficult to overcome in cases where the company is part of a rapidly evolving industry where the risks are multi-vector (as opposed to limited-vector risks like those involving physical access to a tangible item or facility), and the mitigation measures would have to exist in perpetuity (meaning, they would not ultimately result in the divestment of the equity or the cessation of the mitigation regime). Those risk factors are further heightened risk where, as here, the PRC and companies like ByteDance and TikTok can exercise influence through soft power, frequently in person, that is inherently difficult to monitor.

94. (U) In addition, while mitigation measures could keep ByteDance at least one step removed from the TTUSDS Board, ByteDance would still be an essential member for any quorum of the TikTok US Board, have rights to be a member of all committees designated by the TikTok US Board, and have to vote in the affirmative for TikTok to take certain actions. Only a divestment can wholly eliminate ByteDance and TikTok's presence and capability to wield influence on the U.S. companies' boards of directors.

95. (U) The vignettes outlined below illustrate why the Executive Branch felt it could not trust ByteDance.

- a. (U) Public reporting by Forbes Magazine indicates that ByteDance employees abused U.S. user data, even after the establishment of TTUSDS. Moreover, the audio recordings of ByteDance meetings obtained by Forbes indicate that ByteDance retained considerable control and influence over TTUSDS operations.



- [REDACTED]
- b. (U) As made public in a June 18, 2024 statement, the Federal Trade Commission (“FTC”) referred a complaint against TikTok and ByteDance to the Department of Justice for violations of the Children’s Online Privacy Protection Act (“COPPA”), despite a 2019 settlement between FTC and ByteDance. ByteDance’s failure to adhere to that settlement cast doubt on its future compliance with the Final Proposed NSA.
  - c. (U) As described in paragraphs 16-18 above, Chinese law would obligate ByteDance to cooperate with PRC efforts to obtain personal data or drive propaganda narratives. ByteDance’s susceptibility to the influence of that legal system caused the Executive Branch to doubt that, if forced to choose between compliance with PRC law and with the Final Proposed NSA, it would be faithful to its obligations under the Final Proposed NSA. Moreover, as noted, the Executive Branch would have limited visibility into such cooperation.
  - d. (U) Also, even under the Final Proposed NSA, ByteDance would have retained significant presence and representation on the ByteDance board, and the TikTok US board, rendering those individuals susceptible to the influence described above.
  - e. (U) On April 18, 2018, in response to PRC concerns about violating PRC content guidelines, the founder of TikTok publicly pledged to increase the number of censors from 6,000 to 10,000, while creating a blacklist of banned users and developing better technology to boost censorship. As part of the pledge, Zhang stated “[w]e didn’t realize that technology has to be guided by the core values of

socialism so it can be used to spread positive energy, meet the requirements of the times and respect public order and good customs.”

**(U) *Insufficient Operational Independence***

96. (U) TTUSDS would have remained a wholly owned subsidiary of TikTok US ByteDance communicated to the Executive Branch that they envisioned frequent meetings between TTUSDS and TikTok US to ensure TTUSDS’s continued alignment with the global TikTok platform.

97. (U) Despite the Final Proposed NSA’s contemplation of U.S. Government approval for TTUSDS’s choices of vendors, negotiators for ByteDance expressed ByteDance’s intention that employees of TTUSDS would continue to use certain ByteDance products, such as Lark (a ByteDance proprietary platform for in-office communications), which collected and stored large amounts of personal data.

98. (U) The 2022 incident involving ByteDance’s tracking of journalists, as reported by Forbes Magazine in December 2022, only heightened the Executive Branch’s longstanding concerns surrounding a continuing role for ByteDance in TTUSDS’s operations, despite the latter’s nominal independence. TTUSDS was formed in May 2022. Later that same year, according to Forbes, four internal auditors at ByteDance were fired for improperly tracking journalists’ IP addresses. Aside from the concerns raised by the behavior of those employees vis-à-vis journalists, the episode highlights that ByteDance’s own staff continued to have significant levels of access, and participated to a large degree, in TTUSDS’s operations. Even today, I understand that audits of TTUSDS are conducted in the PRC, not the United States.

99. (U) Although the Final Proposed NSA had not been signed, and therefore ByteDance was under no obligation to the U.S. government to guarantee TTUSDS’s operational

[REDACTED]

independence, this vignette gave the Executive Branch additional reason to doubt the true independence TTUSDS would possess under the Final Proposed NSA, if enacted.

- a. (U) First, the same data flow and access to and from the PRC seemed to exist both pre-execution and contemplated post-execution.
- b. [REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]
- c. (U) Third, the structure would nevertheless still rely on ByteDance engineers in the PRC developing and deploying the Source Code.

**(U) *Insufficient Data Protections: Anonymization***

100. (U) Although the Final Proposed NSA purported to anonymize some of the data to which ByteDance would continue to have access, the Executive Branch judged that this proposed anonymization was insufficient to mitigate the national-security risk that the PRC or ByteDance could exploit this data in ways that undermine U.S. national security.

101. (U) Open-source reporting has repeatedly raised concern that supposedly anonymized data is rarely, if ever, truly anonymous. As a recent study has explained, for example, “[a]ggregated insights from location data” could be used to damage national security—such as in 2018, when the publication of a global heatmap of anonymized users’ location data collected by a popular fitness app enabled researchers to quickly identify and map the locations of military and government facilities and activities. Similarly, in 2019, *New York Times* writers were able to combine a single set of bulk location data collected from cell phones and bought

[REDACTED]

and sold by location-data companies—which was anonymized and represented “just one slice of data, sourced from one company, focused on one city, covering less than one year”—with publicly available information to identify, track, and follow “military officials with security clearances as they drove home at night,” “law enforcement officers as they took their kids to school,” and “lawyers (and their guests) as they traveled from private jets to vacation properties.” A 2019 research study concluded that “99.98% of Americans would be correctly re-identified in any dataset using 15 demographic attributes,” thus “suggest[ing] that even heavily sampled anonymized datasets are unlikely to satisfy the modern standards for anonymization set forth by [the European Union’s General Data Protection Regime] and seriously challenge the technical and legal adequacy of the de-identification release-and-forget model.” Other studies and reports have reported similar results.

102. [REDACTED]

[REDACTED]

103. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

104. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

105. (U) Adversaries can use these datasets to reverse-engineer anonymized data and identify people, subjects, or devices that were supposedly anonymized.

106. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

**(U) *Insufficient Data Protections: Data Security***

107. (U) The Final Proposed NSA would have continued to allow ByteDance, and even PRC, access to Protected Data. The Final Proposed NSA describes the situations in which ByteDance would be permitted to access such data as “Limited Access Protocols.” Despite this innocuous name, the Protocols envisioned ByteDance access to data in a wide range of scenarios. These include validating user regions for proper routing, threats of harm to employees, bots and other malicious accounts associated with hate groups, foreign influence campaigns, transnational organized crime, international fraud, emergency responses including terrorism, suicide attempts by a user, and for legal scenarios including eDiscovery, litigation, regulatory responses, and compliance investigations.

108. (U) Given the constraints identified in paragraph 77, *supra*, monitoring ByteDance’s compliance with the Protocols, and ensuring that Protected Data were accessed only for legitimate ends, would have been impossible.

109. (U) The treatment of Excepted Data represented a large loophole in the Final Proposed NSA’s data protection regime. Users could opt into their data being treated as Excepted, placing U.S. national security interests in private hands.

**(U) *Inadequate Remedies***

110. (U) The penalties for non-compliance would not have been sufficient to deter wrongdoers.

111. (U) The U.S. government’s ability to order the TTP to shutter the TikTok platform would not have been a realistic option to deter noncompliance with the Final Proposed NSA. Most centrally, its use would have required the government to know, in sufficient time to

act, of an imminent threat. For the monitoring reasons described above, that possibility was too remote.

112. (U) In the Executive Branch's estimation, monetary and criminal penalties would also have been insufficient to deter wrongdoers. The national security risk posed by TikTok's operation in the United States, detailed in the Declaration of Casey Blackburn, stems from the potential of direct PRC involvement in exploitation of personal data or manipulation of content.

113. (U) The Executive Branch assesses that agents of the PRC would not fear monetary or criminal penalties in the United States, and even if aware of pressure from the PRC government, TTUSDS personnel here would not resist demands to comply.

114. (U) The "kill switch" would not have been an adequate measure to address the national security risk.

- a. (U) ByteDance and TikTok reference a provision of the Final Proposed NSA that provided a "kill switch" to cut off access to the TikTok app. They claim that the kill switch would have addressed the government's national security concerns without the need for divestment.
- b. (U) The language of the Final Proposed NSA paints a different picture. The provision allowed for a "temporary stop" only for a specific list of narrowly scoped NSA violations. Most of those violations would have been overt and easily recognizable failures to implement provisions of the Final Proposed NSA, such as failing to set up the TikTok U.S. Data Security structure, failing to pay the TTP, preventing the TTP from inspecting the source code, or deploying source code that had not been reviewed. Other temporary stops would have relied on

[REDACTED]

notice from the TTP of some failure, such as failure to store data subject to the access controls proposed in the NSA.

- c. (U) The temporary stop would not, however, give the U.S. Government anything resembling complete discretion to shut down the TikTok platform based on its own independent assessment of national security risk and assessments from the U.S. Intelligence Community. For example, the provision does not permit a temporary stop based on concerns related to the algorithm or whether U.S. persons' data is accessible by the PRC government. This provision, like the rest of the Final Proposed NSA, was premised on allowing some flows of U.S. user data back to ByteDance and China, and on allowing ByteDance to continue to be involved in the development and operation of the TikTok platform.
- d. (U) The method for actually triggering the temporary stop also had several steps before the TikTok application would actually be stopped. At each point, ByteDance and TikTok could have litigated the application of the temporary stop, both formally and informally.
- e. [REDACTED]



- f. (U) The Executive Branch thus concluded that the so-called “kill switch” was insufficient to mitigate the national security risks.
- g. (U) All told, any national security agreement is signed with the understanding that some minor noncompliance may result. In this case, the risks were so large, so diffuse, and so unmonitorable that the Executive Branch concluded it could not approve the Final Proposed NSA.

115. (U) As a general matter, the Executive Branch concludes national security agreements in a wide range of contexts, to ameliorate diverse national security risks posed by a variety of private actors. The diversity, specificity, and context-dependency of these risks, alongside the statutory confidentiality obligations the Defense Production Act (under which CFIUS operates) imposes on the Executive Branch, make an apples-to-apples comparison as between the Final Proposed NSA and agreements the Executive Branch has found acceptable difficult to make. Even so, several features of national security agreements the Executive Branch has found acceptable in past CFIUS reviews are absent from the Final Proposed NSA, as elaborated below. For that reason, the risks presented by TikTok’s operation are qualitatively different from those addressed under other national security agreements the Executive Branch has found acceptable.

- a. (U) *Absence of Bright-Line Measures to Reduce or Eliminate Risk.*
- i. (U) In the context of many other national security agreements, CFIUS is able to insist on bright-line, ascertainable steps to isolate the investment at issue from malign foreign influence. Suppose a PRC company invested in a U.S. business operating close to a sensitive military installation. To reduce the risk of malign PRC influence on the U.S. business’s operations,

CFIUS could insist that only non-PRC citizens enter the business's facility. It could require, through a national security agreement, certain physical and logical security measures consistent with the National Institute of Standards and Technology (e.g., that the facility have appropriate fences and barricades, that a trusted third-party operate a booth at the entrance, checking the identification of any person seeking to gain access to ensure compliance with the entry restriction).

- ii. (U) In an alternative scenario, suppose the same company was not located near a sensitive installation, but was exposed to certain categories of sensitive information. CFIUS could, through a national security agreement, require that the U.S. business limit access to certain facilities or equipment, and require that only certain personnel could access the information after being subjected to Executive Branch vetting.
- iii. (U) These bright-line restrictions—entry controls, information-sharing controls—would drastically reduce the national security risks stemming from the PRC company's investment in the U.S. business.
- iv. (U) The risks posed by the TikTok platform's continued operation in the United States stem from TikTok's (1) collection and possession of large amounts of U.S. user data; (2) the platform's algorithm; and (3) the company's susceptibility to PRC influence. The nature of these risks makes it impossible to impose bright-line restrictions of the type identified above. Indeed, the company would never agree (and in the negotiations described above, did not agree) to cease collecting U.S. user data or



- i. (U) The scope and scale of the risks posed by TikTok's continued operation in the United States under PRC ownership are qualitatively different from those addressed under national security agreements the Executive Branch has found acceptable, even if the risks addressed by the latter category remain substantial. The Executive Branch has never before sought to limit the data- and content-manipulation-related risks of an application with more than 170 million U.S. users. Non-compliance here, in other words, poses a risk of consequences of an entirely different magnitude than what the Executive Branch often contends in the CFIUS process.

**(U) 2022-2023 Negotiations Held by the Executive Branch and ByteDance**

116. (U) Between August 23, 2022, when ByteDance submitted the Final Proposed NSA to the Executive Branch, and March 6, 2023, when the Executive Branch informed ByteDance that the Final Proposed NSA insufficiently addressed the national security risks posed by the continued operation of TikTok in the United States while under ownership by a PRC company, extensive internal deliberations concerning the Final Proposed NSA's adequacy took place within the Executive Branch. During the same period, the Executive Branch continued to engage with ByteDance concerning its proposal. For example,

- a. (U) On September 3, 2022, representatives of the Department of Justice and Department of Treasury met with ByteDance to discuss Source Code and remedies.
- b. (U) On September 27, 2022, representatives of the Department of Justice discussed TikTok's Source Code with ByteDance's counsel and technical experts.

- [REDACTED]
- c. (U) On October 14, 2022, representatives of the Department of Justice and Department of Treasury corresponded with ByteDance concerning the Executive Branch's review of the Final Proposed NSA, and requesting various updates and materials, including drafts of annexes to the Final Proposed NSA that ByteDance had not provided. One week later, representatives of the Department of Treasury followed up on this request.
  - d. (U) On November 28, 2022, ByteDance requested a meeting to discuss the establishment of TTUSDS. Four days later, representatives from the Department of Treasury responded, indicating that the Final Proposed NSA remained under review within the Executive Branch.
  - e. (U) On January 9, 2023, the Executive Branch emailed ByteDance questions about recent news reporting concerning TikTok. ByteDance responded in two tranches on February 1, 2023 and February 10, 2023, respectively.

117. (U) On March 6, 2023, representatives of the Executive Branch met with ByteDance and TikTok US to inform them that the Final Proposed NSA did not sufficiently address national security risks stemming from the TikTok platform's continued operation in the United States under ByteDance's/TikTok US's ownership. During that discussion, I and other representatives of the Executive Branch made clear to counsel for TikTok that the only viable solution that had been identified by senior Executive Branch officials to resolve the national security concerns involved a divestment of TikTok's U.S. operations to a trusted buyer along with the migration of the source code and algorithm development outside China. That message was reiterated at a March 23, 2023 follow-up meeting.

118. (U) Following the March 2023 discussions between representatives of ByteDance, TikTok US, and the Executive Branch, representatives of the Executive Branch continued to meet with ByteDance but emphasized that the only resolution supported by Executive Branch leadership involved divestment. As recently as September 8, 2023, Executive Branch representatives (including technical experts and subject matter experts) met ByteDance and TikTok US personnel to discuss methods of divesting the source code from ByteDance control in the PRC. Despite considerable review and analysis, the discussions did not provide confidence that ByteDance was prepared to undertake divestment in a manner that would resolve Executive Branch concerns.

**(U) Additional Information about TikTok & ByteDance Practices**

119. (U) The Executive Branch's lack of trust in TikTok and its ability to comply with the strictures of a mitigation agreement—discussed above in paragraphs 86-95—was further reinforced by information gathered by law enforcement. For instance, I have reviewed reports of voluntary interviews of individuals with knowledge of TikTok's operations, who have stated, in sum and in substance, and in part, the following:

- a. (U) TikTok has used a web-suite system developed by ByteDance called Lark, also known as "Feishu," which hosted TikTok's internal platforms and allowed TikTok employees to interface directly with engineers in China. Lark has served as the primary means by which ByteDance and TikTok employees communicated with one another.
- b. (U) Lark has operated on servers located in China.
- c. (U) TikTok employees have communicated with their co-workers on Lark, and, at various points in time, have sent significant amounts of restricted U.S. user data

(including but not limited to personally identifiable information) to each other through Lark channels to address various operations issues. This resulted in certain sensitive U.S. person data being contained in Lark channels and, therefore, stored on Chinese servers and accessible to ByteDance employees located in China.

- d. (U) TikTok, in or around 2022, created an internal project aimed at identifying and removing certain sensitive U.S. user data improperly maintained on Lark channels.
- e. (U) At least as of 2022, Lark contained multiple internal search tools that had been developed and run by China-based ByteDance engineers for scraping TikTok user data, including U.S. user data.
- f. (U) One of those tools allowed ByteDance and TikTok employees in the United States and China to collect bulk user information based on the user's content or expressions, including views on gun control, abortion, and religion.
- g. (U) Another tool contained policies that allowed both for the collection of bulk user information as well as the triggering of the suppression of content on the platform based on the user's use of certain words. Although this tool contained certain policies that only applied to users based in China, others such policies may have been used to apply to TikTok users outside of China.
- h. (U) TikTok, in or around 2022, was investigating the existence of these policies, and whether and under what circumstances they had ever been used in the United States.

**(U) Legislative Proposals; Briefings**

120. (U) I participated in a series of Congressional briefings related to TikTok and ByteDance in 2023 and 2024. The briefings were related to various legislative proposals Congress was considering to address legislative concerns about the risks posed by TikTok.

121. (U) Also participating in these Congressional proceedings were representatives from the FBI and ODNI. The hearings and briefings were classified, and were held in spaces that were accredited as Secure Compartmented Information Facilities (“SCIFs”), so that classified information could be discussed.

122. (U) The specific legislative proceedings at which I participated in 2024 included the following:

- a. (U) House Homeland Committee - Briefing held on February 15, 2024
  - b. (U) House Energy and Commerce Committee – Hearing held on March 7, 2024
  - c. (U) House All-Member Briefing – Briefing held on March 12, 2024
  - d. (U) Senate Staff for Members of the Commerce, Science, and Transportation Committee and Senate Select Committee on Intelligence – Briefing held on March 19, 2024
  - e. (U) Senate Commerce, Science, and Transportation Committee (CST) and Senate Select Committee on Intelligence (SSCI) – Briefing held on March 20, 2024
123. (U) I attended and actively participated in all of these sessions.

124. (U) I am familiar with the items I discussed, both as the representative for DOJ, as well as the information shared by my colleagues at FBI (which participated in most of the sessions) and ODNI (which participated in all of them).



[REDACTED]

125. (U) At a high level, the matters briefed to the Congressional members and staff in the proceedings listed above involved the following topics:

- a. (U) The threats posed by China, and the risks of actions adverse to U.S. national security.
- b. (U) The formal and informal methods of control the PRC exercises over corporations that do business in China.
- c. (U) The particulars of how the PRC exercises control over ByteDance.

d. [REDACTED]  
[REDACTED]  
[REDACTED]

126. (U) Members asked questions at these meetings. The questions ranged in topics but they generally related to:

- a. (U) the intelligence community's assessment of the risks posed by TikTok's continued operation in the United States;
- b. (U) gaps in the Intelligence Community's ability to collection information related to TikTok;
- c. (U) the mechanics of the Act; and
- d. (U) the legality of and anticipated legal challenges to the Act.

127. (U) I understand that transcripts have been prepared of the classified hearing and one of the classified briefings, described above in paragraphs 122(b) and 122(e), that the House and Senate held on the Act but that the remaining briefings were not transcribed.

128. (U) Although I along with limited other DOJ personnel were authorized to review the transcript of the March 20, 2024 Senate briefing, I understand that a full Senate vote is required before the transcript can be released to the Executive Branch.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct.

Executed on July 26, 2024

*David Newman*

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**David Newman**

Principal Deputy Assistant Attorney General

National Security Division

Department of Justice

**IN THE UNITED STATES COURT OF APPEALS  
FOR THE DISTRICT OF COLUMBIA CIRCUIT**

TIKTOK INC.,	)	
	)	
and	)	
	)	
BYTEDANCE LTD.,	)	
	)	
<i>Petitioners,</i>	)	
	)	
v.	)	No. 24-1113
	)	
MERRICK B. GARLAND, in his official	)	
Capacity as United States Attorney	)	
General,	)	
	)	
<i>Respondent.</i>	)	
	)	
	)	

**REPLY DECLARATION OF CHRISTOPHER P. SIMKINS**

I, Christopher P. Simkins, under penalty of perjury, hereby declare as follows:

1. Through counsel for Petitioners TikTok Inc. and ByteDance Ltd. (“Petitioners”),<sup>1</sup> I have been asked to submit this Reply Declaration in response to specific points raised in three redacted declarations submitted by Respondent: Declaration of Casey Blackburn, Assistant Director of National Intelligence (“Blackburn Declaration”); Declaration of Kevin Vorndran, Assistant Director, Counterintelligence Division, Federal Bureau of Investigation (“Vorndran Declaration”); and Declaration of David Newman, Principal Deputy Assistant Attorney General, National Security Division, Department of Justice (“Newman Declaration”). I will use the same definitions in this Reply Declaration as in my original Declaration filed on behalf of Petitioners.

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<sup>1</sup> References to ByteDance are to the corporate group as opposed to any particular corporate entity. However, such references exclude TikTok U.S. Data Security Inc. (“TTUSDS”).

2. Respondent's three Declarations collectively seek to make the case that the national security risk to the United States from the operation of TikTok, while under the ownership and control of ByteDance, cannot be mitigated by adoption and implementation of the NSA. They make a variety of statements regarding the threat and vulnerability posed by Petitioners and the TikTok U.S. App and TikTok U.S. Platform, and they assert that the NSA is insufficient in multiple respects. I will respond to their most salient arguments below.

3. At the outset, I reiterate my professional opinion that, if implemented as written, the NSA would effectively mitigate the U.S. national security risks identified by the government to be associated with ByteDance owning and deploying the TikTok U.S. App and the TikTok U.S. Platform. Respondent's Declarations do not change that opinion.

4. I start by offering two caveats to the views I express in this Reply Declaration. First, as noted in my first declaration, I assume for purposes of my declaration that the threat level associated with Petitioners TikTok Inc. and ByteDance Ltd. is HIGH. I understand Petitioners disagree with this assumption, and the analysis of this question is not within the scope of my first Declaration or this Reply Declaration. Rather, my focus is solely on whether, taking that threat level as a given, the NSA effectively mitigates the overall risk. Second, Respondent's Declarations contain classified information that has been redacted. I have not been given access to the classified version of the Declarations. My opinion is based solely on the public version of the Declarations as well as the record available to me, including the record provided to CFIUS in its investigation of Petitioners.

