"MEASURED AS CRIMINALS AND LABELED AS TEA": SURVEILLANCE UNDER CHINESE EXCLUSION

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ABSTRACT

In 1875, Congress passed the Page Act—one of the earliest federal immigration laws in the United States—beginning a long period of federal immigration law that facilitated heavy scrutiny of Chinese immigrants and excluded most Chinese people from the U.S. From then until nearly a century later, Chinese exclusion was federal law. Even as millions of European immigrants arrived, settled, and naturalized, the vast majority of would-be Chinese immigrants were systematically barred from coming to the U.S.

In addition to passing a series of highly restrictive race-based laws to carry out Chinese exclusion, the U.S. also built and operated a massive government apparatus to document and surveil Chinese Americans. Treated as perpetual outsiders, the few Chinese people who were permitted to migrate to the U.S. were categorically photographed, measured, interrogated, and required to prove their right to exist in the United States through extensive documentation and external validation by white witnesses. Many Chinese Americans suffered constant invasions of their privacy that generated perpetual fears and significant harms over the course of entire lifetimes. These measures not only restricted Chinese Americans' movement and livelihood but also reinforced a racialized framework of suspicion.

This Article offers a comprehensive overview of surveillance under Chinese exclusion in the U.S. and draws connections between past and present, situating Chinese exclusion surveillance within the broader history of state surveillance targeting marginalized populations. In doing so, it sheds light on the longstanding use of privacy erosion as a tool of racial oppression, and highlights harms and themes of surveillance under Chinese exclusion that echo into the present day.

ABOUT THE AUTHOR

Associate Professor of Law, Georgetown University Law Center. This Article is dedicated to the memory of my grandfather, Grant Moy (1917–2021), whose parents, siblings, and extended family feature throughout the Article. The research spark for this Article started over a decade ago, when, in assisting my grandfather with the drafting and editing of his memoirs, I began researching the experiences of his father and extended family, Chinese Americans who immigrated in the late 1800s and settled in Chicago. The author thanks Gabriel Chin, Julie Cohen, Eun Hee Han, Sherally Munshi, and Paul Ohm for feedback and suggestions, as well as all of the wonderful and generous participants of the 2025 AAPI & MENA Women in the Legal Academy Workshop in Williamsburg.

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I. INTRODUCTION

As this Article nears completion, the federal immigration enforcement and deportation machine is being upgraded to carry out recently-inaugurated President Trump's agenda, which includes ambitious plans to "take bold action to secure our border" and to mobilize a massive "deportation operation."[1] Aspects of the agenda indicate that it is driven in no insignificant part by a desire to protect and perpetuate an ill-defined "American identity" that hints strongly of being code for whiteness. For example, one of the immigration-related executive orders signed by President Trump on his first day in office directs cabinet members to recommend actions to protect against foreign nationals who seek "the overthrow or replacement of the culture on which our constitutional Republic stands" and urges "proper assimilation" of immigrants and measures to promote a "unified American identity."[2] Another attempts—so far unsuccessfully—to end birthright citizenship in the U.S.[3] Another cautions against admitting too many refugees because doing so compromises the "appropriate assimilation of refugees" and declares that U.S. policy is "to admit only those refugees who can fully and appropriately assimilate into the United States,"[4] while yet another simultaneously establishes a policy of "promot[ing] the resettlement of [European-descended South African] Afrikaner refugees escaping government-sponsored race-based discrimination," indicating a presumption that refugees of white European descent can "assimilate" into the U.S.[5]

Language in early executive orders from this administration about "assimilation" and "American identity" supports arguments that white nationalist ideology and xenophobia define President Trump's immigration agenda.[6] The racist anti-immigrant rhetoric used by President Trump and his administration[7] taps into a long-observed reality about Americans'

1. *President Trump's America First Priorities*, WHITE HOUSE (Jan. 20, 2025), https://www.whitehouse.gov/briefings-statements/2025/01/president-trumps-america-first-priorities/ [https://perma.cc/J5WZ-8QVR].

2. *Executive Order: Protecting the United States from Foreign Terrorists and Other National Security and Public Safety Threats*, WHITE HOUSE (Jan. 20, 2025), https://www.whitehouse.gov/presidential-actions/2025/01/protecting-the-united-states-from-foreign-terrorists-and-othernational-security-and-public-safety-threats/ [https://perma.cc/GE33-RTMT].

3. *Executive Order: Protecting the Meaning and Value of American Citizenship*, WHITE HOUSE (Jan. 20, 2025), https://www.whitehouse.gov/presidential-actions/2025/01/protecting-the-meaning-and-value-of-american-citizenship/ [https://perma.cc/9YME-ULEK].

4. *Executive Order: Realigning the United States Refugee Admissions Program*, WHITE HOUSE (Jan. 20, 2025), https://www.whitehouse.gov/presidential-actions/2025/01/realigning-the-united-states-refugee-admissions-program/ [https://perma.cc/E78G-XF6V].

5. *Executive Order: Addressing Egregious Actions of the Republic of South Africa*, WHITE HOUSE (Feb. 7, 2025), https://www.whitehouse.gov/presidential-actions/2025/02/addressing-egregious-actions-of-the-republic-of-south-africa/ [https://perma.cc/796X-SQAM].

6. *See* Jayashri Srikantiah & Shirin Sinnar, *White Nationalism as Immigration Policy*, 71 STAN. L. REV. ONLINE 197, 197–200 (2019). Adherents of white nationalism "believe that white identity should be the organizing principle of the countries that make up Western civilization" and "advocate for policies to reverse changing demographics and the loss of an absolute, white majority." Michael Levin, Linda Gottfredson, & Roger Pearson, *White Nationalist*, S. POVERTY L. CTR, https://www.splcenter.org/resources/extremist-files/white-nationalist/ [https://perma.cc/W95T-P4EY] (last visited Aug. 10, 2025).

7. Myah Ward, *We Watched 20 Trump Rallies. His Racist, Anti-Immigrant Messaging Is Getting Darker*, POLITICO (Oct. 12, 2024, 1:44 PM), https://www.politico.com/news/2024/10/12/trump-racist-rhetoric-immigrants-00183537 [https://perma.cc/V3ZV-JFSA].

associations between race and U.S. nationality: research has long shown that Americans tend to associate whiteness with being American.[8]

Using immigration policy to support whiteness in the U.S. continues a long pattern.[9] For the majority of U.S. history—from 1790 to 1952—federal law determining which foreign-born immigrants could become citizens through naturalization was explicitly race-based.[10] Until 1965, immigration to the United States was limited by racial quotas.[11] Birthright citizenship, which was established with the Fourteenth Amendment in 1868, was challenged for Chinese Americans in the late 1800s,[12] and has been a consistent object of attack by legislators who oppose granting citizenship by birth to the children of immigrants and other non-citizens.[13]

As the U.S. has implemented race-driven immigration policy throughout its history, it has always used surveillance to identify and track individuals targeted for immigration

8. *See, e.g.*, Thierry Devos & Mahzarin R. Banaji, *American = White?*, 88 J. PERSONALITY & SOC. PSYCHOL. 447, 463 (2005) (noting a study of participants' ethnic associations that found "a very consistent and robust American = White association" and "Asian Americans, and to a lesser extent African Americans, are not viewed as being as American as White Americans"). More recent research suggests that the societal biases equating American identity with being White can be learned by and embedded into artificial intelligence models, which in turn threatens to propagate these biases to downstream applications of those models. Robert Wolfe & Aylin Caliskan, *American == White in Multimodal Language-and-Image AI*, AIES '22: PROC. 2022 AAAI/ACM CONFERENCE ON AI, ETHICS, & SOC'Y 800, 800 (2022).

9. *See generally* George A. Martinez, *Immigration and the Meaning of United States Citizenship: Whiteness and Assimilation*, 46 WASHBURN L.J. 335 (2007) (providing a brief overview of how whiteness and perceived assimilability with whiteness have been treated as conditions for U.S. citizenship); Gabriel J. Chin, *A Nation of White Immigrants: State and Federal Racial Preferences for White Noncitizens*, 100 B.U. L. REV. 1271 (2020) (explaining how during the Jim Crow era, federal and state laws discriminated against nonwhite noncitizens); Sherally Munshi, *"You Will See My Family Become So American": Toward a Minor Comparativism*, 63 AM. J. COMP. L. 655 (2015) (describing Dinshah Ghadiali's use of photographs as evidence of American assimilability); Sherally Munshi, *Immigration, Imperialism, and the Legacies of Indian Exclusion*, 28 YALE J.L. & HUMAN. 51 (2016) (examining the exclusion of Indian immigrants from the white-settler world in the early twentieth century).

10. The Naturalization Act of 1790 permitted only "free white persons" to become naturalized citizens. Naturalization Act of 1790, ch. 3, 1 Stat. 103 (repealed 1795). Race-neutral naturalization was not established until 1952. Act of June 27, 1952, ch. 477, 66 Stat. 163, 239 ("The right of a person to become a naturalized citizen of the United States shall not be denied or abridged because of race . . . ."). *See* Chin, *supra* note 9, at 1279–80.

11. *Infra* note 31 and accompanying text.

12. United States v. Wong Kim Ark, 169 U.S. 649 (1898).

13. *See* Allison S. Hartry, *Birthright Justice: The Attack on Birthright Citizenship and Immigrant Women of Color*, 36 N.Y.U. REV. LAW & SOC. CHANGE 57 (2012).

compliance monitoring and enforcement.[14] This tradition has continued in recent years.[15] It is expected to continue—and appears to be intensifying—under the current administration.[16]

This Article focuses on an underdiscussed and underappreciated example of deeply invasive racialized surveillance in the U.S. that spanned some seventy years in the name of explicitly race-based immigration policy: surveillance of Chinese Americans in the era of Chinese exclusion from the 1870s to 1940s. As the U.S. continues down a path of reinvigorated immigration enforcement laced with racist and xenophobic rhetoric, the Article argues that study of the Chinese exclusion surveillance apparatus contains important lessons for today.

This Article includes first-person discussion of the subject matter because both its motivation and subject matter are unavoidably personal. I was motivated to conduct this research because of my identity and experience as an ethnically ambiguous fourth-generation multiracial Chinese American. My Chinese American ancestors arrived before and during Chinese exclusion and lived in the U.S. through seven decades of Chinese

14. *See* Margaret Hu, *Crimmigration-Counterterrorism*, 2017 WIS. L. REV. 955 (2017) (discussing the role of Chinese exclusion as part of the historical genesis for the conflation of crime, immigration, and counterterrorism policy, and exploring government dependence on identification documentation and biometrics as a legacy of Chinese exclusion).

15. *See* Anil Kalhan, *Immigration Surveillance*, 74 MD. L. REV. 1 (2014) (exploring information-centered and technology-driven aspects of modern immigration enforcement in the U.S.); NINA WANG, ALLISON MCDONALD, DANIEL BATEYKO & EMILY TUCKER, GEORGETOWN LAW CENTER ON PRIV. & TECH., AMERICAN DRAGNET: DATA-DRIVEN DEPORTATION IN THE 21ST CENTURY (2022) (describing the massive and growing surveillance network of Immigration and Customs Enforcement); Dennis Young, *Thoughtlessness in the Age of Homeland Security: Race, Surveillance, and Bureaucratic Violence in Immigration Enforcement*, 57 POLITY 29 (2024) (exploring how modernization discourse at the Department of Homeland Security drives expansion of intrusive technologies to surveil immigrant populations); Maurizio Guerrero, *Surveillance Capitalism Has Taken Over Immigration Enforcement—Stifling Dissent and Sowing Fear for Profit*, PRISM (Jan. 9, 2024), https://prismreports.org/2024/01/09/surveillance-capitalism-taken-over-immigration-enforcement/ [https://perma.cc/2ZMG-LWHY].

16. *See, e.g.*, Adam Satariano, Paul Mozur, Aaron Krolik, & David McCabe, *The Tech Arsenal That Could Power Trump's Immigration Crackdown*, N.Y. TIMES (Jan. 25, 2025), https://www.nytimes.com/2025/01/25/technology/trump-immigration-deportation-surveillance.html [https://perma.cc/J9K7-ALSY] (describing the results of a review of nearly 15,000 contracts showing that immigration enforcement agencies have spent $7.8 billion on immigration technologies from 263 companies since 2020); Maurizio Guerrero, *ICE Is Swiftly Expanding Its Sprawling Surveillance Apparatus*, PRISM (Jan. 30, 2025), https://prismreports.org/2025/01/30/ice-surveillance-immigrants/ [https://perma.cc/L9R8-WDKQ] (reporting that within days of Trump's electoral victory in 2024, immigration authorities posted federal procurement notices website seeking contractors to provide technological tools to augment surveillance capabilities, including a request for "predictive analytics and modeling" to support forecasting and scenario-planning); Joseph Cox, *Airlines Don't Want You to Know They Sold Your Flight Data to DHS*, 404 MEDIA (June 10, 2025, 9:00 AM), https://www.404media.co/airlines-dont-want-you-to-know-they-sold-your-flight-data-to-dhs/ [on file with author] (reporting that a data broker owned by airlines has sold detailed passenger information to the Department of Homeland Security); Jason Koebler & Joseph Cox, *ICE Taps into Nationwide AI-Enabled Camera Network, Data Shows*, 404 MEDIA (May 27, 2025, 9:36 AM), https://www.404media.co/ice-taps-into-nationwide-ai-enabled-camera-network-data-shows/ [on file with author] (reporting that local police around the country are tapping into a massive network of automatic license plate readers to assist federal immigration authorities); Juan Sebastian Pinto, *Palantir's Tools Pose an Invisible Danger We Are Just Beginning to Comprehend*, THE GUARDIAN (Aug. 24, 2025, 1:21 PM), https://www.theguardian.com/commentisfree/2025/aug/24/palantir-artificial-intelligence-civil-rights [https://perma.cc/599C-GB3N] (describing the use of vast and powerful surveillance networks powered by artificial intelligence to combine numerous information sources to precisely track and locate targeted individuals).

exclusion surveillance. I was inspired to embrace the personal nature of this material by my close relationship with my late Chinese American grandfather. The research reported in this Article incorporates material derived from historical research into my own family and their Chinese American community in Chicago.

There are many parallels between popular anti-immigrant rhetoric today and anti-Chinese sentiment of the 1870s. During that time, a large number of Chinese laborers had recently arrived to work in gold mines and on railroad construction, and open hatred of Chinese Americans was widespread in the United States.[17] Anti-Chinese hatred was particularly intense in the West, where Chinese Americans described living in constant fear for their lives, witnessing mobs kill people, being spit on by children, getting hit by hurled vegetables and rotten eggs, and staying inside after dark "for fear of being shot in the back."[18] Acts of intense violence against Chinese Americans were common during this era.[19] In 1871, a Los Angeles mob lynched eighteen Chinese Americans—including a fourteen-year-old boy—and left their corpses suspended from ropes around the downtown business section of the city.[20] With physical force and real and threatened violence, at least 168 communities in the western U.S. drove their Chinese neighbors out of their homes and physically expelled them.[21]

It was in this period of widespread national anti-Chinese sentiment that my ancestors became established in Chicago. My great-great-uncle, Moy Dong Chow, left San Francisco in 1876 and, after wandering from city to city, ended up in Chicago.[22] He found the people of Chicago to be far more welcoming than what he had experienced in California. He would later tell a graduate student who interviewed him in the 1920s that the people of Chicago "never said to me that the Chinese have got the perfection of crimes of four thousand years . . . . They never asked me whether or not I ate rats and snakes . . . . The Chicagoans found us a peculiar people, to be sure, but they liked to mix with us."[23] He found Chicago comfortable and decided to settle there.[24] He was soon joined in Chicago by his two younger brothers, Moy Dong Hoy (my great-grandfather) and Moy Dong Yee, as well as by a number

17. *See* BETH LEW-WILLIAMS, THE CHINESE MUST GO: VIOLENCE, EXCLUSION, AND THE MAKING OF THE ALIEN IN AMERICA 17–19 (2018).

18. *See id. at* 19. A note on terminology: throughout this Article, the phrase "Chinese Americans" is used to refer broadly to Chinese people who resided in the U.S. or were in the country for extended periods of time, without regard for citizenship status or long-term intent to stay.

19. *See* Chinese-American World War II Veteran Congressional Gold Medal Act, Pub. L. No. 115-337, § 2(5), 132 Stat. 5029 (2018) (codified as amended at 31 U.S.C. § 5111) ("Chinese Americans were harassed, beaten, and murdered because of their ethnicity, including the Chinese Massacre of 1871, where 17 Chinese immigrants in Los Angeles, California, were tortured and murdered, the Rock Springs Massacre of 1885 where White rioters killed 28 Chinese miners and burned 75 of their homes in Rock Springs, Wyoming, and the Hells Canyon Massacre of 1887 where 34 Chinese gold miners were ambushed and murdered in Hells Canyon, Oregon.").

20. *See* Paul M. De Falla, *Lantern in the Western Sky*, 42 HIST. SOC'Y S. CAL. Q., 57, 57–58, 88 (1960). The bodies of seventeen of the victims were left hanging, and one man's body was dragged to a nearby cemetery. *Id.* at 88.

21. LEW-WILLIAMS, *supra* note 17, at 1.

22. Ting-Chiu Fan, Chinese Residents in Chicago 23 (Dec. 1926) (M.A. dissertation, Univ. of Chi.) (ProQuest); *Our Chinese Residents*, CHIC. TRIB., Apr. 28, 1889 (stating that when Moy first immigrated, he lived in San Francisco and worked as a waiter in a private house).

23. Fan, *supra* note 22, at 23–24.

24. *Id.* at 24 ("I was destined not to return to my fatherland, I thought.").

of friends and family members from San Francisco and from China.[25] Together, the Moy brothers opened and operated a Chinese dry goods store in Chicago.[26]

As my ancestors were finding a new home in Chicago, hatred of Chinese Americans was driving passage of what would turn out to be a decades-long series of restrictive federal Chinese exclusion laws. In 1862, before the first Chinese exclusion laws were passed, Congress passed the Anti-Coolie Act, under which ships became subject to searches for the unauthorized transportation of Chinese coolies who were "held to service or labor."[27] In 1875, the Page Act was passed, under which people immigrating from China, Japan, "or any Oriental country" were scrutinized for the voluntariness of their arrival on U.S. soil, and women were particularly scrutinized for possible participation in prostitution.[28] The Chinese Exclusion Act of 1882 and the series of subsequent laws that extended it barred immigration of most Chinese people to the U.S. from the 1880s until 1943 and authorized a host of attendant registration and surveillance mechanisms. Even after the Chinese Exclusion Act was repealed during World War II,[29] the law continued to tightly restrict the immigration of people of Asian descent on the basis of race.[30] Explicitly race-based immigration restrictions continued until the Immigration and Nationality Act of 1965, the first race-neutral immigration law.[31]

Chinese exclusion laws restricted the lives of Chinese Americans in ways that immigrants from white European nations did not experience.[32] For example, many Chinese men who came to the U.S. to seek fortune—including my great-grandfather and his two

25. HUPING LING, CHINESE CHICAGO: RACE, TRANSNATIONAL MIGRATION, AND COMMUNITY SINCE 1870, 31–32 (2012).

26. HUPING LING, CHINESE AMERICANS IN THE HEARTLAND 21 (2022).

27. Anti-Coolie Act of 1862, ch. 27, 12 Stat. 340 (1862); Kevin Kenny, *The Antislavery Origins of US Immigration Policy*, 11 J. CIVIL WAR ERA 361, 369 (2021) (explaining that the law "authorized all American ships . . . to examine and detain other American vessels suspected of transporting" Chinese coolies); Moon-Ho Jung, *Outlawing "Coolies": Race, Nation, and Empire in the Age of Emancipation*, 57 AM. Q. 677, 696 (2005) (arguing that the law "reproduced the racial logic of the age of emancipation" insofar as it appeared on its face to be motivated by antislavery objectives, but essentially equated all Chinese people with coolies).

28. Page Act of 1875, ch. 141, 18 Stat. 477 (repealed 1974).

29. Magnuson Act of 1943, ch. 344, 57 Stat. 600 (codified as amended to 8 U.S.C. 212(a), 703).

30. MAE NGAI, IMPOSSIBLE SUBJECTS: ILLEGAL ALIENS AND THE MAKING OF MODERN AMERICA 203 (2004) (After the 1943 repeal of the Chinese Exclusion Act, "Congress's continued antipathy towards Chinese migration was evident in the annual Chinese quota of 105. This quota was unlike all other immigration quotas in that it was not for China but for all Chinese in the world, regardless of their country of birth or residence.").

31. Gabriel J. Chin, *The Civil Rights Revolution Comes to Immigration Law: A New Look at the Immigration and Nationality Act of 1965*, 75 N.C. L. REV. 273, 282–97 (1996) (explaining that the repeal of the Chinese Exclusion Act left many restrictive policies in place, including a race-based quota system that continued until 1965). *Id.* at 298 ("The [1965] law's revolutionary feature was its race-neutrality: For the first time since the United States started regulating immigration, race was not a factor.").

32. ERIKA LEE, AT AMERICA'S GATES: CHINESE IMMIGRATION DURING THE EXCLUSION ERA, 1882–1943, 85–87 (2003) (briefly describing the burdensome restrictions that Chinese exclusion laws placed on Chinese immigrants and not on other immigrants); Chin, *supra* note 9, at 1280 (explaining that "Chinese exclusion quickly turned into Asian exclusion," and describing subsequent restrictions on Japanese, Indian, and other Asian immigrants).

brothers—left their families and wives behind in China.[33] Under Chinese exclusion, when my great-great-uncle Moy Dong Chow asked the U.S. government for permission to travel back to China and return with his wife, he was told that even though it was legal for him to remain in the U.S., his wife would not be permitted to enter the U.S. unless she independently qualified for entry under the restrictive law.[34] After having been denied leave to bring his wife to Chicago to reside with him, Moy Dong Chow reportedly still wanted to travel to China just to visit, but avoided going out of fear that if he went, he would not be able to return.[35]

Having invested heavily in building a life in Chicago, given up much to stay, and endured hardship already under Chinese exclusion, many Chinese Americans were dismayed and incredulous when, in 1892, new statutory provisions were passed requiring Chinese Americans already in the country to register with and be documented by government authorities—an obligation not placed on immigrants from any other country.[36] Speaking to a newspaper reporter, Moy Dong Chow decried the requirement that Chinese Americans "be measured as criminals and labeled as so many packages of tea," arguing that such a law could never be enforced.[37] "Are we not residents here? Do we not pay taxes as all other property-holders?" he asked indignantly in a newspaper interview.[38]

Moy Dong Chow opined that a telegram stating that officials at ports had begun meticulously taking bodily measurements and capturing photographs of arriving Chinese must be a hoax.[39] But systematic bodily measurements of Chinese arrivals at American ports were real and destined for even further entrenchment and expansion. For decades of U.S. history, federal law barred most Chinese people from immigrating to the U.S., prohibited Chinese immigrants from becoming citizens, and required Chinese Americans already in the country to register with and be tracked and documented by the government.[40] Chinese exclusion administration and enforcement drove the construction and operation of a massive government apparatus to conduct ongoing documentation and surveillance of Chinese Americans.

Measurements and photographs at ports were just the tip of the iceberg—under Chinese exclusion, Chinese Americans experienced severe invasions of their private lives with great frequency over many years.[41] They were forced to submit to systematic invasive examinations, surveillance, and documentation by the U.S. government, including interviews of themselves and people in their personal and professional networks, physical inspections of their bodies, and visual and descriptive recordings of their physical features.[42]

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33. Historian Huping Ling refers to the wives left behind as "Taishanese widows" and describes a popular folk song with a lyric meaning, "when a man lives overseas, his wife weeps until her death." LING, *supra* note 25, at 104.

34. *Can Both Come In*, WASH. POST, June 17, 1888, at 4.

35. *Our Chinese Pooh-Bah*, CHI. DAILY, Sept. 16, 1888, at 25.

36. *See* discussion *infra* notes 68–69 and accompanying text.

37. *Just Like Criminals: Hi Lung Indignant at the Plan for Detecting Chinamen*, CHI. TRIB., Aug. 10, 1892.

38. *Id.*

39. *Id.*

40. The Chinese exclusion laws only ended in 1943—after more than six decades—because China was an Allied Nation during World War II. *See* Xiaohua Ma, *The Sino-American Alliance During World War II and the Lifting of the Chinese Exclusion Acts*, 38 AM. STUD. INT'L 39, 53 (2000).

41. *See infra* Part II.

42. *See infra* Subpart II-B.

Chinese Americans also were subjected to inescapable ongoing surveillance in the form of surprise inspections, raids, and interception of some of their communications.[43] In addition, there was constant pressure on Chinese Americans to craft public-facing images and personas that would fit into certain approved narratives and minimize scrutiny of themselves.[44] Because Chinese exclusion was federal law for several decades, Chinese Americans experienced these privacy invasions over the course of many people's entire lifetimes.[45]

Despite the massive scale—in size, impact, and time—of surveillance in the era of Chinese exclusion, Chinese exclusion has received little discussion in historical and theoretical perspectives on American domestic surveillance. This Article asserts, however, that especially as the U.S. appears to head into an era of reinvigorated racialized immigration policy, reflection on surveillance under Chinese exclusion is worthwhile for the lessons it offers that can be applied to today. First, it provides an illuminating example of the U.S. government using surveillance not only to enforce exclusionary policy, but to effect race- and class-based oppression through harmful surveillance.[46] Concrete harms caused by surveillance are not always well understood, but there is ample evidence that the privacy-invasive aspects of Chinese exclusion implementation and enforcement caused Chinese Americans at least six kinds of privacy harms: economic, reputational, psychological, autonomy, discrimination, and relationship harms.[47]

This includes the U.S. government's role in constructing and reinforcing "perpetual foreignness" for Asian Americans through racialized surveillance and privacy invasions of Chinese Americans as established and operationalized by the U.S. government under Chinese exclusion and as echoed by surveillance practices of the government into the present day.[48] The U.S. government's century-and-a-half of race-based surveillance of Chinese Americans has reinforced the idea that to be visibly Asian is to be categorically different from—and deserving of different treatment from—other Americans.

Second, surveillance under Chinese exclusion supports observations made by other scholars that privacy is a right that has been enjoyed primarily by those with wealth.[49] Although Chinese exclusion targeted all people of Chinese descent, its most severe surveillance mechanisms fell on poor laborers, while wealthier and more politically powerful Chinese Americans leveraged their power to improve their own circumstances.

Finally, the Article explores echoes and parallels in the present day, especially as the U.S. appears to fall deeper into a time of reinvigorated racialized immigration enforcement and surveillance.[50] Countless individuals in immigrant and mixed status communities today are likely to suffer from a plethora of privacy-related harms as the administration of President Trump augments its immigration enforcement machine, including surveillance tools. We can draw on lessons learned from the history of Chinese exclusion to conclude three things about these harms. First, these harms can be severe and long-lasting; second,

43. *See infra* Subpart II-C.
44. *See infra* Subpart II-D.
45. *See infra* Subpart II-E.
46. *See infra* Subpart IV-A.
47. *See infra* Subpart IV-A.
48. *See infra* Subpart IV-A.
49. *See infra* Subpart IV-B.
50. *See infra* Subpart IV-C.

they can be followed by a decades-long tail of harmful "perpetual foreigner" status for targeted groups; and third, they are likely to fall broadly on all who are visited upon by racialized surveillance, rather than narrowly only on those who are specific targets of immigration enforcement efforts.

This Article proceeds as follows. Part II provides a detailed and comprehensive overview of the invasions of Chinese Americans' privacy perpetrated in the name of Chinese exclusion. Part III explores the treatment of these privacy-invasive practices under the Fourth Amendment prohibition against unreasonable searches. Part IV explores broader reflections and lessons learned from surveillance of Chinese Americans, including that it demonstrates the ability and history of the U.S. to use surveillance to inflict harm directly on oppressed groups, and concludes with some of the echoes and parallels visible in the present day.

II. THE PRIVACY-INVASIVE PRACTICES OF CHINESE EXCLUSION ADMINISTRATION AND ENFORCEMENT

During the period of Chinese exclusion in the U.S., from 1875 to 1965,[51] Chinese Americans experienced an extended period of greatly reduced privacy vis-a-vis the government compared to their white counterparts. This Part discusses the ways in which Chinese exclusion systematically reduced the privacy of Chinese Americans by: prompting systematic invasive examination and surveillance by the U.S. government; facilitating mandatory ongoing surveillance by white civilians; and forcing Chinese Americans to craft non-private public personas to reduce their susceptibility to scrutiny and deportation. Finally, this Part explains how Chinese Americans endured the weight of these aspects of privacy erosion over the course of decades and, in some cases, entire lifetimes.

A. *The policy rationale and legal foundation for reduced privacy for Chinese Americans*

Before cataloging the many ways in which Chinese Americans experienced systematically diminished privacy during the period of formal Chinese exclusion, it is helpful to understand the rationale and mechanics of Chinese exclusion. There are numerous excellent scholarly accounts of how and why Chinese exclusion laws were established in the U.S. and how they changed over time.[52] A brief summary of key points is provided here as context for the discussion of government surveillance carried out as a result.

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51. Some might describe Chinese exclusion as beginning in 1882 with the first Chinese Exclusion Act. Because the Page Act arguably directed racialized surveillance of Asian Americans from its passage in 1875, I am choosing to start my examination of this topic in that year. I am also choosing to refer to the period of Chinese exclusion as extending to 1965, because even though the last iteration of the Chinese Exclusion Act was repealed in 1943, race-based restrictive immigration policies continued to apply to Chinese and other Asian immigrants until 1965. *See supra* note 31 and accompanying text.

52. *See, e.g.*, TIEN-LU LI, CONGRESSIONAL POLICY OF CHINESE IMMIGRATION (1916); LEE, *supra* note 32; IRIS CHANG, THE CHINESE IN AMERICA 130–56 (2003); Sue Fawn Chung, *Chinese Exclusion, the First Bureau of Immigration, and the 1905 Special Chinese Census: Registered, Counted, Arrested, Deported—1892–1906*, 2018 CHINESE AM.: HIST. & PERSPS. 21; MARY ROBERTS COOLIDGE, CHINESE IMMIGRATION 145–253 (1909); MARTIN GOLD, FORBIDDEN CITIZENS: CHINESE EXCLUSION AND THE U.S. CONGRESS: A LEGISLATIVE HISTORY (2012); Gabriel J. Chin & Daniel K. Tu, *Comprehensive Immigration*

Before the first Chinese-specific exclusion law, the Naturalization Act of 1870 and the Page Act of 1875 previewed what was to come. The Naturalization Act extended naturalization, which since its establishment in 1790 had only been available to "free white person[s],"[53] to "aliens of African nativity and to persons of African descent," but declined to extend the privilege to Asians or other non-white people.[54] The general understanding at the time was that Chinese people were not "white" within the meaning of the law, and thus could not naturalize.[55]

The Page Act invited deep scrutiny and exclusion of Chinese people, especially Chinese women. It purported to ensure that "the immigration of any subject of China, Japan, or any Oriental country" be "free or voluntary"; ordered officials not to permit entry of subjects from these countries who had "entered into a contract or agreement for a term of service within the United States, for lewd and immoral purposes"; expressly prohibited "the importation into the United States of women for the purposes of prostitution"; and mandated particular scrutiny of immigration from "Oriental" countries.[56]

A few years later, in 1882, propelled by the widespread belief that Chinese immigrants were arriving in the U.S. in large numbers, failing to assimilate, working for low wages, and displacing or otherwise discouraging more desirable European immigrants, the first federal law devoted specifically to keeping Chinese people out of the U.S. was passed.[57] After a number of modifications and extensions, Chinese exclusion laws then remained in effect in the U.S. until 1943.[58] These laws mandated the exclusion of most Chinese people from the U.S. and permitted only a select few to enter the country, to remain in the country, and to return to the country after leaving for periods of time. Whether or not a Chinese individual would be allowed into the U.S. depended on details about the individual, and the permission was required to be evidenced by a certificate containing further details about the individual.

After the May 6, 1882 enactment of the first Chinese Exclusion Act, it became unlawful "for any Chinese laborer to come, or, having so come . . . to remain within the

Reform in the Jim Crow Era: Chinese Exclusion and the McCreary Act of 1893, 23 ASIAN AM. L.J. 39 (2016).

53. Naturalization Act of 1790, ch. 3, 1 Stat. 103 (repealed 1795); Naturalization Act of 1795, ch. 20, 1 Stat. 414.

54. Naturalization Act of 1870, ch. 254, 16 Stat. 254–56.

55. *See* COOLIDGE, *supra* note 52, at 146 (explaining that in most places the words "free white persons" were construed to exclude Chinese people from naturalization). Chinese people were sometimes considered "Black" for application of the law. *See also* People v. Hall, 4 Cal. 399, 404 (1854) (holding that under a state law decreeing that "No Black or Mulatto person, or Indian, shall be allowed to give evidence in favor of, or against a white man," the word "Black" "must be taken as contradistinguished from white, and necessarily excludes all races other than the Caucasian."). However, the decision to use the phrases "African nativity" and "African descent" in the 1870 Naturalization Act indicated an intent to exclude all other people of color, even those sometimes considered "Black." That the Naturalization Act did not extend the privilege to people of Asian countries was reinforced in the 1920s, when it rejected claims to naturalization by the Japanese-born Takao Ozawa and the Indian-born Bhagat Singh Thind. Ozawa v. United States, 260 U.S. 178 (1922); United States v. Bhagat Singh Thind, 261 U.S. 204 (1923).

56. Page Act of 1875, ch. 141, 18 Stat. 477 (1875) (repealed 1974).

57. Chinese Exclusion Act of 1882, ch. 126, 22 Stat. 58 (1882) (codified as amended in scattered section of 8 U.S.C.).

58. Magnuson Act of 1943, ch. 344, 57 Stat. 600 (1943) (codified as amended to 8 U.S.C. 212(a), 703).

United States."[59] This law barred Chinese laborers in particular, so that non-laborers such as merchants, scholars, and diplomats—often referred to as the "exempt classes" under the law—were, in theory, still permitted to enter and remain within the U.S.[60] The 1882 Act also made an exception for Chinese laborers who were already in the U.S. before a certain date, provided they had sufficient evidence of their early arrival.[61]

In addition to barring most Chinese laborers from the U.S., the 1882 Act mandated the issuance of "certificates" documenting the identity and legal status of Chinese Americans who were permitted to be in the U.S. For example, Chinese laborers who were exempt from the 1882 Act and who wished to leave the U.S. and come back were to first receive "a certificate, signed by the [customs] collector or his deputy and attested by his seal for office."[62] Similarly, the Act required that "every Chinese person other than a laborer" entitled to come to the U.S. first "be identified as so entitled by the Chinese Government in each case, such identity to be evidenced by a certificate" in the English language to be issued by the Chinese government.[63] These certificates, whether issued by the U.S. or China, would then be checked at points of entry to the U.S., the law clearly stating that "no Chinese person shall be permitted to enter the United States by land without producing to the proper officer of customs the certificate in this act required of Chinese persons seeking to land from a vessel."[64]

Not only did the 1882 Act require Chinese individuals to get government-issued certificates as evidence of their legal status, but also mandated that specific pieces of information from and about Chinese Americans be collected and documented directly on the certificates. It ordered U.S. customs collectors to go on board ships leaving U.S. ports with Chinese laborers who fell under the exemption "and on such vessel make a list of all such Chinese laborers, which shall be entered in registry-books . . . in which shall be stated the name, age, occupation, last place of residence, physical marks or peculiarities, and all facts necessary for the identification of such Chinese laborers."[65] A certificate given to any exempt Chinese laborer had to contain "the name, age, occupation, last place of residence, personal description, and facts of identification of the Chinese laborer to whom the certificate is issued."[66] Certificates issued by the Chinese government to Chinese non-laborers permitted to come to the U.S. were also to state "the name, title, or official rank, if any, the age, height, and all physical peculiarities, former and present occupation or profession, and place of residence in China."[67]

In 1892, Congress passed the Geary Act, which extended Chinese exclusion beyond the ten years authorized by the first Chinese Exclusion Act. The Act expanded the

59. Chinese Exclusion Act of 1882, ch. 125, 22 Stat. 58 (1882) (codified as amended in scattered sections of 8 U.S.C.).

60. *See* CAROL NACKENOFF & JULIE NOVKOV, AMERICAN BY BIRTH: WONG KIM ARK AND THE BATTLE FOR CITIZENSHIP 37 (2021) ("On paper, the door was firmly and almost entirely closed to the Chinese, allowing only merchants, students, diplomats, and tourists to enter as new (and sometimes temporary) residents. Government statistics supported this narrative.").

61. Chinese Exclusion Act of 1882, *supra* note 59, at § 3.

62. *Id.* at § 4.

63. *Id.* at § 6.

64. *Id.* at § 12.

65. *Id.* at § 4.

66. *Id.*

67. *Id.* at § 6.

requirement that Chinese Americans obtain certificates outlining their legal status to all those residing in the U.S.—not just those planning to come to the country anew or leave and return.[68]

The Geary Act also explicitly applied not only to Chinese citizens, but to all "person[s] of Chinese descent."[69] Senate discussions regarding the bill suggest that racial animosity likely motivated legislators' desire to encompass people of Chinese descent in addition to those who were from China. For example, Senator William Stewart of Nevada explained, "This country has come to the conclusion that we cannot encourage these people to come among us; that their presence is destructive to our form of civilization, and that we do not want them."[70] Senator Sanders of Montana concluded passionately, "it is not desirable that these people shall be multiplied in this country, but that they shall be diminished to extinction. . . . It is desirable . . . that we shall separate ourselves from that civilization, from that religion, from that industry, from that method of life . . . ."[71]

In addition, the Geary Act contained a provision placing the burden of proving lawful presence in the United States on Chinese Americans. Under the law, "any Chinese person or person of Chinese descent arrested under [Chinese exclusion] shall be adjudged to be unlawfully within the United States unless such person shall establish, by affirmative proof, to the satisfaction of such justice, judge, or commissioner, his lawful right to remain in the United States."[72]

Chinese Americans objected to the Geary Act quite vocally. The Chinese minister called the statute "a violation of every principle of justice, equity, reason and fair-dealing between two friendly powers."[73] Ouyang Geng, the Chinese vice-consul in San Francisco, a Chinese American who had lived in the U.S. since he was a young teen[74] and had graduated from Yale University,[75] took great offense at the new registration requirements. Geng asserted that under the Geary Act, Chinese laborers would be

placed on the level with your dogs. If you have a dog, a black and tan, a Llewellyn setter, a pointer, you buy a license tag for it and fasten it to the dog's collar, and the number in the dog's tag is its immunity from arrest by the poundman. Under the Geary bill the laboring Chinese carry their number in their pocket and any man who so desires may stop them and demand to see their "tag."[76]

Chinese Americans were so outraged by the law's forced registration and burden-shifting provisions that they initially protested with civil disobedience.[77] The Chinese Six

68. Geary Act, ch. 60, 27 Stat. 25 (1892).

69. *Id.* at §§ 1–4 (1892) (multiple provisions applying to "any Chinese person or person of Chinese descent").

70. 23 CONG. REC. 3561 (1892).

71. 23 CONG. REC. 3569 (1892).

72. Geary Act, *supra* note 68, at § 3 (multiple provisions applying to "any Chinese person or person of Chinese descent").

73. COOLIDGE, *supra* note 52, at 221.

74. EDWARD J. M. RHOADS, STEPPING FORTH INTO THE WORLD: THE CHINESE EDUCATIONAL MISSION TO THE UNITED STATES, 1872–81, at 15 (2011).

75. *Id.* at 131.

76. *It May Lead to War: The Geary Bill Scored by the Six Companies*, S.F. MORNING CALL, Sept. 20, 1892, at 8.

77. *See* Ellen D. Katz, *The Six Companies and the Geary Act: A Case Study in Nineteenth-Century Civil Disobedience and Civil Rights Litigation*, 8 W. LEGAL HIST. 227 (1995) (providing an overview of the

Companies reportedly printed thousands of copies of a document denouncing the law and calling on people to refuse to register, which they posted on bulletin boards in Chinatowns and distributed by mail all over the country.[78] Their call was successful—according to one account, only 439 of an estimated 26,000 Chinese in San Francisco registered by the end of 1892.[79] In September 1893, the Treasury Department reported that 13,243 Chinese people had registered out of a total of 106,688.[80] Some number of the unregistered—perhaps ten percent—were people who belonged to exempt classes, but this still left the vast majority of Chinese laborers unregistered.[81] Challenges to the registration requirement eventually made it to the Supreme Court, which ruled that the power of Congress to regulate immigration and to deport also included the power to require aliens to register, and Chinese Americans were forced to comply.[82]

In 1893, Congress further expanded the law again with passage of the McCreary Act.[83] Among the new provisions added in 1893 were new requirements that certificates issued to Chinese Americans include photographs, and that copies of those photographs be filed with U.S. officials.[84] In discussing the need for such provisions, legislators asserted that Chinese people looked too similar to one another to be distinguishable by description alone.[85] For instance, Senator Perkins of California described all Chinese people as having the same tan-colored skin, black hair, and almond shaped eyes.[86] "Place one thousand of them in a line and the same personal description will answer for every one of them. It is impossible to make even a comparative guess of their ages with any degree of accuracy."[87] Senator Geary made a similar argument, stating, "[w]e of the Western country believe [the photograph] to be absolutely necessary if we are to have any registration at all. Without it there is no certain means of identifying the Chinaman."[88]

The McCreary Act also clarified that Chinese Americans could be called upon to prove their lawful status at any time and always bore the burden of proof. Any Chinese laborer who was "found within the jurisdiction of the United States without [a valid] certificate of residence" would be deemed to be in the country unlawfully, and would be arrested and

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massive campaign of civil disobedience coordinated by Chinese American leaders outraged by the registration requirement of the Geary Act).

78. *Id.*

79. CHRISTIAN PARENTI, THE SOFT CAGE: SURVEILLANCE IN AMERICA FROM SLAVERY TO THE WAR ON TERROR 73 (2003).

80. *See* LI, *supra* note 52, at 80.