5. I have organized this Reply Declaration to respond to specific assertions in the Respondent's Declarations as to why the NSA cannot mitigate the national security risks

associated with the TikTok U.S. App and TikTok U.S. Platform. I address these assertions below. I have grouped them into the following categories:

- THREATS POSED BY CHINA AND CHINESE-OWNED COMPANIES (paras. 6-7)
- CONTROL OF THE RECOMMENDATION ENGINE (paras. 8-13)
- ACCESS TO PROTECTED DATA (paras. 14-23)
- DIFFICULTIES WITH SOURCE CODE REVIEW (paras. 24-35)
- INABILITY TO DETECT EXPLOITATION (paras. 36-38)
- INSUFFICIENT INDEPENDENCE OF TTUSDS (paras. 39-49)
- INABILITY TO MONITOR AND ENFORCE THE NSA (paras. 50-53)
- INADEQUACY OF THE “KILL SWITCH” (paras. 54-57)

#### **THREATS POSED BY CHINA AND CHINESE-OWNED COMPANIES**

6. Respondent’s Declarations repeatedly make the point that the PRC’s interests may be adverse to U.S. national security interests and that the PRC has the ability to directly or indirectly require Chinese-owned companies and their U.S. subsidiaries to support the Chinese strategic initiatives, even if doing so is contrary to the companies’ commercial interests. For example, the Blackburn Declaration asserts that the “PRC may coerce ByteDance or TikTok to covertly manipulate the information received by the millions of Americans that use the TikTok application every day... in ways that benefit the PRC and harm the United States.”<sup>2</sup> It further states that the “PRC has undertaken, undertakes, and will undertake overt and covert actions to undermine U.S. interests, public and private.”<sup>3</sup> The Vorndran Declaration asserts that the PRC can “exert[] control over Chinese parent companies through formal legal means and, more

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<sup>2</sup> Blackburn Decl. ¶ 9.

<sup>3</sup> Blackburn Decl. ¶ 23.

frequently, the informal business culture that surrounds the PRC's legal framework" and through that control can "access information from and about U.S. subsidiaries and compel their cooperation with PRC directives."<sup>4</sup>

7. As noted above and in my first declaration, I take these assertions regarding PRC intentions as a given and assume that the PRC poses a threat to U.S. national security, including through direct and indirect control of companies with operations in China or Chinese ownership. However, it would be an analytic mistake to use the existence of such a threat as a reason to conclude that the NSA is insufficient to mitigate the risk. The purpose of the analysis here is to ask whether the NSA is effective even if this threat is assumed. For such a threat to be actualized, it would require the PRC (or hypothetically the Petitioners) to take action to exploit the TikTok U.S. App and the TikTok U.S. Platform, which then begs the question of *how* that exploitation would occur. For purposes of the analysis, it is not relevant whether that exploitation has occurred in the past or is even occurring now. Instead, the analysis must focus on whether exploitation would be possible if the NSA were fully implemented. As I explained in my opening Declaration and will further reiterate in this Reply Declaration, my opinion is that the NSA effectively cuts off the avenues by which the types of exploitation animating the U.S. Government's concerns could occur. In other words, the security provisions in the NSA would make such exploitation sufficiently difficult or would limit the potential scope of exploitation sufficient to effectively mitigate the risks identified by the U.S. Government. Moreover, the NSA gives the U.S. Government and trusted U.S. third parties more visibility into the operations of TikTok than is possible for any other major social media network operating in the U.S., which itself is a boon to U.S. national security interests.

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<sup>4</sup> Vorndran Decl. ¶ 10.

## **CONTROL OF THE RECOMMENDATION ENGINE**

8. One of the key concerns raised by Respondent’s Declarants is the potential for the PRC, via the TikTok U.S. Platform, to “covertly manipulate the information received by the millions of Americans that use the TikTok application every day... in ways that benefit the PRC and harm the United States.”<sup>5</sup> The Blackburn Declaration asserts that “the content recommendation algorithm at the core of the TikTok application—and thus TikTok’s success—resides within China and is largely maintained and controlled by ByteDance. This fact alone provides ByteDance with extremely powerful leverage over TikTok US.”<sup>6</sup> The Vorndran Declaration likewise asserts that “the PRC could use its AI capabilities to augment its influence campaigns, such as amplifying preexisting social divisions, and targeting U.S. audiences through TikTok’s algorithm by promoting and suppressing particular videos. The FBI assesses that this would occur covertly, with little, if any, outward sign of PRC control.”<sup>7</sup>

9. Again, assuming for purposes of this declaration that the Declarant’s concerns regarding propaganda and PRC influence in the U.S. are legitimate, the Declarants fail to address or even acknowledge the controls in the NSA around the Recommendation Engine. Put differently, the Declarants’ ultimate risk assessment does not incorporate the protections and controls of the NSA. These controls are tailored specifically to address these concerns. First, the NSA requires that the Recommendation Engine be deployed in and operate from the Secure Oracle Cloud.<sup>8</sup> The training of the Recommendation Engine will take place in the United States

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<sup>5</sup> Blackburn Decl. ¶ 9.

<sup>6</sup> Blackburn Decl. ¶ 76.

<sup>7</sup> Vorndran Decl. ¶ 32.

<sup>8</sup> See NSA Secs. 1.34, 8.4.

within the Secure Oracle Cloud and be controlled by TTUSDS.<sup>9</sup> Once the Recommendation Engine is deployed in the Secure Oracle Cloud, TTUSDS is required to observe and control the Recommendation Engine completely independently from ByteDance and TikTok US. TTUSDS and Oracle also audit the Recommendation Engine, and the promotion of content outside the Recommendation Engine, to ensure that it conforms to the published policies for the TikTok U.S. App.<sup>10</sup> In short, TTUSDS and Oracle—not ByteDance and TikTok US—will be in control of the Recommendation Engine and its operations in the United States.

10. Second, the NSA contains provisions regarding Source Code review by TTUSDS, Oracle, and the Source Code Inspector to ensure that there is nothing malicious in any Source Code provided by ByteDance.<sup>11</sup> This specifically includes Source Code for the Recommendation Engine.<sup>12</sup> The purpose of this Source Code review with respect to the Recommendation Engine is not necessarily to inspect how the recommendation algorithm makes decisions, which I understand is largely driven by content and user behavior, but to prevent a third party (including Petitioners) from covertly manipulating the Recommendation Engine once it is deployed by TTUSDS and Oracle in the Secure Oracle Cloud.

11. TTUSDS's oversight of the Recommendation Engine and Content Promotion and Filtering, as well as control over their deployment, will include the participation of a Content Advisory Council of external social media, free speech, and content moderation experts who are resident U.S. citizens.<sup>13</sup> This Council will be appointed by and answerable to TTUSDS, not

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<sup>9</sup> See NSA Sec. 9.13(2)(i).

<sup>10</sup> See NSA Secs. 2.4(5), 9.13(2).

<sup>11</sup> See NSA Secs. 2.4, 9.5-9.13, 9.15.

<sup>12</sup> See NSA Secs. 1.28, 9.7, 9.13.

<sup>13</sup> See NSA Secs. 5.4, 9.13(1).



ByteDance or TikTok US. The Council will review the “playbook” that is created by Petitioners that describes the procedures and rules for human-aided content moderation.<sup>14</sup> A copy of the “playbook” will also be given to the U.S. Government and Oracle.<sup>15</sup>

12. The concerns that the PRC or ByteDance can feed data into the Recommendation Engine to subtly guide it to carry out propaganda is belied by the fact that they will not have sufficient technical access to feed the Engine with data. Under the terms of the NSA, “any data that is collected on U.S. user interaction with content on the TikTok U.S. Platform as an input into the Recommendation Engine” is “Protected Data” that will be stored and managed by TTUSDS and Oracle within the Secure Oracle Cloud.<sup>16</sup> TTUSDS, not ByteDance or TikTok US, will control operation and deployment of the Recommendation Engine for the TikTok U.S. Platform and the TikTok U.S. App.

13. Given this level of rigor and the controls that will be placed in the hands of U.S. persons at TTUSDS and Oracle, as well as the visibility to the U.S. Government via monitoring and compliance, it is difficult to give credence to generalized assertions that the PRC and ByteDance will somehow continue to be able to influence and manipulate the Recommendation Engine. The reality is that, in light of the controls created by the NSA, PRC interests likely will have more ability to influence other social media platforms that operate in the U.S. than it will the TikTok U.S. Platform that is protected in the Secure Oracle Cloud.

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<sup>14</sup> *See id.*

<sup>15</sup> *See* NSA Sec. 9.13(1).

<sup>16</sup> *See* NSA Sec. 1.22.

### ACCESS TO PROTECTED DATA

14. The Vorndran Declaration states that “[t]he FBI assesses ByteDance and TikTok could facilitate the PRC’s access to U.S. users’ data, which could enable PRC espionage, technology transfer, data collection, and influence activities.”<sup>17</sup> The Newman Declaration acknowledges that the NSA contains provisions seeking to prevent Petitioners from having access to Protected Data, but then argues that “the proposed role for Oracle under ByteDance’s proposal would not have resolved the Executive Branch’s national security concerns because, among other things, the proposed agreement contemplated extensive data flows of U.S. users back to ByteDance and thus to China.”<sup>18</sup>

15. The Newman Declaration makes three principal assertions to support this proposition. First, the Newman Declaration asserts that Oracle “would be faced with the challenge of the massive scale of data that could be transported back to Beijing for ostensibly legitimate purposes. [Oracle] would be required to sift through such data, using both untested and experimental tools to try to ascertain whether information was routed for legitimate commercial reasons or nefarious reasons at the request of PRC actors.”<sup>19</sup> The Newman Declaration further asserts that Oracle would not be able to adequately identify and secure the Protected Data because it will have to “rely on precision in source code review and access controls that were by definition incomplete, with significant volumes of excepted information able to travel to the PRC for engineering and commercial reasons.”<sup>20</sup> The Newman Declaration expands on this concern, stating “[t]he treatment of Excepted Data represented a large loophole

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<sup>17</sup> Vorndran Decl. ¶ 18.

<sup>18</sup> Newman Decl. ¶ 6.

<sup>19</sup> Newman Decl. ¶ 85.a.

<sup>20</sup> Newman Decl. ¶ 81.

in the Final Proposed NSA’s data protection regime. Users could opt into their data being treated as Excepted, placing U.S. national security interests in private hands.”<sup>21</sup>

16. To begin with, this is a mischaracterization of the basic thrust of the NSA and is premised on a mistaken notion about the volume of data flow. The NSA specifically prohibits the flow of Protected Data to China, including any “anonymized” data.<sup>22</sup> The NSA provisions outline some categories of data that can be sent to ByteDance, but those exceptions are narrow, and subject to the explicit consent of the U.S. Government. It is not correct, as the Newman Declaration asserts, that any user can “opt-in” to having their data treated as excepted.<sup>23</sup> Further, the NSA requires TTUSDS and Oracle to monitor and if necessary to “block” any unexpected or unauthorized network connectivity or traffic between the TikTok U.S. App or TikTok U.S. Platform and any platform operated by ByteDance, with the decision to block being in the “sole discretion” of Oracle.<sup>24</sup>

17. The concern also does not take account of the capabilities of Oracle, which is a sophisticated and highly capable U.S. technology company with decades of experience managing complex datasets and a long-standing customer relationship with the U.S. Government.<sup>25</sup> It would be surprising to say the least for Oracle to enter into agreements to deliver these controls, which would be highly visible to the U.S. Government, if Oracle felt incapable of delivering.

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<sup>21</sup> Newman Decl. ¶ 109.

<sup>22</sup> See NSA Secs. 1.22, 9.8, 11.7-11.9, 11.12.

<sup>23</sup> See NSA Secs. 1.11, 1.23, 11.1-2.

<sup>24</sup> See NSA Sec. 9.17(1).

<sup>25</sup> See e.g., *Defense and Intelligence*, Oracle (last accessed Aug. 6, 2024), <https://perma.cc/PD4X-WNW3>.

And none of Respondent's Declarations identify any particular reason why Oracle would lack the expertise or resources to handle its assigned tasks.

18. Finally, the concern that Oracle would have to rely solely on Source Code review misunderstands the function of a mitigation agreement in this context. Oracle would most certainly not be relying on Source Code review alone to monitor the flow of Protected Data. In fact, network configuration, access controls, authorization requirements, and monitoring and logging of data traffic will play as much or more into securing Protected Data as review of the Source Code. Information security specialists within TTUSDS and Oracle would have controls in place to manage these configurations and could ensure that only authorized personnel have credentials to key systems and applications.<sup>26</sup>

19. Second, the Newman Declaration asserts that the NSA was "designed so that ByteDance and its engineers would continue to have access to data for some purposes and would continue to be involved in engineering, source code and algorithm development, code testing, and user testing. [Oracle] and other independent monitors and auditors would have theoretically been able to see that data left the U.S. storage regime to go back to ByteDance, but those independent monitors and auditors would have no way (that the Executive Branch is aware of) to be able to distinguish legitimate transfers of U.S. person data from nefarious transfers of U.S. person data."<sup>27</sup>

20. The NSA prohibits Petitioners from possessing or having access to Protected Data, in connection with Source Code development or otherwise.<sup>28</sup> The generalized assertion in

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<sup>26</sup> See NSA Secs. 9.8, 9.17.

<sup>27</sup> Newman Decl. ¶ 85.b.

<sup>28</sup> See NSA Secs. 1.22, 9.8, 11.5.

the Newman Declaration that broad swaths of user data will be made available to ByteDance developers is accordingly simply not true. The NSA does allow for TTUSDS and Oracle to send “Excepted Data” to ByteDance.<sup>29</sup> This category of Excepted Data does not include “anonymized” user data—such anonymized user data must remain Protected Data.<sup>30</sup> The NSA states expressly that “TTUSDS shall ensure that Excepted Data does not contain any Protected Data...before transmitting any Excepted Data to ByteDance.”<sup>31</sup>

21. The NSA contemplates that some data related to user identifiers such as usernames or phone numbers may be needed solely for the purpose of routing TikTok traffic to the TikTok U.S. Platform, and can accordingly be included within Excepted Data, but even this limited set of data must be “hashed.”<sup>32</sup> A “hash” is a one-way cryptographic function that obfuscates the underlying data by using a cryptographic key to translate data into integer values. In my professional roles, including as DOJ’s representative on CFIUS, as a technology consultant to corporations across the United States (including some of the world’s leading cybersecurity companies), and as the co-founder and CEO of my own cybersecurity company, I have decades of experience with structuring data protection protocols. I have often designed security protocols to use hashing functions to protect sensitive data. In my experience, trying to reverse a hashing function to discover the underlying data (in the absence of having access to the key) is exceptionally difficult. Hashing is often used by the U.S. Government to protect sensitive

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<sup>29</sup> See NSA Sec. 11.1(2).

<sup>30</sup> See NSA Secs. 1.11, 1.22, 11.1. The category of Excepted Data does include a defined list, subject to U.S. Government approval, of aggregated/averaged business metrics data with no association with any kind of identity or user information (and even anonymized identifiers removed).

<sup>31</sup> NSA Sec. 11.1(2).

<sup>32</sup> See NSA Sec. 1.11(4).

data. Even at the nation-state level, efforts to reverse hashed data through brute force methods is limited to rare circumstances involving only the highest priority national security missions. The Newman Declaration does not address the security implications of hashing the relevant data.

22. Finally, the Newman Declaration notes that the NSA allows Protected Data to flow to ByteDance and TikTok US pursuant to “Limited Access Protocols” and then asserts that these protocols would give ByteDance “access to data in a wide range of scenarios,” such as “validating user regions for proper routing, threats of harm to employees, bots and other malicious accounts associated with hate groups, foreign influence campaigns, transnational organized crime, international fraud, emergency responses including terrorism, suicide attempts by a user, and for legal scenarios including eDiscovery, litigation, regulatory responses, and compliance investigations.”<sup>33</sup> Without explaining why, the Newman Declaration states that under these Limited Access Protocols, “ensuring that Protected Data w[as] accessed only for legitimate ends[] would have been impossible.”<sup>34</sup>

23. This concern about Limited Access Protocols is at odds with the terms of the NSA. To begin with, the NSA authorizes TTUSDS, not ByteDance or TikTok US, to be the principal entity for following Limited Access Protocols, including responding to law enforcement requests.<sup>35</sup> The NSA does allow for Protocols to be established where the Petitioners could have access to Protected Data for the following specific reasons: “legal and compliance matters and certain other emergency situations involving the health, safety, and security of TikTok users and the public in and outside the United States.”<sup>36</sup> However, the

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<sup>33</sup> Newman Decl. ¶ 107.

<sup>34</sup> Newman Decl. ¶ 108.

<sup>35</sup> See NSA Sec. 7.1

<sup>36</sup> NSA Sec. 11.9.

Protocols themselves, which will establish the specific ground rules and use cases under which TTUSDS will release Protected Data (i.e., Petitioners will not be able to “pull” or “gather” the Protected Data, but instead will be given data if the Protocols are met), must be written out and presented to the U.S. Government for approval, with U.S. government having discretion regarding such approvals and any conditions required for the approvals.<sup>37</sup> Far from being a broad flow of data that would be impossible to monitor, the Limited Access Protocols would govern discrete releases of data by trusted parties (TTUSDS and Oracle) according to rules approved by the U.S. Government. The Newman Declaration again does not address these procedures.

#### **DIFFICULTIES WITH SOURCE CODE REVIEW**

24. Respondent’s Declarants seek to cast doubt on the effectiveness of Source Code review as a part of the NSA’s security measures. They assert that Chinese law will not allow Petitioners to export the Source Code.<sup>38</sup> To the extent Respondent’s Declarants are concerned that Petitioners would not provide Source Code for review under the NSA because PRC approval is required and would be withheld, this would clearly constitute a material breach of the NSA by Petitioners, triggering all of the remedies available to the U.S. Government under the NSA, including the suspension of user access to the TikTok U.S. Platform.<sup>39</sup>

25. The Declarants correctly point out that ByteDance will continue to develop Source Code that will be reviewed and deployed in the United States by TTUSDS and Oracle, although they mistakenly assert that ByteDance will “deploy[]” the Source Code.<sup>40</sup> The NSA is

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<sup>37</sup> See NSA Sec. 11.9(2).

<sup>38</sup> See Blackburn Decl. ¶¶ 76, 78.

<sup>39</sup> See NSA Secs. 21.2, 21.3(6), 21.4.

<sup>40</sup> See Newman Decl. ¶¶ 15, 99.c.

very clear that only TTUSDS and Oracle will deploy the Source Code (once it is built into binary code) from the Secure Oracle Cloud, with Petitioners having no role in that deployment.<sup>41</sup>

26. Setting aside this threshold factual error, the Newman Declaration contains several assertions about the difficulties of Source Code review that are contrary to the NSA or are not consistent with the practical realities of Source Code review. First, the Declaration asserts that the size of the Source Code is too large to be effectively reviewed by Oracle: “Though varying over time, ByteDance’s representations as to the size of the TikTok platform’s Source Code leave no doubt that a complete review of each line would be a monumental undertaking. Most recently, ByteDance represented to the Executive Branch in 2022 that the Source Code contained 2 billion lines of code. For comparison, the Zoom application contains 10 million lines of code, and Windows Operating System contains approximately 50 million. Even if static, Oracle estimated it would require three years to review this body of code. But the Source Code is not static; ByteDance regularly updates it to add and modify TikTok’s features. Even with Oracle’s considerable resources, perfect review would be an impossibility.”<sup>42</sup>

27. First, this size comparison is misleading and is an “apples to oranges” comparison. The intent appears to be to suggest the size of the code base inherently makes source code review an unachievable task. However, the referenced statistics for Windows and Zoom are for software *applications*, not platforms that operate both on local devices and on remote servers. The size estimate given by the Newman Declaration is for the entirety of the

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<sup>41</sup> See NSA Secs. 8.4, 9.12.

<sup>42</sup> See Newman Decl. ¶ 80.



TikTok U.S. Platform and the TikTok U.S. App combined.<sup>43</sup> Different components of the TikTok platform such as the TikTok U.S. App, on their own, represent a fraction of the 2 billion lines based on my review of the record presented to CFIUS. According to information provided by Petitioners to CFIUS in 2022, for example, the TikTok U.S. App on iOS devices contained 18.6 million lines of code.

28. More importantly, the size of the code base is not the principal consideration when considering the efficacy of Source Code review. In my various professional roles, I have had substantial experience with using Source Code review as a tool in constructing holistic, overarching security programs. As a member of CFIUS, and in conjunction with government agencies such as FBI and NSA, I personally structured code review programs for systems and networks that were at least as large as the TikTok U.S. App and the TikTok U.S. Platform. They included code review for not just platforms but also network infrastructure such as telecommunications equipment, mobile wireless infrastructure, and biometric identity platforms. I have also instituted programs for Source Code review within some of the largest global cybersecurity providers that protect U.S. Government components. In my experience, the complexity in Source Code review is less about the size of the code base and more about how the code is structured, the amount of open-source code included, and the code configurations that are inherent in its architecture. Mr. Newman's apparent belief that source code review was impracticable in the case of TikTok simply because the size of the code base ignores these considerations.

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<sup>43</sup> As a size comparison, public reports from nearly 10 years ago suggest that at the time Google was 2 billion lines of code. See Cade Metz, *Google is 2 Billion Lines of Code-And It's All in One Place*, Wired (Sep. 16, 2015), <https://perma.cc/V875-2S6F>.

29. The NSA includes a commitment on the part of Oracle to finishing the initial Source Code review within 180 days of execution of the NSA.<sup>44</sup> This is a scalable task because industry-standard code review today typically involves a mix of automated scans, comparisons of open-source libraries that have been copied into the code base (i.e., comparing them against the publicly available libraries to see discrepancies), and manual review of discrete portions of the code.<sup>45</sup> Source code review under the NSA will be further facilitated by the requirement in the NSA that Petitioners provide Oracle a software bill of materials identifying all code modules that are embedded in the Source Code, which essentially functions as a map.<sup>46</sup> Once an initial base review of the Source Code is completed, revisions and updates are compared against original reviewed code to understand differences. Moreover, part of Source Code review will also include running binary (built) Code in secure environments to test behavior and functions.<sup>47</sup> The NSA requires that there be a full history of reviewed Code so that if anomalies arise, there is a way to show when and where they showed up in the Code base.<sup>48</sup> Again, the Newman Declaration fails to address any of these approaches—which include industry-standard techniques for source code review—in reaching his conclusion that Source Code review is not feasible because of the size of the codebase.

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<sup>44</sup> See NSA Sec. 9.9(1).

<sup>45</sup> See, e.g., *Source Code Security Analyzers*, National Institute of Standards and Technology (last updated Feb. 12, 2024), <https://perma.cc/DB2S-H9ZD>; Ibrahim Haddad, *Open Source Guides: Using Open Source Code*, The Linux Foundation (last accessed Aug. 12, 2024), <https://perma.cc/SBF6-HLA7>.

<sup>46</sup> See NSA Sec. 9.2

<sup>47</sup> See NSA Secs. 8.4, 9.12(4)-(5).

<sup>48</sup> See NSA Sec. 9.12(1).