81. *Id.* at 80.

82. *See* Fong Yue Ting v. United States, 149 U.S. 698, 714 (1893) ("Congress, having the right, as it may see fit, to expel aliens of a particular class or to permit them to remain, has undoubtedly the right to provide a system of registration and identification of the members of that class within the country, and to take all proper means to carry out the system which it provides."). *See supra* notes 215–217 and accompanying text. *See also* Katz, *supra* note 77, at 263–67 (explaining that the decision in *Fong Yue Ting* took many Chinese Americans by surprise, and that although many Chinese Americans still refused to register immediately following the decision, virtually all nonregistered Chinese laborers did in fact register after Congress passed the McCreary Amendment in 1893, which gave Chinese laborers additional time to register).

83. McCreary Act of 1893, ch. 14, 28 Stat. 7 (1893) (codified as amended to 8 U.S.C. 287, 289).

84. *Id.*

85. *See* Chin & Tu, *supra* note 52, at 60.

86. 25 CONG. REC. 3045 (1893).

87. *Id*.

88. 25 CONG. REC. pt. 3, app. 234 (1893).

ordered deported, unless they could prove that they were permitted to be in the U.S. and had an excusable reason to be found without a certificate.[89]

B. *Systematic invasive examination, surveillance, and documentation by the U.S. government*

To administer Chinese exclusion law, the U.S. government built and utilized staff, tools, and infrastructure designed for mass examination, surveillance, and documentation of Chinese Americans. This surveillance apparatus carried out invasive interviews of Chinese Americans and their entire personal networks, physical inspections of Chinese bodies and recording of physical features, and systematic photographic documentation of all Chinese entering and exiting the U.S.

1. *Invasive interviews of Chinese Americans and probes of their personal and professional networks*

With the requirement, under Chinese exclusion law, that Chinese Americans obtain proof of their eligibility to come to and remain in the U.S. in the form of official certificates, the U.S. government began to conduct and document investigations of individual applicants for the purpose of fulfilling certificate requests. As part of this process, government inspectors interviewed applicants and their families and collected sworn statements from the interviewees.

The interviews conducted in the furtherance of certificate fulfillment were often numerous and time intensive. According to a 1913 report from the Chinese Chamber of Commerce and Chinese-American League of Justice of Los Angeles,

> Chinese residents of the United States, duly registered, measured, photographed and certified . . . must, before they can go to China and return, appear before the Immigration officers, undergo the most inquisitorial examinations, answer hundreds of impertinent and immaterial questions, reveal every detail of their business, their assets, liabilities, income, sources of profit, number of employes, history of their families in China, their antecedents, etc., and undergo a most rigid "sweating," every answer to be verified by witnesses.[90]

For example, officials conducted extensive interviews while investigating the case of Moy Dong Hoy's U.S.-born Chinese American daughter, Annie Moy, when she wanted to go to China to study at the age of 15 in 1929. Even though Annie—my great-aunt—was a U.S. citizen by birth, U.S. government officials interviewed her and both of her parents multiple times before preapproving her right to return to the U.S. after going abroad.[91] These interviews often delved into minute details of the private lives of the subjects and their families. Among the things that the officials inquired about were Annie's parents' wedding,

89. McCreary Act of 1893, *supra* note 83, at § 6.

90. Chinese Chamber of Commerce and Chinese-American League of Justice, Report of the Special Committee in Charge of the Investigation of the Treatment of Chinese Residents and Immigrants by U.S. Immigration Officers (Jan. 4, 1913), *in* CASEFILE NO. 53620/115, RECORDS OF THE IMMIGRATION AND NATURALIZATION SERVICE, SERIES A: SUBJECT CORRESPONDENCE FILES, PART 1: ASIAN IMMIGRATION AND EXCLUSION, 1906–1913 (ProQuest History Vault) [hereinafter Chinese Chamber of Commerce and Chinese-American League of Justice 1913 Report].

91. INS CASEFILE NO. 12017/37252 [hereinafter Annie Moy 1929 INS Casefile] (on file with author).

including the date, location, officiant, and whether a white man was present for the ceremony; when and where her parents first met and how they were introduced; when her parents first arrived in the U.S., whom they traveled with, and the dates and particulars of any and all trips they had taken back to China since then; who occupied the stateroom with her mother when her mother first traveled on a boat from China to Vancouver; the names and dates of death of her mother's parents; and her father's occupation and the address of and details regarding his place of employment.[92]

These interviews were resource intensive for all involved. Just for this one investigation to clear Annie for one trip, officials interviewed Annie once, her father three times, and her mother twice.[93]

The invasive and time-consuming investigations associated with certificates chilled many Chinese Americans' willingness and ability to travel. The Chinese Chamber of Commerce and Chinese-American League of Justice reported in 1913,

[T]his Committee has been informed by many Chinese merchants of Los Angeles and other cities that, although it has been their life ambition to visit their childhood homes in China, they have foregone the pleasure and must continue to remain here, because of their deep-seated dread of the inquisitorial brow-beating and torturing humiliations which they will have to undergo if they apply to the Immigration office for the necessary papers.[94]

Individuals were also interrogated upon landing at U.S. ports, and often detained for the duration of their interrogation, physical examination, and thorough investigation of their cases. According to a woman named Lee Puey You, when she landed at Angel Island in 1939, her interrogation took multiple days and involved three other people present: a typist, an inspector, and an interpreter.[95] Describing the incident, she said, "[t]hey asked me about my grandparents, which direction the house faced, which house I lived in, how far from one place to another . . . . After they asked me questions, they would ask my father, then my uncles, and then the two witnesses."[96]

There was widespread suspicion that women from China were prostitutes; accordingly, in the course of exclusion-related interrogations, women were often asked highly invasive questions about their romances and sex lives that they found humiliating. According to Ng Poon Chew, a Chinese American immigrant and minister who lectured frequently and wrote about life under Chinese exclusion at the turn of the century, this included "all sorts of questions . . . which [immigration officials] would not dare to mention in the hearing of [white] American ladies."[97] For example, Lee Puey You reportedly was

92. *Id.*

93. *Id.*

94. Chinese Chamber of Commerce and Chinese-American League of Justice 1913 Report, *supra* note 90.

95. Judy Yung, *"A Bowlful of Tears" Revisited: The Full Story of Lee Puey You's Immigration Experience at Angel Island*, 25 FRONTIERS: J. WOMEN'S STUD. 1, 7 (2004); *see* MARIE ROSE WONG, SWEET CAKES, LONG JOURNEY: THE CHINATOWNS OF PORTLAND, OREGON 97 (2004) ("Typically, the interrogation involve the detained; his or her witnesses . . . ; the inspector in charge . . . ; a Chinese interpreter; and a stenographer to record the proceedings").

96. Yung, *supra* note 95, at 7.

97. NG POON CHEW, THE TREATMENT OF THE EXEMPT CLASSES OF CHINESE IN THE UNITED STATES 10 (1908); *see* NACKENOFF & NOVKOV, *supra* note 60, at 75 (2021) ("[I]nterrogation of a man's claim to merchant status would become increasingly searching . . . the interrogation of a merchant's wife and children was often even more so.").

asked to provide details about who she had had sex with and when.[98] Although the purported purpose of these interrogations was to root out the trafficking of women for prostitution, Ng Poon Chew reported that Chinese women from "highly respectable families" were not spared this embarrassment.[99]

2. *Physical inspections of Chinese bodies and recording of individuals' physical features*

Officials tasked with administration and enforcement of Chinese exclusion also closely inspected the physical effects and bodies of Chinese Americans and recorded details of their physical features. These activities attempted to discover physical evidence of unlawful activity, document permanent physical features to facilitate detection of fraudulent exchanging of identities among multiple people, detect any such fraudulent identity swapping, and detect transmissible diseases believed to be spread to the U.S. from East Asia.

As Chinese people entered U.S. ports, they were searched and information about their physical effects collected and documented. For example, officials found and examined American watches, knives, clothing, and papers with American addresses on Chinese travelers, and reported these effects as evidence that the travelers intended to remain in the U.S. rather than merely passing through.[100]

As U.S. officials examined and inspected their subjects, they recorded the physical features of Chinese Americans across a variety of documents associated with certificates establishing legal status. This included the applications and certificates themselves, as well as interview transcripts accompanying applications. Thus when Moy Dong Hoy, who immigrated to the U.S. in 1872, wished to leave the country in 1910 to remarry after the death of his previous wife, his application for preapproval of re-admissibility provided a description including his age, height, and other remarkable features ("left ring finger deformed by wound in youth").[101] Similarly, when his daughter, 15-year-old Annie Moy, was interviewed by an inspector with the Immigration Service prior to her 1929 trip to China, the typed transcript of the interview included a block of text stating her height and the marks observed on her skin ("faint scar right eyebrow; mole right side of neck").[102]

Chinese Americans were also examined on the ships on which they traveled, and their physical descriptions recorded on ship manifests. This is because a statutory provision that ordered masters of vessels arriving in the United States with any Chinese passengers to "deliver and report to the collector of customs of the district . . . a separate list of all Chinese passengers taken on board his vessel at any foreign port or place," which was to include the passengers' names "and other particulars, as shown by their respective certificates."[103] Customs officials also were required "to examine such passengers, comparing the certificates with the list and with the passengers," to ensure that no unauthorized Chinese were permitted to enter into the country.[104] For example, the "Chinese manifests" maintained by officials in San Francisco from 1884 to 1885 included columns for the recording of

98. Yung, *supra* note 95, at 15.
99. NG, *supra* note 97, at 10.
100. COOLIDGE, *supra* note 52, at 288–89.
101. INS Casefile No. 901 [hereinafter Moy Tung Hoy 1910 INS Casefile] (on file with author).
102. Annie Moy 1929 INS Casefile, *supra* note 91.
103. Chinese Exclusion Act of 1882, *supra* note 59, at § 8.
104. *Id.* §§ 9, 12, 13.

Chinese passengers' names, heights, the color of their features, and other physical details.[105] The description of one passenger states, "scar on right forearm, long fingers, small nose."[106] The description of another reads, "large ears, pitmarked, right eye small."[107]

When officials were investigating the legal status of Chinese people and Chinese Americans, they sometimes referenced these physical descriptions. For example, in the course of investigating Annie's legal status prior to her 1929 trip to China, officials discovered a historical discrepancy in the names that had been used to refer to Annie's mother and were uncertain whether the discrepancy was indicative of some type of fraud. In correspondence regarding the discrepancy, an inspector wrote, "the alleged mother's personal description tallies exactly with the description as given at the time of her application for admission at Boston."[108]

Many Chinese arrivals at U.S. ports also were subjected to physical inspections by health inspectors, under the theory that this was necessary to prevent the spread of infectious diseases from East Asia. Following the passage of an 1891 federal law excluding the immigration to the U.S. of "idiots, insane persons, paupers, or persons likely to become a public charge, and persons suffering from a loathsome or a dangerous, contagious disease," scrutiny in the name of "health" intensified.[109] According to historian Nayan Shah, at Angel Island in California where a large number of Asian people arrived, Chinese and Japanese arrivals were closely inspected by public health officials.[110] Poorer Asian people who had traveled in steerage received particularly intense scrutiny as they passed through Angel Island—far more scrutiny than white passengers received at Ellis Island, where the lion's share of immigrants landed in the U.S.[111] According to Shah, unlike at Ellis Island, passengers arriving at Angel Island were segregated by sex in preparation for an intrusive physical examination.[112]

The physical inspections by health inspectors were extremely invasive. A man who was in his twenties when he arrived in 1936 recalled that the men were all ordered to undress.[113] Public health officials inspected each man's teeth, ears, and nose, then conducted a stethoscope examination of his chest, before finally taking the man behind a screen where he was "completely stripped in order to reveal any abnormalities below the waist."[114] After 1910, men and women arriving at Angel Island also were required to provide fecal samples for hookworm examination.[115]

The legal exclusion of immigrants based on health conditions was purportedly race-neutral, but Shah explains that certain types of medical deportations were biased against

105. Chinese manifest page (on file with author).

106. *Id.*

107. *Id.*

108. Annie Moy 1929 INS Casefile, *supra* note 91 (letter dated Sept. 30, 1929 from R.N. Davis, Immigrant Inspector, to the District Director of Immigration, Chicago, Illinois).

109. Immigration Act of 1891, ch. 551, 26 Stat. 1084a (1891) (codified as amended to 8 U.S.C. § 1552).

110. NAYAN SHAH, CONTAGIOUS DIVIDES: EPIDEMICS AND RACE IN SAN FRANCISCO'S CHINATOWN 184 (2001).

111. *Id.*

112. *Id.*

113. *Id.*

114. *Id.* at 184–85 (internal quotations omitted).

115. *Id.* at 185.

Asian immigrants. For example, some public health officials argued that people of the "Oriental" race were more likely to have various types of inflammatory eye conditions, that an eye infection known as trachoma was not as responsive to treatment among Orientals as among people of other races, and that trachoma could cause "dangerous complications" among the "white races" while people of Asian descent had hereditary immunity due to having lived with the disease for thousands of years.[116] In later years, similar assertions were made about the particular prevalence among people of Asian descent of intestinal and bloodstream parasites, thus underscoring the importance of detection upon arrival via inspections of Asian immigrants' feces and blood.[117]

Further adding to the invasive and humiliating nature of examinations and interrogations, Chinese people who arrived at U.S. ports often were held at those ports for long periods of time in overcrowded and unsanitary facilities with no personal privacy, poor food and services, and little or no contact with the outside world.[118] According to a 1906 article in *The Atlantic Monthly*, arrivals who landed at San Francisco and were held at Angel Island were "confined in a wooden shed or loft . . . and this confinement sometimes [was] extended into weeks and months."[119] Facilities at Angel Island were prison-like crowded barracks with barbed wire fences, barred windows, locked doors, bunk beds, malodorous communal baths, and strict movement control for detainees.[120] Further offending any privacy norms that detainees might otherwise have, some who were detained reported that apart from being segregated by sex, people being held for evaluation under Chinese exclusion were lumped together across all age groups, classes, and occupations.[121]

116. *Id.* at 188.

117. *Id.* at 189–94.

118. Sin-Kiong Wong, *The Making of a Chinese Boycott: The Origins of the 1905 Anti-American Movement*, 6 AM. J. CHINESE STUD. 123, 136–37 (1999); *see also* MARIE ROSE WONG, *supra* note 95, at 97 (2004) (explaining that in Portland, Oregon, individuals in the process of being evaluated for admissibility to the country were detained in the Portland city jail).

119. John W. Foster*, The Chinese Boycott,* ATL. MONTHLY, Jan. 1906, at 125.

120. MARIE ROSE WONG, *supra* note 95, at 98 ("detainees were placed under lock and key in stark, prisonlike barracks equipped with bunk beds and communal baths"); LEE, *supra* note 32, at 217 ("most immigrants who were selected for further investigation had to endure incarceration on Angel Island for several days, months, and even years," some "referred to Angel Island as 'Devil Island,'" and "the barracks windows were enclosed with iron bars, and the only time that detainees were allowed outside of their dormitory was during mealtimes, when they were escorted by armed guards to the dining hall."); ERIKA LEE & JUDY YUNG, ANGEL ISLAND: IMMIGRANT GATEWAY TO AMERICA 121 (2012) (account from an Angel Island detainee reporting that some people had been detained there for years, and a few were driven to suicide by despair during their time there. Individuals detained at Angel Island were not permitted to communicate with outsiders, were not given attorneys, and sometimes described their misery in heart-wrenching poems etched into the walls of the facility.); Foster, *supra* note 119, at 125; *see also Voices of Resilience*, ANGEL ISLAND IMMIGR. STATION FOUND., https://www.aiisf.org/voicesofresilience [https://perma.cc/C3Y5-2K5S] (last visited Aug. 10, 2025) (providing English translations of a selection of poems carved into the walls of the Angel Island barracks by detainees, many communicating misery, sadness, loneliness, and anger at the deep injustice of their detention); ISLAND: POETRY AND HISTORY OF CHINESE IMMIGRANTS ON ANGEL ISLAND, 1910–1940 (Him Mark Lai, Genny Lim, & Judy Yung, eds., trans., 1980) (a book of translated poems from the walls of the Angel Island barracks).

121. COOLIDGE, *supra* note 52, at 300 ("Small-footed, high-born wives of merchants, and merchants' children, have been imprisoned with women held as professional prostitutes . . . .").

3. *Systematic photographic documentation of all Chinese entering and exiting the U.S.*

Chinese Americans in the era of Chinese exclusion were the first people subject to systematized photographic documentation by the U.S. government.[122] This began with Chinese women. After enactment of the Page Act of 1875, officials began to require Chinese women to provide photographs along with their applications for admission to help establish their identity and prove that they were not being trafficked for prostitution or any other immoral purposes.[123] Historian Anna Pegler-Gordon has written extensively about this practice of photographic identification, and as she explains it,

Under the [Page] act's authority, every Chinese woman applying for entry to the United States was not only inspected by the U.S. consul in her port of origin but also issued a photographic identity certificate provisionally attesting to her moral character. Upon arrival, each woman was questioned again and compared with her photograph to ensure that she was the same individual who had previously been approved. If the photograph on the certificate matched the applicant before the Immigration Bureau and the woman successfully presented herself as morally upright, she was allowed to enter the United States.[124]

According to Pegler-Gordon, even though the statutory language of the Page Act did not require the collection or scrutiny of photographic evidence, officials administering the law nevertheless decided that photographs were necessary and made them a central part of the process.[125]

The first Chinese exclusion laws also did not require photographs to accompany Chinese certificates.[126] But after passage of the McCreary Amendment in 1893—perhaps on the precedent set by officials administering the Page Act—photographs became a central part of certificates of residence that Chinese Americans were required to obtain, with orders that copies of each resident's photographs be retained by the U.S. government for documentation and verification purposes.

Obtaining photographs for certificates was costly, especially for low-wage workers. As explained by Sue Fawn Chung, "[t]he certificate was $1.00 and the four photographs alone (later three) cost $0.45 each. Since the average Chinese salary was $1.00 per day, this [$2.80] was a significant expense."[127]

The move from mere documentation of physical descriptions to routinized photography was driven by the belief that Chinese Americans engaged in widespread fraudulent exchange of certificates, as well as by a general sentiment among white policymakers and officials that Chinese people looked too similar to be distinguishable by description alone, and that their physical similarity differed from people of other races.[128]

122. ANNA PEGLER-GORDON, IN SIGHT OF AMERICA 23–24 (2009).

123. Kerry Abrams, *Polygamy, Prostitution, and the Federalization of Immigration Law*, 105 COLUM. L. REV. 641, 701 (2005).

124. PEGLER-GORDON, *supra* note 122, at 29.

125. PEGLER-GORDON, *supra* note 122, at 29.

126. *See* Chinese Exclusion Act of 1882, ch. 126, 22 Stat. 58 (codified as amended in scattered section of 8 U.S.C.).

127. Chung, *supra* note 52, at 22.

128. *See* 25 CONG. REC. 3045 (1893) (statement of Sen. Perkins) ("This similarity of appearance and features is not the case with any other people who come to our shores in very large numbers."). The "cross-race effect," humans' tendency to be less able to identify the faces of racial groups other than their own, is a

Speaking in 1893 in favor of a proposal to legally require the inclusion of photographs with certificates of residence, Senator Perkins of California asserted, "Those who have given great attention to this matter have finally become convinced that there is no other way to distinguish them."[129]

4. *Application of the measurement-based Bertillon identification system to Chinese Americans' bodies and photographs*

In the early 1900s, authorities implementing Chinese exclusion further systematized their photography-based documentation methodology by adopting an early biometric: a photography- and measurement-based identification system that had been developed by a French criminologist for the purpose of maintaining records of criminals, named after its creator, Alphonse Bertillon.[130] Adoption of the Bertillon identification system followed officials' insistence that even the prior system of requiring that all certificates be affixed with photographs was not sufficient to be able to identify Chinese individuals with confidence. The Commissioner General of Immigration reported in 1901 that the Bureau's experience attempting to enforce Chinese exclusion had "been sufficient to convince the Bureau that probably no system of legislation enacted thus far by Congress has more numerous or serious obstacles to surmount in order to become reasonably effective of its purpose."[131] Writing in favor specifically of the Bertillon system two years later, the Commissioner General cited the need to prevent Chinese Americans awaiting appeal of their exclusion cases from swapping places with other people.[132] He explained that the Bureau suspected this type of fraud was widespread but had not been able to stop it because officials had a difficult time telling Chinese individuals apart, but the Commissioner "could readily be obviated by a resort in such cases to the Bertillon system of identification."[133]

Within the first few years of the 20th century, Congress heeded the calls of officials struggling to enforce Chinese exclusion and appropriated funds for adoption of the Bertillon

known and documented phenomenon. *See* Kathleen L. Hourihan, Aaron S. Benjamin, & Xiping Liu, *A Cross-Race Effect in Metamemory: Predictions of Face Recognition Are More Accurate for Members of Our Own Race*, 1 J. APPLIED RSCH. MEMORY & COGNITION 158, 158 (2012) (briefly summarizing the cross-race effect as "[a]cross a variety of contexts, experimental methods, and ethnic groups, humans have been shown to be better at remembering faces from their own race than faces from other races."); *id.* at 160–61 (reporting experimentation results in which both Caucasian and Asian test subjects "showed a significant [cross-race effect] in recognition accuracy").

129. 25 CONG. REC. 3045 (1893).

130. *See* PEGLER-GORDON, *supra* note 122, at 39 ("[T]he Immigration Bureau used many of the same techniques and even the same equipment that the police used to document suspects, such as the Bertillon method for photographing and measuring criminals."); Kitty Calavita, *The Paradoxes of Race, Class, Identity, and "Passing": Enforcing the Chinese Exclusion Acts*, *1882–1910*, 25 L. & SOC. INQUIRY 1, 22 (2000) (describing introduction of the Bertillon system in 1903); Hu, *supra* note 14, at 961 (describing the Bertillon system as introduced under Chinese exclusion as "one of the earliest methods of bureaucratized biometric identification").

131. U.S. BUREAU OF IMMIGRATION, 1901 ANNUAL REPORT OF THE COMMISSIONER-GENERAL OF IMMIGRATION, at 46.

132. U.S. BUREAU OF IMMIGRATION, 1903 ANNUAL REPORT OF THE COMMISSIONER-GENERAL OF IMMIGRATION, at 96–97. Officials suspected that while individuals were waiting for their appeal to be processed, they simply swapped places with other Chinese residents who wanted to return home to China and were happy to do so as deportees on the government's expenses. *Id.*

133. *Id.*

system by the Immigration Bureau. A December 1902 article in the *Post Express* of Rochester, New York reported that immigration officials said the Bertillon system would soon be used to record "every Chinaman in the country."[134] Echoing claims that Chinese people were visually indistinguishable, the article added that the system would be used to help prevent fraud, in light of "the Chinese [being] such adepts in the art of counterfeiting," the fact that there was "such a striking resemblance between all Chinese that it would be an easy matter for the entire population of China to palm themselves off as twin brothers," and immigration officials having "admitted their inability to cope with the celestials."[135] A few months later, the Commissioner reported that the system was not yet in use and officers at ports of entry had not yet been trained to use the system, but Congress had appropriated the necessary funds for the Bureau to begin using the system.[136]

Measurement of individuals in accordance with the Bertillon system was meticulous, time-consuming, and humiliating, especially since it required subjects to be nude. Liang Qichao, a Chinese politician, intellectual leader, and journalist, toured North America in 1903 and described the Bertillon recording process:

First, the person's picture is taken, full body and from the waist up. Then the face, frontal view; and then from the back of the head, and facing left and right. Afterwards, a machine is used to measure the width of the skull. The distances between the eyes, ears, nose, and mouth are measured as well as one's height and the length of one's hands and feet. The distances between the shoulder, elbow and wrist are measured as are the distances between the hips, knee and calf. The arms are measured outstretched and bent as are the legs measured while standing and in-step. All of these measurements are taken while the person is nude. The length of the fingers and toes between each joint is also recorded. There is nothing that is not recorded in great detail.[137]

Chinese Americans found the use of the Bertillon system deeply distressing. After visiting the U.S. in 1903, Chinese official Liang Qichao remarked, "the Chinese immigrants coming to America have not yet committed any crimes, but they are treated as criminals."[138] In his 1905 report to the Secretary of Commerce and Labor, Harold Bolce recounted,

A very wealthy Chinese manufacturer stated to me that what the Chinese merchants protested against most was the introduction of the Bertillon method of identification. The Chinese, he explained, who are naturally men of great dignity, regard this system of minute measurement as a great humiliation. In their judgment it places them on a par with criminals.[139]

134. *Will Measure All Chinese*, POST EXPRESS (New York), Dec. 27, 1902.

135. *Id.*

136. ANNUAL REPORT OF THE COMMISSIONER-GENERAL OF IMMIGRATION 108 (1903).

137. K. Scott Wong, *Liang Qichao and the Chinese of America: A Re-Evaluation of His Selected Memoir of Travels in the New World*, J. AMER. 1992 ETHNIC HIST. 3, at 3, 15.

138. K. Scott Wong, *supra* note 137, at 15–16.

139. Report to the Secretary of the Department of Commerce and Labor from Harold Bolce 47 (1905), *in* CASEFILE NO. 53059/8, RECORDS OF THE IMMIGRATION AND NATURALIZATION SERVICE, SERIES A: SUBJECT CORRESPONDENCE FILES, PART 1: ASIAN IMMIGRATION AND EXCLUSION, 1906–1913 (ProQuest History Vault).

Officials continued using the Bertillon system for several years, then abandoned it in 1907 or 1908 because the government had insufficient personnel to operate the resource-intensive system.[140]

C. *Inescapable ongoing surveillance by government officials and a network of "credible" white people*

In addition to being subjected to meticulous investigation and documentation processes, Chinese Americans were also the targets of ongoing surveillance by U.S. officials and white civilians.

1. *Monitoring, surveillance, and surprise inspections of Chinese Americans*

As part of the activities associated with enforcement of Chinese exclusion, U.S. officials engaged in near-constant surveillance of Chinese Americans. This included close tracking of visitors to the U.S.—even, in some cases, of dignitaries; surveillance of people going about their daily lives in Chinatowns and other Chinese neighborhoods in the U.S.; surprise inspections in the form of raids; and interception of certain communications.

Chinese visitors to the U.S. under Chinese exclusion found that government officials interrogated their intentions, distrusted their answers, and monitored their whereabouts with a degree of close scrutiny not applied to visitors from any other country. U.S. officials' close surveillance of Chinese visitors was brought into the international spotlight in 1904 when large numbers of people came from China to the U.S. for the Louisiana Purchase Exposition in St. Louis, and many Chinese visitors were appalled by the way they were treated by officials. Merchants who had traveled to the U.S. as exhibitors at the event were detained upon arrival in San Francisco in facilities so filthy that, according to sociologist Mary Coolidge, they reported, "The Americans are a race of pigs."[141] Among the high-profile international visitors to the St. Louis Exposition was a Chinese delegation led by a Manshu prince, P'u Lun.[142] Immigration officials believed that a large number of the delegation participated in making the trip for the sole purpose of evading Chinese exclusion law and settling permanently in the U.S.[143] As a result, the delegation of over 200 people was subjected to a ten-point regulation not applicable to international visitors from any other country, including a provision requiring members of the delegation to report to officials any

140. NG, *supra* note 97, at 10 (writing in 1908, "[t]he system has only been abandoned during the last few months because the Department at Washington failed to supply the different Bureaus with sufficient men to operate it.").

141. COOLIDGE, *supra* note 52, at 300.

142. *See* Sin-Kiong Wong, *supra* note 118, at 139; Wong Kai Kah, *A Menace to America's Oriental Trade*, 178 N. AM. REV. 414, 421 (1904) (stating that the Chinese government was sending "a Prince of the royal blood [to] be at the opening of the fair").

143. ANNUAL REPORT OF THE COMMISSIONER-GENERAL OF IMMIGRATION 91 (1905).

planned trip greater than 48 hours off of the exhibition site.[144] Visitors who did not comply would be considered fugitives.[145]

Chinese Americans were also monitored as they went about their daily lives in the neighborhoods where they lived and worked. In the early 1900s, the Bureau of Immigration employed undercover agents, some of whom were Chinese, to monitor activities in Chinatowns.[146] Officials maintained detailed records about businesses and the people involved with those businesses for the purpose of verifying the status of individuals claiming to be merchants, who were permitted to come to and remain in the U.S. even when laborers were barred. For example, in Portland, the customs station made annual records of all businesses in Chinatown, including the name of each business, the type of business it was, names of associated partners, and amounts of partners' business investments.[147]

In the course of investigating individuals attempting to establish lawful status to enter the country, immigration officials sometimes came to the homes and businesses of Chinese Americans with demands for information.[148] Sociologist Mary Coolidge wrote in 1909 that these officials "invaded premises as if they were lairs of criminals, extracted information by intimidation, and if the information were refused, made an adverse report."[149]

Chinese Americans also were sometimes subjected to surprise inspections in the form of raids, during which officials descended upon Chinese neighborhoods and demanded to inspect the certificates of any people they encountered who appeared to be of Chinese descent. For example, in one notable incident in October 1903, local police and immigration officials raided Boston Chinatown on a Sunday evening without warrants and demanded to inspect the certificates of thousands of people living in the neighborhood.[150] In another incident, in Seattle in 1905, two Chinese inspectors blockaded the doors of a night school for boys and several Chinese stores.[151] They demanded to see everyone's certificates, arrested those who could not produce certificates, and searched the premises.[152]

Raids often involved warrantless and nonconsensual intrusions into homes and other private places.[153] The Chinese Chamber of Commerce claimed in 1913 that gardens, stores, homes, and the people who occupied them were ''raided repeatedly, sometimes as often as once a month, even though the Immigration Inspectors generally fail[ed] to find contraband Chinese employed or concealed there."[154] According to the Chinese-American League of

144. *See* Sin-Kiong Wong, *supra* note 118, at 139; NG, *supra* note 97, at 11 (explaining that upon arrival, Chinese visitors to the Exposition were treated as though they were laborers attempting to enter the country unlawfully in the United States, and some "were so much offended that they returned at once to China" and "others decided not to set out from China").

145. *See* Sin-Kiong Wong, *supra* note 118, at 139; NG, *supra* note 97, at 11 ("[T]hose who reached St. Louis were treated throughout the Exposition like suspected criminals.").

146. Chung, *supra* note 52, at 28.

147. MARIE ROSE WONG, *supra* note 95, at 99.

148. COOLIDGE, *supra* note 52, at 322.

149. *Id.* at 322–23.

150. *See* Sin-Kiong Wong, *supra* note 118, at 138; Foster, *supra* note 142, at 122.

151. COOLIDGE, *supra* note 52, at 323–24.

152. *Id.*

153. *Id.* at 299 (writing in 1909 that "it has been a common custom throughout the West for the Chinese inspectors when not otherwise busy to round up all of the Chinese in their district at one time and demand their certificates"); *see, e.g.*, *Raid on Chinatown*, BOS. EVENING TRANSCRIPT, Sept. 13, 1895, at 2.

154. Chinese Chamber of Commerce and Chinese-American League of Justice 1913 Report, *supra* note 90, at 3; *see Raid Chinese Gardens: Officers Make Descent on Them at San Bernardino and Arrest*

Justice, raids of "store and bed-chamber" disturbed Chinese Americans—including U.S.-born citizens—"at all hours of the day or night."[155] Sociologist Mary Coolidge wrote in 1909, "[a]ll Chinese are treated as suspects."[156]

Raids often led to the arrest and detention of many Chinese Americans. In the 1903 Boston raid, officials surrounded private homes, clubs, restaurants, and other places of congregation and took approximately 250 people into custody for failing to immediately produce their certificates.[157] According to reports after the fact, some individuals were not even asked to show their certificates until long after they had been taken into custody, and others were denied the opportunity during the raid even to go to a different room to retrieve their certificate from where they kept it stored.[158] Chinatown residents taken into custody were transported in overcrowded wagons and trucks to a federal building, where many were crammed into two rooms so crowded they were forced to stay standing, then held there overnight.[159] Following a raid by the Cleveland police in 1925, people rounded up by the police also were crammed into the holding cells at police headquarters, which, according to a local journalist, "was so crowded that many of the prisoners were forced to stand up all night."[160]

These raids were common occurrences in cities around the country over the course of decades. A newspaper article as early as 1900 reports that a Chinese merchant claimed the Los Angeles police forced entry into the merchant's home and ransacked it, "without right or authority or warrant of law of any kind."[161] As late as 1925, an article in *The Nation* reported that in September that year, police "swooped again and again" in the Chinatowns of "Cleveland, Chicago, Boston, Philadelphia, New York, and other cities."[162]

Chinese Americans complained that in carrying out raids, officials damaged real and personal property, searched through trunks and baggage without lawful orders, and verbally and physically abused their targets.[163] For example, in 1900, a Chinese merchant in Los Angeles filed suit against the police for damaging his property, alleging that during the night, they "with force and arms . . . and without probable or other cause therefor, searched and ransacked the said premises, broke open drawers and private receptacles and cabinets

Several Without Certificates, L.A. TIMES, Nov. 2, 1906, at 12 (reporting that immigration inspectors and a local police officer raided Chinese gardens in San Bernardino and captured nine Chinese people alleged to be in the country illegally); *see* COOLIDGE, *supra* note 52, at 324 (reporting that a "single small firm in Montana received nine such unexpected visits in two years").

155. Chinese-American League of Justice, A Few Facts About the Chinese 3 (1913), *in* CASEFILE NO. 53620/115, RECORDS OF THE IMMIGRATION AND NATURALIZATION SERVICE, SERIES A: SUBJECT CORRESPONDENCE FILES, PART 1: ASIAN IMMIGRATION AND EXCLUSION, 1906–1913 (ProQuest History Vault).

156. COOLIDGE, *supra* note 52, at 324.

157. *See* Sin-Kiong Wong, *supra* note 118, at 138; DELBER L. MCKEE, CHINESE EXCLUSION VERSUS THE OPEN DOOR POLICY, 1900–1906, at 68–69 (1977); John W. Foster, *The Chinese Boycott*, ATL. MONTHLY, Jan. 1906, at 122.

158. Foster, *supra* note 157, at 122–23.

159. Foster, *supra* note 157, at 123.

160. Russell T. Herrick, *The Police Run Wild in Cleveland*, 121 NATION 401, 401 (1925). Among these all-night standees were several old men. *Id.*

161. *Chief Elton Sued: Chinese Merchant Wants a Large Sum from Him Because the Chief Raided His Store*, L.A. TIMES, Dec. 16, 1900, at IV2.

162. *In Chinatown and in China*, 121 NATION 398 (1925).

163. Chinese Chamber of Commerce and Chinese-American League of Justice 1913 Report, *supra* note 90, at 3.

therein, disturbed and examined private papers and property of this plaintiff."[164] According to a 1913 statement from the Chinese Chamber of Commerce and Chinese-American League of Justice, raids of homes and businesses "frequently extend[ed] to the breaking open of doors and locks."[165]

In January 1904, a group of Chinese Americans complained to the Chinese foreign minister in Washington, D.C. of the "serious inconvenience and financial loss" suffered as a result of privacy-invasive enforcement practices, including having their businesses and homes searched without notice, often at night.[166] They claimed it was "a common experience that Chinese merchants are arrested, thrown into jail away from their homes, and are put to great expense in order to show that they are properly within the United States and belong to the exempt class."[167]

Chinese Americans also argued that relentless surveillance and intrusions by authorities drastically limited their economic opportunities. As early as 1890, Chinese Minster Tsui Kwo Yin wrote to Secretary of State James G. Blaine claiming that Chinese merchants had "encountered much harsher treatment and increasing embarrassment during the past year and a half from the customs authorities; and it has become much more difficult than formerly for them to carry on commerce in and with the United States."[168] Pleading for relief in a 1913 missive, the Chinese-American League of Justice wrote,

[Chinese Americans] who remain [in the United States] are so ceaselessly persecuted and discriminated against that they are making little money, and, with a few exceptions, are living under miserable conditions; all are daily and hourly subjected to many indignities; but a very few own property, and most of those who do are native-born Chinese . . . . In the name of common decency, let us give the few Chinese who now remain here a chance to live in peace and quiet, a chance to earn their living unmolested.[169]

Constant surveillance and the ever-present threat of raids also kept Chinese Americans living in fear during Chinese exclusion. Because surveillance, searches, and interrogation were often precursors to arrest, imprisonment, and deportation, it is difficult to state with precision the amount of fear that was attributable to the privacy invasions specifically. There is evidence, however, that fear stemmed both from the privacy invasions themselves as well as from deportation. In the words of Erika Lee, "Chinese immigrants and residents . . . often lived a shadowed existence, constantly anxious about their immigration status, about harassment by immigration officials and others, and about their personal safety in general."[170]

Surveillance caused constant fear and anxiety for Chinese Americans because they understood that regardless of their birth, loyalty, or citizenship status, they were presumptively deportable. As explained above, since the early 1890s, the law explicitly

164. L.A. TIMES, *supra* note 161.

165. Chinese Chamber of Commerce and Chinese-American League of Justice 1913 Report, *supra* note 90, at 3.

166. Petition from Chinese in Portland, Oregon to His Excellency, Sir Chon Tung Liang Chong, Envoy Extraordinary and Minister Plenipotentiary 3 (January 1904), *in* CASEFILE 52320/9, RECORDS OF THE IMMIGRATION AND NATURALIZATION SERVICE, SERIES A: SUBJECT CORRESPONDENCE FILES, PART 1: ASIAN IMMIGRATION AND EXCLUSION, 1906–1913.

167. *Id.* at 6.

168. H.R. DOC. NO. 51-1, pt. 1, at 213 (1890) (on file with author).

169. Chinese-American League of Justice, *supra* note 155, at 10.

170. LEE, *supra* note 32, at 229.

placed the burden on Chinese Americans to prove they were permitted to be in the U.S., and any person of Chinese descent found without a valid certificate was subject to arrest and possible expulsion from the country.[171] In the words of Gabriel Chin, "at any moment they could be called upon to prove citizenship or lawful entry on pain of deportation because their race itself was evidence of deportability."[172]

In a 1904 petition to the Secretary of the Department of Commerce and Labor, the Chinese Benevolent Association of Portland, Oregon described the fear caused by inspectors' practice of demanding to see Chinese Americans' certificates on the street, then arresting and incarcerating any unable to produce their certificates. According to the petition, such procedure caused Chinese laborers "to be in a state of dread and uncertainty," and "put[] Chinese residents of all classes in fear of being arrested at any moment without reference to the conditions or circumstances attending their cases, and without reference to the inconvenience or loss such arrest may occasion."[173]

2. *Interception and surveillance of Chinese Americans' private communications*

Officials enforcing Chinese exclusion also intercepted and examined the private communications of Chinese Americans. The Bureau of Immigration relied on the examination of mail to build and support fraud cases against Chinese attempting to circumvent Chinese exclusion policies. For example, in 1902, the Chief of the Chinese Bureau, James R. Dunn, reported to the Senate Committee on Immigration regarding the interception of "coaching papers" created to help Chinese laborers prepare false testimony at ports of entry.[174] Dunn presented the committee with photos and translations of twenty letters intercepted en route to or from Chinese people or Chinese Americans, which had been translated and analyzed by Bureau of Immigration officials.[175]

Immigration officials also read the mail of Chinese people awaiting processing or investigation after being detained by U.S. officials. For example, when Quock Yu, a man who had lived in Portland, Oregon, was detained upon disembarkation in the U.S. after spending time abroad on a stint as a seaman, officials intercepted some letters he handed over to a jailer to be mailed.[176] Quock's intercepted letters were sent to the Portland immigration office, where they were opened, translated, and examined.[177]

171. *See supra* notes 72, 89 and accompanying text.

172. Gabriel J. Chin, "*A Chinaman's Chance" in Court: Asian Pacific Americans and Racial Rules of Evidence*, 3 U.C. IRVINE L. REV. 965, 980 (2013).

173. Petition from the Jung Wah Company, known in English as the Chinese Benevolent Association of Portland, Oregon, to George B. Cortelyou, Secretary of the Department of Commerce and Labor (Jan. 29, 1904), *in* CASEFILE 52320/9, RECORDS OF THE IMMIGRATION AND NATURALIZATION SERVICE, SERIES A: SUBJECT CORRESPONDENCE FILES, PART 1: ASIAN IMMIGRATION AND EXCLUSION, 1906–1913.

174. S. REP. NO. 57–776, pt. 2, at 469–86 (1902).

175. *Id.* There is, unfortunately, no information available to determine what portion of the time such interceptions were or were not supported by warrants.

176. MARIE ROSE WONG, *supra* note 95, at 98.

177. *Id.*

3. *White witnesses needed to attest to claims of lawfulness in order to obtain a valid certificate of residence*

Under Chinese exclusion, the U.S. government credited white Americans as extensions of its surveillance apparatus. Chinese Americans were required to make themselves known to white people for the purpose of having white witnesses who could vouch for their lawfulness.