30. In addition to reviewing all Code for both the TikTok U.S. App and the TikTok U.S. Platform, including the Recommendation Engine,<sup>49</sup> TTUSDS and Oracle will have sole and complete control over how it is deployed and what network connections and access will be allowed because the Code must be deployed in the Secure Oracle Cloud.<sup>50</sup>

31. On top of all of that, yet another third party—the Source Code Inspector—must review the entirety of the Source Code process and ensure that TTUSDS and Oracle have complied with best practices and their security obligations under the NSA.<sup>51</sup> The engagement of the Source Code Inspector is subject to the U.S. Government’s approval (through non-objection).<sup>52</sup> If the U.S. Government is not satisfied with any aspect of the Source Code review process, it can request at any time and in its sole discretion additional security testing of the Source Code using any other generally accepted practices to ensure the security of both the Source Code and Executable Code.<sup>53</sup>

32. Taking all of that together, it is difficult to imagine a more robust Source Code review process than that which is included in the NSA. The Newman Declaration fails to take account of these provisions in concluding that Source Code review was an insurmountable task.

33. The Newman Declaration next asserts that even if Source Code review is effective, it will not be enough to prevent the PRC or Petitioners from subverting national security: “Even assuming every line of Source Code could be monitored and verified by [Oracle], the PRC could exert malign influence through the very same features that have made

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<sup>49</sup> See NSA Sec. 9.10.

<sup>50</sup> See NSA Secs. 8.4, 9.12.

<sup>51</sup> See NSA Sec. 9.11.

<sup>52</sup> See *id.*

<sup>53</sup> See NSA Sec. 9.14.

the TikTok platform globally successful. For example, the TikTok platform includes a feature known as ‘heating,’ by which employees may manually boost certain content for viewing on users’ For You Pages. Users cannot see that a video has been ‘heated’ when they view it. Heating is useful from a commercial perspective, as it enables TikTok to curate popular content and disseminate that content widely on the platform, potentially increasing user engagement and increasing the value of advertising it sells. But it may also be used to drive views of content of the PRC’s choosing. A review of the Source Code, in other words, would not and could not satisfy that the platform’s features would be used for benign commercial ends, not malicious ones, thus inhibiting the government from detecting noncompliance with the Final Proposed NSA.”<sup>54</sup>

34. This assertion represents a misunderstanding of how the NSA deals with “heating,” which is a part of the Content Promotion and Filtering function described in the NSA.<sup>55</sup> The Newman Declaration suggests that a human sitting within ByteDance will be able to use access to the TikTok U.S. Platform—specifically software that is used for Content Promotion and Filtering—to manually suggest propaganda in favor of the PRC. The reality is that any “heating” or “filtering” (i.e., removing or demoting content, rather than promoting it) of content by Petitioners for the TikTok U.S. Platform would be implemented through TikTok USDS, subject to the protections of the NSA, and highly auditable and monitorable. Under the NSA, such “heating” or “filtering” would be considered Content Promotion and Filtering.<sup>56</sup>

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<sup>54</sup> Newman Decl. ¶ 78.b.

<sup>55</sup> See NSA Secs. 1.6, 9.13.

<sup>56</sup> See NSA Sec. 1.6.

Under the NSA, TTUSDS, with support from Oracle, will be responsible for auditing Content Promotion and Filtering in the United States.<sup>57</sup>

35. Based on the information presented to CFIUS, any video campaign selected for “heating” is assigned a Program ID. TTUSDS will be responsible for approving and deploying that Program ID and the associated Software before allowing videos associated with that campaign to be promoted to U.S. users.<sup>58</sup> In addition, Oracle and the Third-Party Monitor would review the Content Promotion and Filtering software and data for compliance with relevant policies.<sup>59</sup> If there is any “material inconsistenc[y]” between the Source Code or the data and the policies, Oracle and the Third-Party Monitor will be required to report their findings to the Board of TTUSDS.<sup>60</sup> The TTUSDS Board, Oracle, and the U.S. government can also each call for an audit of these processes at any time by the Third-Party Auditor.<sup>61</sup> In short, the so-called “heating” is not an avenue for circumvention, but instead is a process that will be heavily scrutinized and monitored under the NSA. Further, the entire process involves a series of auditable activities that can be readily verified.

#### **INABILITY TO DETECT EXPLOITATION**

36. The Newman Declaration makes several statements that together assert it will be too difficult for TTUSDS and Oracle or the U.S. Government to detect exploitation by Petitioners, even if the NSA is faithfully implemented.<sup>62</sup> For example, the Newman Declaration suggests that the Petitioners and ostensibly other Chinese-controlled companies might gather

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<sup>57</sup> See NSA Sec. 2.4(4).

<sup>58</sup> See NSA Sec. 9.13.

<sup>59</sup> See *id.*

<sup>60</sup> See NSA Sec. 9.13(2).

<sup>61</sup> See *id.*

<sup>62</sup> See, e.g., Newman Decl. ¶ 76.

data flowing from U.S. users to other locations around the world: “The flow of U.S. user data into TTUSDS’s servers, and from there to other locations, would not be subject to direct U.S. government monitoring under the Final Proposed NSA.”<sup>63</sup> As mentioned above, the Newman Declaration also includes “heating” as a purported method of evading the NSA. The suggestion is that neither TTUSDS nor Oracle could monitor these avenues of exploitation.

37. As discussed above, it is factually incorrect to assert that “heating” will be an effective way to avoid detection under the NSA. TTUSDS will be responsible for approving and deploying a promotion campaign’s assigned Program ID and the associated Software before allowing videos associated with that campaign to be promoted to U.S. users.<sup>64</sup> As noted above, TTUSDS will control the deployment of Content Moderation and Filtering in the Oracle Cloud. Moreover, the process generates highly auditable artifacts, and Oracle and the Third-Party Monitor will review those artifacts against the written policies for Content Promotion and Filtering.<sup>65</sup>

38. Regarding the purported flow of data outside the United States, this is a misunderstanding of how the TikTok U.S. App and the TikTok U.S. Platform work. The inference being made is that the U.S. Government would be unable to monitor flows of data in and out of the Oracle cloud. But the NSA requires TikTok USDS and Oracle to identify and monitor all interactions and data elements, including all user data, between the TikTok U.S. App

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<sup>63</sup> See, e.g., Newman Decl. ¶ 78.a.

<sup>64</sup> See NSA Sec. 9.13.

<sup>65</sup> See NSA Sec. 9.13(2).

and the TikTok U.S. Platform, on the one hand, and any other internet host, on the other hand.<sup>66</sup>

And Oracle is required to block any unexpected or unauthorized flows of data.<sup>67</sup>

### **INSUFFICIENT INDEPENDENCE OF TTUSDS**

39. For the NSA to be effective, TTUSDS must have sufficient independence from ByteDance and TikTok US to effectively implement the NSA without the threat of PRC control or influence. The Newman Declaration acknowledges that the Board of TTUSDS “would consist of three directors, none with ByteDance or TikTok US. affiliations, to be approved by the Executive Branch, with ostensibly no duty to report to TikTok US. or to ByteDance.”<sup>68</sup>

However, the Newman Declaration cites several examples that it argues cast doubt on whether these governance provisions will be effective. The Newman Declaration concludes that “[a]lthough the Final Proposed NSA had not been signed, and therefore ByteDance was under no obligation to the U.S. government to guarantee TTUSDS’s operational independence, ... the Executive Branch ... doubt[ed] the true independence TTUSDS would possess under the Final Proposed NSA, if enacted.”<sup>69</sup>

40. The Newman Declaration’s discussion on the Executive Branch’s lack of trust in ByteDance and the insufficient operational independence of TTUSDS does not support this conclusion.

41. First, the Newman Declaration asserts that the corporate governance model for TTUSDS’s independence will not be sufficient because the U.S. Government cannot trust the

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<sup>66</sup> See NSA Sec. 9.17.

<sup>67</sup> See *id.*

<sup>68</sup> Newman Decl. ¶ 52.

<sup>69</sup> Newman Decl. ¶ 99.

Petitioners' and TTUSDS's motivations for complying with the NSA.<sup>70</sup> By way of background, the governance provisions in the NSA for TTUSDS (i.e., the reliance on independent Outside Directors) are modeled on governance provisions that have been used by the U.S. Government in hundreds of mitigation agreements. CFIUS adopted these corporate governance provisions from the Defense Department, which uses them to give U.S. subsidiaries of a foreign parent sufficient independence from the foreign ownership, control, and influence ("FOCI") of their foreign parent(s) when performing classified work for the U.S. Government.

42. These FOCI governance provisions require the U.S. subsidiary to have a Board of Directors that includes "Outside Directors" or "Proxy Holders," who are U.S. citizens with no prior affiliation with the foreign parent and are approved by the U.S. Government.<sup>71</sup> Under the NSA, the term "Security Directors" is used instead of "Outside Directors."<sup>72</sup> These Board structures are placed between the protected U.S. subsidiary and all of the corporate parent(s) above it, including between other U.S. corporations in the ownership chain. The NSA actually goes farther than the typical FOCI case where foreign parents are allowed to have at least one "Inside Director" on the Board. The NSA requires the TTUSDS Board be comprised of *only* Security Directors.<sup>73</sup> These Security Directors that govern and control TTUSDS owe a fiduciary duty to the U.S. Government, not ByteDance or TikTok US.<sup>74</sup>

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<sup>70</sup> See Newman Decl. ¶¶ 95, 99.

<sup>71</sup> See *Foreign Ownership, Control or Influence*, Defense Counterintelligence and Security Agency (last visited Aug. 12, 2024), <https://perma.cc/J7JQ-D8WD>.

<sup>72</sup> See NSA Sec 3.1.

<sup>73</sup> See NSA Sec. 3.1(1). Typically, the U.S. subsidiary's Board must also include one or more "Inside Directors," who are representatives of the foreign parent and are not required to be U.S. persons.

<sup>74</sup> See NSA Sec. 3.6.



43. In asserting that the U.S. Government cannot trust TTUSDS's independence, the Newman Declaration claims that U.S. Government agencies, including the Defense Department, will only entertain this corporate governance mitigation mechanism "with companies it assesses are motivated to comply solely by business incentives: retaining their U.S. Government contracts in order to maximize profits. For these businesses, maximizing profit is their primary motivation, and failure to comply with a FOCI mitigation agreement exposes them to losing significant profits from classified contracts. On the other hand, for companies that are controlled by a hostile foreign power seeking to penetrate the United States, national objectives may outweigh business incentives. This is true even for otherwise legitimate companies."<sup>75</sup> The inference is that the Petitioners and TTUSDS cannot be trusted because they could be forced to comply with PRC directives that are contrary to their economic missions.

44. This critique in the Newman Declaration misses a critical aspect of the NSA: the role for Oracle as the trusted third party responsible for implementing the most significant mitigation measures. Even if the U.S. Government believes it cannot trust the Petitioners to truly give TTUSDS its independence, the Newman Declaration fails to explain why the U.S. Government cannot rely on Oracle to faithfully implement the NSA.

45. In any event, it is inaccurate to say that DOD, CFIUS, and other U.S. Government agencies will only entertain the use of these corporate governance mechanisms when the foreign parent company can be counted on to be motivated solely by economic incentives such as maintaining government contracts. The U.S. Government has relied on corporate governance measures for FOCI mitigation in scores of situations where there was negative intelligence reporting about the intentions of foreign parent companies, as well as in situations where the

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<sup>75</sup> Newman Decl. ¶ 89.

home country of the foreign parent was known to have interests that are contrary to U.S. national security interests. Therefore, these arguments cannot be used to suggest that the NSA will fail to give TTUSDS sufficient independence.

46. The Newman Declaration next seeks to cast doubt on TTUSDS independence by focusing on governance over TikTok US as a whole, as opposed to TTUSDS. The Newman Declaration cites a number of ways in which ByteDance will continue to have the ability to interact with and influence the TikTok US Board. For example, “ByteDance would still be an essential member for any quorum of the TikTok US Board, have rights to be a member of all committees designated by the TikTok US Board, have to vote in the affirmative for TikTok to take certain actions.”<sup>76</sup> Based on this, the Newman Declaration concludes that “[o]nly a divestment can wholly eliminate ByteDance and TikTok’s presence and capability to wield influence on the U.S. companies’ boards of directors.”<sup>77</sup>

47. First, this mischaracterizes the TikTok US Board under the NSA. Specifically, under the NSA, the TTUSDS chair is the only director specifically required for a quorum of the TikTok US Board and any committee thereof. Additionally, while decisions of the TikTok US Board would generally require an affirmative vote by a majority of the directors in office, of which at least 2 of at least 5 would be employees of ByteDance or its affiliates, the only director that would “have to vote in the affirmative for TikTok to take certain actions” is the TTUSDS chair as it relates to certain “matters dealing with the relationship with or responsibilities of

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<sup>76</sup> Newman Decl. ¶ 94; *see also id.* ¶ 95.d.

<sup>77</sup> Newman Decl. ¶ 94.

[Oracle]” or “issues that directly impact [ByteDance and TikTok US’s] compliance with” the NSA.<sup>78</sup>

48. More fundamentally, this discussion of ByteDance’s participation at the TikTok US level misses the primary point of the NSA’s provisions regarding independence. While the NSA does include some controls at the TikTok US level, as discussed above, the primary purpose of the NSA is to give TTUSDS—not TikTok US—independence from both ByteDance and TikTok US. All critical security provisions and operational control of the TikTok App and TikTok Platform in the United States would be controlled by TTUSDS, not TikTok US.<sup>79</sup>

49. Finally, the Newman Declaration includes several asserted anecdotes regarding the Petitioners’ behavior. The Newman Declaration relies on these anecdotes to establish that despite the FOCI corporate governance mitigation measures in the NSA, TTUSDS will not in fact remain independent from ByteDance and TikTok US. These anecdotes do not support the Newman Declaration’s conclusions:

- A. For example, one anecdote relates to a story published by Forbes suggesting that ByteDance is still today playing a role in TTUSDS operations: “Moreover, the audio recordings of ByteDance meetings obtained by Forbes indicate that ByteDance retained considerable control and influence over TTUSDS operations.”<sup>80</sup> However, this argument is belied by the fact that the NSA has never been signed and the FOCI mitigation contemplated therein is not yet fully implemented. The Newman Declaration acknowledges this point: “ByteDance

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<sup>78</sup> See NSA Sec. 4.3.

<sup>79</sup> See NSA Sec. 2.4.

<sup>80</sup> Newman Decl. ¶ 95.a.

has voluntarily implemented some components of the Final Proposed NSA, although the agreement was never signed.”<sup>81</sup>

- B. The Newman Declaration also argues that Petitioners “communicated to the Executive Branch that they envisioned frequent meetings between TTUSDS and TikTok US to ensure TTUSDS’s continued alignment with the global TikTok platform.”<sup>82</sup> This is actually precisely in line with how FOCI governance mitigation mechanisms work, both in the CFIUS and the Defense Department FOCI contexts. In virtually every such context, protected U.S. subsidiaries are authorized to interact with foreign-owned parent companies to coordinate on business matters. The NSA specifically contemplates this.<sup>83</sup> The whole point of having Security Directors with fiduciary obligations to protect U.S. national security is to monitor and control if, when, and how interactions take place between the foreign parent and the protected U.S. subsidiary.
- C. Finally, the Newman Declaration asserts that TTUSDS would not be independent as a result of the use by TTUSDS of an internal communication application developed by ByteDance called “Lark”: “Despite the Final Proposed NSA’s contemplation of U.S. Government approval for TTUSDS’s choices of vendors, negotiators for ByteDance expressed ByteDance’s intention that employees of TTUSDS would continue to use certain ByteDance products, such as Lark (a ByteDance proprietary platform for in-office communications), which collected

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<sup>81</sup> Newman Decl. ¶ 50, fn. 6.

<sup>82</sup> Newman Decl. ¶ 96.

<sup>83</sup> See NSA Sec. 4.2.

and stored large amounts of personal data.”<sup>84</sup> First, Newman ignores the fact that under the NSA, use by TTUSDS of Lark or any other software would be subject to the same restrictions on the storage of and access to Protected Data that apply generally.<sup>85</sup> Second, there is nothing in the record to indicate that the U.S. Government ever asked that the NSA be modified to forbid the use of such internal tools as a general matter. Third, as discussed in more detail below, the NSA requires that TTUSDS’s operations be audited and monitored by multiple third parties.<sup>86</sup> If any one of those monitors or auditors believed Lark posed a security vulnerability, they could alert the Security Directors as well as the U.S. Government and require a change. This is part of the purpose of having independent governance at the Board level—TTUSDS would be able to make its own decision whether to use Lark or any other application, regardless of the opinion or intention of Petitioners.

### **INABILITY TO MONITOR AND ENFORCE THE NSA**

50. In conjunction with the assertion discussed above that TTUSDS will not be sufficiently independent, the Newman Declaration suggests that the U.S. Government will be left with having to trust Petitioners to faithfully implement the NSA. The Declaration asserts that such trust will not be possible: “Most fundamentally, the Final Proposed NSA ... still permitted ByteDance executives to exert leadership control and direction over TikTok’s US operations, and still contemplated extensive contacts between the executives responsible for the TikTok U.S.

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<sup>84</sup> Newman Decl. ¶ 97.

<sup>85</sup> See NSA Secs. 11.5, 11.8.

<sup>86</sup> See NSA Secs. 14.1-14.6, 15.1, 16.1-16.6.

platform and ByteDance leadership overseas. Moreover, the Final Proposed NSA would ultimately have relied on the Executive Branch trusting ByteDance to make day-to-day business decisions that enforce the mitigation measures even as the Executive Branch lacked the resources and capabilities to fully monitor and verify ByteDance’s compliance with the Final Proposed NSA.”<sup>87</sup>

51. The Newman Declaration then asserts that in the absence of such trust, the U.S. Government will be left to rely on robust monitoring and enforcement and that there simply are not enough resources available to do this effectively: “[T]he Executive Branch lack[s] the resources and capabilities to fully monitor and verify ByteDance’s compliance with the Final Proposed NSA”<sup>88</sup> The Declaration attributes this to the “size and technical complexity of the TikTok platform and its underlying software”<sup>89</sup> and the “massive data flows between the United States and the PRC and the opacity of TikTok’s algorithm,”<sup>90</sup> as well as an assertion that “TikTok’s legitimate and ... illegitimate activities are externally indistinguishable.”<sup>91</sup> The Vorndran Declaration also asserts that the U.S. Government—specifically the FBI—lacks both the expertise and resources to assist with monitoring.<sup>92</sup>

52. These assertions about the lack of U.S. Government resources ignore the fact that the primary burden of monitoring compliance with the NSA does not fall on the U.S.

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<sup>87</sup> Newman Decl. ¶ 75.

<sup>88</sup> Newman Decl. ¶ 75.

<sup>89</sup> Newman Decl. ¶ 79.

<sup>90</sup> Newman Decl. ¶ 115.b.ii.

<sup>91</sup> Newman Decl. ¶ 115.b.ii.

<sup>92</sup> Vorndran Decl. ¶¶ 36, 46 (“The FBI does not independently monitor compliance with CFIUS NSAs. It does not have agents or analysts devoted to monitoring these agreements and instead would only get involved when one of the co-lead agencies seeks FBI review.”).

Government. Instead, it falls to a series of U.S. third party entities that are contractually charged with ensuring that TTUSDS and Oracle are discharging their responsibilities under the NSA. These entities must be approved by CFIUS and owe fiduciary obligations to CFIUS for reporting security violations. All of these will be funded by Petitioners, not the U.S. Government.<sup>93</sup> They include not only the Trusted Technology Provider (Oracle), but also the Source Code Inspector discussed above, as well as a Third-Party Monitor (conducts ongoing oversight of the actual implementation of the NSA and a principal point of contact for the U.S. Government regarding compliance),<sup>94</sup> a Third-Party Auditor (conducts an independent audit of compliance by Petitioners and TTUSDS upon request by the U.S. Government),<sup>95</sup> and a Cybersecurity Auditor (conducts technical audits of TTUSDS's and Oracle's compliance, including with implementation of Source Code review, deployment of the Platform in the Secure Oracle Cloud, and the storage and protection of Protected Data).<sup>96</sup>

53. By design, these third parties have the technical and operational expertise to ensure effective monitoring within their respective areas of focus and, under the NSA, generally have reporting obligations directly to the U.S. Government.<sup>97</sup> Rather than being required to deploy its own agents and analysts to conduct monitoring, the U.S. Government will review the findings and submissions of these third parties and make decisions about what actions to take, if any, including enforcement and penalties. The U.S. Government plays this exact role of reviewing third party monitoring and auditing in scores of CFIUS contexts where parties have

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<sup>93</sup> See NSA Secs. 8.2(7), 9.11(1), 14.6, 15.1, 16.4(12).

<sup>94</sup> See NSA Secs. 16.1-16.6.

<sup>95</sup> See NSA Sec. 15.1.

<sup>96</sup> See NSA Secs. 14.1-14.6.

<sup>97</sup> See NSA Secs. 9.11(2), 14.3, 15.1, 16.4(2).

been required to enter into mitigation agreements to protect national security. The Newman and Vorndran Declarations do not explain why U.S. Government resource constraints undermine the efficacy of the NSA given the multiple layers of third-party monitoring that will be funded by Petitioners, not the U.S. Government.

### **INADEQUACY OF THE “KILL SWITCH”**

54. The Newman Declaration asserts that the so-called “kill switch” remedy in the NSA, whereby the U.S. Government could stop the operation of the TikTok U.S. App and the TikTok U.S. Platform in the U.S., is ineffective and is not a “realistic option to deter noncompliance with the Final Proposed NSA.”<sup>98</sup> The Declaration makes several statements as to why the kill switch remedy could not be used effectively.

55. First, the Declaration states that “its use would have required the government to know, in sufficient time to act, of an imminent threat” and that the purported lack of ability to monitor the NSA (as discussed above) would diminish the ability to know of such imminent threat.<sup>99</sup> As discussed above, however, the Declaration here again ignores a key line of defense in the NSA, which is Oracle. Oracle is required to operate the TikTok U.S. App in accordance with the Security Protocols, and TTUSDS and Oracle are generally responsible for the security of the TikTok U.S. Platform.<sup>100</sup> Oracle is also responsible for securing the access to Protected Data and ensuring that the Recommendation Engine is operating exclusively in its own Secure Oracle Cloud.<sup>101</sup> If Oracle or any other trusted party under the NSA (each of which serve as additional lines of defense), such as TTUSDS or the Third-Party Monitor, discovers a violation,

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<sup>98</sup> Newman Decl. ¶ 111. Petitioners alternatively refer to this remedy as a “shut-down option.”

<sup>99</sup> Newman Decl. ¶ 111.

<sup>100</sup> See NSA Secs. 2.4, 9.8.