Under the Geary Act of 1892, when Chinese American laborers entitled to live in the U.S. were arrested for not having a certificate of residence, they were statutorily required to have "at least one credible white witness" to establish their lawful status.[178] The law was amended in 1893 to broaden this requirement to the testimony of "at least one credible witness other than Chinese."[179]

The 1893 amendments to the law further required Chinese and Chinese American merchants—who were explicitly exempt from the strictest exclusion provisions—to arrange supportive non-Chinese witnesses. Specifically, new provisions required that a merchant previously in the U.S. who was applying for reentry after travel abroad must "establish by the testimony of two credible witnesses other than Chinese the fact that he conducted such business . . . for at least one year before his departure from the United States, and that during such year he was not engaged in the performance of any manual labor, except such as was necessary in the conduct of his business as such merchant."[180] Implementing regulations adopted by the Bureau of Immigration went even further. For example, under the regulations in operation in July 1903, it was not sufficient for witnesses to testify merely that a merchant applicant was not engaged in manual labor except as necessary to conduct his business, as the statute called for. Rather, regulations required that "the testimony should show specifically the kind of work the Chinaman has done during the entire year, and, after detailing the character of such work, should say that he has not performed any other labor than that specifically set forth."[181]

Implementing regulations also stated that "to avoid unnecessary delay" in readmission after temporary trips abroad, merchants should submit in advance to officials at their intended port of departure the affidavits of "two credible witnesses, other than Chinese" containing additional details, including about the nature and amount of the merchant's ownership stake in a mercantile business. Officials were directed to issue their advance approval of the planned trip only if they were "satisfied of the truth of the statements" made by the non-Chinese witnesses "after a thorough investigation."[182]

Individual case files from the early 1900s confirm the importance of having white people familiar with and able to testify to the lawful status of merchants being investigated under Chinese exclusion laws. For example, when Moy Dong Hoy applied for pre-clearance to take a trip out of the country in 1910—some 38 years after his initial arrival in the U.S.—his case file included affidavits, completed forms, and letters vouching for his lawful status from multiple white people. A letter from the Chinese Inspector evaluating the file stated, "[h]e is identified by two white witness [sic] as having performed no manual labor during

178. Geary Act, ch. 60, § 6, 27 Stat. 25 (1892).

179. McCreary Act, ch. 14, § 6, 28 Stat. 7 (1893).

180. *Id.* at § 2.

181. U.S. DEPT. OF COMMERCE & LABOR, THE LAWS TREATY, AND REGULATIONS RELATING TO THE EXCLUSION OF CHINESE FROM THE UNITED STATES 19–20 (1903) (Rule 54 dated July 27th, 1903).

182. *Id.* at 41 (Rule 33 dated July 27, 1903).

the past year."[183] Accompanying Moy's application was a notarized affidavit signed by three white residents of Chicago containing a physical description and affixed with a photograph of Moy, attesting that "the foregoing are a true photograph and description of him," stating that he had been "a reputable resident Chinese merchant of [Chicago] and neither a huckster, peddler, laundryman or laborer of any kind."[184] The affidavit further described Moy's business and the value of his interest in it, and declared that he had not engaged in manual labor beyond what was necessary for his business as a merchant.[185]

If Chinese Americans were unable to produce a non-Chinese witness in support of their claims to lawful status, they could be deported, regardless of the existence or strength of other supporting evidence.[186] In one such case in the early days of Chinese exclusion, a judge ordered the deportation of a Chinese resident of New York despite being persuaded by testimony that the individual was in the country legally, but had been unable to procure a certificate of residence because "there was no person other than one of the Chinese race who knew and could truthfully swear that he was lawfully within the United States."[187] Upon appeal, the Court upheld the deportation order, stating, "[t]he provision which puts the burden of proof upon him of rebutting the presumption arising from his having no certificate, as well as the requirement of proof 'by at least one credible white witness . . . ,' is within the acknowledged power of every legislature to prescribe the evidence which shall be received, and the effect of that evidence, in the courts of its own government."[188]

To ensure the availability of legally credible witnesses in support of their lawful status, Chinese community leaders made a conscious effort to build relationships with white community leaders who could assist with identification applications.[189] This took effort because, as the Chinese Chamber of Commerce and Chinese-American League of Justice of Los Angeles explained in a 1913 report, many Chinese immigrants had limited contact with white Americans.[190] The report explained that a "small retail merchant in Chinatown . . . meets very few white persons, therefore he experiences the greatest difficulty in complying with the rule of the Immigration Bureau."[191] According to at least one account, as time progressed, it became more difficult for Chinese Americans to procure white witnesses to support their claims because immigration officials often treated those witnesses quite poorly.[192] As the Chinese Chamber of Commerce and Chinese-American League of

183. Moy Tung Hoy 1910 INS Casefile, *supra* note 101, at 34 (letter from Howard [illegible] to Dr. P. L. Prentis, Inspector in Charge, Chicago, Illinois, dated June 1, 1910).

184. *Id.* at 38 (supporting Moy Tung Hoy's application for re-admission into the United States, dated May 12, 1910).

185. *Id.*

186. As explained above, people of Chinese descent were presumptively deportable. *See supra* note 171 and accompanying text.

187. Fong Yue Ting v. United States, 149 U.S. 698, 703–04 (1893).

188. *Id.* at 729. In dissent, Justice Brewer seemed to acknowledge the difficulty to a Chinese person of becoming known well enough by a white witness to qualify for a certificate of residence, asking, "[a]nd how shall he obtain that [white] witness? No provision is made in the statute therefor." *Id.* at 742 (Brewer, J., dissenting).

189. CHUNG, *supra* note 52, at 22.

190. Chinese Chamber of Com. and Chinese-American League of Just. 1913 Report, *supra* note 90, at 4.

191. *Id.*

192. COOLIDGE, *supra* note 52, at 323 ("Even their white witnesses were put to so much inconvenience and so discourteously treated by the Chinese Bureau that the merchants began to find it difficult to procure them.").

Justice of Los Angeles explained it, immigration officials required witnesses to appear in support of Chinese residents at inflexible times, "regardless of the inconveniences to which it often subjects the white witnesses." As a result, the groups explained,

> Frequently a white man is disinclined to act as a witness for a Chinese, because he feels he cannot be present, in justice to his business, at the hour designated, or because of other inconveniences and discomfitures which he must experience, and for the further reason that he receives no witness fees, mileage, or other compensation, and is so severely cross-examined and browbeaten by the Immigration officials that he will seldom consent to act as a witness for a Chinese, if familiar with the ordeal that it involves, unless he entertains an unusual feeling of friendship for the applicant.[193]

This exacerbated the challenges of securing white witnesses to support Chinese Americans' claims to lawful status in the U.S., increasing the amount of effort required to ensure one had sufficient reliable witnesses they could call on.

D. *Pressure to craft public-facing images and personas to discourage or minimize legal scrutiny*

In a context of regular and expected close inspection, many Chinese Americans preemptively reduced their own privacy by intentionally crafting public-facing personas designed to satisfy white American expectations of assimilability or respectability. Carefully constructing a public-facing persona to satisfy anticipated inspection could help maximize the likelihood that an individual would be accepted as lawful and minimize negative scrutiny by authorities.

Chinese Americans crafted and exposed a public-facing visual appearance, especially as documented in posed photographs that would be included in their applications for certificates documenting their lawful status. As historian Anna Pegler-Gordon has explained, "the identity photograph was not only a form of identification but also a means of supporting an application through self-presentation."[194] Chinese Americans understood that cultivating a Western and wealthy appearance could give them a legal advantage under certain circumstances.[195] For example, presenting the right way could improve an individual's chances of approval for a sought-after certificate.[196] In 1905, when a U.S.-born man of Chinese descent named Lee Gum Yoke applied for the right to reenter the U.S. on the grounds that he was a citizen, the Chinese inspector evaluating his file, which included a studio portrait photograph in which Lee wore Western clothing, noted, "his appearance is decidedly in favor of his claims."[197]

In light of American officials' tendency to assume that all Chinese women were prostitutes, women often presented themselves in public-facing photographs to display

193. Chinese Chamber of Com. and Chinese-American League of Just. 1913 Report, *supra* note 90, at 6.

194. PEGLER-GORDON, *supra* note 122, at 48.

195. *See* Sherally Munshi, *"You Will See My Family Became So American": Race, Citizenship, and the Visual Archive, in* LAW AND THE VISUAL: REPRESENTATIONS, TECHNOLOGIES, AND CRITIQUE 161, 162–63 (2018) (discussing the "performance of national belonging" through the photographic medium as exemplified by Indian-American immigrant Dinshah Ghadiali in the 1930s).

196. *See* LEE, *supra* note 32, at 89 ("Chinese merchants were also expected to look like merchants . . . it is clear that officials believed that bona fide merchants' wealth would be apparent in their dress and appearance.").

197. *See* PEGLER-GORDON, *supra* note 122, at 53.

features indicating refinement and chastity.[198] According to Pegler-Gordon, photographs of women applying for certificates "presented women as accepting some of the immigration officials' American expectations of respectability," such as exposed feet that could be observed to be bound (a sign of wealth) or an exposed left hand bearing a wedding ring.[199] For example, in 1901 when Gee See, the wife of a Chinese merchant who lived in Los Angeles, applied for permission to reenter the U.S. after a trip abroad, her application included not only a full-length photograph of herself clearly displaying her feet, but also an X-ray of her feet to prove that they were bound.[200]

Being pressured to display parts of their bodies for inspection was of particular significance for Chinese women because it likely strained their cultural norms and customs of bodily privacy. Chinese scholar Lin Yutang, who in the 1930s encouraged Chinese people to wear Chinese clothes, argued that Western clothing served to reveal the body, but Chinese clothing was fashioned to conceal.[201] Some scholars have also suggested that in certain Chinese cultures, women's feet were considered sensual and generally were not revealed to men or displayed in portraits.[202]

Public-facing personas extended beyond photographs, to Chinese Americans' physical appearance generally and even the appearance and naming of their businesses. For example, one individual coming to the U.S. was instructed upon arrival at Angel Island in California to "wear . . . foreign clothes or new Chinese clothes in order to present a good appearance."[203] For a period of time, the Attorney General ruled that to prove their status as a merchant, an individual partner of a commercial business had to have their name appear as part of the firm name, even though the Chinese minister explained that this was not the normal business naming convention under Chinese customs.[204] The government's interpretation of the law was eventually broadened, following a Ninth Circuit ruling that the statutory language meant only "that the interest of the merchant must be real, and appear in the business and partnership articles in his own name, and not that his name must appear in the firm designation."[205] However, this broadening only occurred after several hundred people were excluded under the narrower interpretation of the law.[206]

198. *See* PEGLER-GORDON, *supra* note 122, at 57 ("[W]omen were consistently concerned with presenting themselves as respectable, traditional, and chaste.").

199. *See* PEGLER-GORDON, *supra* note 122, at 58–61; LEE, *supra* note 32, at 94 (explaining that "immigration officials expected bona fide merchant wives to possess fine clothing, a respectable manner, and, especially, bound feet, which were considered a mark of wealth and status in China.").

200. LEE, *supra* note 32, at 135.

201. *See* Wessie Ling, *Harmony and Concealment: How Chinese Women Fashioned the Qipao in 1930s China*, *in* MATERIAL WOMEN, 1750–1950: CONSUMER DESIRES AND COLLECTING PRACTICES 209, 219 (Maureen Daly Goggin & Beth Fowkes Tobin, eds., 2009).

202. *See* JAN STUART & EVELYN S. RAWSKI, WORSHIPING THE ANCESTORS: CHINESE COMMEMORATIVE PORTRAITS 172 (2001) (stating that "[t]raditionally a female's feet were considered sensual and shoes were, therefore, never pictured in decorous portraits."); PEGLER-GORDON, *supra* note 122, at 58.

203. PEGLER-GORDON, *supra* note 122, at 62.

204. COOLIDGE, *supra* note 52, at 294; *In re* Quan, 61 F. 395, 397 (N.D. Cal. 1894) (upholding opinion of the attorney general that "'[a] Chinese person does not bring himself within the statutory definition of 'merchant,' unless he conducts his business either in his own name, or in a firm name of which his own is a part.'").

205. Lee Kan v. United States, 62 F. 914, 918 (9th Cir. 1894).

206. COOLIDGE, *supra* note 52, at 294.

E. *Diminished privacy over the course of entire lifetimes*

The diminished privacy experienced by Chinese Americans under the Page Act and Chinese exclusion laws was not short-lived but rather existed for some 90 years, from 1875 to 1965. For Chinese immigrants in the U.S., there was no path to citizenship until Chinese exclusion came to an official end in 1943,[207] when China allied with the U.S. And even for Chinese Americans who were U.S. citizens, citizenship provided no respite from the diminished privacy under Chinese exclusion. Many provisions of Chinese exclusion applied not just to non-citizens but to all persons of Chinese descent, and many of the invasive practices associated with enforcement were carried out without solid legal authority.

For example, in the case of my great-grandfather Moy Dong Hoy, throughout the decades from the 1870s until his death in the 1940s, compliance with Chinese exclusion occupied a significant amount of his time and resources. This is evidenced by the large volume of Chinese exclusion files in which he appeared. When immigration officials sought files pertaining to Moy for an investigation regarding his status in 1939, the response to the request listed fifty-six file numbers, stated that only a few were enclosed, and explained, "They are being sent in three separate envelopes due to their bulk."[208] Those files represented tremendous amounts of time and money spent by Moy over six decades, during which he sat for multiple photographs, submitted to physical inspections whenever he traveled out of the country, complied with countless interviews and interrogations in support of both his own lawful status and that of his family and members of his community, carefully maintained business and financial records proving his employment as a merchant who did not do physical labor, ensured he was well-known among white people who could attest to the truth of his claims, and likely was subjected to raids of his home and businesses.[209]

Although my great-grandfather Moy immigrated to the U.S. in 1872, federal law prohibited him from becoming a naturalized citizen because of his race, and he thus was never assured of permanent lawful status from the time of his immigration for most of the rest of his life.[210] As a result, for most of his life, Moy had to maintain certificates attesting to his lawful status, apply for permission to reenter the U.S. every time he left the country for personal or professional reasons, assist his wife and children in ensuring their lawful status was sufficiently maintained and documented, and—in his role as a prominent community leader in Chicago Chinatown—assist his community in navigating Chinese exclusion.

The privacy-invasive mechanisms of Chinese exclusion became more severe over the first few decades of Chinese exclusion, sending the message to individuals subject to its provisions that no amount of cooperation was good enough. For example, under the treaty of 1894, Chinese laborers were permitted the right to travel through the U.S. to ports in Mexico, but by 1900, the privilege was significantly restricted[211]—to be permitted transit

207. Magnuson Act of 1943, *supra* note 58.

208. Moy Tung Hoy 1910 INS Casefile, *supra* note 101, at 3.

209. INS files (on file with author).

210. He died in 1948, five years after the 1943 repeal of the Chinese Exclusion Act, which created a path to naturalization for Chinese Americans for the first time since 1882. *See Rites Thursday for Dong Hoy Moy, 96, Chinatown Patriarch*, CHI. TRIB., Dec. 29, 1948, at 20. It was, in fact, my failure to find naturalization records for this ancestor, even though they were readily locatable for my white ancestors, that first sparked my interest in studying Chinese exclusion.

211. COOLIDGE, *supra* note 52, at 287.

through the country, Chinese laborers were required to show a valid ticket across the territory and to make a $500 bond guaranteeing their departure.[212] By 1905 the right was encumbered even further, so that all Chinese persons (not just laborers, but merchants, scholars, and other members of exempt classes as well) were subject to restrictions, including a requirement to provide any proof that officials might demand demonstrating that the transit was in good faith, up to and including additional photographs and examinations by the Bertillon system.[213]

III. NO LEGAL RECOURSE FOR CHINESE AMERICANS UNDER THE FOURTH AMENDMENT

Chinese Americans suffering repeated and harmful privacy invasions at the hands of the U.S. government under Chinese exclusion found no legal recourse under the Fourth Amendment. A full-scale analysis of the constitutionality of each of the privacy-invasive practices associated with Chinese exclusion enforcement under the Supreme Court's interpretation of the Fourth Amendment at the time is beyond the scope of this Article. Chinese exclusion involved too many fact-specific enforcement practices to analyze here, and lasted for several decades, during which Fourth Amendment standards changed significantly.

This Article does, however, offer a brief discussion of this topic below. First, it explains the general inapplicability of the Fourth Amendment in the civil context, including immigration law. It then explores officials' correspondence regarding two types of searches they conducted under Chinese exclusion, including their discussion of the potential Fourth Amendment questions involved. Officials exchanged significant correspondence regarding their inspections of businesses and interception of mail, and regarding both of these types of searches, left questions about Fourth Amendment applicability unresolved,

A. *General inapplicability of Fourth Amendment in the civil context*

To offer the briefest summary of how the privacy-invasive enforcement practices of Chinese exclusion would fare under constitutional scrutiny at the time: it is possible that courts would not have found any of the practices detailed in this Article to violate the Fourth Amendment prohibition against unreasonable searches, so long as those practices were authorized by federal law.

The primary reason for this is that during the decades of Chinese exclusion, U.S. courts generally only recognized Fourth Amendment protections in criminal actions and denied its applicability in civil actions such as immigration.[214] Relatedly, in one 1893 case, Chinese American Fong Yue Ting and two other individuals challenged Chinese Exclusion Act proceedings against them as violations of Constitutional due process rights.[215] In *Fong Yue*

212. COOLIDGE, *supra* note 52, at 287.

213. COOLIDGE, *supra* note 52, at 287–88.

214. *See* Michael Kagan, *Immigration Law's Looming Fourth Amendment Problem*, 104 GEO. L. J. 125, 129 (2015) ("From the late nineteenth century through the twentieth century, the Supreme Court generally regarded immigration enforcement as a civil matter and as a matter of national sovereignty. Over time, the result of this approach was that the government gained the power to arrest and detain noncitizens on immigration grounds with little constitutional restraint.").

215. Fong Yue Ting v. United States, 149 U.S. 698 (1893).

Ting, the Court rejected the Constitutional claim, declaring that an immigration proceeding determining whether an alien was entitled to remain in the U.S. or should be deported was "in no proper sense a trial and sentence for a crime or offense."[216] The court reasoned that an individual deported after such a proceeding "has not, therefore, been deprived of life, liberty, or property without due process of law, and the provisions of the Constitution securing the right of trial by jury and prohibiting unreasonable searches and seizures and cruel and unusual punishments have no application."[217]

The general refusal to extend Fourth Amendment protections to civil proceedings, including immigration proceedings, derived from the recognition that the Fourth Amendment was historically intertwined with the Fifth Amendment prohibition against "compell[ing a person] in any *criminal* case to be a witness against himself."[218] Not until 1967—after Chinese exclusion ended—would the Court change its view on this point and recognize Fourth Amendment applicability in civil proceedings in *Camara v. Municipal Court*.[219]

It is difficult to know for sure what courts would have done at the time, however, because it appears that no Fourth Amendment cases were even resolved regarding Chinese subjects under Chinese exclusion. The case that came closest was brought by Charley Hee, a Chinese American man arrested in Boston during the spate of raids carried out across the country in September 1925.[220] After his arrest, Hee was held for extended questioning during which he claimed to have been frightened, intimidated, and confused, and ultimately gave information that immigration officials relied upon in ordering his deportation in February 1926.[221] Hee appealed his case to the District Court that same month, was denied, then appealed again to the First Circuit Court of Appeals, arguing that his testimony should not have been relied upon in the deportation proceeding because it was obtained in violation of the Fourth Amendment. The First Circuit affirmed the decision below in May 1927 on grounds that the evidentiary question was beyond the scope of its review but stated, "That

216. *Id.* at 730.

217. *Id.*

218. U.S. CONST. amend. V (emphasis added); *see* Boyd v. United States, 116 U.S. 616 (1886) ("[T]he 'unreasonable searches and seizures' condemned in the [F]ourth [A]mendment are almost always made for the purpose of compelling a man to give evidence against himself, which, in criminal cases, is condemned in the [F]ifth [A]mendment, and compelling a man 'in a criminal case to be a witness against himself,' which is condemned in the [F]ifth [A]mendment, throws light on the question as to what is an "unreasonable search and seizure" within the meaning of the [F]ourth [A]mendment."); Frank v. Maryland, 359 U.S. 360, 362–65 (1959) (in case upholding conviction of an individual under Baltimore City Code for refusing to permit warrantless inspection of his basement by a health inspector, discussing at length the relationship between the protection against self-incrimination and the protection against unreasonable searches).

219. Camara v. Mun. Ct. of City and Cnty. of San Francisco, 387 U.S. 523, 534 (1967) ("In summary, we hold that administrative searches of the kind at issue here are significant intrusions upon the interests protected by the Fourth Amendment, that such searches when authorized and conducted without a warrant procedure lack the traditional safeguards which the Fourth Amendment guarantees to the individual, and that the reasons put forth in *Frank v. Maryland* and in other cases for upholding these warrantless searches are insufficient to justify so substantial a weakening of the Fourth Amendment's protections.").

220. Charley Hee v. United States, 19 F.2d 335 (1st Cir. 1927), *rev'd sub nom*. Charley Hee v. U.S., 276 U.S. 638 (1928); *see* discussion of the September 1925 raids *supra* note 162 and accompanying text.

221. Charley Hee v. United States, 19 F.2d 335 (1st Cir. 1927), *rev'd sub nom*. Charley Hee v. U.S., 276 U.S. 638 (1928).

the statement was obtained by entirely unjustifiable methods is too clear for discussion."[222] Hee then appealed again to the Supreme Court.[223]

The government appeared unwilling to press the question of whether evidence collected in warrantless search or seizure without explicit statutory authorization could be relied upon in a deportation proceeding, however. Hee's case was never heard in the Supreme Court. Instead, in February of 1928, Hee's deportation order was reversed and remanded, per stipulation of counsel, on motion of the United States Solicitor General.[224]

B. *Unresolved constitutionality of warrantless inspections of businesses and workers*

As discussed above,[225] immigration officials frequently raided homes and businesses attempting to find Chinese people who were in the country unlawfully so that they could be arrested and deported. According to numerous accounts, these raids were conducted in many U.S. cities for decades, without warrants or other lawful order. Officials discussed, but never resolved, the constitutionality of these raids in correspondence from 1925–1926.

In 1925, Immigrant Inspector Patrick J. Farrelly filed a report with the San Francisco Commissioner of Immigration about his visit to a Chinese-owned business, where he had gone on information that unlawful Chinese laborers were working at the business.[226] According to Farrelly's report, when he walked into the kitchen and began questioning a worker named Henry Ows, who stated that he was both the manager and a U.S. citizen, told Farrelly that he could not speak to any of the workers or look around without a search warrant.[227] Farrelly reported that Ows told him he was acting on instructions from the Chinese Six Companies of San Francisco, and that if Farrelly "spoke to that Chinaman he would resist me by force."[228] Farrelly then communicated with the Inspector in Charge of the City Office, who instructed him to leave the premises so that the matter could be resolved before proceeding.[229]

Two days after Farrelly's report, someone in the San Francisco Office of the Commissioner forwarded a copy to the U.S. Attorney's Office in San Francisco seeking advice on how to proceed.[230] Inspectors were accustomed to entering businesses to question individuals as to their right to be in the country,[231] and thus the office was concerned about

222. Charley Hee v. United States, 19 F.2d 335, 336 (1st Cir. 1927).

223. Charley Hee v. United States, 276 U.S. 638 (1928).

224. *Id.*

225. *Supra* Subpart II.C.1.

226. Letter from Patrick J. Farrelly, Immigr. Inspector, to Comm'r of Immigr., Angel Island Station, Port of S.F. (Feb. 24, 1925), *in* CASEFILE 53244/1E, REC. OF THE IMMIGR. AND NATURALIZATION SERV., SERIES A: SUBJECT CORRESPONDENCE FILES, PART 1: ASIAN IMMIGR. AND EXCLUSION, 1898–1941 (ProQuest History Vault).

227. *Id.*

228. *Id.*

229. *Id.*

230. Letter from Comm'r M to U.S. Att'y Gen., Post Off. Bldg., S.F., Cal. (Feb. 26, 1925), *in* CASEFILE 53244/1E, REC. OF THE IMMIGR. AND NATURALIZATION SERV., SERIES A: SUBJECT CORRESPONDENCE FILES, PART 1: SUPPLEMENT: ASIAN IMMIGR. AND EXCLUSION, 1898–1941 (ProQuest History Vault) (the signature is not clear but appears to be a single "M").

231. *Id.* (explaining, "it is necessary to question the alien himself . . . as he is in possession of the facts. The burden is on Chinese to show the right to be in the country.").

"a concerted movement on the part of the managers of Chinese firms to require [their] officers to produce search warrants."[232] The author of the letter acknowledged the government's lack of clear statutory authority to search Chinese businesses or question their workers absent a warrant. Although the Immigration Act of 1917 authorized immigration officers "to board and search for aliens any vessel, railway car, or vehicle in which they believe aliens are being brought into the United States," the letter observed, "[i]t does not provide for searches otherwise."[233] The Commissioner of Immigration could not simply obtain search warrants for the searches his inspectors were accustomed to doing, because "it seems to be practically impossible to secure affidavits from informers as the basis for the application for a warrant."[234]

Because warrantless raids were a widespread practice of immigration authorities under Chinese exclusion,[235] the U.S. Attorney's office probably did not relish the idea of acknowledging the practice or weighing in on its constitutionality. Perhaps for this reason, it simply did not respond to the inquiry as to warrants.[236]

Hearing no response, the San Francisco immigration office grew more anxious for direction, so when Robert Carl White, a representative of the Department of Labor, came out to San Francisco a month later, the question was raised with him.[237] White reportedly instructed the San Francisco office to write directly to the central office of the Bureau of Immigration in Washington, D.C.[238] A week later, Acting Commissioner Edward L. Haff did just that, "with the purpose of learning the views of the Department and Bureau as to meeting the situation."[239]

Like the U.S. Attorney's Office, the Bureau of Immigration and the broader Department of Labor met the search warrant question with silence, despite repeated inquiries. When the Bureau did not respond to the April letter, Commissioner Haff sent follow-up letters in August and the following January, stating each time, "[r]eference is had to my letter of April 7, 1925 . . . . As no reply has been received to date the matter is again brought to the Bureau's attention."[240] In March 1926, Commissioner John D. Nagle from the San Francisco office also sent a telegram calling attention to the matter.[241] Commissioner

232. *Id.*

233. *Id.*

234. *Id.*

235. *See supra* Subpart II.C.1.

236. There is no response in the archived file from the U.S. Attorney's Office. *See* CASEFILE 53244/1E, REC. OF THE IMMIGR. AND NATURALIZATION SERV., SERIES A: SUBJECT CORRESPONDENCE FILES, PART 1: SUPPLEMENT: ASIAN IMMIGR. AND EXCLUSION, 1898–1941 (ProQuest History Vault).

237. Letter from Acting Comm'r Edward L. Haff to the Comm'r-Gen. of Immigr. (Apr. 7, 1925), *in* CASEFILE 53244/1E, REC. OF THE IMMIGR. AND NATURALIZATION SERV., SERIES A: SUBJECT CORRESPONDENCE FILES, PART 1: ASIAN IMMIGR. AND EXCLUSION, 1898–1941 (ProQuest History Vault).

238. *Id.*

239. *Id.*

240. Letter from Acting Comm'r Edward L. Haff to Comm'r Gen. of Immigr. (Aug. 26, 1925), *in* CASEFILE 53244/1E, REC. OF THE IMMIGR. AND NATURALIZATION SERV., SERIES A: SUBJECT CORRESPONDENCE FILES, PART 1: ASIAN IMMIGR. AND EXCLUSION, 1898–1941 (ProQuest History Vault); Letter from Acting Comm'r Edward L. Haff to Comm'r Gen. of Immigr. (Jan. 4, 1926), *in* CASEFILE 53244/1E, REC. OF THE IMMIGR. AND NATURALIZATION SERV., SERIES A: SUBJECT CORRESPONDENCE FILES, PART 1: ASIAN IMMIGR. AND EXCLUSION, 1898–1941 (ProQuest History Vault).

241. Telegram from Comm'r John D. Nagle to Immigr. Bureau (Mar. 15, 1926), *in* CASEFILE 53244/1E, REC. OF THE IMMIGR. AND NATURALIZATION SERV., SERIES A: SUBJECT CORRESPONDENCE FILES, PART 1: ASIAN IMMIGR. AND EXCLUSION, 1898–1941 (ProQuest History Vault).

Haff wrote again in April 1926, listing the dates of all previous communications, reiterating, "but to date no reply has been received."[242]

Meanwhile, immigration raids continued in Chinatowns across the country, including a cluster in September 1925 carried out in several cities across the country.[243] An article in *The Nation* magazine about the flurry of raids quoted the U.S. Attorney for the Southern District of New York as saying, "I have put the federal Government in Chinatown and I am going to keep it there."[244]

The remarkably lengthy silence of the Attorney General, Bureau of Immigration, and Department of Labor suggests that they intentionally avoided the warrant question. The repeated inquiries on the topic from the San Francisco office to the Department of Labor, though left unanswered, were not lost—they were duly filed upon receipt, referenced internally,[245] and ultimately preserved in department archives.[246] Another possible explanation for D.C.'s apparent stonewalling of the San Francisco office could be that authorities were simply overwhelmed by other matters. San Francisco's search warrant inquiry came during a time of relatively high activity for U.S. immigration enforcement. Major changes were underway following the Immigration Act of 1924, which restricted all immigration into the U.S. to 150,000 per year based on quotas allocated to different countries of origin.[247]

As the San Francisco office awaited instructions regarding the necessity of search warrants, it directed its agents to hold off on entering Chinese-owned business places for purposes other than to carry out pre-investigations of Chinese Americans lawfully residing in the U.S. who were seeking advance authorization to leave the country and later return. Commissioner John D. Nagle of San Francisco lamented in September 1925 that his office's activities directed at business places were "completely forestalled by the attitude of the Chinese merchants, which has made Chinatown, San Francisco, a haven for Chinese who have entered the United States surreptitiously, the Department ruling on this question not having been received altho submitted to the Bureau some few months past."[248] In April 1926, Commissioner Haff said the office was in possession of dozens of anonymous letters "indicating that about fifty-four Chinese are here unlawfully at certain addresses mentioned

242. Memo to Comm'r-General of Immigr. from Acting Comm'r Edwin L. Haff (Apr. 26, 1926), *in* CASEFILE 53244/1E, REC. OF THE IMMIGR. AND NATURALIZATION SERV., SERIES A: SUBJECT CORRESPONDENCE FILES, PART 1: ASIAN IMMIGR. AND EXCLUSION, 1898–1941 (ProQuest History Vault).

243. An article published in *The Nation* in October 1925 referenced September 1925 raids in "Cleveland, Chicago, Boston, Philadelphia, New York, and other cities," indicating that in the year when San Francisco authorities began meeting resistance from Chinese businesses insisting on search warrants, raids were in widespread use. *In Chinatown and in China*, *supra* note 162.

244. *In Chinatown and in China*, *supra* note 162. (quoting Emory R. Buckner).

245. *See* Memorandum from W. W. Husband, Second Assistant Sec'y to the Solic. (Apr. 19, 1926), *in* CASEFILE 53244/1E, REC. OF THE IMMIGR. AND NATURALIZATION SERV., SERIES A: SUBJECT CORRESPONDENCE FILES, PART 1: ASIAN IMMIGR. AND EXCLUSION, 1898–1941 (ProQuest History Vault).

246. *See* CASEFILE 53244/1E, REC. OF THE IMMIGR. AND NATURALIZATION SERV., SERIES A: SUBJECT CORRESPONDENCE FILES, PART 1: ASIAN IMMIGR. AND EXCLUSION, 1898–1941 (ProQuest History Vault).

247. For discussion of the Immigr. Act of 1924, *see* Mae M. Ngai, *The Architecture of Race in American Immigration Law: A Reexamination of the Immigration Act of 1924*, 86 J. AM. HIST. 67 (1999).

248. Letter from Comm'r John D. Nagle to Comm'r-Gen. of Immigr. Harry Hull (Sept. 4, 1925), *in* CASEFILE 55476/519, REC. OF THE IMMIGR. AND NATURALIZATION SERV., SERIES A: SUBJECT CORRESPONDENCE FILES, PART 1: ASIAN IMMIGR. AND EXCLUSION, 1898–1941 (ProQuest History Vault).

therein."[249] Having not received guidance on the warrant question, however, he stated, "we shall not proceed further without Bureau and Department sanction."[250]

Finally, in April 1926—more than a year after the Department was first asked for Fourth Amendment guidance regarding immigration officials wishing to enter and search Chinese-owned businesses—Second Assistant Secretary of Labor W. W. Husband put the question to the Solicitor of Labor in a two-page memo.[251] Describing immigration officials' practice of entering stores, laundries, and other places of business "to locate some specific Chinese regarding whom information . . . has been received questioning their right to reside in the United States," Husband acknowledged, "[t]hese practices have been going on for years," and then referred to Chinese American business owners' demand for search warrants as a "situation developing in that city."[252] He explained, "[t]he San Francisco office has referred to this question several times since last April, so it seems that definite instructions should be promulgated without much further delay."[253]

Husband escalated the Constitutional question to the Solicitor of Labor, this time suggesting his own view that the Fourth Amendment did not apply at all to Bureau officials' searches of businesses, owing to the civil/criminal distinction, and to statutory provisions requiring Chinese Americans to produce certificates of residence upon demand.[254] Husband theorized that perhaps statutory provisions requiring Chinese Americans to produce their certificates to authorities upon demand "would seem to imply a right to enter peacefully upon the premises where Chinese are employed, to interrogate them regarding any identifying papers in their possession, or whether they have had any such papers."[255]

Having offered his legal theory permitting warrantless searches of businesses, Husband again sought a clear and direct answer to the question one way or another from the Solicitor of Labor:

An opinion is requested as to whether the practice referred to of visiting such premises must give way to requiring that a search warrant be obtained in each instance before an immigrant inspector can enter Chinese premises for the purpose stated in the foregoing. In other words, does the Fourth Amendment to the Constitution prohibit such visits to and searches of Chinese premises?[256]

The archives of the Immigration Bureau contain no substantive response to Husband's detailed memo. The only hint as to what may have happened to Husband's memo is in a memo the following month from Assistant Secretary Robert Carl White to the Commissioner General of Immigration, blaming an administrative mishap for the Solicitor's failure to respond to Husband's memo:

249. Memo to Comm'r-Gen. of Immigr. from Acting Comm'r Edwin L. Haff (Apr. 26, 1926), *supra* note 242.

250. *Id.*

251. Memorandum from W. W. Husband, Second Assistant Sec'y to the Solic. (Apr. 19, 1926), *supra* note 245.

252. *Id.*

253. *Id.*

254. Memorandum from W. W. Husband, Second Assistant Sec'y, to the Solic. (Apr. 19, 1926), *supra* note 245. For brief discussion of the civil/criminal distinction under the Fourth Amendment, *see supra* notes 214–219 and accompanying text.

255. Memorandum from W. W. Husband, Second Assistant Sec'y, to the Solic. (Apr. 19, 1926), *supra* note 245.

256. *Id.*

It sometimes happens that memorandums addressed to the Solicitor are placed in active files and before an opinion can be rendered in the Solicitor's office the file is withdrawn therefrom and the memorandum becomes buried under a mass of correspondence and does not receive attention. A case in point is that of [Husband's memo], which bears date of April 19, 1926.[257]

It could be that the Solicitor, like several others before him, did not want to be on the record weighing in on this question. Although the civil/criminal distinction might have given the benefit of the doubt to the Bureau of Immigration in any challenge brought to a warrantless search of a business under the Chinese Exclusion Act, there are reasons to believe the question was not so clear.

First, cases that had declined to apply Fourth Amendment scrutiny to warrantless searches in the civil enforcement context had generally involved searches that stood on some statutory or regulatory authorization.[258] Furthermore, the Supreme Court had recently indicated a receptiveness to applying Fourth Amendment scrutiny to civil searches conducted outside of statutory authorization when, in *Bilokumsky v. Tod*, a case decided in 1923 involving the deportation of an immigrant, it stated, "[i]t may be assumed that evidence obtained . . . through an illegal search and seizure cannot be made the basis of a finding in deportation proceedings."[259] But as the San Francisco office itself noted in its report regarding Mr. Ows' refusal to permit Inspector Farrelly to question workers in the non-public areas of his business without a warrant, the Immigration Act of 1917 did not explicitly authorize warrantless inspection of private businesses.[260]

Second, as mentioned above, while officials exchanged correspondence discussing this Fourth Amendment question, there was a pending Fourth Amendment case brought by Charley Hee, a Chinese American man arrested in Boston during the spate of raids carried out across the country in September 1925.[261] The fact that Hee's case advanced all the way to the Supreme Court indicated at least a legitimate question as to the applicability of the Fourth Amendment to law enforcement practices carried out in the service of Chinese exclusion.

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257. Memorandum from Robe Carl White, Assistant Sec'y, Dep't of Lab., to the Comm'r Gen. of Immigr. (May 8, 1926), *in* CASEFILE 53244/1E, REC. OF THE IMMIGR. AND NATURALIZATION SERV., SERIES A: SUBJECT CORRESPONDENCE FILES, PART 1: ASIAN IMMIGR. AND EXCLUSION, 1898–1941 (ProQuest History Vault). White continued, "[t]o prevent occurrences of this kind, it is suggested that memorandums be prepared in duplicate, the original to be removed from the file and kept in the Solicitor's office, and the copy to remain in the file." *Id.*

258. Fong Yue Ting v. United States, 149 U.S. 698, 729 (1893) (rejecting due process challenge to deportation of Chinese persons found without certificates of residence as required by law, notwithstanding their potential eligibility for such certificates, stating, "The provision which puts the burden of proof upon him of rebutting the presumption arising from his having no certificate, as well as the requirement of proof 'by at least one credible white witness that he was a resident of the United States at the time of the passage of this act,' is within the acknowledged power of every legislature to prescribe the evidence which shall be received, and the effect of that evidence, in the courts of its own government."); *see* Oceanic Steam Navigation Co. v. Stranahan, 214 U.S. 320, 339 (1909) (saying of the Alien Act, a U.S. immigration law, "over no conceivable subject is the legislative power of Congress more complete than it is over that with which the act we are now considering deals"); U.S. *ex rel.* Knauff v. Shaughnessy, 338 U.S. 537, 544 (1950) ("[w]hatever the procedure authorized by Congress is, it is due process as far as an alien denied entry is concerned.").

259. United States ex. rel, Bilokumsky v. Tod, 263 U.S. 149, 155 (1923).

260. *See supra* note 233 and accompanying text.

261. *See supra* notes 220–224 and accompanying text.

Whatever the reason for the government's repeated refusal to opine on whether search warrants were required to enter nonpublic areas of Chinese-owned businesses and question individuals who worked there, Assistant Secretary White's memo claiming an administrative mishap seems to constitute the final preserved communication regarding the matter in available archives from the Department of Labor. Although the file containing this memo and every previous communication referenced above contains a variety of other Bureau of Immigration communications through the end of October 1926, six months after Husband's memo, there is no later mention in the file of the warrant question.[262]

C. *Inspections of private mail*

As discussed above in Subpart II.C.2, immigration officials relied on intercepted mail to build cases against Chinese Americans and Chinese people in the U.S. There is insufficient public information to determine how widespread this practice was or to what extent it was supported by search warrants. However, there is some evidence in archived correspondence that officials considered the permissibility of interception of mail and, at least in some cases, declined to intercept mail out of respect for the Fourth Amendment.

Between June 1904 and the end of 1906, Oscar S. Straus, the Secretary of Commerce & Labor (the parent agency of the Bureau of Immigration), sought assistance for his department in inspecting registered mail.[263] Immigration officials observed registered mail being sent from Chinese people in Mexico to addresses in the U.S., and they suspected that some of this mail contained fraudulent registration certificates.[264]

Secretary Straus wrote to the Postmaster General to ask if immigration inspectors could enlist the help of the Post Office's Division of Dead Letters in inspecting intercepted mail.[265] The Division of Dead Letters was authorized to open and examine mail deemed undeliverable for the purpose of attempting to identify a party to whom it could be sent,[266] so Secretary Straus wondered if perhaps mail suspected to contain fraudulent certificates

262. *See generally* CASEFILE 53244/1E, REC. OF THE IMMIGR. AND NATURALIZATION SERV., SERIES A: SUBJECT CORRESPONDENCE FILES, PART 1: ASIAN IMMIGR. AND EXCLUSION, 1898–1941 (ProQuest History Vault).

263. Letters prior to 1907 are not available in archived correspondence on the matter, but are discussed in later correspondence. *See* Letter from Oscar S. Straus, Sec'y, Dep't of Com. & Lab., to George B. Cortelyou, Postmaster-Gen. (Jan. 12, 1907), *in* CASEFILE 52516/7, REC. OF THE IMMIGR. AND NATURALIZATION SERV., SERIES A: SUBJECT CORRESPONDENCE FILES, PART 1: ASIAN IMMIGR. AND EXCLUSION, 1906–1913 (ProQuest History Vault); Letter from Acting Postmaster-Gen. Frank Harris Hitchcock to Oscar S. Straus, Sec'y, Dep't of Com. & Lab. (July 31, 1907), *in* CASEFILE 52516/7, REC. OF THE IMMIGR. AND NATURALIZATION SERV., SERIES A: SUBJECT CORRESPONDENCE FILES, PART 1: ASIAN IMMIGR. AND EXCLUSION, 1906–1913 (ProQuest History Vault).

264. Letter from Oscar S. Straus, Sec'y, Dep't of Com. & Lab., to George B. Cortelyou, Postmaster-Gen. (Jan. 12, 1907), *supra* note 263; Letter from Acting Postmaster-Gen. Frank Harris Hitchcock to Oscar S. Straus, Sec'y, Dep't of Com. & Lab. (July 31, 1907), *supra* note 263.

265. *See* Letter from Acting Postmaster-Gen. Frank Harris Hitchcock to Oscar S. Straus, Sec'y, Dep't of Com. & Lab. (July 31, 1907), *supra* note 263.