<sup>101</sup> See NSA Secs. 8.4, 9.12-13, 11.5.



they have a duty to report concerns immediately. The NSA provides that “any actual or potential violation of this Agreement” must be reported to the appropriate Technology Officer, the Third-Party Monitor, and the U.S. Government “as soon as practicable, but in any event within one (1) day of learning of the actual or potential violation.”<sup>102</sup>

56. Second, the Newman Declaration asserts that the kill switch remedy is not effective because it would allow for only a “temporary stop” for only a “specific list of narrowly scoped NSA violations,” with most of those violations being obvious breaches of the NSA.<sup>103</sup> The Declaration asserts that the “temporary stop would not, however, give the U.S. Government anything resembling complete discretion to shut down the TikTok platform based on its own independent assessment of national security risk and assessments from the U.S. Intelligence Community. For example, the provision does not permit a temporary stop based on concerns related to the algorithm or whether U.S. persons’ data is accessible by the PRC government.”<sup>104</sup>

57. The Newman Declaration’s characterization of the kill switch remedy is inaccurate in several respects. For one thing, as the Newman Declaration itself recognizes elsewhere, the kill switch remedy is available for concerns related to the algorithm (it applies to deployment of unreviewed source code) and to concerns about access to U.S. users data (it applies to Protected Data access controls).<sup>105</sup> It also ignores a separate provision of the NSA that allows Oracle to suspend user access to the TikTok U.S. Platform specifically where Oracle identifies issues related to the Source Code, with the suspension continuing until Oracle in its

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<sup>102</sup> NSA Sec. 10.6.

<sup>103</sup> Newman Decl. ¶ 114.b.

<sup>104</sup> Newman Decl. ¶ 114.c.

<sup>105</sup> NSA Sec. 21.3(7), (10).

sole discretion is satisfied that ByteDance modifies the Source Code to remedy those issues.<sup>106</sup> Further, there is nothing in the NSA to indicate that the U.S. Government must wait to be told by the Petitioners or even Oracle that a problem has arisen. The NSA is very clear that the determination of whether the Petitioners have violated the NSA is solely within the U.S. Government's sole discretion: "The CMAs, in their sole discretion, may determine whether a violation has occurred, if such violation warrants the imposition of a Penalty or further action, and the appropriate Penalty amount or action, if any."<sup>107</sup> And if the U.S. Government determines there is a violation, it can trigger the temporary stop, which must become effective within three days.<sup>108</sup> As with any mitigation agreement entered into by the U.S. Government, there is always a possibility of litigation. But, the NSA specifically authorizes the U.S. Government to "seek any and all remedies available under applicable law, including injunctive or other judicial relief."<sup>109</sup> The NSA states that if the Petitioners do not comply with a temporary stop order, the U.S. Government "may direct" Oracle to suspend "user access to the TikTok U.S. Platform."<sup>110</sup> I am personally unaware of any other unilateral remedy of this magnitude in a CFIUS mitigation agreement. Mitigation agreements entered into by the Defense Department to protect classified information do not contain unilateral remedies of this sort.

## CONCLUSION

58. After reviewing Respondent's Declarations, my assessment is that the Declarations—and the Newman Declaration in particular—misunderstand or disregard important

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<sup>106</sup> NSA Sec. 9.15(2).

<sup>107</sup> NSA Sec. 21.1.

<sup>108</sup> NSA Sec. 21.3.

<sup>109</sup> NSA Sec. 21.2.

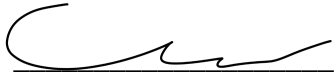
<sup>110</sup> NSA Sec. 21.5.

provisions of the NSA, leading to inaccurate conclusions about the NSA and how it will be implemented. The Newman Declaration also makes technical and operational assumptions that fail to address current industry practices and standards.

59. Having carefully considered Respondent's Declarations, my professional opinion remains unchanged—if implemented as written, the NSA would effectively mitigate the U.S. national security risks associated with Petitioners owning and deploying the TikTok U.S. App and the TikTok U.S. Platform.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge.

Executed this day August 14, 2024.



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Christopher P. Simkins



I, Steven Weber, under penalty of perjury, hereby declare as follows:

1. I am a Professor of the Graduate School at the University of California, Berkeley (“UC Berkeley”), where I hold joint appointments as Professor of the School of Information and in the Department of Political Science. I am also a Partner at Breakwater Strategy, a strategic insights and communications firm. I have been retained by counsel for Petitioners TikTok Inc. and ByteDance Ltd. (the “Petitioners”) in this action to analyze certain reported justifications for the Protecting Americans from Foreign Adversary Controlled Applications Act (the “Act”).

2. I submitted a declaration in this case on June 20, 2024 that analyzed two reported justifications for the Act: (1) the security of the data that TikTok collects from its U.S. users, particularly as it relates to alleged risks of disclosure to the Chinese government; and (2) the possibility that TikTok’s recommendation algorithm could be misused for the benefit of the Chinese government, either by censoring certain content or promoting propaganda or disinformation. In my first declaration, I explained, among other things, that (i) the concerns that reportedly animated the Act “are issues that the industry confronts as a whole and are not unique or distinctive to TikTok,” (ii) “TikTok’s approach for dealing with these issues is in line with—and in many respects markedly better than—industry best practices,” and (iii) based on my experience and expertise, “there is no evident national security rationale for the Act’s particular focus on TikTok.”<sup>1</sup> A copy of my declaration is available at pages 760 to 798 of Petitioners’ appendix.

3. Since submitting my first declaration, I have reviewed the materials that the government publicly filed on July 26, 2024, July 30, 2024, and August 9, 2024 in defense of the

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<sup>1</sup> App’x to Br. of Petitioners at 762, 788, *TikTok, Inc. v. Garland*, No. 24-1113 (D.C. Cir. June 20, 2024), ECF No. 2060757 (“Pet’rs App’x”).

Act, including redacted versions of the government’s brief and appendix.<sup>2</sup> Nothing in those filings alters the assessment I provided in my first declaration. I submit this supplemental declaration solely to address certain specific points raised in the government’s public filings. The fact that I am not addressing a claim made by the government should not be interpreted to mean that I agree with it.

### **I. Data Security**

4. The government’s brief states that TikTok collects “vast amounts of personal information” about its users, which the government claims “can be used for all sorts of intelligence operations or influence operations.”<sup>3</sup> The government’s brief and supporting declarations focus on two types of “personal information” purportedly collected by TikTok: (i) U.S. users’ “precise locations,” and (ii) “contact lists” stored in U.S. users’ phones.<sup>4</sup> While the government acknowledges that TikTok collects and uses these categories of information for “legitimate business purposes,” including “suggesting contacts to follow” and “targeting advertisements” to U.S. users, the government contends that such information “can be used to harm the United States’ national security.”<sup>5</sup> The government’s statements about TikTok’s data collection practices are inaccurate in several respects.

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<sup>2</sup> Public Redacted Br. for Respondent, *TikTok, Inc. v. Garland*, No. 24-1113 (D.C. Cir. July 26, 2024), ECF No. 2066896; Public Redacted Gov’t App’x, *TikTok, Inc. v. Garland*, No. 24-1113 (D.C. Cir. July 26, 2024), ECF No. 2066897 (“Gov’t App’x”); Amended Public Redacted Br. for Respondent, *TikTok, Inc. v. Garland*, No. 24-1113 (D.C. Cir. July 30, 2024), ECF No. 2067517 (“Gov’t Br.”); Notice of Filing of Redacted Transcript, *TikTok, Inc. v. Garland*, No. 24-1113 (D.C. Cir. Aug. 9, 2024), ECF No. 2069332.

<sup>3</sup> Gov’t Br. at 27–28.

<sup>4</sup> *Id.* at 8–9, 18, 27–28, 34; Gov’t App’x at 35–37 (Vorndran Decl.).

<sup>5</sup> Gov’t App’x at 35–37 (Vorndran Decl.).

5. First, I am not aware of any evidence that TikTok collects “precise location” data from U.S. users. In the technology industry, “precise location” data commonly refers to location data gathered using GPS technology, often in conjunction with WiFi, Bluetooth, and cellular data.<sup>6</sup> That is also how mobile device companies, like Apple and Google, use the term.<sup>7</sup> TikTok states in its Privacy Policy that current versions of the U.S. TikTok app do not collect GPS data from U.S. users and that no version of the app released after August 2020 has collected such data.<sup>8</sup> I am unaware of any evidence that contradicts this assertion. Nothing in the government’s submission, for example, establishes or even asserts that current versions of the U.S. TikTok app collect GPS data from U.S. users. Accordingly, it is inaccurate to claim as the government does that TikTok collects “precise location” data from U.S. users, as that term is commonly used and defined in the technology industry.

6. To be sure, TikTok collects IP address and country information from U.S. users, which can be used to approximate users’ geographic locations.<sup>9</sup> But IP addresses are a significantly less precise—and often inaccurate—way to attempt to identify a user’s geographic location. While a GPS-enabled cell phone is capable under some conditions of accurately

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<sup>6</sup> See, e.g., Dan Komosny, Miroslav Voznak & Saeer Ur Rehman, *Location Accuracy of Commercial IP Address Geolocation Databases*, 46 J. of Info. Tech. 333, 334 (2017), <https://perma.cc/Z5PK-SDWV> (comparing IP geolocation to “GPS-precise locations”); Clare Stouffer, *What Is An IP Address? A Definition + How to Find It*, Norton (Nov. 20, 2023), <https://perma.cc/KQN3-EP5C> (“IP addresses do reveal your geolocation, but not your precise location like a home address does.”).

<sup>7</sup> See *Turn Location Services and GPS On or Off on Your iPhone, iPad, or iPod Touch*, Apple (Mar. 26, 2024), <https://perma.cc/A98Z-4QTN>; *Manage Location Permissions for Apps*, Google Account Help, <https://perma.cc/3W8T-FR7E>.

<sup>8</sup> *Privacy Policy*, TikTok, <https://perma.cc/2DW2-TPSP>.

<sup>9</sup> *Id.*

identifying a user's location to within a five-meter radius,<sup>10</sup> IP-based geolocation provides only a rough estimate of a user's location (*e.g.*, to within multi-mile radius) and may be inaccurate for a variety of reasons. MaxMind, an IP intelligence firm that maintains a commercial IP geolocation database, has stated that its IP geolocation products are capable of estimating a device's location within the U.S., plus or minus 50 kilometers, between 77% and 81% of the time.<sup>11</sup> IP2Location, another company that maintains an IP geolocation database, has stated that its geolocation product correctly estimates a device's location within the U.S., plus or minus 50 miles, 76.32% of the time.<sup>12</sup> The accuracy and precision of estimating a *mobile* device's location based on IP address information is even lower. MaxMind, for instance, states that it can correctly estimate a mobile device's geographic location within the U.S., plus or minus 50 kilometers, between 38% and 42% of the time.<sup>13</sup> Because TikTok does not collect GPS information from U.S. users, I disagree with the government's assertion that TikTok "has access to the precise locations" of U.S. users.

7. Second, with respect to TikTok's ability to access users' contact list information, the government fails to mention that TikTok may access a user's contact list only if the user gives TikTok express permission to do so.<sup>14</sup> This is a common practice among applications. Indeed, a number of social media companies, including Instagram and X (formerly Twitter), collect users' contact lists to connect them to other app users whom the user already knows.<sup>15</sup>

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<sup>10</sup> GPS Accuracy, GPS.gov, <https://perma.cc/8U95-YRV6>.

<sup>11</sup> *GeoIP2 City Accuracy*, MaxMind, <https://perma.cc/T2VY-HFCP>.

<sup>12</sup> *IP Geolocation Data Accuracy*, IP2Location, <https://perma.cc/X6Z6-45JT>.

<sup>13</sup> *GeoIP2 City Accuracy*, MaxMind, <https://perma.cc/X3D8-GGM4>.

<sup>14</sup> *Privacy Policy*, TikTok, <https://perma.cc/2DW2-TPSP>.

<sup>15</sup> *Privacy Policy: Friends, Followers and Other Connections*, Instagram, <https://perma.cc/37RX-KG3C>; *X Privacy Policy*, X (Sept. 29, 2023), <https://perma.cc/6XST-39LA>.



8. Finally, it bears mention that the government does not assert that TikTok collects data from U.S. users that is different in amount or kind than the data typically collected from U.S. users by other applications, including foreign-owned applications.<sup>16</sup> As I explained in my first declaration, “the type and amount of data that TikTok collects from U.S. users . . . is comparable to the type and amount of data that other social media platforms and applications collect from U.S. users.”<sup>17</sup> The government does not appear to disagree.<sup>18</sup>

## II. Content Recommendation

### A. NCRI Study

9. In his declaration, Casey Blackburn, Assistant Director of National Intelligence, admits that he has “no information that the [People’s Republic of China] has . . . coerce[d] ByteDance or TikTok to covertly manipulate the information received by . . . Americans that use the TikTok application . . . , through censorship or manipulation of TikTok’s algorithm.”<sup>19</sup> Mr. Blackburn’s declaration is consistent with a number of studies that have analyzed the TikTok platform and similarly concluded that there is no evidence that TikTok is systematically promoting

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<sup>16</sup> See, e.g., *Privacy Policy*, Instagram, <https://perma.cc/U9DF-9UG7>; *X Privacy Policy*, X (Sept. 29, 2023), <https://perma.cc/6XST-39LA>; *Yelp Privacy Policy*, yelp (Jan. 1, 2023), <https://perma.cc/JNJ4-L8AQ>; *Shein Privacy Policy*, Shein (Mar. 11, 2024), <https://perma.cc/X5YD-2M27>; *Temu | Privacy Policy*, Temu (Mar. 30, 2024), <https://perma.cc/6KGC-PK38>; Nicholas Kaufman, *Shein, Temu, and Chinese e-Commerce: Data Risks, Sourcing Violations, and Trade Loopholes*, U.S.-China Econ. & Security Review Comm’n (Apr. 14, 2023), <https://perma.cc/LW3U-E65P>.

<sup>17</sup> See Pet’rs App’x at 764–65 (Weber Decl.).

<sup>18</sup> The government also does not appear to disagree with my conclusion that there are a variety of ways that a nation-state actor, like China, may acquire information about U.S. citizens, including by purchasing “U.S. user data through the broader, multi-layered data brokerage market.” *Id.* at 767–69. Nor does the government appear to disagree with my conclusion that many multinational companies, including U.S. companies, maintain ties with and/or have operations in China. *Id.* at 770–72.

<sup>19</sup> Gov’t App’x at 4 (Blackburn Decl.).

pro-China and/or anti-U.S. content or censoring content that may be critical of China and/or sympathetic to the United States or its allies.<sup>20</sup>

10. Mr. Blackburn also cites a December 2023 study from the Network Contagion Research Institute (the “NCRI Study”), which he claims “underscores” the government’s “concern” that China may attempt to censor or manipulate TikTok’s algorithm in the future.<sup>21</sup> In the NCRI Study, researchers purported to compare the use of certain hashtags on TikTok to the use of the same hashtags on Instagram and found a lower incidence of TikTok posts related to topics adverse to China’s national interests as compared to Instagram posts on the same topics.<sup>22</sup> From this, the researchers suggested that “[w]hether content is promoted or muted on TikTok appears to depend on whether it is aligned [with] or opposed to the interests of the Chinese Government.”<sup>23</sup> In my analysis, the NCRI Study suffers from a number of methodological flaws that call its findings and conclusions into question.

11. As others have noted, the authors of the NCRI Study made two fundamental errors in designing the study and interpreting its results.<sup>24</sup> First, in designing the study, the researchers “failed to account for how long each platform has existed.”<sup>25</sup> Instagram was launched in 2010 and

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<sup>20</sup> Laura Edelson, *Getting to Know the TikTok Research API*, Cybersecurity for Democracy, <https://perma.cc/V3AJ-8JEP>; Milton L. Mueller & Karim Farhat, *TikTok and U.S. National Security*, Georgia Inst. of Tech. Internet Governance Project, at 12–13 (2023), <https://perma.cc/JR3Z-F5TK>.

<sup>21</sup> Gov’t App’x at 21 (Blackburn Decl.).

<sup>22</sup> *A Tik-Tok-ing Timebomb: How TikTok’s Global Platform Anomalies Align with the Chinese Communist Party’s Geostrategic Objectives*, Network Contagion Research Institute (Dec. 2023), <https://perma.cc/57L2-A9RW> (“NCRI Study”).

<sup>23</sup> *Id.* at 3.

<sup>24</sup> Paul Matzko, *Lies, Damned Lies, and Statistics: A Misleading Study Compares TikTok and Instagram*, CATO Institute (Jan. 2, 2024), <https://perma.cc/ZZ5X-8TTE>.

<sup>25</sup> *Id.*

is thus nearly twice as old as TikTok, which was launched internationally in 2017. Given the platforms' different launch dates, "topics that were the subject of intense public discourse in the early 2010s, but which have not been heavily featured in the decade since"—*e.g.*, activism related to Tibet—would be expected to be less well represented on TikTok over its lifespan than Instagram over its lifespan.<sup>26</sup>

12. Notably, the authors of the NCRI Study were *not* assessing posts uploaded to Instagram and TikTok during a discrete time period (*e.g.*, the last six months of 2023). Rather, the authors were assessing posts uploaded to the platforms over the *entirety* of the platforms' existence.<sup>27</sup> Given this design flaw, the researchers' failure to account for variations in the salience of political issues over time further undermines the conclusions they draw from their analysis.

13. Second, the authors of the NCRI Study failed to account for the fact that TikTok and Instagram have users of different age demographics, with TikTok users trending younger than those who use Instagram.<sup>28</sup> Because different age groups have different interests and viewpoints that might account for some of the observed variation in posts, the study's failure to attempt to correct for the age demographic characteristics of each platform's users "led them to miss the potential for generational cohort effects," once again weakening the validity of conclusions drawn from the study.<sup>29</sup>

14. The NCRI Study suffers from other methodological issues:

- a. The researchers' decision to analyze the number of posts uploaded to each platform, as opposed to the number of views such posts receive, is an important flaw given

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<sup>26</sup> *Id.*

<sup>27</sup> NCRI Study at 5.

<sup>28</sup> Matzko, *supra* note 24.

<sup>29</sup> *Id.*

the conclusions they purport to draw. As the researchers were attempting to assess whether TikTok is “promot[ing] or mut[ing]” content based on “whether it is aligned or opposed to the interests of the Chinese Government,”<sup>30</sup> information about the number of *views* that posts receive—as opposed to the number of posts themselves—would appear to be the more appropriate dependent variable, as viewership information more directly measures users’ access to and engagement with content on a platform. Indeed, if a foreign government were aiming to influence public perceptions and opinions on a sensitive issue, they surely would be aiming for views not posts as the dependent variable to measure the success of their propaganda campaign. Screenshots published along with the NCRI Study show that the authors of the study had access to view counts associated with TikTok and Instagram posts, and so it is concerning that they declined to use that data.<sup>31</sup>

- b. Apart from differences in the platforms’ *age* demographics discussed above, the NCRI Study rests on the unsubstantiated assumption that the *geographic* demographics of Instagram and TikTok are the same. Because the researchers did not consider differences in the apps’ popularity or availability around the world, they did not consider whether demographic differences might account for differences in hashtag data.
- c. The NCRI Study uses global Instagram and TikTok data to draw conclusions about the experience of U.S. users on the app.<sup>32</sup> But there is no basis for the authors’

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<sup>30</sup> NCRI Study at 3.

<sup>31</sup> *Id.* at 19–20.

<sup>32</sup> *Id.* at 5.

assumption that global hashtag data is similar to U.S. hashtag data. Because the researchers have not established that global hashtag data is consistent with U.S. hashtag data, the conclusions they draw about U.S. users' experiences on the apps are unsubstantiated.

- d. The NCRI Study methodology is also susceptible to selection bias in the hashtags that were chosen. The authors of the NCRI study do not explain why they selected the particular hashtags they used, and whether they considered but rejected other hashtags that satisfied their stated criteria (“topics directly sensitive to the Chinese Government”),<sup>33</sup> but did not fit with their narrative. For example, the hashtag #spyballoon has a comparable number of posts on TikTok (8238) and Instagram (9767).
- e. The authors of the NCRI Study assert that, after the release of the study, “TikTok removed the public hashtag search feature for analyzing trends on its platforms,” which the authors surmise was meant “to deliberately obscure public access and transparency.”<sup>34</sup> The authors of the NCRI study relied on a tool on the TikTok website intended for advertisers, and they do not mention that nearly a year before the study was published, TikTok launched a “Research API” to allow qualifying researchers “to study public data about TikTok content and accounts.”<sup>35</sup> Contrary to the authors' assertion, TikTok's Research API—which remains available to

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<sup>33</sup> *Id.* at 3.

<sup>34</sup> *Id.* at 18.

<sup>35</sup> See *Research Tools*, TikTok, <https://perma.cc/2EG6-745Q>; Mariella Moon, *TikTok Opens Data to US Researchers in Its Bid to Be More Transparent*, Engadget (Feb. 21, 2023), <https://perma.cc/W584-RZ6D>; Pet'rs App'x at 809 (Presser Decl.)

researchers today—includes a “public hashtag search feature.” Indeed, other researchers have used this public hashtag search feature in their academic studies of TikTok.<sup>36</sup>

## **B. Heating**

15. In its brief, the government states that “TikTok and ByteDance ‘employees regularly engage’ in a practice’ called ‘heating,’ in which certain videos are manually promoted to ‘achieve a certain number of video views.’”<sup>37</sup> The government further states that “TikTok does not disclose which posts are ‘heated,’ and public reporting found that China-based employees had ‘abused heating privileges,’ with the potential to dramatically affect how certain content is viewed.”<sup>38</sup> The implication is that TikTok’s practices with respect to heating are concerning or represent a departure from the practices of its peers in the industry.

16. The source the government identifies for these assertions about heating is a January 2023 *Forbes* article by Emily Baker-White, titled “TikTok’s Secret ‘Heating’ Button Can Make Anyone Go Viral.”<sup>39</sup> As an initial matter, this article does not support the statements made in the government’s brief. For example, the article never states that “China-based employees . . . ‘abused heating privileges.’”<sup>40</sup> While the article refers to certain instances in which “heating was used improperly by employees,” the article does not assert that such employees were based in China or used heating to further China’s national interests.<sup>41</sup> On the contrary, the instances of heating

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<sup>36</sup> Edelson, *supra* note 20.

<sup>37</sup> Gov’t Br. at 37.

<sup>38</sup> *Id.*

<sup>39</sup> *Id.* (quoting Emily Baker-White, *TikTok’s Secret ‘Heating’ Button Can Make Anyone Go Viral*, *Forbes* (Jan. 20, 2023), <https://perma.cc/GE2X-WW4B>).

<sup>40</sup> Baker-White, *supra* note 39.

<sup>41</sup> *Id.*

misuse identified in the article concern incidents in which employees violated company policy by “heat[ing] their own accounts, as well as accounts of people with whom they have personal relationships.”<sup>42</sup> As I noted in my first declaration, the risk that corporate insiders will engage in conduct that violates company policy is an industry-wide issue that affects nearly every company, both within and outside the technology industry.<sup>43</sup> In my assessment, the risk of employee misconduct as described in this article is not a basis for distinguishing TikTok from other platforms.