266. *See* U.S. POST OFF. DEPT., THE POSTAL LAWS AND REGULATIONS OF THE UNITED STATES OF AMERICA 49 (1902) (Title I, Chapter 4, Sec. 52) (setting forth procedures by which letters or packages may be opened by the Dead-Letter Office "to obtain the necessary information to make proper disposition thereof").

could be intercepted and turned over to the Division of Dead Letters, which then could open and inspect the mail.[267]

In the alternative, Straus wondered if mail could be intercepted for inspection by Customs agents.[268] Like the Dead Letters Office, the Customs Service was authorized to inspect mail under certain circumstances, namely when postmasters had "reason to believe that letters, sealed packages, or packages the wrappers of which can not be removed without destroying them, received in the mails from foreign countries, contain articles liable to customs duties."[269]

The Postmaster-General informed the Secretary that his department could not assist with the matter.[270] He encouraged Secretary Straus to take the matter up with the Secretary of the Treasury because Customs was part of the Treasury Department.[271] Secretary Straus did so, and the Secretary of the Treasury passed the inquiry back to the office of the Postmaster General, which then referred it to the Assistant Attorney General for the Post Office Department and asked for an opinion on both questions—whether mail suspected to contain fraudulent certificates could be inspected by the Division of Dead Letters or by the Customs Service.[272]

Assistant Attorney General for the Post Office Russell P. Goodwin prepared an opinion as requested and sent a copy to Secretary Straus.[273] In the opinion, Goodwin invoked the landmark 1877 case *Ex parte Jackson*,[274] in which the Supreme Court recognized a Fourth Amendment interest in mail, and quoted it at length, including this portion:

Letters and sealed packages of this kind in the mail are as fully guarded from examination and inspection, except as to their outward form and weight, as if they were retained by the parties forwarding them in their own domiciles. The constitutional guaranty of the right of the people to be secure in their papers against unreasonable searches and seizures extends to their papers, thus closed against inspection, wherever they may be. Whilst in the mail, they can only be opened and examined under like warrant, issued upon similar oath or affirmation, particularly describing the thing to be seized, as is required when papers are subjected to search in one's own household. No law of Congress can place in the

267. *See* Letter from Acting Postmaster-Gen. Frank Harris Hitchcock to Oscar S. Straus, Sec'y, Dep't of Com. & Lab. (July 31, 1907), *supra* note 263.

268. *See id.*

269. *See* U.S. POST OFF. DEPT., *supra* note 266, at 338 (Title III, Chapter 8, Sec. 698) (setting forth procedures by which letters or packages may be inspected by Customs officers).

270. This letter is not available in archived correspondence on the matter, but its existence is implied in later correspondence. *See* Letter from Oscar S. Straus, Sec'y, Dep't of Com. & Lab., to George B. Cortelyou, Postmaster-Gen. (Jan. 12, 1907), *supra* note 263.

271. This letter is not available in archived correspondence on the matter, but its existence is implied in later correspondence. *See* Letter from Oscar S. Straus, Sec'y, Dep't of Com. & Lab., to George B. Cortelyou, Postmaster-Gen. (Jan. 12, 1907), *supra* note 263.

272. *See* Letter from Acting Postmaster-Gen. Frank Harris Hitchcock to Oscar S. Straus, Sec'y, Dep't of Com. & Lab. (July 31, 1907), *supra* note 263.

273. Letter from R. P. Goodwin, Assistant Att'y Gen., to Oscar S. Straus, Sec'y, Dep't of Com. & Lab. (July 15, 1907), *in* CASEFILE 52516/7, REC. OF THE IMMIGR. AND NATURALIZATION SERV., SERIES A: SUBJECT CORRESPONDENCE FILES, PART 1: ASIAN IMMIGR. AND EXCLUSION, 1906–1913 (ProQuest History Vault); 4 U.S. GOV'T PRINTING OFF., OFFICIAL OPINIONS OF THE ASSISTANT ATTORNEYS-GEN. FOR THE POST-OFFICE DEP'T, 1905–1908, at 563–64 (1908).

274. *Ex parte* Jackson, 96 U.S. 727 (1877).

hands of officials connected with the postal service any authority to invade the secrecy of letters and such sealed packages in the mail.[275]

With the understanding that the letters suspected of containing fraudulent documentation were sealed, Goodwin presumed that "the action proposed to be taken in regard to them must be based upon mere suspicion," as opposed to probable cause.[276] Noting that there was no authorization to send those letters to the Dead-Letter Office and that the reason immigration officials would send the letters there was only to bring them within the reach of laws permitting postal service employees to open them, he declared, "[b]ut it is clear that if the sending of such letters to the Dead-Letter Office be unlawful, then their opening there can not be lawful. What can not be done directly may not be done by indirection."[277]

Goodwin's response was similar with respect to the Customs question. He pointed out, "[f]raudulent naturalization certificates are not by law made subject to customs duties or to seizure, and no regulation providing for their treatment in the same manner as articles liable to customs duties may be treated would be valid."[278] Therefore, the statute permitting Customs inspections of mail in certain circumstances could not be relied upon to inspect envelopes suspected to contain fraudulent certificates.[279]

Goodwin concluded his opinion by declining to offer any further suggestions as to how the Post-Office Department might be able to help immigration authorities wishing to inspect mail. His closing line suggested a hint of disapproval at the Department of Commerce and Labor's interest in loopholes to engage in warrantless inspection of private mail, stating, "[w]hile it should be the aim of the officers of this Department to aid all persons in the proper enforcement of the law, they should themselves exercise care not to violate any of its provisions."[280] After Goodwin's opinion was received and acknowledged by Secretary of Straus, no further correspondence was added to the Immigration Bureau's file on the matter for almost two years.

Then in June of 1909, Burton Parker, a customs agent in El Paso, Texas, wrote to the Secretary of the Treasury and urged the government to devise a way to seize fraudulent Chinese certificates passing through the mail.[281] Parker reported that many letters had passed through the El Paso post office "addressed to Chinamen in Los Angeles, San Francisco, and other places, including El Paso."[282] In January, one such letter had been marked by the customs officer "Supposed Liable to Customs Duties," and the recipient had then been required to open it in the presence of a customs officer.[283] Inside were four forged certificates, which were delivered to the recipient—presumably because, as Assistant

275. *Id.* at 733 (quoted in Letter from R. P. Goodwin, Assistant Att'y Gen., to Oscar S. Straus, Sec'y, Dep't of Com. & Lab. (July 15, 1907), *supra* note 273).

276. U.S. GOV'T PRINTING OFF., *supra* note 266, at 564.

277. *Id.*

278. *Id.* at 565.

279. *Id.*

280. *Id.*

281. Letter from Burton Parker, Special Agent in Charge, U.S. Customs Serv., Port of El Paso, Tex., to the Sec'y of the Treasury (June 5, 1909), *in* CASEFILE 52516/7, REC. OF THE IMMIGR. AND NATURALIZATION SERV., SERIES A: SUBJECT CORRESPONDENCE FILES, PART 1: ASIAN IMMIGR. AND EXCLUSION, 1906–1913 (ProQuest History Vault).

282. *Id.*

283. *Id.*

Attorney General Goodwin had explained, fraudulent certificates were subject neither to customs duties nor to seizure.[284] According to Parker, registered letters like that one that had been opened, suspected to contain fraudulent Chinese certificates, were passing through El Paso "almost daily."[285] He concluded, "[t]his report is submitted . . . with a view of having arrangements made whereby such fraudulent Chinese certificates [may] be seized and properly disposed of."[286]

Parker's report rekindled the entire discussion about interception of mail. Shortly after Parker's report, the Supervising Inspector of the Immigration Service in San Antonio, Frank W. Berkshire (who would later be referred to as the "Father of the U.S. Border Patrol"[287]), expanded on the issue in a letter to the Commissioner-General of Immigration, implying a state of ongoing frustration on the matter.[288] Berkshire acknowledged that this was not a new problem, stating, "[t]he writer is of the impression that the Bureau is familiar with the fact that for some years certificates of residence and other papers belonging to Chinese persons have been sent by registered mail through the post-office at El Paso, to Chinese residents of that city as well perhaps as others."[289] Although Berkshire's office felt strongly that the mail was being used widely for this purpose, he noted, "I am informed that the matter was presented to the Post-office Department two years ago and the Assistant Attorney General for that Department held that the papers, be they fraudulent or otherwise, were not subject to seizure, and for this reason this office has not taken any action in the matter."[290] He ended by again calling for a solution to the problem, urging, "if some arrangement can be made with the Post-office Department by which we may be authorized to take charge of papers sent through the mails, particularly from Mexico, it would be a means of strengthening our efforts in this district."[291]

Acting Commissioner-General of Immigration F.H. Larned wrote back to Berkshire reiterating the conclusion of Assistant Attorney General Goodwin "that registered letters containing fraudulent Chinese certificates cannot be opened or the certificates molested by Government officers,"[292] but before it was received, his letter crossed paths with a second letter from Berkshire, claiming to have solved the problem. Berkshire explained,

[A]n arrangement has been perfected at the El Paso post-office whereby one of our officers will be present when packages containing Chinese papers are opened, and I am

284. *Id.*

285. *Id.*

286. *Id.*

287. U.S. Customs and Border Protection refers to Berkshire as the "Father of the U.S. Border Patrol." *See The Father of the U.S. Border Patrol*, U.S. CUSTOMS & BORDER PROT., https://www.cbp.gov/border-security/along-us-borders/history/father-us-border-patrol [https://perma.cc/WV3X-NYAP] (last visited Aug. 10, 2025).

288. Letter from Frank W. Berkshire, Supervising Inspector, Immigr. Service, San Antonio, Tex. to the Comm'r-Gen. of Immigr. (June 23, 1909), *in* CASEFILE 52516/7, REC. OF THE IMMIGR. AND NATURALIZATION SERV., SERIES A: SUBJECT CORRESPONDENCE FILES, PART 1: ASIAN IMMIGR. AND EXCLUSION, 1906–1913 (ProQuest History Vault).

289. *Id.*

290. *Id.*

291. *Id.*

292. Letter from Acting Comm'r-Gen. F. H. Larned to Supervising Inspector, Immigr. Serv., San Antonio, Tex. (June 29, 1909), *in* CASEFILE 52516/7, REC. OF THE IMMIGR. AND NATURALIZATION SERV., SERIES A: SUBJECT CORRESPONDENCE FILES, PART 1: ASIAN IMMIG. AND EXCLUSION, 1906–1913 (ProQuest History Vault).

today instructing the Inspector in Charge to have said officer take up such certificates of residence as may be found in the possession of a person other than to whom they belong, unless such person can produce the Chinaman to whom the certificate actually belongs.

There was no explanation in Berkshire's letter as to how authorities would force recipients of mail suspected to contain fraudulent certificates to open that mail at the post office. Nevertheless, the Acting Commissioner-General of Immigration wrote back in approval of the plan.[293] This approval was the final piece of correspondence on the matter included in the file when it was eventually archived.

IV. THEMES AND LESSONS FROM CHINESE EXCLUSION SURVEILLANCE

The principal achievement of this Article to this point has been to shed light on the mechanics and impact of privacy invasions perpetrated against Chinese Americans by the U.S. government over several decades of Chinese exclusion. In addition to documenting important historical events, this exploration also helps illustrate three important broader points. First, the U.S. government can use—and has used—racialized privacy invasions not just to administer and enforce racist policies, but directly to operationalize oppression. In addition to assisting with the administration and enforcement of explicitly race-based immigration law, surveillance under Chinese exclusion served oppression both by inflicting a plethora of harms on people of Chinese descent through privacy invasions and by reinforcing and popularizing the idea that people of Chinese descent were "perpetual foreigners." Second, the study of surveillance under Chinese exclusion serves to validate assertions made by other scholars that privacy is a right that has been enjoyed primarily by those with wealth. Third, the study of Chinese exclusion can help us anticipate and understand the broader impact of present-day racialized immigration surveillance in the U.S.

A. *Surveillance weaponized by the U.S. government to oppress marginalized populations by inflicting harm*

A number of scholars have observed that surveillance is disproportionately wielded against historically disadvantaged groups. In the words of John Gilliom, "[t]he politics of surveillance *necessarily* include the dynamics of power and domination."[294] The very point of surveillance is "to control human behavior, whether by limiting access to programs or institutions, monitoring and affecting behavior within those arenas, or otherwise enforcing rules and norms by observing and recording acts of compliance and deviance."[295] Surveillance is thus used to administer and enforce policies that embed race- and class-based prejudice and inequality. In the words of Virginia Eubanks, "The practice of surveillance is both separate and unequal."[296] As Scott Skinner-Thompson has written, "[e]xtensive

293. Letter from Acting Comm'r-Gen. F. H. Larned to Supervising Inspector, Immigr. Ser., San Antonio, Tex. (July 2, 1909), *in* CASEFILE 52516/7, REC. OF THE IMMIGR. AND NATURALIZATION SERV., SERIES A: SUBJECT CORRESPONDENCE FILES, PART 1: ASIAN IMMIGR. AND EXCLUSION, 1906–1913 (ProQuest History Vault).

294. JOHN GILLIOM, OVERSEERS OF THE POOR: SURVEILLANCE, RESISTANCE, AND THE LIMITS OF PRIVACY 2–3 (William M. O'Barr & John M. Conley eds., 2001) (emphasis added).

295. *Id.* at 3.

296. Virginia Eubanks, *Want to Predict the Future of Surveillance? Ask Poor Communities*, AM. PROSPECT (Jan. 15, 2014), https://prospect.org/power/want-predict-future-surveillance-ask-poor-communities [https://perma.cc/MQ3T-NWPB].

research now documents the degree to which marginalized communities experience less lived privacy, are subject to greater degrees of surveillance, and feel the burdens of any surveillance more acutely."[297] Writing over the course of decades, scholars have shed a great deal of light on the disproportionate surveillance experienced by marginalized communities: Anita Allen,[298] Chaz Arnett,[299] Sahar Aziz,[300] Alvaro Bedoya,[301] Sarah Brayne,[302] Khiara Bridges,[303] Simone Brown,[304] Jordan C. Budd,[305] Robin Morris Collin and Robert William Collin,[306] Mary Anne Franks,[307] Michele Gilman,[308] Michael Harrington, [309] Margaret Hu,[310] Karen Levy,[311] Mary Madden,[312] Christian Parenti,[313] and Brishen Rogers,[314] to name a few.

The study of Chinese exclusion illustrates that the U.S. government has used privacy-invasive practices not just to enforce oppressive race-based laws, but to go further—to inflict harms on certain oppressed groups of people. This was understood when Chinese exclusion

297. SCOTT SKINNER-THOMPSON, PRIVACY AT THE MARGINS 16 (2020).

298. ANITA L. ALLEN, UNEASY ACCESS: PRIVACY FOR WOMEN IN A FREE SOCIETY (1988).

299. Chaz Arnett, *Black Lives Monitored*, 69 UCLA L. REV. 1384 (2023).

300. Sahar F. Aziz, *Caught in a Preventive Dragnet: Selective Counterterrorism in a Post 9/11 America*, 47 GONZ. L. REV. 429 (2011).

301. Alvaro M. Bedoya, *Privacy as a Civil Right*, 50 N.M. L. REV. 301 (2020); Alvaro M. Bedoya, *The Color of Surveillance*, SLATE (Jan. 18, 2016, 5:55 AM), https://slate.com/technology/2016/01/what-the-fbis-surveillance-of-martin-luther-king-says-about-modern-spying.html [https://perma.cc/MP6N-EAYC].

302. Sarah Brayne, *Big Data Surveillance: The Case of Policing*, 82 AM. SOCIOL. REV. 977 (2017).

303. KHIARA BRIDGES, THE POVERTY OF PRIVACY RIGHTS (2017).

304. SIMONE BROWNE, DARK MATTERS: ON THE SURVEILLANCE OF BLACKNESS (2015).

305. Jordan C. Budd, *A Fourth Amendment for the Poor Alone: Subconstitutional Status and the Myth of the Inviolate Home*, 85 IND. L.J. 355, 356 (2010) ("Acting with the acquiescence of a complicit judiciary, the state has repeatedly exempted the poor from the full measure of privacy protections at the core of our constitutional identity . . . .").

306. Robin Morris Collin & Robert William Collin, *Are the Poor Entitled to Privacy?*, 8 HARV. BLACKLETTER J. 181, 182 (1991) ("Present case law and social policy . . . treat the privacy interests of poor people as commodities which are protected only to the extent that the person claiming privacy has the money to pay for the material goods and benefits that are required to exercise privacy.").

307. Mary Anne Franks, *Democratic Surveillance*, 30 HARV. J.L. & TECH. 425, 441 (2017) ("The surveillance of marginalized populations has a long and troubling history. Race, class, and gender have all helped determine who is watched in society, and the right to privacy has been unequally distributed according to the same factors.").

308. Michele Estrin Gilman, *The Class Differential in Privacy Law*, 77 BROOK. L. REV. 1389, 1389–90 (2012) (explaining that the poor "endure a barrage of information-collection practices that are far more invasive and degrading than those experienced by their wealthier neighbors. The law reinforces this class differential in privacy.").

309. Michael Harrington, *Privacy and the Poor*, 1971 U. ILL. L.F. 168, 169–72 (1971) (describing ways in which poor people disproportionately suffer invasions of privacy and attributing this to three things: the idea that poor people "should be made to feel like the bums that they are" (a quote from Lester Maddox), the possibility that invasions of privacy tend to discourage people from using the welfare system, and the possibility that "invasions of privacy in the South are a means of controlling the labor market and controlling black people.").

310. Margaret Hu, *Algorithmic Jim Crow*, 86 FORDHAM L. REV. 633 (2017).

311. Karen E. C. Levy, *The Contexts of Control: Information, Power, and Truck-Driving Work*, 31 INFO. SOC'Y 160 (2015).

312. Mary Madden, Michele Gilman, Karen Levy, & Alice Marwick, *Privacy, Poverty, and Big Data: A Matrix of Vulnerabilities for Poor Americans*, 95 WASH. U. L. REV. 53 (2017).

313. PARENTI, *supra* note 79.

314. BRISHEN ROGERS, DATA AND DEMOCRACY AT WORK: ADVANCED INFORMATION TECHNOLOGIES, LABOR LAW, AND THE NEW WORKING CLASS (2023).

was being developed and implemented. For example, in one 1893 speech condemning the Geary Act, Senator Davis of Minnesota opined that "[u]p to a certain time . . . the [Chinese exclusion] policy . . . was to regulate, control, and prevent the coming into this country of those Chinese who were not entitled to come," but that the Geary Act, which first established registration and certificate requirements, represented a change.[315] "[T]hat purpose has been enlarged," he argued, "so that, say what you may of the devices and pretexts and glosses to which this legislation has been subjected, the actual object is to drive from this country . . . those who came here by our invitation, and whose right to remain here is guaranteed" both by treaty obligations and by statute.[316] In 1909, sociologist Mary Coolidge's observed that the officials tasked with enforcing Chinese exclusion aimed "to shut out more Chinamen . . . by constantly greater severity, suspicion and intimidation."[317]

The direct harms of Chinese exclusion's privacy invasions to Chinese people and Chinese Americans can be articulated as several different types of harms when viewed through the lens of the taxonomy defined by Danielle Citron and Daniel Solove's *Privacy Harms*.[318] Under Citron and Solove's taxonomy, the privacy-invasive aspects of Chinese exclusion policy caused Chinese Americans at least six kinds of harms:

Economic harms.[319] Surveillance practices that were relentless, invasive, and humiliating during Chinese exclusion damaged real and personal property and made it difficult for Chinese Americans to conduct business and earn a living in the U.S.[320]

Psychological harms.[321] Chinese Americans suffered humiliation, fear, and disturbance due to surveillance. They were humiliated by invasive and dehumanizing practices such as physical inspections, detailed bodily measurements,[322] and unjustified searches of their private spaces.[323] They lived in constant fear of invasive harassment and raids.[324] And they experienced significant "disturbance"—a type of emotional harm defined by Citron and Solove as "unwanted intrusions that disturb tranquility, interrupt activities, sap time, and otherwise serve as a nuisance."[325]

315. 53 CONG. REC. 3081 (1893).

316. *Id.*

317. COOLIDGE, *supra* note 52, at 328.

318. Danielle Keats Citron & Daniel J. Solove, *Privacy Harms*, 102 B.U. L. REV. 793 (2022).

319. *Id.* at 834 (defining economic harms as those that "involve monetary losses or a loss in the value of something.").

320. *See* discussion *supra* notes 163–169 and accompanying text.

321. Citron & Solove, *supra* note 318, at 841 (defining psychological harms as those that "involve a range of negative mental responses, such as anxiety, anguish, concern, irritation, disruption, or aggravation.").

322. *See* discussion *supra* notes 137–139 and accompanying text.

323. For example, Chinese residents of Portland wrote to the Chinese foreign minister in January 1904 that they found it "[humiliating] to feel that our places of business and homes are subject to violation without notice, and generally in the night time; that our countrymen are arrested, taken to the private office of the officers, subjected to examination covering the period of their residence in the United States, and expected to account for their whereabouts for a great number of years, and all this by officers who apparently are not seeking to ascertain the facts, but are attempting to find some pretext upon which to base an order of deportation." Petition from Chinese in Portland, Or. to His Excellency, Sir Chon Tung Liang Chong, Envoy Extraordinary and Minister Plenipotentiary (Jan. 1904), *supra* note 166.

324. *See* discussion *supra* notes 168–177 and accompanying text

325. Citron & Solove, *supra* note 318, at 844.

Reputational harms.[326] Chinese Americans often expressed concerns that being subjected to privacy invasions harmed their reputations.[327] This included concerns that being measured and recorded under the Bertillon system could cause one to "lose face" within their community,[328] and that having one's person and property searched might cause onlookers to think that person had engaged in wrongdoing.[329]

Autonomy harms.[330] Under Chinese exclusion, Chinese Americans lost control—or more accurately never had it—over their personal information.[331] Chinese Americans' surveillance-related fears also negatively impacted their autonomy to travel.[332]

Discrimination harms.[333] Citron and Solove's harms typology recognizes discrimination harms distinctly: the harms associated with entrenching inequality and treating different groups unequally, creating shame and stigma.[334] This results in a distinctly harmful type of psychological harm: "knowing that one is viewed as less than human, as not worthy of respect."[335] Chinese Americans experienced and decried intense discrimination in the way they were surveilled during Chinese exclusion.