17. Nor is the fact that TikTok engages in heating in the first place a basis for the Act’s differential treatment of TikTok. As the *Forbes* article acknowledges, all technology companies, including Google and Meta, “engage, in some degree, in efforts to amplify specific posts to their users.”<sup>44</sup> For example, public reporting shows that Facebook prioritizes posts in users’ newsfeeds that have “sparked lots of comments and replies” on the site, a strategy that Facebook believes increases users’ engagement.<sup>45</sup> Platforms also regularly promote content on specified topics.<sup>46</sup>

18. In addition to promoting content themselves, platforms also enable promotion of content by users and others. X, for example, prioritizes the replies of users who pay to subscribe

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<sup>42</sup> *Id.*

<sup>43</sup> Pet’rs App’x at 775–76 (Weber Decl.) (describing risks associated with “the potential access to, and misuse of, data by corporate insiders for purposes not authorized by company policy” and recounting instances of such misuse at Google, Meta, and Uber).

<sup>44</sup> Baker-White, *supra* note 39.

<sup>45</sup> Will Oremus, *et al.*, *How Facebook Shapes Your Feed*, Wash. Post (Oct. 26, 2021), <https://perma.cc/8TA7-4STJ>.

<sup>46</sup> *See, e.g.*, Laurie Richardson, *Our Ongoing Work to Support the 2022 U.S. Midterm Elections*, Google (Sept. 1, 2022), <https://perma.cc/X9YQ-38X6> (describing Google’s efforts to “connect voters with information about voter registration and how to vote”); *Promoting Authoritative Information about COVID-19 Vaccines*, Meta, <https://perma.cc/NXL7-VVFS> (describing Facebook’s “campaign to promote authoritative information about COVID-19”).

its “X Premium” service”<sup>47</sup> and allows users to pay to promote their own posts.<sup>48</sup> Foreign actors have utilized these types of features for improper ends. In the lead up to the 2016 election, Russia’s Internet Research Agency created Facebook posts designed to “sow discord and polarize voters in the United States” and then used the social media company’s advertising platform to promote those posts among certain demographics, including African Americans, Mexican Americans, and conservative voters.<sup>49</sup> Facebook estimated that 150 million Facebook and Instagram users were exposed to these posts in 2016.<sup>50</sup>

### C. Acts of Alleged “Censorship” Outside of the United States

19. In its brief and supporting declarations, the government states that TikTok has engaged in “censorship” outside of the United States. For example, Mr. Vorndran refers to reporting about ByteDance purportedly censoring content for applications available in China in response to Chinese government demands.<sup>51</sup> “Censorship” is a loaded term, and it is not clear precisely what the government means to allege through this statement. To the extent the allegation is that TikTok has made editorial decisions outside of the United States in response to requests or demands from foreign governments, or to comply with foreign law, such an allegation (if true) would not be a basis for distinguishing TikTok from other U.S. companies. Indeed, many U.S.

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<sup>47</sup> *About X Premium*, X Help Center, <https://perma.cc/9544-K5EG>.

<sup>48</sup> *How To Increase Your Reach*, X Help Center, <https://perma.cc/Z47C-PX27>.

<sup>49</sup> Kate Fazzini, *Here’s How the Russians Targeted Social Media Posts to Influence the 2016 Election, According to a New Independent Report*, CNBC (Dec. 27, 2018), <https://perma.cc/FF6H-282S>.

<sup>50</sup> Cecilia Kang, Nicholas Fandos & Mike Isaac, *Russia-Financed Ad Linked Clinton and Satan*, N.Y. Times (Nov. 1, 2017), <https://perma.cc/6HUZ-6QVR>.

<sup>51</sup> Gov’t App’x at 38. Mr. Newman’s discussion of this same incident is misleading insofar as it suggests that censorship at China’s behest occurred outside of China. *Id.* at 72–73. As Mr. Vorndran’s declaration makes clear, the reporting on this incident related to services provided *within* China. *Id.* at 38.



companies engage in such activities. In 2023, for example, Twitter (now known as X) admitted that it restricted access to certain content in Turkey in advance of the country’s presidential election in response to threats by the Turkish government to shut down the app in Turkey unless it removed such content from the platform.<sup>52</sup> In 2021, India introduced a set of “IT rules” that require, among other things, social media platforms to warn users “not to post anything that’s defamatory, obscene, invasive of someone else’s privacy, encouraging of gambling, harmful to a child or ‘patently false or misleading.’”<sup>53</sup> The rules further require social media platforms to take down posts at the government’s direction and, upon request, to identify the original source of offending information.<sup>54</sup> Public reporting indicates that a number of U.S. companies, including Google, Facebook, X, and LinkedIn, are complying with India’s rules, “at least partially.”<sup>55</sup>

20. Indeed, it is common for social media companies operating globally to state that they will comply with local laws in the jurisdictions in which they operate. Facebook, Instagram, X, and YouTube all include language to this effect on their websites,<sup>56</sup> and a number of

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<sup>52</sup> Megan Cerullo, *Twitter Under Fire for Restricting Content Before Turkish Presidential Election*, CBS News (May 16, 2023), <https://perma.cc/QV56-HFN5>.

<sup>53</sup> Lauren Frayer & Shannon Bond, *India and Tech Companies Clash Over Censorship, Privacy and ‘Digital Colonialism’*, NPR (June 10, 2021), <https://perma.cc/2UR9-6EXX>.

<sup>54</sup> *Id.*

<sup>55</sup> *Id.*; Varsha Bansal, *India’s Government Wants Total Control of the Internet*, WIRED (Feb. 13, 2023), <https://perma.cc/VL3P-HH9B>; Surabhi Agarwal, *Facebook Says It Aims To ‘Comply’ With India’s New IT Rules Effective Tomorrow*, Economic Times (May 25, 2021), <https://perma.cc/LJE6-DFYA>.

<sup>56</sup> *Content Restrictions Based on Local Laws: H2 2023 Report*, Meta, <https://perma.cc/TZJ9-U4TP> (“When something on Facebook or Instagram is reported to us as going against local law, but doesn’t go against our Community Standards, we may restrict the content’s availability in the country where it is alleged to be unlawful.”); *About Country Withheld Content*, X Help Center, <https://perma.cc/KA26-3HDJ> (“[I]f we receive a valid and properly scoped request from an authorized entity, it may be necessary to withhold access to certain content in a particular country from time to time . . . where the content has been found to violate local law(s).”); *Legal Removals*, YouTube, <https://perma.cc/8UXG-VLSW> (“While our Community Guidelines are

companies—including TikTok—publish reports regarding foreign governments’ requests to remove or restrict content based on local laws and the companies’ response to those requests.<sup>57</sup>

#### **D. The NSA**

21. In a declaration submitted in support of the government’s arguments, David Newman, Principal Deputy Assistant Attorney General of the National Security Division of the Department of Justice, states that “[n]otwithstanding . . . extensive negotiations” between the parties, “the Executive Branch was ultimately unable to reach a national security agreement with ByteDance because senior Executive Branch officials concluded that the terms” of that agreement (the “NSA”) “would not sufficiently ameliorate th[e] risks” associated with “TikTok’s operations in the United States under Chinese ownership.”<sup>58</sup> As noted in my first declaration, I am not an expert on the CFIUS process, and I have not undertaken to analyze the CFIUS review in this case.

22. From my perspective, however, none of Mr. Newman’s statements alter my assessment that TikTok’s draft NSA “provides for a robust system of controls to mitigate data security risks that might arise were foreign governments or adversarial groups . . . to access protected U.S. users data” and that these controls “significantly exceed and improve upon the controls that have been proposed and reportedly implemented by other social media and technology companies, including U.S. companies.”<sup>59</sup>

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policies that apply wherever you are in the world, YouTube is available in more than 100 different countries - so we also have a process in place to comply with local law.”).

<sup>57</sup> See, e.g., *Government Removal Requests Report, July 1, 2023 - December 31, 2023*, TikTok (June 6, 2024), <https://perma.cc/VR3G-XKDJ>; *Content Restrictions Based on Local Law: H2 2023 Report*, Meta, <https://perma.cc/TZJ9-U4TP>.

<sup>58</sup> Gov’t App’x at 46 (Newman Decl.).

<sup>59</sup> Pet’rs App’x at 773 (Weber Decl.).

23. Indeed, several of Mr. Newman’s criticisms of the draft NSA are clearly flawed. For example, Mr. Newman states that the NSA’s proposal to “anonymize some of the data to which ByteDance would continue to have access” under the NSA would be “insufficient to mitigate the national-security risk[s]” surrounding TikTok because, according to Mr. Newman, “anonymized data is rarely, if ever, truly anonymous.”<sup>60</sup> In support of this assertion, Mr. Newman refers to several studies and articles, including a 2019 *New York Times* article, in which anonymized “precise location” data was combined with other publicly available information to “identify, track, and follow” certain individuals.<sup>61</sup> These materials, however, do not establish that TikTok data could be similarly de-anonymized. The evidence the government cites in support of this statement relies on precise GPS location data, but as noted above, current versions of the U.S. TikTok app do not collect the types of “precise geolocation information” used in these studies.<sup>62</sup> Mr. Newman’s sources, accordingly, do not establish any deficiency in the NSA relative to anonymization.

24. Mr. Newman also states that the NSA’s proposal to have a “Trusted Technology Partner” (“TTP”) inspect and monitor source code developed by ByteDance is insufficient to address national security concerns because “a complete review of each line [of code] would be a monumental undertaking,” and “perfect review would be an impossibility.”<sup>63</sup>

25. The threshold problem with Mr. Newman’s statement is his selection of “perfect review” as the yardstick of success. In practice, there is no such thing as “perfect review” of source

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<sup>60</sup> Gov’t App’x at 74 (Newman Decl.).

<sup>61</sup> *Id.* at 74–75 (citing, among other sources, Stuart A. Thompson & Charlie Warzel, *Twelve Million Phones, One Dataset, Zero Privacy*, N.Y. Times (Dec. 19, 2019), <https://perma.cc/GLQ4-D9MK>).

<sup>62</sup> Thompson & Warzel, *supra* note 61.

<sup>63</sup> Gov’t App’x at 65.

code. As noted in my first declaration, data security professionals recognize that “data security is not a binary switch that can be toggled on or off.”<sup>64</sup> Data security is about trade-offs, and it ultimately is “an exercise in risk management—identifying risks, assessing them, and mitigating those risks to acceptable levels.”<sup>65</sup> No organization can assert that its software has no bugs, or that its data security risk has been reduced to zero. Instead, data security professionals seek to mitigate risks to a level such that it is no longer effective or efficient for bad actors to pursue a particular course of action.<sup>66</sup>

26. With respect to data security concerns, as I explained, there are “more effective and efficient means” for a foreign state to “obtain[] relevant information about high-value targets” than attempting to circumvent the types of security protocols outlined in the draft NSA to appropriate TikTok user data.<sup>67</sup> These alternative means include open source intelligence gathering, purchasing data on the open market, and engaging in hacking operations, such as China’s reported intrusion of a database maintained by the U.S. Office of Personnel Management—an operation that Mr. Blackburn acknowledges in his declaration.<sup>68</sup> With respect to concerns about content manipulation, foreign states remain able to promote or influence content on other social media platforms, which, unlike TikTok, have not agreed to the types of security and transparency

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<sup>64</sup> Pet’rs App’x at 766 (Weber Decl.).

<sup>65</sup> *Id.*

<sup>66</sup> *Id.* at 766–67. As I noted in my first declaration, while “it is virtually impossible to . . . establish that there are no risks associated with a particular application, network, or data storage and management system,” TikTok’s draft NSA “provides for a robust system of controls to mitigate data security risks that might arise were foreign governments or adversarial groups acting as their agents to attempt to access protected U.S. user data,” which “significantly exceed[s] and improve[s] upon the controls that have been proposed and reportedly implemented by other social media and technology companies, including U.S. companies.” *Id.* at 766, 773.

<sup>67</sup> *Id.* at 767–69.

<sup>68</sup> *Id.*; see also Gov’t App’x at 10 (Blackburn Decl.).

protocols described in the NSA. Indeed, as discussed above, these influence operations can be accomplished on other platforms through means as simple as purchasing advertisements on those platforms.<sup>69</sup>

27. By requiring the NSA to enable “perfect review” of TikTok’s source code, Mr. Newman is holding TikTok to an impossible standard that is not and could not be applied elsewhere in the technology industry—even with respect to the asserted threat posed by China described in the government’s declarations. The government does not require any other technology company, including U.S. technology companies, to be “perfect” in eliminating the risk associated with foreign actors’ use of a platform or technology for improper ends. Indeed, the government does not impose this standard on U.S. companies that have Chinese-headquartered subsidiaries and/or engineering operations in China, such as the companies identified in my first declaration.<sup>70</sup> Although many of these companies “face the same theoretical risk” that Chinese employees may interfere with “source code development,” the government has not implemented processes and procedures regarding the review of their source code.<sup>71</sup>

28. Setting that issue aside, Mr. Newman does not acknowledge or address industry-standard techniques for effectively assessing data security risk arising from malicious code. From a threat perspective, for example, risk could be substantially mitigated through a prioritized review of proposed changes to the source code, which would be far less burdensome than a review of TikTok’s existing source code.<sup>72</sup> Under the NSA, the TTP can review all changes to TikTok’s

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<sup>69</sup> *See supra* at 12–13.

<sup>70</sup> Pet’rs App’x at 770–71 (Weber Decl.).

<sup>71</sup> *Id.*

<sup>72</sup> Gov’t App’x at 65.

source code.<sup>73</sup> Mr. Newman does not explain why this robust approach for source code review of code changes is insufficient to address his concerns.

29. Finally, Mr. Newman cites press reports and ongoing civil court proceedings as support for why “the Executive Branch felt it could not trust ByteDance” to comply with the NSA’s provisions, notwithstanding the NSA’s requirement that TikTok submit to multiple layers of third-party monitoring in order to verify its compliance with the agreement.<sup>74</sup> Mr. Newman, however, understates the function of third-party monitoring, which is designed to account for a lack of trust. Indeed, the government routinely agrees to third-party monitorships with entities—including Chinese entities—found to have engaged in criminal violations in the national security context.<sup>75</sup> To my knowledge, ByteDance Ltd. and TikTok Inc. have not been found to have engaged in such criminal violations. Mr. Newman does not explain why third-party monitorships are sufficient to address the government’s concerns with respect to companies that have been found guilty of criminal offenses but are not sufficient to address its purported concerns with respect to TikTok.

### **III. Foreign-Owned Media Organizations Operating in the United States**

30. Apart from its national security arguments, the government also asserts that TikTok Inc. is differently situated among media and entertainment companies because it is owned by a foreign company and that its activities are accordingly the “speech of a foreigner.”<sup>76</sup> In this context as well, the government’s statements regarding TikTok are at odds with industry realities. Many news and media organizations in the United States are owned by foreign entities. In terms of news

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<sup>73</sup> Pet’rs App’x at 196–97 (NSA Sec. 9.12).

<sup>74</sup> Gov’t App’x at 71–73.

<sup>75</sup> See, e.g., Plea Agmt., *United States v. ZTE Corp.*, No. 3:17-cr-00120-K-1 (N.D. Tex. Mar. 7, 2017), ECF No. 3, available at <https://perma.cc/GNQ8-6HMT>.

<sup>76</sup> Gov’t Br. at 60.

organizations, *Business Insider* and *Politico* are published by U.S. companies—Insider, Inc. and Politico LLC, respectively—that are owned by the German media company Axel Springer SE.<sup>77</sup> *Fortune* is published by New York-based Fortune Media Corporation, which is owned by Thai businessman Chatchaval Jiaravanon.<sup>78</sup> *Forbes* is owned by a Hong Kong-based investor group.<sup>79</sup> Reuters, which supplies news articles to major U.S. publishers like Gannett and McClatchy, is headquartered in the United Kingdom and owned by a Canadian company.<sup>80</sup> *The Economist*, *The Guardian*, *The Week*, *Mental Floss*, and *Marie Claire* are owned by British companies.<sup>81</sup> *The Spectator* also has British ownership.<sup>82</sup> *The Financial Times* is owned by a Japanese company, and *Al Jazeera* is owned by a Qatari company and funded, in part, by the Government of Qatar.<sup>83</sup>

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<sup>77</sup> See Alyson Shontell, *German Publishing Powerhouse Axel Springer Buys Business Insider at a Whopping \$442 Million Valuation*, Business Insider (Sep. 29, 2015), <https://perma.cc/U2CE-N5BP>; *Axel Springer Completes Acquisition of POLITICO*, Axel Springer (Oct. 19, 2021), <https://perma.cc/Z889-BBE2>; *Who We Are*, Insider Inc., <https://perma.cc/352U-MKYN>.

<sup>78</sup> See Christine Hauser & Edmund Lee, *Fortune Magazine Sold to Thai Businessman for \$150 Million*, N.Y. Times: DealBook (Nov. 9, 2018), <https://perma.cc/ATZ4-CAYC>; *Fortune Media Corporation*, Fortune (archived Aug. 8, 2020), <https://perma.cc/TA37-LC4V>.

<sup>79</sup> See *Forbes Media Agrees to Sell Majority Stake to a Group of International Investors to Accelerate the Company's Global Growth*, Forbes (July 18, 2014), <https://perma.cc/YW82-U8SS>.

<sup>80</sup> See David Bauder, *Gannett, McClatchy News Chains Say They Will Stop Using Associated Press Content*, AP (Mar. 19, 2024), <https://perma.cc/W2VQ-6Y79>.

<sup>81</sup> Jeremy W. Peters, *The Economist Tends to Its Sophisticate Garden*, N.Y. Times (Aug. 8, 2010), <https://perma.cc/4DLK-BDL5>; *Our Businesses*, The Economist Group, <https://perma.cc/VE9N-GZSJ>; *About Guardian Media Group*, Guardian, <https://perma.cc/T6DG-692Z>; Sara Jerde, *Minute Media Acquires Mental Floss*, AdWeek (Sept. 20, 2018), <https://perma.cc/WH5A-K7EQ>; *About Us*, Minute Media, <https://perma.cc/K32W-K89N>; *Future Acquires Marie Claire US*, Future plc (May 12, 2021), <https://perma.cc/49DK-DR8F>; *Our Brands*, Future plc, <https://perma.cc/L2TY-K6BD>; Future plc, Annual Report FY 2023, at 135, <https://perma.cc/MH5J-G8YE>.

<sup>82</sup> *Telegraph, Spectator to Not Resume Sale as Barclay Family Repays Debt*, Reuters (Dec. 5, 2023), <https://perma.cc/V8CC-39K7>.

<sup>83</sup> John Plunkett & Jane Martinson, *Financial Times Sold to Japanese Media Group Nikkei for £844m*, Guardian (July 23, 2015), <https://perma.cc/GCU9-N2EK>; *Our History 1: Nikkei*

31. Looking beyond news organizations, many other media companies in the United States are owned by foreign entities, including by Chinese companies. Video game developer Riot Games has been owned by the Chinese company Tencent since 2015.<sup>84</sup> Another Chinese company, Wanda Group, owned a controlling share in AMC Theaters from 2012 to 2021.<sup>85</sup> Three of the “Big Five” English-language publishing companies—Hachette Book Group, Macmillan Publishers, and Penguin Random House—are owned by French and German companies.<sup>86</sup> Since the 1990s, Sony Group Corporation, a Japanese company, has owned Sony Pictures Entertainment, one of the “Big Five” American film studios.<sup>87</sup> Two of the “Big Three” record labels in the United States are also foreign owned. Sony Music Entertainment is owned by Sony Group Corporation, a Japanese company, while Universal Music Group is a Dutch-American corporation organized under Dutch law.<sup>88</sup>

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*Acquires Financial Times(FT)*, Nikkei (Oct. 1, 2021), <https://perma.cc/GRQ6-FGVQ>; *About Us*, Al Jazeera, <https://perma.cc/4L5S-6Z78>.

<sup>84</sup> Allegra Frank, *Riot Games Now Owned Entirely by Tencent*, Polygon (Dec. 16, 2015), <https://perma.cc/RW8K-KRYF>.

<sup>85</sup> Alex Weprin, *Wanda Sells Off AMC Theatres Stake for \$426 Million*, Hollywood Reporter (May 21, 2021), <https://perma.cc/3QA9-4K65>.

<sup>86</sup> *Bertelsmann Acquires Full Ownership of Penguin Random House*, Bertelsmann (Dec. 18, 2019), <https://perma.cc/RF85-9JM3>; *Book Publishing*, Hachette Livre, <https://perma.cc/6MKW-MFLX>; *About Us*, Macmillan Publishers, <https://perma.cc/7VXR-J2HJ>.


<sup>87</sup> *Affiliated Companies*, Sony, <https://perma.cc/MF9J-6GWH>.

<sup>88</sup> *Id.*; Caitlin Kelley, *Sony Consolidates Recorded Music and Publishing Under Sony Music Group*, Forbes (July 19, 2019), <https://perma.cc/82AP-Z4ZD>; *Board and Governance*, Universal Music Group, <https://perma.cc/7A6C-DKFL>.



Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge.

Executed this 14th day of August, 2024.

A handwritten signature in black ink, appearing to read 'Steven Weber', is written over a horizontal line.

Steven Weber

**IN THE UNITED STATES COURT OF APPEALS  
FOR THE DISTRICT OF COLUMBIA CIRCUIT**

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TIKTOK INC.,		)
		)
and		)
		)
BYTEDANCE LTD.,		)
		)
	<i>Petitioners,</i>	)
		)
v.		)
		)
		)
MERRICK B. GARLAND, in his official		)
Capacity as United States Attorney		)
General,		)
		)
	<i>Respondent.</i>	)
		)
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No. 24-1113

**DECLARATION OF WILLIAM C. FARRELL**

1. I am the Security Officer of TikTok U.S. Data Security Inc. (“TikTok USDS”), which is a wholly owned subsidiary of Petitioner TikTok Inc. In that role, which I have held since May 2022, I lead security, privacy, and compliance functions within TikTok USDS. My focus is working to help ensure that protected U.S. user data is secure, that security controls are in place and effective, and that continuous monitoring and evaluation are conducted to address emerging threats.

I lead a team that includes security researchers, software engineers, network analysts, data scientists, and others dedicated to protecting U.S. user data and preventing unauthorized interference with the U.S. TikTok platform.

2. Between July 2020 and May 2022, I was TikTok's Head of Global Cyber and Data Defense. Before that, I spent 16 years at Booz Allen Hamilton where I led data protection programs, cyber operations, and vulnerability assessments for U.S. government and private-sector clients, including the U.S. Department of Defense and several Fortune 100 companies. My experience includes overseeing efforts to protect sensitive data and communications, supporting the U.S. Department of Defense in both offensive and defensive cyber operations, building world-class cyber-security programs for private sector clients, and helping company boards measure and mitigate cyber risk. I held a Top Secret/Sensitive Compartmented Information clearance. I am a U.S. citizen, born and raised in New York.

3. This declaration responds to certain factual assertions in the government's brief and declarations that relate to my work at TikTok USDS.

4. Since I started working at TikTok in July 2020, I have been deeply involved in the negotiations with the member agencies of the Committee on Foreign Investment in the United States (CFIUS) regarding a potential National Security Agreement (NSA) to resolve the government's concerns that TikTok could pose a risk to U.S. national security.

5. I participated in multiple meetings with and presentations to the CFIUS agencies, including subject matter presentations on protected data, source code, governance, and content moderation mitigations. I also had several additional technical discussions with CFIUS staff of the Department of Justice about the TikTok source code. Throughout this period, I worked closely with our in-house and outside counsel on the technical solutions that were memorialized in that draft Agreement, and received regular updates on the negotiations. I am very familiar with the draft NSA that the company sent to CFIUS on August 23, 2022.

## I. NSA Negotiations

6. In his declaration, David Newman describes the August 23, 2022 draft NSA as “ByteDance’s final proposal” or the “Final Proposed NSA.”<sup>1</sup>

7. By August 23, 2022, we had spent more than a year and a half negotiating the NSA with CFIUS and had exchanged approximately 20 drafts of the Agreement. At the time, we viewed the August 23, 2022 draft as near-final. By then, we had made significant progress in the negotiations, and our focus had shifted to finalizing specific details in the draft Agreement related to, for example, certain definitions, governance provisions, and time periods. Around this time, the Department of Justice began discussing with the company a settlement of the pending litigation and final resolution of the matter.

8. But it was clear that the NSA was still in draft form, and the company was advised by the Departments of the Treasury and Justice that they expected to provide further comments on the draft. The company never received those comments, but was prepared to continue negotiating with the government, including on core terms and the

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<sup>1</sup> See Gov’t App.46; see also *id.* 57-62, 64, 83.

structure of the mitigation solution contemplated by the draft Agreement. The company continued to provide the government updates on the NSA annexes and related materials in fall 2022. Although the company had not received any substantive feedback from the government, the company requested a meeting with the CFIUS Deputies on December 28, 2022. The purpose of this requested meeting was to finalize the NSA, or, if CFIUS were not prepared to finalize the NSA, to hear about any concerns the Committee had so that the company could address them.<sup>2</sup> We formally requested a meeting with the CFIUS Deputies again on February 27, 2023, but that request also was never granted.<sup>3</sup>

## II. Insufficiency of Draft NSA

9. Mr. Newman's declaration also identifies several purported flaws in the draft NSA that he claims rendered it insufficient to protect U.S. national security, including that

- a. “[S]ignificant volumes of excepted information [would be] able to travel to the PRC for engineering and

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<sup>2</sup> App.360.

<sup>3</sup> App.364-65.

commercial reasons,” which “would expose U.S. users’ data to malign purposes.”<sup>4</sup>

- b. Anonymization of data is “insufficient to mitigate the national-security risk that the PRC or ByteDance could exploit this data in ways that undermine U.S. national security.”<sup>5</sup>
- c. The so-called “kill switch” “allowed for a ‘temporary stop’ only for a specific list of narrowly scoped NSA violations” and would not “give the U.S. Government anything resembling complete discretion” to shut down the platform “based on its own independent assessment of national security risk and assessments from the U.S. Intelligence Community.”<sup>6</sup>

10. CFIUS did not raise these three issues during our negotiations as reasons why it viewed the August 23, 2022 draft NSA as inadequate. Had the government communicated their concerns, the

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<sup>4</sup> Gov’t App.65.

<sup>5</sup> Gov’t App.74.

<sup>6</sup> Gov’t App.78-79.

company was prepared to discuss modifications to the draft NSA to address them.

11. Mr. Newman's declaration also states that "ByteDance's representations as to the size of the TikTok platform's Source Code leave no doubt that a complete review of each line would be a monumental undertaking. ... Even with Oracle's considerable resources, perfect review would be an impossibility."<sup>7</sup>

12. However, as we explained to the Department of Justice, Oracle could prioritize its code review based on the government's (and Oracle's) perceived level of risk and that review could be more targeted and expedited. For example, Oracle could focus first on the code for the user-facing mobile application and leave for later things like open-source code developed by others. Even with these targeted code reviews, we agreed that all code would be available to Oracle, and all code would undergo Oracle analysis using automated tools at Oracle's discretion.

13. The company also recommended supplementing manual source code review with additional reviews by companies with

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<sup>7</sup> Gov't App.65.



particular expertise in testing and inspection of mobile apps and platforms. The company explained that such review would be more effective and efficient than line-by-line manual code review. I know from my experience as a government contractor that the methods used by these specialist companies reflect best practices and are relied on by government agencies to identify and address risks or vulnerabilities present in software. In light of these discussions with the government, we engaged HaystackID, OnDefend, and Mandiant as Independent Security Inspectors to provide additional assurance.<sup>8</sup>

### III. Protection of U.S. User Data

14. Mr. Newman's declaration also states that the draft NSA "contemplated extensive data flows of U.S. users back to ByteDance and thus to China ...."<sup>9</sup>

15. Throughout the draft NSA's negotiations, the company understood that it and the government were aligned that the NSA would limit data flows outside the Oracle cloud as much as possible

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<sup>8</sup> "TikTok U.S. Data Security Names Independent Security Inspectors as Part of Digital Integrity and Compliance Journey," TikTok (June 26, 2024), <https://perma.cc/L2YE-YEML>.

<sup>9</sup> Gov't App.47; *see also id.* at 62, 65.

while allowing the U.S. TikTok platform to continue as part of the global platform. From the very beginning of the NSA negotiations in 2020, our discussions with the government regarding U.S. user data security were premised on distinctions among three different categories of user data: Protected Data, Public Data, and Excepted Data.

16. These distinctions help to ensure that sensitive U.S. user data is adequately protected and that U.S. users can access a TikTok experience that is appropriate, reliable, and integrated with the global platform. While we had extensive discussions with the government about which data should be included in which category, and requested and expected further negotiations on that issue, the government did not object to the *concept* of these three categories of data.

#### **IV. Location of The Recommendation Engine**

17. The declarations of Casey Blackburn and David Newman both state that the recommendation algorithm that is used to recommend content to U.S. TikTok users is “stored in” or “resides within” China.<sup>10</sup>

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<sup>10</sup> Gov’t App.25, 49.

18. The recommendation engine for the U.S. TikTok platform, including the recommendation algorithm, is stored in the Oracle cloud on servers located in the United States. It is subject to the control of TikTok USDS and available for review in its entirety by Oracle.

19. Mr. Newman also states that the company would not agree to “cease collecting U.S. user data or sending it to Beijing to train the algorithm.”<sup>11</sup>

20. The recommendation algorithm is trained on U.S. user data in the Oracle cloud by TikTok USDS personnel.

## **V. TikTok Data Collection**

21. The government repeatedly refers to the data collected by TikTok as including a user’s “precise location data.”<sup>12</sup>

22. The current version of the TikTok app does not collect GPS information from U.S. users. Rather, it collects IP address and country information. This data helps route user data appropriately—for example, routing U.S. user data to the Oracle cloud—and it can render

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<sup>11</sup> Gov’t App.81-82.

<sup>12</sup> Br. at 1, 18, 27-28; *see also* Gov’t App.35-37.

information about a user's *approximate* location, but, unlike GPS, it is an imprecise means of determining a user's location.

23. In his declaration, Kevin Vorndran states that “the TikTok app has access to any data stored in the user's contact list, from names and contact information, to job titles, contact photos, and notes.”<sup>13</sup>

24. The TikTok app will, with the user's affirmative permission, access the user's phone contacts and collect information such as names, phone numbers, and email addresses. But that information is automatically “hashed,” meaning that it is converted to a unique and anonymized alphanumeric code, before it is sent to the Oracle cloud. In this cloud, the hashed information is used to connect the user with other existing TikTok users, whose information would generate the same hashed value. To the extent the hashed phone contacts are not TikTok users, that information alone cannot be used to recover the original contact information and is deleted. For U.S. users, that hashed information is treated as “protected data” and is not accessible to TikTok or ByteDance employees outside TikTok USDS (subject to exceptions specified by the draft NSA).

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<sup>13</sup> Gov't App.35.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge.

Executed this day August 14, 2024.



William C. Farrell

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EXECUTIVE SESSION  
LEGISLATION TO PROTECT AMERICAN DATA AND  
NATIONAL SECURITY FROM FOREIGN ADVERSARIES  
THURSDAY, MARCH 7, 2024  
House of Representatives,  
Committee on Energy and Commerce,  
Washington, D.C.

The committee met, pursuant to call, at 10:36 a.m., in Room 2123, Rayburn House Office Building, Hon. Cathy McMorris Rodgers [chairwoman of the committee] presiding.

Present: Representatives Rodgers, Burgess, Latta, Guthrie, Griffith, Bilirakis, Bucshon, Hudson, Walberg, Carter, Duncan, Palmer, Dunn, Lesko, Pence, Crenshaw, Joyce, Armstrong, Weber, Allen, Balderson, Fulcher, Pfluger, Harshbarger, Miller-Meeks, Cammack, Obernolte, Pallone, Eshoo, DeGette, Schakowsky, Matsui, Castor, Sarbanes, Tonko, Ruiz, Peters, Dingell, Veasey, Kuster, Kelly, Soto, Schrier, and Fletcher.

1           Mr. Newman. Thank you. Thank you to the chair, thank  
2 you to the ranking member for taking up legislation to fill  
3 critical gaps in our national security authorities.

4           In my role as the Principal Deputy Assistant Attorney  
5 General for National Security at the Department of Justice, I  
6 confront on a daily basis the threats that you just heard  
7 that the People's Republic of China poses to the United  
8 States, to Americans. And increasingly, as we have seen,  
9 that threat involves the PRC's attempts to weaponize  
10 America's data against us. And TikTok and its parent company  
11 ByteDance are a case in point -- and perhaps even Exhibit A  
12 -- in that story.

13           Our intelligence community leaders and our national  
14 security experts have warned and just reiterated that the  
15 parent company, ByteDance, presents a clear and present  
16 danger to our national security, a latent threat but a threat  
17 that could be deployed [REDACTED]

18 [REDACTED]  
19           First, as you just heard, TikTok collects vast amounts  
20 of personal data from the more than 170 million Americans who  
21 actively use the platform, [REDACTED]

22 [REDACTED]  
23 [REDACTED]  
24           Second, PRC -- TikTok relies on a proprietary algorithm  
25 developed and maintained inside China to determine what

1 content to show and what content not to show to its American  
2 users.

3 And third, [REDACTED]

4 [REDACTED]  
5 [REDACTED]  
6 [REDACTED]  
7 [REDACTED]  
8 To date, Department of Justice leadership and other  
9 senior national security administration officials have  
10 identified only one viable solution for these national  
11 security risks.

12 TikTok must be divested and sold to a trusted buyer,  
13 severing the link that currently binds TikTok to Beijing and  
14 its PRC-based parent, ByteDance.

15 In addition, TikTok must move the data that TikTok  
16 collects about Americans and the development of its algorithm  
17 and source code outside of China and to a trusted location.

18 In response to that, TikTok has publicly offered a  
19 counterproposal, what it calls Project Texas. But, in our  
20 view, Project Texas would not achieve the national security  
21 objectives that we have.

22 Among other things, Project Texas would still allow  
23 TikTok's algorithm, source code, and software development to  
24 remain in key measures in China, and it would allow Chinese  
25 employees and ByteDance employees to continue to have



1 influence over TikTok's operations.

2 Last year, along with other officials from the  
3 Department of Justice and the Treasury Department, I  
4 personally told ByteDance's attorneys that Project Texas was  
5 an inadequate solution. And I made clear -- we all did --  
6 that the only solution that we have identified is a sale of  
7 TikTok to a U.S. Government-approved purchaser.

8 But that has left us in something of a legal standoff,  
9 because our current U.S. laws have gaps and limits that have  
10 seriously hindered our ability to compel that result from the  
11 company.

12 The executive branch currently has two key authorities  
13 that have been used in the past to try to force just this  
14 divestment of TikTok. The first is the International  
15 Economic Emergency Powers Act, or IEEPA; and the second is  
16 our authorities under the Committee on Foreign Investment in  
17 the United States.

18 Both of those authorities were invoked first in the last  
19 administration and then in this administration to try to  
20 force a divestment of TikTok, but we are stalled out in the  
21 courts.

22 That is for the following reason: IEEPA contains a  
23 pre-internet statutory exception, the so-called Berman  
24 amendment, after Representative Berman, for executive -- for  
25 informational materials and personal communications.

1           And given the amount of First Amendment-protected  
2 activity and expressive content on the platform, courts have  
3 held in this case that the Berman amendment does not allow  
4 IEEPA to regulate and ban TikTok.

5           CFIUS, the Committee on Foreign Investment in the U.S.,  
6 is a very powerful tool to review foreign acquisitions of  
7 U.S. businesses. The challenge with using it here is that  
8 TikTok in the main did not originate from the acquisition of  
9 a U.S. business. It grew organically as a foreign-controlled  
10 application and it has worldwide popularity.

11           And in the D.C. Circuit, in response to the CFIUS  
12 divestment order, TikTok the company put forward a very  
13 compelling factual showing that their 2017 acquisition of a  
14 U.S. company or a U.S. subsidiary called Musical.ly is not  
15 the reason that that company grew in the United States.

16           And as a result, we are in a challenging place to argue  
17 that the risks you just heard from TikTok arise from their  
18 application -- from their acquisition of a U.S. business as  
19 opposed to from their organic growth outside the United  
20 States. Because of that, there are serious limits to what we  
21 can do with CFIUS to try to bring this problem to heel.

22           So, put simply, as you know, TikTok is a sophisticated  
23 legal adversary that understands the limits of our  
24 authorities and the weakness of our negotiating position.

25           And that is why DOJ believes that strong new statutory

1 the strongest possible legal footing. And obviously TikTok,  
2 as you said, has all kinds of lawyers.

3 So my question is, could you just tell us briefly what  
4 the DOJ litigators consider to be the biggest litigation  
5 risks in the bill and if there are some revisions you think  
6 that would deal with that problem?

7 I mean, I know it would probably take an hour and I am  
8 asking you in a minute or so to tell us.

9 Mr. Newman. Sure.

10 So briefly, again, we stand ready to defend the bill in  
11 its current form in court. So I think that is important as a  
12 starting point.

13 It is the case that if litigation concerns were the only  
14 concern, we would have an additional argument if there were  
15 executive branch findings and executive branch process in  
16 addition to the congressional findings and congressional  
17 action that the bill would impose on TikTok and ByteDance,  
18 and that would give us an additional argument. And we did  
19 propose that or at least offer that point during the  
20 technical assistance.

21 At the same time, I do understand that there are policy  
22 considerations that go into that question. And the work that  
23 Congress has done, to make findings, to give process, to have  
24 the hearing that this committee had with TikTok's leadership,  
25 definitely helps us to buy down that risk.

1 of findings about the national security threat that the  
2 application poses. And in the main, I think that that would  
3 not apply to most of the scenarios that you are talking  
4 about.

5 Mr. Burgess. Thank you very much.

6 I yield back.

7 The Chair. The gentleman yields back.

8 The chair recognizes Ms. Eshoo for 5 minutes.

9 Ms. Eshoo. Thank you, Madam Chairwoman and our minority  
10 leader on the committee.

11 Thank you, gentlemen, for your help today.

12 I think that it is important to note in this undertaking  
13 that this is not a banning. This is not a banning. This is  
14 about divestment.

15 And we understand that in terms of your presentation  
16 that there are limits to the present laws, and you went  
17 through that I think very well, Mr. Newman.

18 I wasn't aware of the executive order on data brokers,  
19 but I welcome it. I don't know -- that is an important hole  
20 that needs to be filled, because it just leaves the door so  
21 wide open and essentially could make a mockery of our taking  
22 the steps that are at hand, at least in my view.

23 You spoke about defending in court, Mr. Newman, and the  
24 bill establishes one track for ByteDance and another for  
25 other foreign adversary-controlled applications. That is a

1 -- it is a two-track approach, and it will give ByteDance the  
2 opportunity to argue it is being selectively persecuted and  
3 not provided the same due process rights as other companies.

4 So can you allay my apprehension about that? I think  
5 that that needs to be discussed and that you walk into court  
6 with the tightest case possible. Because there have been  
7 other attempts and the courts have turned them down, and that  
8 should be highly instructive to us.

9 Mr. Newman. So it is a great question. I think they  
10 would make that argument, because they have, again,  
11 very sophisticated lawyers.

12 Ms. Eshoo. I would if I were them.

13 Mr. Newman. I would say three points in response.

14 One, there have been congressional findings,  
15 congressional process that underpins what is taking place  
16 here. And I think we would absolutely point to those and the  
17 record that has been compiled and the work that all of you  
18 are doing.

19 The second is, again, there is a long track record of  
20 divestment of companies in the national security space when  
21 they have problematic foreign owners. That is what we saw in  
22 CFIUS.

23 I spoke at the briefing about, for example, one instance  
24 of a U.S. application bought by a Chinese buyer and they had  
25 to divest. And divestment, as to your point, is different

[REDACTED]

1 from a ban, and that is really what this bill requires. is  
2 divestment.

3 And then the third is, there is a severability provision  
4 in the bill. In other words, if for whatever reason those  
5 arguments worked -- and, again, we would argue that they  
6 shouldn't work -- the executive branch could go back and  
7 build a record under the more general provision against these  
8 two companies and go back into court and use that record to  
9 achieve the same outcome.

10 And so there is a belt and suspenders built into the  
11 bill under which we could use that second option if, contrary  
12 to the arguments that the Department would be making, a court  
13 found that the first provision was problematic for some  
14 reason.

15 Ms. Eshoo. Well, that is most helpful.

16 [REDACTED] [REDACTED] [REDACTED]  
17 [REDACTED]  
18 [REDACTED] [REDACTED]  
19 [REDACTED]

20 Mr. Newman. [REDACTED]  
21 [REDACTED] [REDACTED] [REDACTED]  
22 [REDACTED]  
23 [REDACTED]  
24 [REDACTED]  
25 [REDACTED] [REDACTED]

[REDACTED]

1 anybody. We are just making sure that it is safe for them to  
2 use a certain app.

3 So I appreciate you all being here.

4 Madam Chair, I yield back.

5 The Chair. The gentleman yields back.

6 The chair recognizes Ms. DeGette for 5 minutes.

7 Ms. DeGette. Thank you very much, Madam Chair.

8 Thanks for all of you for coming.

9 I want to start with you, Mr. Newman, about the  
10 constitutional issues. And I know you said there is a long  
11 record of divestment of companies and so on.

12 Have we ever had legislation targeting a specific  
13 company? Because that is part of what TikTok is arguing is  
14 that we are specifically targeting them in legislation.

15 Mr. Newman. So you do have legislation that targets  
16 companies in related context, so, for example, disqualifies  
17 them from being Federal contractors, disqualifies them from  
18 selling services to the Federal Government, speaks to certain  
19 companies' ineligibility.

20 I do think, to your point, that the company will try to  
21 argue that this is a form of impermissible punishment, that  
22 the Constitution --

23 Ms. DeGette. And do you think there is legal precedent  
24 that you have to say that is not the case?

25 Mr. Newman. I do, because I think fundamentally our

1 position is this is not punishment for this company. This is  
2 not a ban on the company. This is an effort to compel  
3 something that we do regularly in the national security space  
4 to force a divestment of problematic ownership.

5 Ms. DeGette. We don't do legislation specifically  
6 targeted at companies in the national security. We do  
7 require divestment in the nat- -- I mean, that is the  
8 difference, right?

9 Mr. Newman. There is a Federal statute under CFIUS that  
10 allows divestment --

11 Ms. DeGette. Right.

12 Mr. Newman. -- across a number of companies.

13 Ms. DeGette. I understand.

14 Mr. Newman. And there are instances where Congress will  
15 highlight national security risks of specific companies.

16 Ms. DeGette. Okay. My second question is, can you  
17 briefly tell us the difference between -- tell us what  
18 happened in the Montana case where in November the U.S. Court  
19 judge ruled that the Montana ban was not constitutional.

20 Mr. Newman. So there, that ruling, as I understand it,  
21 rested on First Amendment grounds.

22 Ms. DeGette. Right.

23 Mr. Newman. And it reflects the fact that there is --  
24 first of all, there is a lot of First Amendment protected  
25 activity that takes place --



1 Ms. DeGette. But did the Montana law have some of the  
2 provisions that we have in this bill?

3 Mr. Newman. States and the Federal Government are very  
4 differently situated when it comes to legislating in the  
5 national security interest --

6 Ms. DeGette. Okay. But my question is --

7 Mr. Newman. -- and the Federal Government --

8 Ms. DeGette. -- did the Montana law have some -- was it  
9 structured the way we are or was it structured a different  
10 way?

11 Mr. Newman. I am probably not an expert on that law,  
12 but it -- the fundamental difference from my perspective is  
13 that Congress and the Federal Government has the power to act  
14 in the national security interest in a way that States often  
15 do not.

16 Ms. DeGette. I am going to try to get some more  
17 information about what that Montana law said.

18 Now, I have a question for either of the other two  
19 witnesses here, which is, when we had our big hearing in this  
20 committee last year, TikTok came in and they talked about  
21 this Texas project. They were transferring management of  
22 TikTok to Oracle, and this was their whole big argument to us  
23 about how this was taking it independent of PRC.

24 Can you guys comment on that effort and why you don't  
25 believe that that is sufficient to get to -- to gain the

1           ODNI. [REDACTED]

2           Mr. Grover. [REDACTED]

3 [REDACTED]

4           Mr. Soto. Any opinions by Justice?

5           Mr. Newman. I think we have seen some outside experts  
6 point to content on the platform that they think is more  
7 reflective of anti-Semitic narratives on TikTok than other  
8 platforms. [REDACTED].

9           Mr. Soto. Well, we need some inside experts to look at  
10 this as well to the extent that whatever data you have. I  
11 realize you will be able to make an opinion about the  
12 fidelity of your conclusions, but a lot of us are seeing well  
13 beyond anecdotal evidence that there is already influence on  
14 U.S. policy right now, even setting aside elections, based  
15 upon the type of -- the number of posts for one perspective  
16 versus another that we are seeing.

17           So I appreciate you all agreeing to take that back to  
18 your respective offices, because this is something we need  
19 you to help analyze to help us form an opinion.

20           With that, I yield back.

21           Mr. Latta. Thank you. The gentleman yields back.

22           The chair recognizes the gentleman from Alabama's Sixth  
23 District for 5 minutes.

24           Mr. Palmer. Thank you, Mr. Chairman.

25           Gentlemen, I want to raise some questions about the fact

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Is that confirming? Maybe you don't know. Do you recall that?

Mr. Grover. [Redacted]

[Redacted] That is worked out of a different shop for us.

Ms. Schrier. Okay. And then you talked about



But now, as Darren was talking about, we have got this Israel-Gaza thing, Rutgers. Do any of you off the top of your head have the numbers about the difference between anti-Israel, pro-Palestinian/Gaza on TikTok versus Instagram and other social media, like off the top of your head?

Mr. Newman. I am familiar with the general study, but not the specific numbers.

Ms. Schrier. Okay. I will look up the Rutgers study. Again, no devices here.

But it seems like right now that is certainly dividing

1           But I think your general point is correct, that by  
2 Congress having these hearings and then making the findings  
3 directly, it obviously happens faster and more definitively  
4 than if the executive branch conducted its own review and  
5 then made findings.