Relationship harms.[336] Chinese Americans described how the privacy invasions associated with becoming approved for a certificate or for entry to the U.S. placed a tremendous strain on their relationships.

In addition to perpetrating a plethora of privacy harms on Chinese Americans, Chinese exclusion surveillance inflicted harm by reinforcing and popularizing the idea that people

326. *Id.* at 837 (defining reputational harms as those that "involve injuries to an individual's reputation and standing in the community.").

327. Wong Kai Kah, *supra* note 142, at 418 (arguing that interrogation of an individual passenger arriving in the U.S. "humiliates him before his fellow passengers.").

328. Rep. to the Sec'y of the Dep't of Com. & Lab. from Harold Bolce, *supra* note 139.

329. *Chief Elton Sued: Chinese Merchant Wants a Large Sum from Him Because the Chief Raided His Store*, *supra* note 161 (charging that search "subjected plaintiff to humiliation, contumely and disgrace," and further that as a result, "divers and sundry persons believed the plaintiff a criminal and was harboring criminals and evidences of crime, and that his premises were used for unlawful and criminal purposes and practices."). The idea of that one's reputation was damaged by being treated like a criminal, even if they had committed no crime, was spotlighted in 1903 when Tom Kim Yung, military attaché of the Chinese Legation at Washington, died by suicide after having been arrested by San Francisco police for a crime he claimed he did not commit. According to an article in the *San Francisco Chronicle* reporting on the incident, "The principal complaint of the Chinese is that their countryman was mistreated before his own people, yanked about by the queue and treated like any common drunk." *Killed Safe to Save Face: Suicide of Tom Kim Yung Due to Humiliation Because of His Arrest*, S.F. CHRON. (Sept. 17, 1903), at 12; *see* Chung, *supra* note 52, at 29.

330. Citron & Solove, *supra* note 318, at 845 (defining autonomy harms as those that "involve restricting, undermining, inhibiting, or unduly influencing people's choices.").

331. *Id.* at 845–46 (describing "the inability to make meaningful choices about one's data or prevent the potential future misuse of it" as an autonomy harm).

332. Chinese Chamber of Commerce and Chinese-American League of Justice 1913 Report, *supra* note 90.

333. Citron & Solove, *supra* note 318, at 855 (defining discrimination harms as those that "involve entrenching inequality and disadvantaging people based on gender, race, national origin, sexual orientation, age, group membership, or other characteristics or affiliations.").

334. *Id.* at 855.

335. *Id.* at 56.

336. *Id.* at at 859 (defining relationship harms as those that "involve the damage to relationships that are important for one's health, well-being, life activities, and functioning in society," including both personal and professional relationships, as well as relationships with organizations.).

who were ethnically Chinese were foreign by default—a common stereotype that persists today.[337] Through the privacy-invasive practices of Chinese exclusion, the U.S. government endorsed and reinforced the idea that people who were Asian American were perpetually foreign, in contrast to their white counterparts. Requirements that Chinese Americans obtain and carry certificates documenting their legal status and have their status validated by white Americans contributed to their "perpetual foreigner" status. In addition, raids of neighborhoods where Chinese Americans lived and invasive inspections at borders sent the clear message that Chinese Americans were aliens under constant suspicion.

The idea that people of Chinese descent were perpetual foreigners was, in fact, largely the motivation for Chinese exclusion. Speaking on the floor of the House before the passage of the first Chinese Exclusion Act in 1882, Representative Page of California asserted that Chinese people were unable to become American compared to white immigrants.[338] Page described his perception of how Chinese immigrants differed from immigrants from European nations, stating,

[O]ur experience shows that the German, the Irishman, and the Scandinavian come here to make their homes with us and become a part of us. They fraternize with us and we absorb them. They are of our own race, having the same customs, manners, and religion. Where a German came here twenty-five or thirty years ago and reared his family, you cannot now point out his boys as being of German extraction, in contradistinction to other boys of American parentage; you cannot distinguish the difference between the sons of Irish parents and the sons of parents who were born in the United States. They become homogeneous. Their assimilation is completed within one generation.[339]

Legislators persisted in asserting that Chinese people were unassimilable. Ten years later, as the Senate considered the bill that would become the Geary Act, Senator Teller of Colorado distinguished Chinese exclusion from the idea of excluding immigrants from other places, arguing that the "question of the immigration of a class of people who are entirely different from ours, a class of people with whom we can have no social relations, and with whom our people can not and will not amalgamate . . . ." was very different than the question of "undesirable immigration of persons from foreign countries who are of our family."[340] He opined that "we should have an American policy that, while we welcome good people of all countries of our own race who can amalgamate with us and become a part of the body politic, hereafter there shall be more energy devoted to exclude the undesirable classes."[341] Senator Sanders of Montana similarly stated that Americans would welcome any group of people that "would ultimately assimilate to our people and with our civilization. . . But here is a race that is petrified, as changeless as the stars in heaven . . . ."[342] In Senate discussions the following year regarding proposed updates that would become the McCreary Act, Senator Perkins of California declared, "The Chinese do not, they can not, they will not assimilate with us."[343]

337. *See* discussion *infra* notes 366–370 and accompanying text.
338. 13 CONG. REC. 1932 (1882).
339. *Id*.
340. 23 CONG. REC. 3558 (1892).
341. 23 CONG. REC. 3559–60 (1892).
342. 23 CONG. REC. 3568 (1892).
343. 25 CONG. REC. 3046 (1893).

The detailed documentation and constant surveillance of Chinese Americans—including by white validators required to sign off on Chinese Americans' applications for certificates of residency[344]—built upon and reinforced this idea that people of Chinese were perpetually foreign by keeping them in the administrative and public spotlight for decades. As Chinese Minister Tsui Kwo Yin wrote to Secretary of State James G. Blaine in 1890, "[w]hile the merchants of all other nations of the earth are permitted free and unobstructed entrance into and departure from the ports of the United States, the Chinese merchant has by the legislation of your Congress had thrown around him the most obstructive, embarrassing, and humiliating restrictions.[345] My great-great-uncle Moy Dong Chow decried the requirement that Chinese Americans alone were singled out to "be measured as criminals and labeled as so many packages of tea," asking, "[a]re we not residents here? Do we not pay taxes as all other property-holders?"[346]

Through the privacy harms exacted on Chinese Americans and the reinforcement of their status as perpetual foreigners, surveillance conducted under Chinese exclusion can be characterized as constituting government oppression of Chinese Americans. This is in addition to the part such surveillance played supporting the administration of oppressive race-based immigration law.

B. *Wealth as a condition of possibility for privacy*

The study of surveillance under Chinese exclusion also serves to validate and give texture to assertions made by other scholars that privacy is a right that has been enjoyed primarily by those with wealth. In the words of Khiara Bridges, "wealth is the condition of possibility for privacy."[347] Although Chinese exclusion targeted all people of Chinese descent, its most severe surveillance mechanisms were imposed, perhaps unsurprisingly, on poor laborers. Meanwhile, wealthier Chinese aristocrats often (though not always) managed to escape the greatest privacy harms of Chinese exclusion. This was largely because there was a significant wealth distribution—and thus a political distribution—among Chinese Americans. More powerful Chinese Americans leveraged their power to improve their own circumstances.

The harms suffered and objections expressed by Chinese Americans under Chinese exclusion surveillance were not uniform; rather, they tended to differ by class and status. There was something of an acceptance—even among Chinese Americans—of invasions of poor Chinese laborers' privacy as compared to when those same practices were used to harm and humiliate upper-class Chinese people and Chinese Americans with greater wealth and political power.[348] When the Vice-Commissioner to the Louisiana Purchase Exposition,

344. *See* discussion *supra* Subpart II.C.3.

345. H.R. DOC. NO. 51-1, pt. 1, *supra* note 168, at 216 (Letter from Mr. Tsui to Mr. Blaine, Mar. 26, 1890) (on file with author).

346 *Just Like Criminals: Hi Lung Indignant at the Plan for Detecting Chinamen*, *supra* note 37.

347. BRIDGES, *supra* note 303, at 13; *see* Gilman, *supra* note 308 (on the class differential in privacy).

348. COOLIDGE, *supra* note 52, at 333 ("The treaties and the laws distinguish between laborers and the privileged classes and guarantee specifically to the latter all the rights of the most favored nations except the right of naturalization; but the regulations of the Immigration Bureau have almost obliterated any distinction between them and the officers have in fact often ignored it."); *id.* at 334 (the Chinese were "justly outraged, not because their laborers have been excluded nor even primarily because they have been ill-treated, but because their honorable men and women have been harassed and insulted within our own borders.")

Wong Kai Kah, wrote an outraged piece about the regulations that would apply to Chinese visitors to the Fair,[349] he seemed concerned only about the treatment of upper-class visitors, arguing that Chinese people who arrived via first class passage—a fraction of those who arrived—were inspected and humiliated as though they were laborers suspected of violating Chinese exclusion. "The fact that a Chinese gentleman travels as a first-class passenger, should be considered as prima facie evidence that he is not a coolie," [350] he argued. An individual arriving via first-class passage, upon presenting his documents at customs, should therefore be entitled to "the same treatment as other passengers."[351]

The wealthy also used economic influence in the form of a boycott to push back against the humiliating treatment that they found so offensive. Wong explained, "[i]n no other country is the power of boycott as strong as it is in China," where "often merchants accomplish the repeal of an obnoxious law . . . by closing their places of business and letting them remain closed until the remedy asked for is granted."[352] True to the threat, in May 1905, members of the Shanghai Chamber of Commerce declared a boycott on American goods.[353] George Anderson, then the American consul at Amoy in Fukien province, China, reported, "There is less resentment against the restriction of our immigration laws than there is for the treatment accorded Chinese in enforcing such laws at the time of entrance and after such Chinese have been properly entered in American territory."[354] A piece in *Current Literature* explained that it was the "treatment of high-caste Chinamen—not the exclusion by law of Chinese labor" that had aroused the wrath of Chinese merchants.[355]

The hierarchy of wealth and power among Chinese Americans meant that Chinese Americans of a more privileged class expected greater privacy and were outraged at receiving the same humiliating treatment endured by those who were poorer. Wealthier Chinese Americans and Chinese people also were able to wield their economic and political power to push back in a way that was unavailable to poor laborers.

C. *Echoes and parallels*

This Article turns, finally, to a brief discussion of some present-day echoes of and parallels to surveillance under Chinese exclusion and its impact. Having explored the privacy harms inflicted on Chinese Americans by Chinese exclusion surveillance,[356] it is easy to imagine how the same categories of harms—economic, psychological, reputational,

349. *See* discussion *supra* notes 141–145 and accompanying text.

350. Wong Kai Kah, *supra* note 142, at 421.

351. *Id.*

352. *Id.* at 424.

353. Sin-Kiong Wong, *supra* note 118, at 123.

354. *Id.* at 139 (citing "Memorandum on Chinese exclusion Legislation," George E. Anderson to Dep't of State, Oct. 10, 1905, Consular Dispatches, Amoy. Quoting from Papageorge, "American Diplomats," p. 100); *see* Sin-Kiong Wong, *supra* note 118, at 124 ("From the Chinese perspective, exclusionary legislation was indeed irritating, but the implementation of the laws proved more troublesome than the laws themselves."); Rep. to the Sec'y of the Dep't of Com. & Lab. from Harold Bolce, *supra* note 139 ("It is universally acknowledged . . . that the claims of Chinese men of financial standing and education that merchants and others have been treated with injustice and indignity at our ports, denied lawful right to land, and without warrant shipped back to China, prompts the present boycott and is the inspiration for the whole anti-American movement in the Empire.").

355. *A Review of the World*, CURRENT LITERATURE, July 1905.

356. *See* discussion *supra* Subpart IV.A.

autonomy, discrimination, and relationship—likely fall on countless individuals in immigrant and mixed-status communities today. It is beyond the scope of this Article to conduct a fulsome analysis of all categories of privacy harms befalling communities subjected to present-day racialized immigration-related surveillance, but three points merit highlighting.

First, Chinese exclusion illustrates that privacy harms fall on all people who are targeted by racialized surveillance, not just those at risk of deportation.[357] For example, fear, anxiety, and psychological disturbance associated with increased surveillance and raids may be felt by all people who understand themselves to be targeted, even if they do not consider themselves to be at risk of deportation, and consequently result in a diminishment of autonomy for all affected. This was seen in 2019 when even people who were citizens determined it was in their best interest to carry proof of citizenship on their person at all times.[358] One such person told journalists, "I'm a third-generation Texan. I've been carrying a passport since the day he was elected."[359]

Second, fear, which seems to be a primary goal of the Trump administration's approach to immigration messaging and policy because it advances the goal of "self-deportation,"[360] further inhibits people's ability to access critical services that they may need, exacerbating harm.[361] For example, both journalistic reporting and empirical research suggest that immigration-related fears reduce people's access to education[362] and health care.[363] In the criminal legal context, concerns about law enforcement surveillance can chill the willingness of individuals who have had contact with the criminal legal system to interact with all institutions that maintain formal records, such as banks, hospitals, employers, and schools.[364]

Third, the state of perpetual foreignness reinforced by racialized surveillance can be thought of as a long tail of privacy harm to targets of racialized surveillance and their descendants. Indeed, perpetual foreignness has lasted for many decades among Chinese and other Asian Americans, even though the last Chinese exclusion law was brought to an end

357. *See* discussion *supra* Subpart IV.A.

358. *See* Dennis Romero, *Fear of ICE Raids Leads Some U.S. Citizens To Carry Their Passports*, NBC NEWS (July 14, 2019), https://www.nbcnews.com/news/us-news/fear-ice-raids-leads-some-u-s-citizens-carry-their-n1029621 [https://perma.cc/SPC8-T5MG].

359. *Id.*

360. Adrian Carrasquillo, *The Fear Is the Point*, THE BULWARK (Jan. 15, 2025), https://www.thebulwark.com/p/the-fear-is-the-point [https://perma.cc/RW9D-ETXZ]; *see* Rosalind Ghafar Rogers, *The Dire Mental Health Effects of Restrictive Immigration Policies*, U.S. COMM. FOR REFUGEES AND IMMIGRANTS (Feb. 5, 2025), https://refugees.org/the-dire-mental-health-effects-of-restrictive-immigration-policies/ [https://perma.cc/3WG9-XWRZ].

361. *See* Wang et al., *supra* note 15, at 61–64.

362. AM. IMMIGR. COUNCIL, *U.S. Citizen Children Impacted by Immigration Enforcement* (June 24, 2021), https://www.americanimmigrationcouncil.org/research/us-citizen-children-impacted-immigration-enforcement [https://perma.cc/4AL5-AASU].

363. Karen Hacker, Maria Anies, Barbara L. Folb, & Leah Zallman, *Barriers to Health Care for Undocumented Immigrants: A Literature Review*, 8 RISK MGMT. & HEALTHCARE POL'Y 175, 175–83 (2015); Timothy Callaghan, David J. Washburn, Katharine Nimmons, Delia Duchicela, Anoop Gurram, & James Burdine, *Immigrant Health Access in Texas: Policy, Rhetoric, and Fear in the Trump Era*, 19 BMC HEALTH SERVS. RSCH. 342 (2019).

364. Sarah Brayne, *Surveillance and System Avoidance: Criminal Justice Contact and Institutional Attachment*, 79 AM. SOCIO. REV. 367, 367–91 (2014).

more than 80 years ago and explicitly race-based immigration restrictions ended in 1965.[365] The estimated seven percent of Americans who are Asian American experience ongoing racial profiling, stereotyping, and race-based hatred and aggression.[366] This problem was brought to the front of public consciousness during the height of the COVID-19 pandemic, when pandemic-related anti-Asian incidents spiked, including several violent murders and assaults.[367] These incidents have faded somewhat from the national spotlight, but the problem continues.

A nationwide survey of Chinese Americans released in the fall of 2024 revealed continuing high rates of discrimination and race-based aggressions and microaggressions.[368] Two-thirds of respondents reported they face at least one form of discrimination in an average month.[369] A majority of respondents reported that in any average month, people assume they are not from the U.S. and ask them where they are from, and more than one-quarter of respondents said that they are called names or insulted.[370]

In light of the racist and anti-immigrant rhetoric used by Trump and others in his administration that indicates an affirmative desire to inflict harms on others, it is perhaps not a particularly useful insight to observe that immigration-related surveillance is deeply harmful in a variety of ways. Nevertheless, as journalists, scholars, and advocates study and report on the human impact of immigration enforcement, these points regarding harms—that they fall broadly on all people who are targeted, that they chill participation in critical services, and that they reinforce a status of "perpetual foreignness" that leads to additional harms—are worthy of notice.

365. *See* NEIL G. RUIZ, CAROLYNE IM, & ZIYAO TIAN, DISCRIMINATION EXPERIENCES SHAPE MOST ASIAN AMERICANS' LIVES: STEREOTYPES OF ASIANS IN THE U.S. AS FOREIGNERS AND A MODEL MINORITY DRIVE DISCRIMINATION 38, https://www.pewresearch.org/wp-content/uploads/sites/20/2023/11/RE_2023.11.30_Asian-American-Discrimination_Report.pdf [https://perma.cc/5HTZ-VFKT] (providing a brief explanation of the "perpetual foreigner" stereotype); *see generally* Frank H. Wu, *Where Are You Really From? Asian Americans and the Perpetual Foreigner Syndrome*, C.R. J., Winter 2002, at 14 (author describing his own experience being treated as a perpetual foreigner in the U.S. due to his race and reflecting on some of the ways in which this treatment is harmful).

366. *See National Population by Characteristics: 2020–2024*, U.S. CENSUS BUREAU, https://www.census.gov/data/tables/time-series/demo/popest/2020s-national-detail.html (under "Tables" and subheading "Sex, Race, and Hispanic Origin," click on "Annual Estimates of the Resident Population by Sex, Race, and Hispanic Origin for the United States: April 1, 2020 to July 1, 2024 (NC-EST2024-SR11H)" to download the relevant data in Excel spreadsheet format) [on file with author] (as of July 1, 2024, estimated population of 26,809,708 who are Asian alone or in combination with one or more other races out of a total estimated U.S. population of 340,110,988).

367. Sungil Han, Jordan R. Riddell, & Alex R. Piquero, *Anti-Asian American Hate Crimes Spike During the Early Stages of the COVID-19 Pandemic*, 38 J. INTERPERSONAL VIOLENCE 3513, 3513–14 (2022); Mengyan Liu, Natalie Anastasio, Hope LeFreniere, & Arie Perliger, *Public Health Crisis and Hate Crimes: Deciphering the Proliferation of Anti-Asian Violence in the US before and During COVID-19*, 17 PERSPS. ON TERRORISM 30, 30 (2023).

368. *See* NATHAN KAR MING CHAN, VIVIEN LEUNG, & SAM COLLITT, STATE OF CHINESE AMERICANS SURVEY 2024: EXECUTIVE SUMMARY (2024), https://www.committee100.org/wp-content/uploads/2024/09/SOCA2024_ExecutiveSummary.pdf [https://perma.cc/A8BN-R2H4].

369. *Id.*

370. *Id.*

V. CONCLUSION

Over nearly 70 years of Chinese exclusion in the U.S., Chinese Americans were subjected to unprecedented levels of scrutiny and surveillance. Under Chinese exclusion, the U.S. government built and operated a massive government apparatus to conduct ongoing documentation and surveillance of Chinese Americans. The few Chinese people who were permitted to migrate to the U.S. were categorically documented, surveilled, and tracked.

For many readers, the privacy-invasive aspects of Chinese exclusion are not well known and the harms of surveillance are not well understood. But a deep dive into historical information about how people lived under Chinese exclusion provides strong evidence that the privacy-invasive practices of Chinese exclusion were constant and extensive over the course of many Chinese Americans' entire lifetimes.

This Article's insight into surveillance in the era of Chinese exclusion also supports broader reflections. Perhaps most importantly, the study of surveillance under Chinese exclusion demonstrates that the U.S. government can use and has used privacy-invasive practices not just to enforce oppressive race-based law, but to go further—to directly inflict extensive harms on certain oppressed groups of people. This includes the reinforcement and popularization of the idea that people who are targeted by racialized surveillance are foreign by default.

Finally, Chinese exclusion surveillance and its consequences find echoes and parallels in the present day, especially as the U.S. appears to fall deeper into a time of reinvigorated racialized immigration enforcement and surveillance. Countless individuals in immigrant and mixed-status communities today are likely to suffer from a plethora of privacy-related harms as the Trump administration ramps up racialized surveillance related to immigration enforcement. The history of Chinese exclusion shows us that these harms can be severe and long-lasting, can be followed by a decades-long tail of harmful "perpetual foreigner" status for targeted groups, and are likely to fall broadly on all who are visited upon by racialized surveillance, rather than narrowly only on those who are specific targets of immigration enforcement efforts.