6           Mr. Griffith. I now yield back to the gentleman from  
7 Texas.

8           Mr. Crenshaw. Thank you. I reclaim my time. I  
9 remember the question now.

10           So does this legislation actually ban the app or does it  
11 just ban future downloads of the app and updates?

12           Mr. Newman. It effectively -- if there is no  
13 divestment, it would prohibit actors such as the Apple App  
14 Store and Google Play and others who would support the  
15 distribution and operation of the app.

16           Mr. Crenshaw. Right. So it would disappear from app  
17 stores for future users, but current users would still have  
18 TikTok. And it does nothing to actually stop the data flow  
19 from the app, which is a technical possibility that we could  
20 do but that is not what we are doing here.

21           Mr. Newman. It doesn't do it directly. I think other  
22 actors who would be supporting the data flows would have to  
23 look carefully at the bill to decide if they were on the  
24 right side of the line.

25           Mr. Crenshaw. Like telecom companies?

1           Mr. Newman. Right. And there is an exception for some  
2 of those actors, but it depends on how the -- the technical  
3 way that the app works, I think, who would be subject to it.  
4 But, at a minimum, I think the App Store, Google Play, some  
5 of the others who they need to be able to reach a U.S.  
6 audience would no longer be able to distribute it.

7           Mr. Crenshaw. Right. Well, what do you think AT&T  
8 would do if this was passed into law? Have they been  
9 consulted? I mean, we have had a lot of conversations about  
10 this.

11           Mr. Newman. It is a good question. I think different  
12 actors may have different risk tolerance for the bill. But  
13 fundamentally, I think the reason everyone is getting calls  
14 today from those who TikTok is activating is because I think  
15 they are very concerned that if the bill became law it would  
16 be very difficult for them to continue to operate their  
17 products with a U.S. audience.

18           Mr. Crenshaw. Okay. I hope it is, but I am not sure it  
19 would be. Okay.

20           Thank you. I yield back.

21           The Chair. [Presiding.] The gentleman yields back.

22           The chair recognizes Mr. Veasey for 5 minutes.

23           Mr. Veasey. Thank you, Madam Chair.

24           I just have one question for you. I know that a lot of  
25 what I have heard -- and I have been in and out, so let me

1 just say that, you may have already touched on this -- but a  
2 lot of what I have heard is, as this data is being collected,  
3 that it could pose a very serious future threat.

4 For people that are concerned about now -- and of  
5 course, you sat through the same, similar type briefings that  
6 all of us in here have that talk about how the Chinese think  
7 about things long term. They think about things 5, 10, 15,  
8 20 years from now. But in America we always think about  
9 today. We always think about how something affects us now.

10 And as Members of Congress, we have to go and sell what  
11 we are doing to the American public. So what type of threat  
12 are you comfortable telling the American public now how this  
13 affects them, and particularly the TikTok users that are very  
14 loyal to this particular platform?

15 Mr. Newman. So first, I would highlight that no one is  
16 suggesting that this legislation would end the platform. It  
17 would simply transfer it to responsible ownership.

18 In terms of the risks right now, I think right now the  
19 data that people are generating on the app, both public but  
20 also private data, is potentially at risk of going to the  
21 Chinese Government, being used now or in the future by the  
22 Chinese Government in ways that could be deeply harmful to  
23 tens of millions of young people who might want to pursue  
24 careers in government, who might want to pursue careers in  
25 the human rights field, and who one day could end up at odds

1 with the Chinese Government's agenda. So I think that is a  
2 concern right now, because they are generating the  
3 information right now.

4 It is also the case that the narratives that are being  
5 consumed on the platform, there is a risk right now that  
6 those narratives are being affected by the algorithm and that  
7 the Chinese Government potentially has the right to censor  
8 information that the Chinese Government decides it does not  
9 want the American public to know.

10 And when you look at the statistics of the number of  
11 young people who, for example, get their news and information  
12 from TikTok now versus just 3 years ago, it is striking to  
13 what degree those narratives are resonating with young people  
14 in America.

15 So, fundamentally, I think the message would be, this is  
16 not a ban. This is something that simply transfers it to  
17 responsible ownership. And there are risks right now of  
18 having additional data collected and stored by the Chinese  
19 Government for uses in the future.

20 Mr. Veasey. Yeah. One of the things that you did say  
21 earlier in your testimony is that if they say no to an  
22 American company being able to run TikTok USA that they could  
23 just say, "We just won't have the platform in America then if  
24 that is our only alternative," which would, in these people's  
25 eyes, that would be a ban to them.

[REDACTED]

1 So, Madam Chair, I yield back. Thank you very much.

2 And thanks to all of you.

3 The Chair. The gentlelady yields back.

4 The chair recognizes Mr. Weber for 5 minutes.

5 Mr. Weber. Thank you, ma'am.

6 We have heard about at least one person in this country  
7 that owns a 15 percent share of TikTok and, therefore,  
8 reluctant to see this go forward. Do we have a way of  
9 knowing how many Americans or we -- can we see that trade?  
10 Do we happen to know how many Americans have shares of  
11 TikTok? Do we know that? Are we able to get that  
12 information?

13 ODNI. I was just going to say, from the intelligence  
14 community, [REDACTED]

15 [REDACTED]  
16 [REDACTED] But I don't know from the other side.

17 Mr. Weber. So I assume they are not listed on the  
18 New York Stock Exchange, huh? Do we know that?

19 Mr. Newman. We don't have the visibility --

20 Mr. Weber. Your mike is not on.

21 Mr. Newman. Forgive me.

22 We don't have, I don't have the visibility into the  
23 ownership structure to know all of the U.S.-based owners.

24 Mr. Weber. Would that be beneficial to know?

25 Mr. Newman. I would certainly be interested to know



[REDACTED]

1 more about who owns it. But my assumption is that, as a  
2 practical matter, the strongest ownership interest is in  
3 China and among individuals who are subject to the  
4 jurisdiction of the Chinese Government.

5 Mr. Weber. Okay. And this is a little bit afield, pun  
6 intended, but the Chinese have been buying land.

7 Anything related to TikTok connection?

8 Mr. Grover. [REDACTED]

9 [REDACTED]

10 Thank you.

11 Mr. Weber. Okay. So speaking of TikTok, which I want  
12 all my grandkids and even my great-granddaughter to stay away  
13 from, do we have staffers in the IC or other places. FBI,  
14 whatever, do we have staffers [REDACTED]

15 [REDACTED]

16 ODNI. [REDACTED] [REDACTED]

17 [REDACTED]

18 [REDACTED]

19 [REDACTED]

20 [REDACTED]

21 [REDACTED]

22 [REDACTED]

23 [REDACTED]

24 Mr. Weber. [REDACTED]

25 ODNI. [REDACTED]

IN THE UNITED STATES COURT OF APPEALS  
FOR THE DISTRICT OF COLUMBIA CIRCUIT

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TIKTOK INC.,		)
		)
and		)
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BYTEDANCE LTD.,		)
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	<i>Petitioners,</i>	)
		)
	v.	)
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		)
		)
MERRICK B. GARLAND, in his official		)
Capacity as United States Attorney		)
General,		)
		)
	<i>Respondent.</i>	)
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No. 24-1113  
(consolidated with  
Nos. 24-1130,  
24-1183)

**DECLARATION OF BLAKE CHANDLEE IN SUPPORT OF  
PETITIONERS’ EMERGENCY MOTION FOR INJUNCTION**

1. I am the President of Global Business Solutions for TikTok, a role I have served in since April 2019. As the President of Global Business Solutions, my responsibilities include overseeing the team responsible for managing TikTok’s commercial partnerships, including our relationships with advertisers, and related policy issues. In addition, as a TikTok senior executive for over five years, I have become

broadly familiar with our operations and policies across a range of other areas, including our engineering and platform operations. For clarity, references in this declaration to “TikTok Inc.” are to the specific U.S. corporate entity that is a Petitioner in this lawsuit, and references to “TikTok” are to the online platform.

2. The purpose of this declaration is to elaborate on the irreparable harms to our business and brand from even a temporary shutdown of TikTok in the United States as previously discussed in paragraphs 50-52 of the Declaration of Adam Presser filed in this case on June 20, 2024.

3. TikTok has more than 170 million monthly users in the United States and more than a billion users worldwide. The foundation of our business is to attract creators and users to our platform, which in turn allows us to attract advertisers, talented employees, and continued investment in our platform. Even a very short ban on the order of days or weeks would irreversibly harm TikTok’s reputation and goodwill. And a longer temporary ban on the order of several months would irreversibly harm TikTok Inc.’s ability to maintain and grow the user

base, develop content, earn advertising revenue that we can reinvest in the platform, and attract and retain business partners and employees.

## **I. Lost Revenue and Commercial Partnerships**

4. Attracting advertising and commercial partnerships depends on the presence of users on the platform. Since even a temporary shutdown of the platform will, as discussed below, result in irreversibly losing users and content creators, and harm our reputation and goodwill, we will experience irreparable harm to our advertising and commercial partnerships, as will the many thousands of businesses who rely on TikTok to market their products.

5. We estimate that if the TikTok platform is shut down in the United States on January 19, 2025, but the prohibitions are lifted after a month, U.S. small businesses would lose more than \$1 billion in revenue,<sup>1</sup> almost two million creators in the United States would suffer almost \$300 million in lost earnings, and TikTok itself would lose 29%

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<sup>1</sup> See Oxford Economics, *TikTok: Helping Grow Small- and Mid-Sized Businesses and Delivering Value for Consumers Across the United States*, at 12 (2024), available at <https://tiktokeconomicimpact.com/> (“Our modeling suggests that SMB investments in paid advertising and marketing on TikTok drove \$14.7 billion in revenue for SMBs in selected sectors in the US in 2023.”).

of our total targeted global advertising revenue for 2025. Those numbers would only increase if the shutdown extends for more than a month.

6. As of last month, there were over 7 million U.S. accounts using TikTok to do business. According to an Economic Impact Report prepared for us by Oxford Economics, small- and mid-sized businesses see TikTok as integral to their expansion plans.<sup>2</sup> 69% of these businesses say that using TikTok has led to increased sales for their business in the last year, and 39% say that access to TikTok is critical to their business's existence.<sup>3</sup> These businesses' advertising, marketing, and organic reach on TikTok contributed \$24.2 billion, and TikTok's own operations contributed an additional \$8.5 billion, to U.S. GDP in 2023.<sup>4</sup>

7. TikTok also provides an extraordinarily popular online platform for e-commerce—selling physical goods online. On Black Friday, November 29, 2024, TikTok Shop hit over \$100 million in sales

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<sup>2</sup> *Id.* at 5.

<sup>3</sup> *Id.* at 7.

<sup>4</sup> *Id.* at 4.

in the United States on a single day.<sup>5</sup> Top selling brands included household names like Crocs and Estee Lauder, and the singer Nicki Minaj had the highest-viewed TikTok Shop Live ever, with over 172 million viewers.<sup>6</sup> But many sales went to brands that first started on TikTok Shop, and one-third of all the purchases were from small- and medium-sized businesses.<sup>7</sup> A temporary loss of this platform for commercial activity would irreparably harm sellers of products and the creators in this country who market them for commissions—as well as our business, which also earns revenue from those sales.

8. Apart from the lost revenue, even a temporary ban will irreversibly weaken our competitive position because advertisers and business partners who have developed relationships with other platforms will not return. Large advertisers set budgets on an annual basis and allocate that budget across the platforms on which they plan

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<sup>5</sup> Alexandra S. Levine, *TikTok Shop Triples Black Friday Sales, Topping \$100 million*, Bloomberg (Dec. 4, 2024), <https://www.bloomberg.com/news/articles/2024-12-04/tiktok-shop-triples-black-friday-sales-topping-100-million>.

<sup>6</sup> *TikTok Shop: A Home for Inspiration this Holiday Season*, TikTok, <https://newsroom.tiktok.com/en-us/tiktok-shop-a-home-for-product-inspiration-this-holiday-season>.

<sup>7</sup> *Id.*

to advertise. If advertisers conclude that TikTok will be unavailable in the United States, those advertisers will reallocate to other platforms any budget they planned to allocate to TikTok. Even if the Act's prohibitions are later struck down, it will be impossible to entirely recoup these lost opportunities.

9. A temporary shutdown of the platform will also undermine our reputation and goodwill, including harming our relationships with advertisers and business partners in the United States and around the world. Advertisers and partners are already concerned about the impact of the ban, and even a temporary shutdown will undermine our credibility in being able to deliver an audience going forward.

## **II. TikTok's User Base and Content Development**

10. If the ban is permitted to enter into force, it would instantly deprive U.S. users and creators of access to the TikTok platform. Users and content creators tend to develop lasting brand loyalty when it comes to social media and online entertainment platforms, and if we lose these users and content creators to our competitors, even on a temporary basis, some will not return, even if the prohibitions are later lifted.

11. In addition to general brand loyalty, another reason content creators are not likely to return to TikTok following a temporary ban is the significant costs associated with changing platforms. Different platforms provide creators with different tools and incentives to create and promote videos, and use different content recommendation and promotion technologies that result in those creators reaching different audiences. If creators start creating on or move to another platform because TikTok is not available, once they have established themselves there, they will be less likely to switch, or switch back, to TikTok because of the costs of doing so.

12. Users who view (rather than create) content similarly experience costs associated with switching platforms. Once users have established themselves on another platform, with a content feed tailored to their tastes, including their favorite creators, and become familiar with the tools that allow them to engage with content or with others on the platform, they will be less likely to switch, or switch back, to TikTok.

13. While the unprecedented nature of this shutdown makes it difficult to predict how users would react, our modeling based on the



return rate of users who have previously been absent for a 30-day period indicates that a one-month shutdown would result in TikTok losing approximately one third of its daily users in the United States. A longer shutdown would result in an even greater loss of users.

14. If TikTok becomes unavailable in the United States, some users and creators *outside* the United States will also depart for other platforms. Creators abroad who want to reach U.S. audiences, and users abroad who want to follow popular U.S. creators, will shift to other platforms because U.S. users and creators will no longer be on TikTok.

15. Accordingly, even if the Act's prohibitions are later lifted, we would not be able to recover all the creators and users lost while TikTok was unavailable, because people who would have continued or started to use TikTok will have already turned to other competing platforms, such as Instagram, Facebook, or YouTube.

16. Even a short shutdown of the platform, on the order of days or weeks, will also undermine our reputation and goodwill with creators and users. Even if TikTok later becomes available, a temporary shutdown will undermine our credibility in being able to deliver content

to users and an audience to creators going forward. And the longer the shutdown, the greater damage to our reputation and goodwill.

### **III. Hiring and Employee Retention**

17. In addition to users and advertisers, a shutdown of the platform will also irreversibly damage our ability to recruit and retain employees. As a technology business, we compete for software engineers and other talent in a highly competitive market. If TikTok is even temporarily banned, the business our current or prospective employees would support will be gone, and they are likely to accept offers from competitors. Even if the prohibitions are later lifted, it will be impossible to recruit most of them back.

### **IV. Shutting Down the TikTok Platform**

18. Many of our hundreds of service providers in the United States help make the platform available to TikTok users around the world—not just in the United States. If those providers were to stop providing services to enable the distribution, maintenance, or updating of TikTok for users in the United States, TikTok could also become unavailable for users in many other countries.

19. Accordingly, if the prohibitions in the Act come into effect on January 19, 2025, to avoid interruption of services for tens of millions of TikTok users outside the United States, where the Act's prohibitions do not apply, we would need a period of lead time to work closely with our service providers. Conversely, if TikTok is allowed to remain available to users in the United States, we would need to work with our service providers in advance to ensure that TikTok will remain available to users in the United States.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge.

Executed this day, December 8, 2024.

A handwritten signature in black ink, appearing to read 'B. Chandlee', written over a horizontal line.

Blake Chandlee

IN THE UNITED STATES COURT OF APPEALS  
FOR THE DISTRICT OF COLUMBIA CIRCUIT

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BRIAN FIREBAUGH, CHLOE  
JOY SEXTON, TALIA CADET,  
TIMOTHY MARTIN, KIERA  
SPANN, PAUL TRAN,  
CHRISTOPHER TOWNSEND,  
and STEVEN KING,

*Petitioners,*

v.

MERRICK B. GARLAND, in his  
capacity as United States Attorney  
General,

*Respondent.*

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DECLARATION OF TALIA CADET IN SUPPORT OF PETITIONERS'  
EMERGENCY MOTION FOR INJUNCTION PENDING  
SUPREME COURT REVIEW

I, Talia Cadet, declare as follows:

1. I make this declaration from personal knowledge.
2. I incorporate by reference the facts stated in my June 18, 2024 declaration.
3. If the Act, which bans TikTok in the United States, takes effect in January 2025, I will suffer substantial and immediate harm.
4. As described in further detail in my original declaration, I

have dedicated years to creating content on TikTok that promotes Black authors and small businesses and shares my personal experiences with the world. The community that I have found and helped to foster on TikTok has greatly impacted my life—providing me with a sense of purpose, joy, connection, expression, and information. The loss of my ability to speak to and learn from this community even for a few months would create a damaging void in my life and the lives of many other TikTok users and creators.

5. I currently have specific engagements scheduled for next year that would be threatened if the ban takes effect as scheduled in January. Specifically, I am scheduled to participate in several book talks in February, March, and April 2025 that I would normally promote heavily on my TikTok account, resulting in increased visibility and potential sales for the authors as well as possible future opportunities for me. I also have pending paid partnerships for books that are scheduled to publish in February 2025, which would be threatened if TikTok is banned as scheduled. Losing the ability to boost these authors and share these book talks with my over 145,000 TikTok followers would be very painful and also impact me financially. It would also impact the authors I

promote, many of whom are independent or under-represented and under-resourced in the traditional publishing industry, and rely on TikTok creators like me to expand their books' reach.

6. Specifically, if the ban takes effect in January, my annual income will decrease. Last year, I made about 15 percent of my annual income from my work on TikTok; and I stand to make more this year. The loss of this supplemental income and the financial freedom it allows me would be difficult.

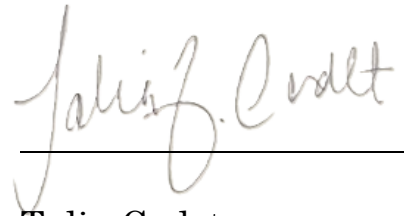
7. As I explained in further detail in my original declaration, I do not believe that I could replicate my success with TikTok on any other social media platform. Despite having posted some similar content on other apps like Instagram, I have not seen the same rates of growth and engagement—and my follower numbers show it. Additionally, a number of my TikTok followers have told me that they do not even use the other leading social media apps like Facebook or Instagram. So while I might continue creating content on Instagram in the event of a TikTok ban, I know it will not be the same.

8. I urge the Court to grant our emergency motion for an injunction pending appeal and protect our access to TikTok throughout

this judicial process.

I declare under penalty of perjury that the foregoing is true and correct.

Signed in Capitol Heights, Maryland this 9th day of December, 2024.

A handwritten signature in cursive script, appearing to read "Talia Cadet", is written above a solid horizontal line.

Talia Cadet



IN THE UNITED STATES COURT OF APPEALS  
FOR THE DISTRICT OF COLUMBIA CIRCUIT

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BRIAN FIREBAUGH, CHLOE  
JOY SEXTON, TALIA CADET,  
TIMOTHY MARTIN, KIERA  
SPANN, PAUL TRAN,  
CHRISTOPHER TOWNSEND,  
and STEVEN KING,

*Petitioners,*

v.

MERRICK B. GARLAND, in his  
capacity as United States Attorney  
General,

*Respondent.*

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DECLARATION OF BRIAN FIREBAUGH IN SUPPORT OF  
PETITIONERS' EMERGENCY MOTION FOR INJUNCTION  
PENDING SUPREME COURT REVIEW

I, Brian Firebaugh, declare as follows:

1. I make this declaration from personal knowledge.
2. I incorporate by reference the facts stated in my June 18, 2024

declaration.

3. If the Act takes effect as scheduled on January 19, 2025, it will have immediate and devastating consequences on myself and my family.

4. I earn most of my income through selling my ranch products promoted on TikTok. If the Act takes effect and TikTok is banned, even for a few months, I believe my ranch will no longer generate sufficient revenue for my family to survive. We do not have any equivalent means to market our products and, as first-generation ranchers, do not have the same longstanding relationships or financial reserves as more established ranches. We do not have sufficient financial reserves to weather even a temporary shutdown of TikTok.

5. I also have contracts with third-party companies to promote certain products on my TikTok account that would become obsolete if the Act takes effect. Many of these companies are small local businesses that rely on me and other creators to market their products.

6. As a result, if TikTok is banned, I would be forced to accept work outside of my ranch and believe I would eventually have to sell the ranch. For me, the most difficult part of finding a new job is that I would have to hire someone else to provide daily care for my young son Rooster, instead of caring for him at home on the ranch as my wife and I have for 2.5 years. My wife and I believe it is very important to raise Rooster in a family environment where he feels loved and cared for, and is able to

learn about nature and animals—as he is on our ranch. Taking him out of this nurturing environment would break my heart.

7. Not only would a TikTok ban quickly dismantle my business and my family’s way of life, it would also immediately eliminate the most effective tool for me to communicate with and support the agricultural community in Texas. As stated in my opening declaration, TikTok has allowed me to raise donations of critical cattle feed and antibiotics to send to ranchers in need after a series of devastating wildfires, and helped me to advertise beef-drop offs for folks struggling with food security.

8. I anticipate continuing to use TikTok to address any natural disasters or other community service needs that may arise in the next few months. Even if TikTok is only temporarily banned, I will lose my ability to help fellow ranchers respond to any emergencies, and I worry that these ranchers might be unable to recover.

9. In addition to community service, I have also used TikTok to both share my knowledge about Texas longhorn cattle and the agricultural lifestyle and to learn from and connect with other ranchers. In an environment like ranching that can be very isolating, this form of community-building, education, and mentorship is extremely valuable

and its loss—even for a few months—would be highly damaging.

10. If TikTok was banned, I know I would not be able to replicate the same experience and community impact or generate the same revenue through using other social media apps. As stated in my opening declaration, I have tried posting content on other platforms and failed to get anywhere near the same engagement as I have on TikTok. Videos I post on TikTok will sometimes garner millions of views, while the exact same video on other platforms may end up with just a few hundred views. No other platform compares, and none of them would save my ranch from financial ruin or allow me the same ability to support my community.

11. Thinking about the potential TikTok ban in January 2025 fills me with dread. I take pride in being able to provide for my family and help my community in times of need. Especially as a Marine Corps veteran, the idea that the government could take this all away from me and other Americans, even temporarily, is appalling.

12. I urge the Court to grant our emergency motion for an injunction pending appeal and protect our access to TikTok throughout this judicial process.

I declare under penalty of perjury that the foregoing is true and correct.

Signed in Hubbard, Texas this 9th day of December, 2024.

A handwritten signature in black ink, appearing to read "Brian Firebaugh". The signature is written in a cursive style with a large initial "B" and a distinct "F".

Brian Firebaugh

IN THE UNITED STATES COURT OF APPEALS  
FOR THE DISTRICT OF COLUMBIA CIRCUIT

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BRIAN FIREBAUGH, CHLOE )  
 JOY SEXTON, TALIA CADET, )  
 TIMOTHY MARTIN, KIERA )  
 SPANN, PAUL TRAN, )  
 CHRISTOPHER TOWNSEND, )  
 and STEVEN KING, )  
   ) *Petitioners,* )  
 v. )  
 MERRICK B. GARLAND, in his )  
 capacity as United States Attorney )  
 General, )  
   ) *Respondent* )

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DECLARATION OF STEVEN KING IN SUPPORT OF PETITIONERS’  
EMERGENCY MOTION FOR INJUNCTION PENDING  
SUPREME COURT REVIEW

I, Steven King, declare as follows:

1. I make this declaration from personal knowledge.
2. I incorporate by reference the facts stated in my June 17, 2024 declaration.
3. If the Act, which bans TikTok in the United States, takes effect in January 2025, it will have immediate and severe consequences on me, my family, and my community.

4. If the ban takes effect, I would be devastated to lose the community that I have found and fostered on TikTok. As described further in my original declaration, I create content on TikTok that is not only entertaining but also deeply personal, and I have connected with countless followers and fellow creators over topics of great importance to me—such as my experience as a gay man in Arizona, my challenging childhood involving living in a juvenile institution and boys' homes, and my sobriety journey.

5. The TikTok format allows me to express myself authentically and share these vulnerable stories in a way that I have not found on other social media. It is an honor and a privilege to be able to inspire others with my experiences or give them a glimmer of hope when they're in a dark place. Losing the ability to speak to and engage with this community—even for a temporary period of time—would be very difficult. You never know when a kind word or inspiring message can make a big difference for someone.

6. If the Act takes effect, I would not only be unable to create content on TikTok and speak to my followers, but I would also be unable to consume content. This would greatly impact me as I get all of my news

from TikTok, by following certain local and international journalists on TikTok whom I trust to produce unbiased and authentic news. The loss of these sources of information, especially during a time like January 2025 when the U.S. government is changing administrations, would be very detrimental to me and other Americans.

7. In addition to the loss of community and information, a TikTok ban would be financially devastating to me. I make almost all my income from TikTok, including from the TikTok Creator Rewards Program, LIVE videos, and brand deals. Thus, if TikTok is banned, I would immediately lose my career and the ability to financially support myself as a creator. I would also lose my ongoing partnerships with third parties that rely on my ability to share content with my 6.8 million TikTok followers. As described further in my original declaration, I have not been able to build the same community on other social media platforms, nor have I been able to monetize my content to the same extent.

8. The thought of no longer being able to work as a full-time creator fills me with sadness and anxiety. When I worked in healthcare administration, I always felt that my creative side was not being fulfilled,

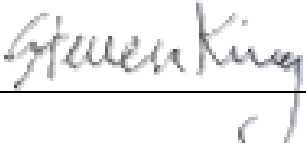


and I longed for an outlet for self-expression. I was so grateful when I discovered that my TikTok content was resonating with the public to the point that I was able to amass millions of followers and eventually quit my job to pursue my passion of creating content full-time. TikTok completely changed my life and opened up my world. The idea that the government could wipe away years of my hard work and force me back to square one—even before the conclusion of the judicial process—terrifies me.

9. I urge the Court to grant our emergency motion for an injunction pending appeal and protect our access to TikTok throughout this judicial process.

I declare under penalty of perjury that the foregoing is true and correct.

Signed in Buckeye, Arizona this 9th day of December, 2024.



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Steven King



4. My one million followers on TikTok rely on me for positive, uplifting, and informative content about college and professional sports, especially American football, which I will no longer be able to share if the Act takes effect. Nor would I be able to converse with or receive information from all of the wonderful connections I have made through the app—including many former athletes who, like me, turned to creating content on TikTok to rediscover their voices after they stopped playing sports. The loss of this community would be devastating.

5. Additionally, if the ban takes effect as planned, I would lose the opportunity to cover specific sporting events in early 2025. For example, I expect to cover the NFL playoffs and the Super Bowl over TikTok, which take place in January and February of 2025. A prominent university has also asked me to come visit campus in the spring and promote their football team over TikTok—a project I was really looking forward to because of my passion for college football. If the ban takes effect, I will lose both the experiences and the income that these exciting opportunities would have afforded me.

6. Even though the ban is not yet in place, I have already noticed that companies and sponsors are less likely to enter into long-

term contracts that might be impacted by a ban. For example, by this time last year, I was already having discussions with third parties about covering March Madness on my TikTok channel, but this year, there has not been similar outreach.

7. I will suffer significant financial losses if the ban takes effect. I have been able to earn as much as \$4,000 to \$5,000 each month because of my TikTok videos, which on average, more than doubles the income that I am able to make as a new college football coach. This income stream would disappear immediately if TikTok is banned in January.

8. I would not be able to make this same income—or more importantly, create the same community—on another app. As explored in more detail in my opening declaration, I have tried posting the same content on Instagram and YouTube, but have not had anywhere near the same success in terms of generating followers or income. I have approximately 100 times more followers on TikTok than these other apps.

9. Without the same community or financial benefits, I may stop creating content on social media entirely.

10. I urge the Court to grant our emergency motion for an injunction pending appeal and protect our access to TikTok throughout this judicial process.

I declare under penalty of perjury that the foregoing is true and correct.

Signed in Mayville, North Dakota this 9th day of December, 2024.

A handwritten signature in black ink, appearing to read 'Timothy Martin', written over a horizontal line.

Timothy Martin

IN THE UNITED STATES COURT OF APPEALS  
FOR THE DISTRICT OF COLUMBIA CIRCUIT

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BRIAN FIREBAUGH, CHLOE )  
 JOY SEXTON, TALIA CADET, )  
 TIMOTHY MARTIN, KIERA )  
 SPANN, PAUL TRAN, )  
 CHRISTOPHER TOWNSEND, )  
 and STEVEN KING, )  
 )  
 ) *Petitioners,* )  
 )  
 v. )  
 )  
 MERRICK B. GARLAND, in his )  
 capacity as United States Attorney )  
 General, )  
 )  
 ) *Respondent.* )

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**DECLARATION OF CHLOE JOY SEXTON IN SUPPORT OF  
PETITIONERS' EMERGENCY MOTION FOR INJUNCTION  
PENDING SUPREME COURT REVIEW**

I, Chloe Joy Sexton, declare as follows:

1. I make this declaration from personal knowledge.
2. I incorporate by reference the facts stated in my June 18, 2024 declaration.
3. If the Act, which bans TikTok in the United States, takes effect in January 2025 as planned, it will have an immediate and devastating impact on me, my family, and my community.

4. If the ban takes effect, I would lose the incredible community that I have found on TikTok. This community has supported me emotionally through some of my life's greatest challenges, including the death of my mother; provided me with useful knowledge and information, such as regarding parenting and grief; and made me laugh when I needed it the most. I worked very hard to build this community, and cannot replicate it on other platforms, as I have already tried and failed to do. Losing this community—whom I currently interact with through TikTok on a daily basis—would create an irreplaceable void in my life.

5. In addition to losing this invaluable community, a TikTok ban would destroy my business. I rely almost entirely on TikTok to market my cookie business, because I found that traditional marketing and other social media apps did not successfully promote my products. As detailed further in my original declaration, despite posting the exact same videos about my cookies on TikTok, Instagram, and Facebook for about a year, the videos performed vastly better on TikTok and reached multitudes more people. There is simply no replacement for TikTok as a free platform where I can speak to millions of people about my cookies and

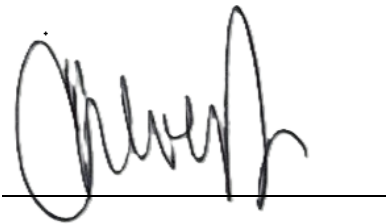
also about personal details of my life that generate interest in my company and increase brand loyalty.

6. As the owner of a small business, I do not have the capital needed to effectively promote the company through traditional marketing streams to anywhere near the same level that TikTok affords me for free. As a result, even if TikTok was banned for only a few months, I do not believe that my company could survive without it.

7. I urge the Court to grant our emergency motion for an injunction pending appeal and protect our access to TikTok throughout this judicial process.

I declare under penalty of perjury that the foregoing is true and correct.

Signed in Memphis, Tennessee this 9th day of December, 2024.

A handwritten signature in black ink, appearing to read "Chloe Joy Sexton", written over a horizontal line.

Chloe Joy Sexton



IN THE UNITED STATES COURT OF APPEALS  
FOR THE DISTRICT OF COLUMBIA CIRCUIT

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BRIAN FIREBAUGH, CHLOE )  
JOY SEXTON, TALIA CADET, )  
TIMOTHY MARTIN, KIERA )  
SPANN, PAUL TRAN, )  
CHRISTOPHER TOWNSEND, )  
and STEVEN KING, )

*Petitioners,* )

v. )

MERRICK B. GARLAND, in his )  
capacity as United States Attorney )  
General, )

*Respondent.* )

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DECLARATION OF KIERA SPANN IN SUPPORT OF PETITIONERS’  
EMERGENCY MOTION FOR INJUNCTION PENDING  
SUPREME COURT REVIEW

I, Kiera Spann, declare as follows:

1. I make this declaration from personal knowledge.
2. I incorporate by reference the facts stated in my June 18, 2024

declaration.

3. If the Act, which bans TikTok in the United States, takes effect as scheduled on January 19, 2025, it will severely harm me and the communities that I support.

4. TikTok has played a significant role in my life largely because of the community of domestic violence and sexual assault survivors that it has fostered. As a survivor of assault myself, this topic is very important to me. As explained further in my opening declaration, I have engaged with this TikTok community of survivors from all over the world to share experiences, learn, promote reform, and advocate for change.

5. If the Act takes effect in January and TikTok is banned, this community will dissolve. We cannot simply move to another social media app. Some other apps make it very difficult to talk about sexual assault by flagging such videos as violating community standards or terms of service—even when they are not graphic or descriptive. This makes it all but impossible to create an organic community among survivors where they can process their experiences without having to resort to code words or self-censorship. Additionally, numerous survivors have told me that they find it easier to anonymously participate in these sensitive conversations on TikTok instead of forums like Instagram or Facebook where one's profile is tied more strongly to one's families, friends, and personal identities. When it comes to the survivor community, there simply is no replacement for TikTok.

6. The loss of this community—even for a few months—would be devastating. People experience domestic violence and sexual assault every day and look to the TikTok community as a place of understanding, support, resources, and refuge. Additionally, even a temporary ban on TikTok would significantly curtail our community’s efforts to promote policy changes by universities and state and local legislatures to protect survivors—changes that I have seen TikTok play a direct role in accelerating. Activism in the survivor community—like most activism—is most effective when it is timely, direct, and concrete. Even a temporary ban would damage my community because activism in August will not effectively address sexual assaults occurring in January or February.

7. In addition to the horrible loss of this community, my personal speech and expression would also be immediately and irreparably harmed if the Act takes effect. I regularly use my TikTok account to reach my over 771,000 followers—an audience more than 60 times larger than my next largest following (12,100 followers on Instagram). One of the topics I often discuss on TikTok is political news—for example, I closely covered every state’s result from the U.S. presidential election this fall, as well as a significant number of other important down-ballot

ances. If TikTok is banned starting on January 19, 2025, I will be unable to reach my TikTok followers—including to discuss timely and relevant topics such as the Inauguration of President-Elect Donald Trump on January 20, 2025, and the ensuing changes in the administration. I will also lose the ability to obtain news on TikTok during this period of transition—which would greatly impact me as I consider TikTok to be one of the most authentic sources of information. Even if the TikTok ban is eventually lifted, I will have permanently lost the ability to timely react to, comment upon, and learn about these historical events with the audience and community of my choice.

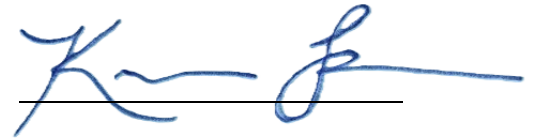
8. In addition to political content, I also post a lot of book reviews on my TikTok account and love to engage with my followers about what we are currently reading. I would be deeply saddened to lose access to this remarkable community of fellow booklovers.

9. Finally, I make approximately half of my income from creating videos on TikTok (either through the Creator Rewards Program or brand deals). Although my first priority has always been helping to grow and strengthen my community, if TikTok is banned, I will immediately lose approximately half of my income stream.

10. I urge the Court to grant our emergency motion for an injunction pending appeal and protect our access to TikTok throughout this judicial process.

I declare under penalty of perjury that the foregoing is true and correct.

Signed in Charlotte, North Carolina this 9th day of December, 2024.



Kiera Spann

IN THE UNITED STATES COURT OF APPEALS  
FOR THE DISTRICT OF COLUMBIA CIRCUIT

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BRIAN FIREBAUGH, CHLOE )  
 JOY SEXTON, TALIA CADET, )  
 TIMOTHY MARTIN, KIERA )  
 SPANN, PAUL TRAN, )  
 CHRISTOPHER TOWNSEND, )  
 and STEVEN KING, )  
 )  
 ) *Petitioners,* )  
 )  
 v. )  
 )  
 ) MERRICK B. GARLAND, in his )  
 ) capacity as United States Attorney )  
 ) General, )  
 )  
 ) *Respondent* )

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**DECLARATION OF CHRISTOPHER TOWNSEND IN SUPPORT OF  
PETITIONERS' EMERGENCY MOTION FOR  
INJUNCTION PENDING SUPREME COURT REVIEW**

I, Christopher Townsend, declare as follows:

1. I make this declaration from personal knowledge.
2. I incorporate by reference the facts stated in my June 17, 2024 declaration.
3. If the Act, which bans TikTok in the United States, takes effect in January 2025, it will severely impact me, my family, and my community.

4. I primarily use TikTok to carry out the mission of my non-profit: to encourage a deeper understanding of the Bible and its relevance in our lives and to inspire a lifelong love of learning and exploration of Christian faith. TikTok has been the most effective means of communicating those messages, and I have been able to reach far more people through TikTok than any other platform. Losing the ability to share God's words with others—particularly with new followers—even for a limited amount of time, would be highly detrimental to the community we serve and to our mission of increasing biblical literacy and knowledge of Christian teachings.

5. I also use TikTok to discuss political issues from my perspective as a conservative and a veteran. Over the past few months, I have created a lot of content regarding the race for the U.S. presidential election, in particular, campaigning for the Republican party and the now President-Elect Donald J. Trump. I attended campaign rallies around the country and posted coverage to TikTok—some of which was later picked up by news outlets. I also posted videos explaining my political opinions or interviewing others about the presidential race. I plan to communicate further with my 2.6 million TikTok followers regarding the

Inauguration of President-Elect Trump and his incoming administration—which would be rendered impossible if the app is banned on January 19, 2025, as currently scheduled. As a veteran, I feel that losing the ability to speak about my political views on the platform of my choice would be a gross violation of my First Amendment rights.

6. I also use TikTok to share my work as a musical artist. As explained further in my original declaration, I have found TikTok to be the best platform to promote my music—far better than other social media apps in terms of its format and reach. TikTok also allows me to collaborate with other musical artists through “duets” and other methods—enabling a valuable creative process. Without TikTok, my music will undoubtedly reach fewer people and gain less traction.

7. A TikTok ban would thus affect me and my family financially, as one of our main sources of income is the money I earn each month from music streams. The volume of these music streams on other platforms depends largely on my ability to promote and share my music on TikTok, because, in my experience, people are more likely to stream music they have heard about. Because the success of my music is dependent on my ability to share it on TikTok, even a temporary ban of the app would



damage my income and my music career. This is especially true because I am planning to release new music in January 2025, which coincides with when the Act is scheduled to take effect. Not being able to promote my new music on the most effective platform for music-sharing would be devastating.

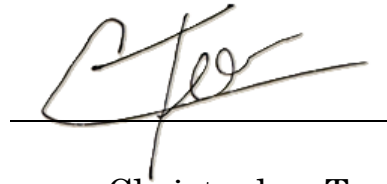
8. My family and I would also be financially affected by a TikTok ban because I currently earn substantial income on TikTok through the Creator Rewards Program and some brand partnerships—all of which would evaporate if the Act takes effect. I have worked hard to develop my TikTok content and my community of 2.6 million followers on the app. The idea that the government could take it all away from me—even before the judicial process is concluded—is troubling.

9. TikTok has brought great value to my life—not just financially, but also because it allows me to express myself and share ideas with others to an extent that I have not experienced on any other platform. For the reasons explained further in my original declaration, based on my experience, I do not think it would be possible to replicate my TikTok network elsewhere. Even a temporary ban would bar me and other creators from a critical space for expression and free speech.

10. I urge the Court to grant our emergency motion for an injunction pending appeal and protect our access to TikTok throughout this judicial process.

I declare under penalty of perjury that the foregoing is true and correct.

Signed in Philadelphia, Mississippi this 9th day of December, 2024.

A handwritten signature in black ink, appearing to read 'CTownsend', is written over a horizontal line.

Christopher Townsend

IN THE UNITED STATES COURT OF APPEALS  
FOR THE DISTRICT OF COLUMBIA CIRCUIT

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BRIAN FIREBAUGH, CHLOE )  
 JOY SEXTON, TALIA CADET, )  
 TIMOTHY MARTIN, KIERA )  
 SPANN, PAUL TRAN, )  
 CHRISTOPHER TOWNSEND, )  
 and STEVEN KING, )  
 )  
 ) *Petitioners,* )  
 )  
 v. )  
 )  
 ) MERRICK B. GARLAND, in his )  
 ) capacity as United States Attorney )  
 ) General, )  
 )  
 ) *Respondent* )

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DECLARATION OF PAUL TRAN IN SUPPORT OF PETITIONERS'  
EMERGENCY MOTION FOR INJUNCTION PENDING  
SUPREME COURT REVIEW

I, Paul Tran, declare as follows:

1. I make this declaration from personal knowledge.
2. I incorporate by reference the facts stated in my June 18, 2024 declaration.
3. If the Act takes effect in January 2025 as planned and TikTok is banned in the United States, it will immediately and disastrously affect me, my family, and my community.

4. As described in my original declaration, my wife and I worked very hard to launch our skincare company and to create products that we believe in. This company means so much to us, and we have made significant sacrifices to maintain it.

5. We currently sell approximately 90% of our products through TikTok Shop (TikTok's integrated e-commerce solution that allows sellers to sell products directly on the platform), and almost all of our marketing is through TikTok. In particular, we work with about 2,000 TikTok "affiliates" who create videos about our products in exchange for a share in our revenue.

6. If TikTok is banned in January, our business may fail. We would have to completely restructure how we sell and market our products, and based on our experience, we would not be able to find any remotely comparable alternatives to TikTok. Indeed, one of the reasons we have relied so much on TikTok is because we previously struggled to market our products through traditional advertising and other social media apps—and failed to reliably sell our products through Amazon or other websites. Nothing comes close to TikTok in terms of our ability to

share and sell our products to large numbers of people, including new viewers who are likely to be interested in skincare.

7. I am also concerned about the ban's effect on TikTok affiliates with whom my wife and I have worked closely for years. Some of them have become good friends and a TikTok ban would eliminate a source of their income overnight.

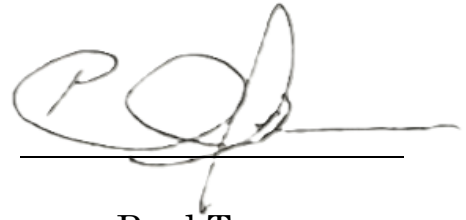
8. Even if TikTok was only banned for a few months, our business would be severely impacted, and may not recover. Aside from the fact that we would have to undergo the time and expense of moving our marketing and sales to other (far less effective) platforms—only to then move them back if the ban was repealed—we would also be unable to promote the launch of some new products that we are currently developing and intend to sell starting in the spring of 2025.

9. While the financial losses would be devastating, the loss of our community following a TikTok ban would be just as harmful. My wife and I have connected with TikTok users and creators all over the world over our love of skincare, and truly cherish what we have built together. Losing those connections, even temporarily, would be very isolating.

10. I urge the Court to grant our emergency motion for an injunction pending appeal and protect our access to TikTok throughout this judicial process.

I declare under penalty of perjury that the foregoing is true and correct.

Signed in Atlanta, Georgia this 9th day of December, 2024.

A handwritten signature in black ink, appearing to read 'Paul Tran', is written over a horizontal line. The signature is stylized and cursive.

Paul Tran

**IN THE UNITED STATES COURT OF APPEALS  
FOR THE DISTRICT OF COLUMBIA CIRCUIT**

<p>BASED POLITICS, INC., <i>Petitioner,</i></p> <p>v.</p> <p>MERRICK B. GARLAND, in his official capacity as Attorney General of the United States, <i>Respondent.</i></p>	<p>No. 24-1183</p>
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**DECLARATION OF HANNAH COX IN SUPPORT OF  
EMERGENCY MOTION FOR INJUNCTION PENDING  
SUPREME COURT REVIEW**

I, Hannah Cox, declare as follows:

1. I make this declaration from personal knowledge.
2. I am the president and co-founder of BASED Politics, Inc. (“BASED Politics”), the Petitioner in the above-captioned case.
3. BASED Politics, Inc. is a Georgia 501(c)(3) nonprofit corporation.
4. A central part of BASED Politics’s mission is to reach members of “Gen Z”—particularly users under 25 years old—with social media content that promotes free markets and individual liberty.

5. BASED Politics publishes its content on various internet platforms, including TikTok, primarily through the accounts of its founders, namely journalist Brad Polumbo and myself.

6. My TikTok account has approximately 59,500 followers.

7. My TikTok videos on topics such as systemic racism and the gender pay gap have reached hundreds of thousands, and as many as one million, people at a time.

8. I consider the ability to comment contemporaneously on current events on TikTok to be essential to BASED Politics's efforts to participate in and influence public discourse.

9. I often comment on the President's State of the Union address and would like to comment on the ideas in the President's inaugural address in a TikTok video as soon as possible after it occurs on January 20, 2025.

10. I also will want to comment contemporaneously on the actions the Trump administration takes (or refrains from taking) in the days and months after the inauguration, such as implementation of tariffs, follow-through on threats related to release of hostages in the Middle East, cuts the Department of Government Efficiency may make,



confirmation of nominees to cabinet positions, and the potential abolition of the Department of Education.

11. I expect that, in the days and months after the inauguration, BASED Politics and I will want to comment contemporaneously on TikTok about other actions taken or not taken by the Trump Administration, which I cannot predict at this time.

12. I consider TikTok essential to communicate with BASED Politics's target audience of members of Gen Z. I do not know of any other way that BASED Politics could reach the same audience, or even a comparable audience. As I stated in my previous declaration in this case, I have found it easier to gain a following—and therefore to spread BASED Politics's ideas—on TikTok than on Instagram, where I have about 37 percent as many followers, even though I have been using that platform for more than a decade. If TikTok is banned, BASED Politics would lose its ability to reach its target audience, and would not be able to reconstitute that audience on other platforms.

I declare under penalty of perjury that the foregoing is true and correct.

Signed this 7<sup>th</sup> day of December, 2024.

*Hannah Cox*

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Hannah Cox